



**Washington State Supreme Court  
Commission on Children  
in Foster Care**

**9/12/2022  
1:00-4:00 p.m.**

<https://wacourts.zoom.us/j/91935733384>

Meeting ID: 919 3573 3384

Dial by your location:  
+ 1 253 215 8782

**Agenda**

<p>1:00 pm 7 min</p>	<p>1. Welcome and Introductions</p> <ul style="list-style-type: none"> <li>• Land and Forced Labor Acknowledgment</li> <li>• Please type your name and agency in the chat in lieu of roll call.</li> <li>• If you have suggested agenda items for the next meeting, please type them into the chat or email Kelly Warner-King or the Co-Chairs before November 10, 2022.</li> </ul>	<p>Justice Barbara Madsen, <i>Co-Chair</i></p> <p>Secretary Ross Hunter, <i>DCYF; Co-Chair</i></p>
<p>1:07 pm 3 min</p>	<p>2. Approval of May 2022 Minutes</p>	<p>Justice Barbara Madsen, <i>Co-Chair</i></p>
<p>1:10 pm 20 min</p>	<p>3. Mockingbird Youth Leadership Summit Follow Up</p>	<p>Lauren Frederick, Sierra Rogers, Emily Abell, El Berendts, Erin Fenton, Bunni Garcia-Owens, Nicolas Guzman, Sabian Hart-Wall, and Ryan Tobiasson; <i>The Mockingbird Society</i></p>
<p>1:30 pm 20 min</p>	<p>4. Court Improvement Spotlight – Family Treatment Court (FTC) Team</p> <ul style="list-style-type: none"> <li>• Overview of FTC Federal Grant and What We’ve Learned</li> <li>• AOC DRAFT Decision Package – Sustain Family Treatment Court Team</li> <li>• Opioid Settlement Funds</li> </ul>	<p>Julie Lowery and Kelly Warner-King, AOC</p>
<p>1:50 pm 10 min</p>	<p>BREAK</p>	
<p>2:00 pm 50 min</p>	<p>5. Children’s Representation Standards Workgroup</p> <ul style="list-style-type: none"> <li>• Presentation on Updated Standards &amp; Workgroup Process</li> <li>• Questions &amp; Answers</li> <li>• Commission’s Role/Next Steps</li> </ul>	<p>Jill Malat and Emily Stochel, <i>Workgroup Co-Chairs</i></p> <p>Bailey Zydek, OCLA</p>
<p>2:50 pm 10 min</p>	<p>BREAK</p>	

<p>3:00 pm 50 min</p>	<p>6. CASA/VGAL Discussion</p> <ul style="list-style-type: none"> <li>• AOC DRAFT Decision Package Request - Stabilize and Improve Best Interests Model in Dependency Cases</li> <li>• Evaluation <ul style="list-style-type: none"> <li>○ Racial Equity Issues</li> <li>○ Best Interest</li> </ul> </li> <li>• Ideas for CCFC Role</li> </ul>	<p>Chris Stanley, AOC</p> <p>Dave Reynolds, WAJCA Representative</p>
<p><b>New Business</b></p>		
<p>3:50 pm 10 min</p>	<p>7. Member Updates and Requests for Future CCFC Topics</p> <ul style="list-style-type: none"> <li>• Hybrid Option for December 12<sup>th</sup> CCFC Meeting</li> </ul>	<p>Justice Barbara Madsen, <i>Co-Chair</i></p> <p>Secretary Ross Hunter, <i>DCYF; Co-Chair</i></p>
	<p><b>Adjournment</b></p>	
	<p><u>Upcoming 2022 Meeting:</u> December 12, 2022</p>	



**Washington State Supreme Court  
Commission on Children in Foster Care  
May 9, 2022  
Meeting Minutes**

**Members Present:**

Justice Barbara Madsen, Washington State Supreme Court, Commission Co-Chair  
Ross Hunter, Department of Children, Youth, and Families (DCYF), Commission Co-Chair  
Jim Bamberger, Director, Office of Civil Legal Aid (OCLA)  
Jolie Bwiza, Tacoma Chapter Leader, Mockingbird Youth Network  
Judge Alicia Burton, Superior Court Judges' Association (SCJA)  
Mike Canfield, Foster Parent Alliance of Washington State (FPAWS)  
Alyssa Connolly, Northwest Intertribal Council  
Sydney Doherty, Coordinated Care of WA; Foster Care Physical/Mental Health Representative  
Veronica Gallardo, Office of Superintendent of Public Instruction (Designee for Chris Reykdal)  
Larry Jefferson, Washington State Office of Public Defense (OPD)  
Jeannie Kee, Foster Youth Alumni Representative  
Laurie Lippold, Partners for Our Children  
Jill May, Washington Association for Children & Families  
Tonia McClanahan, Parent Advocate Representative  
Ryan Murrey, Washington Association of Child Advocate Programs (WACAP)  
Yuval Berenstein on behalf of Representative Tana Senn, Washington House of Representatives  
Rachel Sottile, Center for Children & Youth Justice (CCYJ)  
Emily Stochel, Youth Who Has Been Reunified; College Success Foundation  
Carrie Wayno, Attorney General's Office (Designee for Bob Ferguson)  
Senator Claire Wilson, Washington State Senate  
Bailey Zydek, Children's Representation Program Manager, OCLA

**Members Not Present:**

Beth Canfield, Foster Parent Allies of Washington State

**Guests Present:**

Katie Anderson, Family & Youth Justice Programs, AOC  
Linda Benson, Interim Executive Director, Washington CASA Association  
Sarah Burns, Statewide Innovation Coordinator, Family & Youth Justice Programs, AOC  
Sophia Byrd McSherry, Office of Public Defense (OPD)  
Peggy Carlson, Office of Superintendent of Public Instruction (OSPI)  
Jacob D'Annunzio, Washington State OPD, Parents Representation Program  
Patrick Dowd, Office of the Family and Children's Ombuds  
Lauren Frederick, Mockingbird Society  
Michael Griesedieck, Program Manager, King County Dependency CASA  
Allison Krutsinger, DCYF Director of Government Affairs and Community Engagement  
Jill Malat, OCLA Consultant  
Erin Shea McCann, Legal Counsel for Youth & Children  
Alison Mendiola, Senate Human Services, Reentry & Rehabilitation Committee  
Jorene Reiber, Washington Association of Juvenile Court Administrators  
Sierra Rogers, Regional Engagement Coordinator, Mockingbird Society  
Sarah Sullivan, Think of Us

Reyana Ugas, CASA Supervisor, King County Dependency CASA  
Tara Urs, King County Department of Public Defense  
Laura Vogel, Family & Youth Justice Programs, AOC

**Staff Present:**

Kelly Warner-King, Family & Youth Justice Programs, AOC  
Susan Goulet, Family & Youth Justice Programs, AOC

**Call to Order**

Justice Madsen called the meeting to order at 1:01 p.m. Introductions and roll call were conducted virtually through the Zoom meeting chat box.

Justice Madsen welcomed Senator Claire Wilson to the Commission. She replaced Senator Jeannie Darneille on the Commission as Chair of the Senate Human Services, Reentry & Rehabilitation Committee. Senator Wilson said the committee is continuing the work Senator Darnielle did for so long, including looking at prevention supports that young people need, and she looks forward to working with the Commission to do good work on behalf of young people.

**Approval of the Minutes**

Justice Madsen invited a motion to approve the March 2022 meeting minutes. The motion to approve the minutes passed.

**Legislative & Budget Updates**

*DCYF Highlights of the 2022 Legislative Session*

Allison Krutsinger, DCYF Government Affairs Deputy Director, provided a DCYF Legislative Update, focusing on highlights of the 2022 Legislative Session that are most relevant to the Commission. She noted that this shorter supplemental legislative session was also conducted as a hybrid session (with a lot of remote and some in-person meetings). Significant investments were made in DCYF, driven by a strong economy in Washington State, which resulted in strong and positive steps forward for child welfare.

DCYF Decision Packages submitted to the Legislature and Funded Amounts included:

- (1) Indian Child Welfare Act Compliance - \$8,200,000 provided full funding, so DCYF is moving ahead with implementation.
- (2) Family Time Rates - \$23,900,000 provided a rate increase that went into effect April 1, 2022.
- (3) Combined In-Home Services - \$8,440,000 goes into effect July 1, 2022.
- (4) Kinship Caregiver Engagement - \$1,780,000 goes into effect July 1, 2022.

DCYF also put forward a request for Exceptional Placement Continuum Funding, which included five components and was fully funded:

- (1) Adolescent Housing Program Pilot (\$1,290,000).
- (2) Increases for Case Aide Hourly Rate (\$220,000).
- (3) Increase BRS Facility Rates (\$13,375,000).
- (4) Increase BRS Treatment Foster Care Rates (\$4,511,000).
- (5) Shared Planning (\$1,144,000).

Safely Reduce Number of Children in Out-of-Home Care Policy and Budget Highlights included:

- (1) Hub Home Foster and Kinship Constellations and Long-term Implementation (\$269,000).
- (2) Family Reconciliation Services (\$100,000).
- (3) Child Welfare Housing Pilot (\$767,000).
- (4) Prenatal Substance Exposure (\$300,000).
- (5) Grays Harbor SafeCare (\$100,000).

Create Successful Transitions to Adulthood Policy and Budget Highlights included:

- (1) Extended Foster Care Transition Stipends (\$10,600,000).
- (2) Systems Assessment of Extended Foster Care (\$200,000).
- (3) Youth Financial Capability (\$325,000).
- (4) Foster Care Educational Outreach (\$460,000).

Improve Quality and Intention of Practice Policy and Budget Highlights included:

- (1) Child Support Foster Care (\$2,000,000).
- (2) Child Welfare Workload Study (\$1,000,000).
- (3) BRS New Vancouver Facility (\$1,513,000).

DCYF Related Bill Highlights that Passed included:

- (1) HB 1747, *Child relative placements*, supporting relative placements in child welfare proceedings.
- (2) HB 1890, *Children behavioral health*, concerning the children and youth behavioral health work group.
- (3) HB 1905, *Homelessness/youth discharge*, reducing homelessness for youth and young adults discharging from a publicly funded system of care.
- (4) HB 1955, *Dependency/education*, creating uniformity in education requirements for students who are the subject of a dependency proceeding.
- (5) SB 5793, *State boards, etc./stipends*, concerning stipends for low-income or under represented community members of state boards, commissions, councils, committees, and similar groups.
- (6) HB 1735, *Peace officers/use of force*, modifying the standard for use of force by peace officers—bill clarifies law enforcement role in child welfare statutes.

Allison then discussed implementation of multiple Federal and State requirements that are putting pressure on DCYF to make major shifts in child welfare policy and practice. DCYF is trying to bring all of these new requirements together into one implementation plan to help it make sense for employees. She explained that system pressures from new federal laws, Washington Supreme Court decisions and changes in state legislation require DCYF to change policy and practice related to equity, preventing out of home placement, prioritizing relative placements, and reunification and permanency. DCYF acknowledges that it has to address some implementation challenges, including unaligned and outdated policies, inconsistent practice in the field, and problems with its IT system.

Secretary Hunter explained that it is not only external pressure requiring DCYF to make changes; there is internal pressure and urgency to do the same things. The improvements are extensive and will take time to accomplish. In response to a question about whether policies have been revised and are available to system partners, Secretary Hunter noted that DCYF's policies have not been updated yet. He said that the agency has a lot of work to do before it can produce coherent, updated policies. DCYF will come back to the Commission to talk about how staff plan to roll out the changes and new policies. Jacob D'Annunzio asked if the AGO agrees with shifting practice to

align with the new pressures, given that some legal arguments being made at the case level seem to be moving in the opposite direction. Secretary Hunter stated that the AGO is a key part of DCYF's implementation design effort.

*Priority Budget Items—Partners for Our Children/Child Welfare Advocacy Coalition (CWAC)*

Laurie Lippold thanked Allison and her team for their collaboration, and focused her presentation on legislative action relevant to the Commission that Allison had not yet covered, which included:

- HB 1747, Relative Placements/Guardianship.
- Rising Strong West: Capital Budget \$150,000 for continued planning with a goal of submitting a capital budget request for 2023.
- Family Resource Centers: \$5,000,000 to build capacity to divert families from entering dependency.
- Behavioral Health 7% Medicaid Rate Increase: to provide stability for behavioral health work.
- HB 1800, Parent Portal: final budget was \$257,000 GFS total.
- Parents for Parents (P4P): One-time funding of \$425,000, that went to OPD, is provided in FY 2023 to increase support for P4P program which provides peer mentoring for parents involved in the dependency court system.

*Family and Juvenile Court Improvement Program (FJCIP) Expansion*

The AOC was successful in securing legislative funding to expand resources and court sites for the Family and Juvenile Court Improvement Program (FJCIP). Since 2008, FJCIP has provided funding to local dependency courts to support a dedicated court improvement coordinator who helps judicial officers and court partners understand their performance data, continuously assess their effectiveness, and improve operations to better serve families, children, and professionals. Currently, there are ten FJCIP courts that receive partial funding for a FJCIP coordinator. The new budget allocation does the following:

- increases current FJCIP court allocations to fully fund current FJCIP coordinators' salaries and benefits,
- adds six new courts FJCIP courts, and
- creates two new AOC staff positions to coordinate, support, and evaluate the FJCIP program across sites.

Secretary Hunter invited Senator Claire Wilson to share her thoughts on the legislative session and what to expect going forward. Senator Wilson discussed:

- Juvenile Record Sealing: work was started, and although it didn't pass in the most recent session, work will continue.
- Extended Foster Care: Mockingbird launched this work and the legislature will keep thinking about how to meet the service and support needs of young people, ages 21-25.
- Reentry Services.
- Washington Future Fund: to help young people create generational wealth.
- Compensation for lived experience: Senator Wilson plans to work with the Governor's Office of Equity to operationalize.

**Racial Equity Discussion: WACAP and Washington CASA Association**

Ryan Murrey, Washington Association of Child Advocate Programs (WACAP) presented on WACAP's efforts to address racial inequities. Ryan shared a list of WACAP member programs, by county, that identifies where the programs are located – in a court, a non-profit, and/or a tribe. He then gave a general overview of the WACAP Core training, which was approved for use by the

AOC in March 2020. WACAP has served as the primary facilitator of trainings for child advocates since the pandemic started, conducting ten virtual statewide trainings for over 700 new advocates and staff. It was noted that the King, Snohomish, and Chelan-Douglas CASA programs train new volunteers using the National CASA curriculum. The WACAP curriculum consists of 30 hours of training, with materials and presentation slides available on their website. Zoom training sessions run Monday through Thursday, 10am-12pm, and again at 5:30pm-7:30pm for four weeks. WACAP plans to host quarterly trainings from now on. Sixty percent of trainees go onto take a case, and the program is strongly reunification based.

Understanding inequities and addressing racial bias are major themes of the training and appear in the following ways:

- The concept of disproportionality is introduced on the first day, with child-related data presented statewide and county by county.
- A section on Bias includes an introductory news video clip addressing disproportionality, and a required reading of the article “However Kindly Intentioned: Structural Racism and Volunteer CASA Programs.” Participants are then broken into small groups to discuss the questions: “Why did the authors single out volunteer advocates?” and “Why do disproportional results occur even though no one sets out with that intention?” A large group discussion is then facilitated for up to two hours. Ryan pointed out that, for a lot of folks this is stressful, because it is the first time they are having a conversation about race equity.
- Participants consider their own privileges by participating in a privilege “walk” exercise and video.
- They are also provided with a “Disproportionality Card” (one-side includes questions from a NCJFCJ-developed benchcard to help combat disproportionality, and the other side illustrates the “Ladder of Inference” to help them understand how bias occurs in their own thinking.
- A video on ICWA, produced by NCJFCJ, and class instruction explain how child advocacy works for Native American children.
- Included in the LGBTQ advocacy section is an exercise where they look at healthy youth surveys and do an empathy building activity for the coming-out process, produced by the Trevor Project.

Ryan shared a list of the WACAP links and resources on their website, including Core Training Materials and other resources, including the annual WACAP ICWA Institute and Conference Session. Ryan also provided Commission members with a document called “Sample of Local Program DEI Recent Activities” in the meeting materials.

Ryan then answered Commission members’ questions. In response to questions about the demographics of potential volunteers who participate in the training, Ryan responded that he doesn’t have that data yet, but they started tracking that this year. Justice Madsen asked whether trainees are coming from religious groups, churches, etc. Ryan said he hasn’t figured out how to ask that tactfully, and Justice Madsen said it would be great to track that information in the future. Larry Jefferson reported that he recently provided a presentation to a CASA audience and felt that these trainings are important to help reduce harm to families going through the system. Ryan said he has received requests to provide more of the racial equity trainings. Rachel Sottile thanked Ryan for this information, and also referenced a study of CASA volunteers in Texas that found that involvement of a CASA volunteer in a case reduces the likelihood of reunification. Justice Madsen encouraged WACAP to conduct an evaluation of the impact of CASAs and VGALs in Washington, suggesting that grants may be available to cover the cost.

Michael Griesedieck and Reyana Ugas, of King County Dependency CASA, then presented on the racial equity efforts of the Washington CASA Association and local programs. Michael introduced Reyana, noting that she self identifies as a Black and Mexican woman who holds this work dear to her. Reyana reported there are eight CASA/GAL programs in nine counties in Washington State. She then shared Washington CASA goals, which include the following:

1. Internalizing Diversity, Equity Inclusion and Belonging (DEIB) into every organization strategy, process, and policy
  - Align WA CASA’s current strategic initiatives with DEIB goals necessary to fulfill intent of the current plan
  - Review & recommend changes to all key policies, procedures, strategies & processes to reflect a DEIB centered organization
2. DEIB Planning for 2023-2025 –Support of State CASA programs
  - Demographic Gap Analysis of racial, ethnic & cultural disparities
  - Create goals, strategies & outcome measurements for marketing, outreach & awareness raising needed to help local directors recruit necessary volunteers to ensure no child must wait for an advocate:
    - Sample strategy -In collaboration with local programs:
      - Determine ongoing advocacy needs & timing
      - Set goals for volunteer diversity & lived experience resources
      - Identify recruitment vehicles & tactics
      - Expand private funding sources to meet recruitment goals
      - Track & record impact and lessons learned.

Reyana then shared highlights from last year’s Justice, Equity, Diversity, Inclusion (JEDI) training for local programs, which included the following three multi-session workshops:

- Workshop 1: Building Blocks of Dialogue
- Workshop 2: Whiteness –What It Is & Why It Matters; and
- Workshop 3: Antiracism–Going Beyond Allyship.

The JEDI training is free to all child welfare stakeholders, and it is facilitated with support of program staff. The trainings included: 11 facilitated and interactive sessions, 22 hours of training from July–September 2021, with 70 participants from across CASA/GAL programs, Courts, DCYF, Parent Allies. Additionally, CASA provides spaces for staff and volunteers to support continued learning, such as Pierce County’s White Anti-Racist Caucus group, Snohomish County’s JEDI Collective, and King County’s ESJ book group and affinity groups.

Resources from National CASA and other programs were also shared.

Reyana described focusing on equity in local program improvement efforts, which include Recruitment and Retention, and Ongoing Assessment and Accountability. Related to Recruitment and Retention of diverse volunteers and staff, programs are tracking demographics of staff and volunteers, reviewing application and hiring practices, stressing a commitment to cultural humility and addressing bias and racism within their roles and within the child welfare system. Ongoing Assessment and Accountability includes critical self-reflection work, such as: Case consultations, volunteer evaluations, work and advisory groups, and commitment to learning and doing better.



Jim Bamberger asked if there is a demographic breakdown of CASA volunteers here in Washington State. Michael reported that the CASA programs have 270 CASA volunteers; about 25% of those are people of color. Ryan said his program statistics show that 80% of volunteers are white. Jim also asked if there are third party academic evaluations of the CASA programs that were undertaken with an equity lens? Michael said he was not aware of any studies. Ryan reported there was one conducted in Texas.

Jacob asked if either program is tracking complaints regarding volunteers/staff, and if they have protocols for how complaints regarding bias/discrimination are investigated/managed. Michael reported that, in King County, they do have a defined grievance process that is posted on their website; also, complaints can be brought to the court under HB 1334. Ryan said they have not received complaints.

Laurie raised the question that, given that studies have shown that child outcomes could be made worse with CASA, would the two organizations would be willing to redesign the approach? Ryan said he appreciated her question, and we need to stay in our lane, but at the same time explore what does “best practice” really mean for children. Michael said they are always willing to have a conversation about that. Justice Madsen said we will try to figure out a forum for future discussions about this issue with CASA, perhaps coming back to a future Commission meeting to talk about ideas.

Secretary Hunter posed several questions: Are outcomes for children better if they have a CASA, or a lawyer? What is it we want for children, and how do we design a system that works? Ryan posed that the same questions can be asked about child welfare and social workers. Secretary Hunter acknowledged that he is trying to work on that for 50%. Justice Madsen stated that, as long as we have a system there is a need for an independent voice for children – right now, that role is served by WACAP and Washington CASA Association.

### **Reports from Commission Workgroups**

#### *Children’s Representation Standards Workgroup – Update & June 17<sup>th</sup> Meeting to Present to CCFC*

Bailey Zydek reported that Jill Malat is still co-chair of the Children’s Representation Standards Workgroup, along with Emily Stochel. Jill reported that the workgroup is still meeting to develop its final proposed updated standards. OCLA staff met with the workgroup and shared its observations, and the workgroup has a meeting scheduled this week to discuss caseloads and the nature of the presentation of the standards. The report on representation of children under eight has been completed and Professor Lisa Kelly is retired. However, she and the authors of the report will be available for the Commission’s upcoming discussion about the workgroup’s recommendations on June 17<sup>th</sup>. Jill confirmed that Commission members will receive copies of the standards and under 8 report at least two weeks before the June 17<sup>th</sup> meeting. Jill encouraged everyone on the workgroup will attend.

Jim Bamberger will include caseload standard changes in a supplemental funding request in 2023, and additional funding in 2024-2025 will depend on what action the Commission takes on the standards. OCLA will need to provide a budget to DCYF to activate an interagency agreement for funding (a one-year contract). Justice Madsen said she is looking forward to receiving the materials prior to the June 17<sup>th</sup> meeting. Secretary Hunter said they do not have to submit their budget until September; DCYF will have time to read the analysis in time to respond and then address the budget.

### Family Well-Being Community Collaborative (FWCC)

Kelly reported that members of the FWCC will attend a future Commission meeting to talk about the work that they are doing to prepare system partners to implement HB 1227 when it goes into effect in July 2023. The FWCC has three workgroups, that include the Appropriate Placement Decisions Workgroup, Ex Parte Removal Workgroup, and Shelter Care Removal Decisions Workgroup. The fourth workgroup, Family Time and HB 1194 Implementation Workgroup, will be focused on HB 1194. More information about the FWCC's work is available [here](#), and members may contact Kelly if they have interest in or questions about the FWCC and its workgroups.

### **AOC Court Research: Presentation of the 2021 Dependency Timeliness Report**

Matt Orme, Senior Research Associate at the Washington State Center for Court Research (WSCCR), presented a high-level overview of the findings from the 2021 Annual Dependency Timeliness Report (DTR). The DTR is in its final administrative review, and it will be available [here](#) on the Washington Courts website when it is officially released.

#### Presentation Key Takeaways included:

- Looking at the inflow of children into the system, and pressures on the system, we see:
  - Dependency filings decreased again in 2021 by 10%. We expected a rebound but are not seeing it. In 2019, prior to the pandemic, there was a decline in dependency filings; then when we hit the pandemic and filings dropped by about 20%.
  - A look at month to month, year to year shows a decline of 24%.
  - In 2022, there was a greater influx in filings in March, and challenges in the system—new people, turnover.
  - Demographics show kids under three are the largest age group (48%) entering the system.
  - In 2017, process to outcome reports showed when we do things on time, duration of case is shorter and children reach permanency faster.
  - Decline in case timeliness over the pandemic.
  - Increase in adoption completion within six months of TPR (termination of parental rights).
- The New Dependency Dashboard is now available [here](#) and provides public data on dependency filings, demographics and timeliness measures.
  - Demographics: one can select for any jurisdiction in the state:
    - Age.
    - Gender.
    - Race Ethnicity – uses the WSRDAC (Washington State Racial Disproportionality Advisory Committee) data.
  - State Map – for each county, racial breakdowns are available in a pie chart.
  - Dashboard is updated quarterly.
  - Dependency/termination filings over time:
    - Can see trends over time.
    - Example – see differences across counties.
  - Measures Over Time (this is new).

Matt shared that iDTR, the interactive database that provides the data for the annual report and the public dashboard, is available to court system partners (FJCIP Coordinators, judicial officers, OPD, DCYF and AOC). Access to the data enables partners to track aspects of the system over time and assess where efforts can be made to improve outcomes.

## **Family Reunification Celebrations**

Tonia McClanahan, Co-Chair of the Family Reunification Day Celebrations Steering Committee, reported that June is national and state family reunification month. She reported that counties are being encouraged to hold celebrations, with nine counties currently confirmed for in-person events. Mini grants are being offered this year in the amount of \$200 through the AOC. The AOC works with the Governor's Office to provide a formal proclamation each year. Lorrie Thompson also develops promotional materials and provides teddy bears to be given out as gifts. In addition, Lorrie is working on the Governor's proclamation. Tonia also informed the Commission that Mason County Superior Court Judge Amber Finlay is retiring and invited everyone to celebrate her at the June 30<sup>th</sup> Mason County Reunification Day, which will be her last day on the job.

## **Overview of CIP Strategic Plan**

Kelly provided an overview of the 2022-2023 CIP Strategic Plan that Family & Youth Justice Programs (FYJP) is developing, and detailed information about that can be found [here](#). She explained that the annual federal CIP grant application requires FYJP to develop a plan and implementation steps for a minimum of three projects as follows:

1. a project to continuously improve the quality of child welfare court hearings and reviews;
2. a project to continuously improve the quality of legal representation for parents, children and youth or the child welfare agency; and
3. a joint project with the title IV-B/IV-E agency to improve specific safety, permanency, or wellbeing outcomes as identified through the CFSR or other CQI process.

Additional projects that may also be included in the FY 2023 Strategic Plan include: Support for effective hybrid court operations and ICWA/Tribal Court collaboration.

Secretary Hunter recommend that CIP conduct ICWA work through one of the DCYF workgroups, rather than creating another workgroup. Kelly will talk with Tleena Ives about that, and if it makes sense to add some FJYP members as a subgroup to a DCYF workgroup, they may do that to make things more efficient.

The CIP grant application is due on June 30<sup>th</sup>, and Kelly would like Commission members' input and ideas. A CIP Feedback Session is scheduled on May 23<sup>rd</sup>, from 12:00-1:30pm, for CCFC members to attend. She will also send out more detailed documents for the Commission's review, and Commission members can contact Kelly directly with any questions.

## **Court Improvement Updates – Family & Youth Justice Programs**

### Early Childhood Courts

Kelly Warner-King and Rachel Sottile, Center for Children & Youth Justice (CCYJ), provided an overview of the Early Childhood Courts (ECC) effort. Washington State data tells us that 46% of child abuse and neglect cases filed in 2020 involved children under 3 years old (compared to 40% in 2019). In addition, racial disproportionality for dependency involved young children is high:

- 2.9%: AI/AN 0-3 total WA population; 16%: AI/AN 0-3 dependency cases.
- 5.2%: Black 0-3 total WA population; 14%: Black 0-3 dependency cases.
- 13.7%: Hispanic 0-3 total WA population; 16%: Hispanic 0-3 dependency cases.

Rachel outlined the history of Early Childhood Courts in Washington. Pierce County began operating Best for Babies, the first Safe Babies Court Team (SBCT) in Washington, in 2016. In early 2020, CCYJ and AOC were approached by Zero To Three (ZTT) to determine the feasibility of expanding SBCT/ECC courts in Washington. Simultaneously, in May 2020, a funding opportunity to launch new ECC sites became available through ZTT/HRSA (Health Resources & Services Administration). She further explained that the intent of ECC work in Washington State is to improve experiences and services for families with young children in Dependency, as well as improving the collaboration and coordination of systems that support these families. CCYJ convened a design team that prominently included parent voices to develop standards for ECC Programs in Washington and ensure that courts adopting this approach do so with consistency and fidelity. ECCs are therapeutic, problem solving courts, which utilize the SBCT approach (more frequent court hearings, a dedicated Community Coordinator, a trauma-informed approach that encourages ongoing goal setting and increased family time to strengthen the relationship between parent and child. The courts are embedded in a Systems Change Initiative that includes a State Advisory Board, focused on supporting local sites and engaging multiple systems to serve families.

On May 13, 2021, Senate Bill (SB) 5331 established minimum requirements for ECCs, centering racial equity as a core standard, requiring antiracism training and data collection to address racial disproportionality and promote equitable outcomes for families. A fiscal note provided funding for evaluation and statewide coordinator support, both of which are housed at AOC. Katie Anderson is the Statewide Coordinator and Arina Gertseva, is the AOC researcher from the Washington Center for Court Research. Clark County just signed on as the newest court operating an ECC program, in addition to Kitsap, Pierce, Spokane, and Thurston Counties who are already operating ECCs, and Clallam County may also be starting a new ECC program soon.

Looking ahead, the original federal grant funding will sunset in 2022, so CCYJ worked with AOC and court partners to submitted a new grant proposal on May 2, 2022, requesting \$625,000 per year for 5 years, which would include Clallam County and possible Tribal courts expansion. Contacts for the ECC program are as follows:

- Emily Nicewonger, CCYJ Associate Director of Programs, [ENicewonger@ccyj.org](mailto:ENicewonger@ccyj.org); and
- Katie Anderson, AOC Early Childhood Courts Statewide Coordinator, [katie.anderson@courts.wa.gov](mailto:katie.anderson@courts.wa.gov).

### **"Vision for the Future" – Lived Experience Advisors & Think of Us – Partnership with DCYF Office of Adolescent Programs**

Emily Stochel and Sarah Sullivan, from [Think of Us](#), provided the Commission background information and a preview regarding an upcoming "Vision for the Future" presentation. A year ago, Think of Us embarked on a research project to collaborate with lived experience experts in Washington to co-design a "Vision for the Future" for the Office of Adolescent Programs in partnership with DCYF. Prior to sharing this vision with the general public, the Lived Experience Advisors and Think of Us partners want to present the report to stakeholders. Their proposed vision lays out a plan to get to this world by reimagining five key stages of the adolescent experience:

1. Entering the system with dignity.
2. Experiencing the system empowered.
3. Anticipating adulthood with support.
4. Entering adulthood prepared.
5. Exiting the system ready.

The vision then maps out what it will take Washington State to get to this world. Commission members were asked to prioritize attending one of three upcoming presentations scheduled as follows:

- Wednesday, May 18<sup>th</sup>, from 1:30- 2:30pm at Think of Us Community Practice meeting;
- Wednesday, May 25<sup>th</sup>, from 2:00-3:00pm at Washington Passport Network series; and
- Thursday, May 26<sup>th</sup>, from 11:00am-12:00pm at Tea with Taku meeting.

Emily will also email the presentation dates and Zoom links to Commission members.

### **Closing & Adjournment**

Justice Madsen thanked everyone for their presentations and attendance. She looks forward to seeing everyone at the Mockingbird Youth Leadership Summit on August 2, 2022, and at the next Commission meeting on September 12, 2022.

### **Next Steps:**

- DCYF will come back to the Commission to talk about how staff plan to roll out the changes and new policies.
- Justice Madsen said we will try to figure out a forum for future discussions about this issue with CASA, perhaps coming back to a future Commission meeting to talk about ideas.
- Members of the FWCC will attend a future Commission meeting to talk about the work that they are doing to prepare system partners to implement HB 1227 when it goes into effect in July 2023.

**Adjourned at 4:08 p.m. by Justice Barbara Madsen.**



# 2023 Youth Advocacy Issues + Updates



# Seattle and Youth Advocates Ending Homeless Chapters

## Expanding Extended Foster Care

- Working to expand accessibility and available resources
- Allow any dependent youth in WA to enroll in EFC whether or not engaged in federal qualifying activity
  - Increased monthly payment
  - Aftercare support for age 21 - 26
- Meeting with stakeholders, DCYF, and Senator Wilson

# Eastern Chapter

## Student To Adult Readiness Training

- Creating a required high school course, START, that provides life skills training
- Engaging with Board of Education, OSPI, school districts, & other community partners



## Peninsula Chapter

# Minor Access to Shelter

- Allowing young people to self-initiate shelter stays, safety
- Possible focus on giving shelters more time to provide services to youth before contacting parents (If it is in the best interest of the youth)
- Possible focus on access for youth whose parents can't be located, or whose parents refuse to allow the youth to stay in shelter
- Engaging WACHYA subcommittee and deciding which element to tackle this year (Likely to be a multi-year effort)
  - Engaging other community partners

## Northern Chapter

# Juvenile Records

- Make juvenile justice records confidential
- Establish a \$15k fine for improperly sharing sealed records, \$10k to impacted person and \$5k to community restitution fund to address outstanding restitution that is a barrier to sealing
- Engaging with community partners and building coalition with Stand For Children, Columbia Legal Services

# Washington State Judicial Branch 2023-25 Decision Package Template

**DRAFT**

**Agency:** Administrative Office of the Courts

**Decision Package Title:** Continue Family Treatment Court Team

**Budget Type:** Operating Request

**Budget Period:** 2023-25 Biennial Budget

**Cost Type:** Ongoing

**Fund Source:** General Fund – State (Fund-001)

**Subject Matter Expert / Program Contact:** Kelly Warner-King, 206-920-2414, kelly.warner-king@courts.wa.gov

## **Agency Recommendation Summary Text:**

The Administrative Office of the Courts (AOC) requests 4.4 FTEs and \$1.9 million in ongoing state funding to establish a sustainable Family Treatment Court (FTC) Team to continue the successful FTC quality improvement efforts and expand the statewide team approach to improve outcomes and increase equity for all families in dependency court. With a three-year federal grant, AOC created a statewide FTC Team that provides coordinated training, technical assistance and data support that has improved local practice and built capacity for ongoing evaluation. The federal grant expires in 2023 and due to a change in grant requirements, the FTC will not qualify for continued funding.

Half of the children in dependency court have a parent with a Substance Use Disorder (SUD). Research shows that Family Treatment Courts (FTCs) improve parents' treatment results and increase family reunification. Twenty Washington communities, many in rural areas, operate FTCs, and statewide coordination has proven extremely effective, making considerable progress on the grant goals and generating excitement and kudos from courts, attorneys, DCYF, providers and parents with lived experience in the child welfare system.

## **Package Description:**

National research has shown that the majority of children placed in foster care have a parent with a Substance Use Disorder (SUD). In Washington State, 48% of all dependency cases filed in 2021 included parental SUD as a reason for removal. SUD-related removals of young children in Washington are even greater, accounting for nearly 80% of the 737 newborns removed by DCYF in 2020. Dependency-involved children impacted by SUDs are at risk for poorer outcomes than their peers who have parents who do not struggle with SUD. These children are less likely to reunify with a parent, they stay longer in foster care, and they experience higher rates of termination of parental rights than children of parents without SUD.

The AOC's OJJDP grant is scheduled to end September 2023, and no sustainable funding source currently exists to maintain the important statewide work that the FTC Team and their extensive network of partners have started. AOC does not have resources to sustain the program and is therefore requesting ongoing legislative funding that would enable the Family Youth Justice Programs (FYJP) to continue training, evaluating and supporting FTCs.

Additionally, while dependency case filings have steadily decreased over the past four years, from an annual high of 4,976 cases filed in 2017 to 2,926 cases filed in 2021, the needs of the families who remain are complex. The pandemic likely contributed to the drop in case filings, but the child welfare system has also focused on preventing neglect cases from entering the dependency system by connecting families to community-based resources to address poverty and

treatment needs. As this front-end prevention work progresses, the cases that enter the dependency court will be the most challenging. These are the cases that would benefit most from the specialty court approach, that offers a collaborative, trained court team; individualized assessment and case planning; more frequent court contact; and access to culturally relevant community-based services and supports; and effective treatment for SUD, trauma and behavioral health challenges.

We have the opportunity to apply the FTC Team staffing model that is working so well for the FTC grant and expand it to support all specialized dependency courts. In addition to the state's 20 FTCs and three Tribal Healing to Wellness Courts, Washington has a growing network of five Early Childhood Courts (ECC) and several courts interested in developing dedicated Indian Child Welfare dockets, similar to the ICW court in Spokane. These court models share common traits and already have considerable overlap in the statewide structure, service needs and system challenges they face.

Rather than silo-ing these programs within AOC and the court system, FYJP would like to develop a sustainable, statewide team that supports all specialized dependency courts through training, data analysis and evaluation, technical assistance, cross-system collaboration and increased access to effective services and funding. This broader approach will be expected to improve the following outcomes:

- *Efficiency* - courts will share resources and avoid reinventing the wheel; statewide cross-system collaboration will support expansion of needed services and supports for families
- *Effectiveness* – training and technical assistance targeted at improving practice and developing individual courts' capacity to collect, analyze and use data to track outcomes
- *Equity* – improve the ability for all families, particularly those disproportionately impacted, to have access to effective, culturally competent court programs
- *Evaluation* – provide research expertise to evaluate the effectiveness of specialized court models and services; create robust data sharing resources with partner agencies
- *Expansion to rest of the system* – share findings with the larger system and encourage uptake of effective practices by dependency courts across the state

Family Treatment Courts (FTCs) were developed in the mid-1990s as a way to better serve families with dependency cases in which parental SUD and co-occurring mental health disorders are contributing factors. FTCs and Tribal Healing to Wellness Courts address the needs of the whole family through a strengths-based, team approach that engages the community. Judges, attorneys, child welfare, social service, tribal members and treatment professionals collaborate with the goal of providing safe, nurturing, and permanent homes for children while giving parents the necessary support to achieve long-term, stable recovery from SUD. When FTCs adhere to effective practice, researchers have found that reunification outcomes and parents' treatment results are considerably better than for those receiving conventional court and child welfare services. FTC Best Practice Standards, published in 2019, were created to improve the effectiveness of FTCs by encouraging courts to examine their practice and engage in continuous quality improvement efforts with fidelity to the model.

Washington State has 20 FTCs that currently serve approximately 300 participants, or 20% of dependency cases involving parental SUD. Statewide FTC capacity is around 489 participants, meaning that many FTCs operate well below capacity, particularly in rural communities. Barriers to effective participation include a dearth of services, housing, and transportation. In some communities, a lack of effective leadership or collaboration and challenges with implementing parts of the model have reduced demand. Decisions about therapeutic court organization and operations are based on local court preference and priorities, with funding patched together from local sales tax revenue, grants and county funds. For years, FTCs operated independently, rarely engaging with each other and accessing technical support and education on their own. The ability of FTCs to collect and analyze data also varies widely, with some courts adeptly utilizing case management software and others collecting minimal data by hand, with no ability analyze the information.

In 2020, the AOC, along with the Department of Children, Youth and Families (DCYF) and the Health Care Authority (HCA), applied for and received a three-year \$1.75 million dollar federal grant from the Office of Juvenile Justice and Delinquency Prevention. The purpose of the grant is to provide coordinated statewide training and technical assistance to the state's Family Treatment Courts (FTCs), with the goals to improve FTC adherence to best practices, increase

enrollment, and expand access to needed services, particularly in rural communities. To carry out the work of the federal grant, AOC created a four-person FTC Team that includes the following positions: Program Manager, Research Associate, Training Specialist and Administrative Assistant. The team also engaged partners from multiple systems at the state level to form the FTC Steering Committee, which is committed to addressing gaps in services and funding for local FTCs. The FTC Team has a strong relationship with Children and Family Futures (CFF), the technical assistance provider for the grant. A year and a half into the work, the FTC Team has proven extremely effective, making considerable progress on the grant goals and generating excitement and kudos from courts, attorneys, DCYF, providers and parents with lived experience in the child welfare system. Below are some of their key accomplishments and findings.

### **FTC Team Accomplishments**

#### **Data and Continuous Quality Improvement**

- *Court Performance Measures and Monitoring.* Created a routine performance monitoring tool that FTCs fill out twice a year. The tool automatically generates data visualizations, enabling teams to visually assess their data by race, gender, and status in the program. This is the first time Washington has been able to review FTC data at this level and with this detail, making evaluation of participant outcomes and continuous quality improvement (CQI) possible. For some courts, this is the first time that data has been collected in a routine way.
- *Process evaluation review and technical assistance.* The team encouraged all county-based FTCs to complete the National Evaluation of Family Treatment Courts (NEFTC). Utilizing the results, the Research Associate worked with court teams to address the areas where each court was not yet meeting Best Practice Standards and develop steps to improve.
- *Change management process.* The FTC state team created a step-by-step resource for introducing change management efforts into court operations. Using these resources together, teams are able to regularly track efforts they make to improve practice and procedures.
- *Observation and feedback.* For the first time on a state level, county-based FTCs were observed and received feedback based on Best Practice Standards by the state FTC team.


#### **Technical Assistance and Training**

- *Connection to resources.* The state FTC team has received technical assistance requests from all 19 counties that have active FTCs and one county that is starting a new FTC. Nearly half of the technical assistance requests the state team receives is to find or share resources. The state FTC team has provided feedback on written materials and court observations, and hosted meetings with teams regarding the use of Best Practice Standards.
- *Washington FTC All Sites Meeting.* Over 220 individuals attended the first FTC All Sites meeting in September 2021, where they received training on best practice standards, trauma informed practices, and equity and inclusion in dependency. The second annual WA FTC All Sites Meeting will be held September 30, 2022.
- *Trainings – live, online, and self-paced.* The FTC Training Specialist developed a series of on-line training modules based on the FTC Best Practice Standards, available on-demand, to introduce new professionals to the core principles, values, and vocabulary of FTCs. A [Data Resources website](#), with data tips and templates to help courts use data to tell a story and make improvements, is also available on-line. This kind of training is especially important given the high turnover that court teams experience. Live, interactive trainings are also key to the FTC training plan and have included “Cultivating Belonging, Equity and Inclusion in Family Treatment Courts” and a [“Rural Family Treatment Court Roundtable,”](#) with an accompanying library of comprehensive rural FTC resources.
- *Building community across FTCs.* Regular, role-based community of practice meetings, facilitated by the FTC Team, provide Coordinators, Judicial Officers, Attorneys, Social Workers and Peer Partners a space to share ideas and resources, form relationships and engage in peer learning. A variety of FTC listservs and a quarterly newsletter keep FTC professionals connected to what’s going on with trainings, resources and news from local teams. For FTC professionals who are new to a local court team, there is now a [New to Family Treatment Court webpage](#) that orients them to the work and Best Practices, as well as national organizations and resources.

#### **Identifying and Addressing FTC Needs and Barriers**

- *FTC Steering Committee.* Created in July 2021, the FTC Steering Committee is a high-functioning, state-level group that meets monthly and in workgroups to address the challenging needs and barriers that FTCs struggle

to address on their own. Bringing together representatives from systems outside of the courts and child welfare, the Steering Committee has been largely focused on developing new housing resources and increasing access to housing navigation services for families involved in FTCs and dependency court.

- *Lived Expert Support.* Research shows that lived experts improve parent engagement and understanding of the dependency court system, and have positive impacts on case timeliness and outcomes. The Lived Expert/Peer Support Specialist position will be added to the AOC Dependency Specialized Courts Team to provide expertise on engaging parents and caregivers, training and supporting Parent Allies and Peer Support staff who work with local specialized court teams, and ensuring that the work of the AOC team is grounded in principles of equity and belonging. 

**Fully describe and quantify expected impacts on state residents and specific populations served:**

Families and courts in rural communities face particular challenges, including high rates of poverty, trauma, and limited treatment and enabling services. The FTC Team, working with state-level and community partners in other systems, will help courts in rural areas access SUD and other treatment services, as well as transportation and housing resources.

Black, Indigenous and People of Color (BIPOC) families are overrepresented in the dependency court system. For the past decade, the rates of dependency case filings for American Indian/Alaska Native, Black and Multiracial children have exceeded the filing rates for White children, by as much as 2.5 times. According to enrollment data collected by the FTC and ECC statewide teams, these families are under-represented in specialized court programs. The Specialized Court Team will focus on ensuring that research-based court models that provide team support and individualized, culturally relevant services are equitably utilized by families most adversely impacted by the system.

**Explain what alternatives were explored by the agency and why they were rejected as solutions:**

The alternative to funding the FTC Team is a return to the situation that FTCs found themselves in prior to AOC receiving the FTC grant. Essentially, local courts would be on their own to access training and technical assistance through piecemeal approaches. This would lead to inconsistent practices across courts, creating barriers to system improvement and meaningful evaluation. While FTCs would continue to have the benefit of the online training and data resources created by the FTC Team, they would lack the targeted support that courts have found so useful. Additionally, the statewide community building and peer learning opportunities would no longer be supported.

**What are the consequences of not funding this request?**

FTCs would lose almost all of the benefits gained through the expiring federal FTC grant. Without state-level staff to provide the training, communication and evaluation support to FTCs, the community would lack capacity to maintain the programs put in place by the high-functioning AOC FTC Team.

The inability to maintain regular performance monitoring at the local and state level will prevent effective evaluation of FTCs in the future. The only reason there is a consolidated effort to collect and review regular data regarding Family Treatment Courts at this time is because the state FTC team set this as a goal early on in the grant operations. Without a state team to continue these efforts, they will fail.

Failure to regularly monitor court operations and performance at the local and state level will result in the inability to assess the equity and effectiveness of FTCs. The system will lack the necessary data to determine the effectiveness of best practices and replicate what works across sites. Evidence-based programs are only as good as the evidence collected. Therefore, it is necessary to continually monitor operations and outcomes.

**Is this an expansion or alteration of a current program or service?**

This budget request would sustain activities of the FTC Team that are currently funded by the expiring federal grant and add a Lived Expert/Peer Support Specialist position. This proposal would alter the structure of the team to incorporate the ECC work, which is already funded by the legislature, and create efficiencies for both programs.

**Decision Package expenditure, FTE and revenue assumptions:**

The AOC has ongoing state funding the following Early Childhood Court Program. The ECC staff includes a statewide coordinator (1.0FTE), a dedicated research analyst (0.6 FTE), and a web designer (0.5 FTE, currently the work is contracted). The existing ECC staff and funding and augmented by this request would support creation of the Specialized Dependency Court Team.

**Staffing Assumptions**

Beginning July 1, 2023 and ongoing, AOC requires salary, benefits, and associated standard costs for staff to continue the FTC Team with state funding for Senior Court Program Analysts (2.0 FTE) to coordinate the program and offer training, fully-fund a Senior Research Associate (0.4 FTE), a Court Program Analyst (1.0 FTE) as a Lived Expert Specialist, and an Administrative Assistant (1.0 FTE) to provide program support.

**Other Non-Standard Costs**

**Contracts (Object C)**

Contracts will fund ongoing expertise in instructional and web design (\$55,000) per fiscal year and pay consultants with lived experience (22,000) per fiscal year to engage trainers and provide stipends for people with lived experience to participate in the trainings and on statewide steering committees.

**Goods and Services and Travel (Objects E & G)**

In addition to the standard costs per FTE, this request will fund:

Annual Washington FTC All Sites meeting event space, event costs, and travel.

Goods and Services: \$2,000 per fiscal year

Travel: \$38,000 per fiscal year

National conference attendance for FTC and ECC Team members where they would receive state-of-the-art training, networking opportunities with peers and experts from across the nation.

Goods and Services: \$6,000 per year for registration

Travel: \$23,000 per year

Long Distance Court Observations assumed for three times per year.

Travel: \$31,000

**Grants (Object N)**

This request also includes funding for courts to purchase electronic specialized court data and information systems. These systems cost \$3,000 each for 18 courts (10 FTCs, 5 ECCs, 3 Healing to Wellness Courts) = \$54,000 each year. AOC anticipates an ongoing need as new court teams launch.

<b>Expenditures by Object</b>	<b><u>FY 2024</u></b>	<b><u>FY 2025</u></b>	<b><u>FY 2026</u></b>	<b><u>FY 2027</u></b>	<b><u>FY 2028</u></b>	<b><u>FY 2029</u></b>
A Salaries and Wages	403,100	403,100	403,100	403,100	403,100	403,100
B Employee Benefits	128,600	128,600	128,600	128,600	128,600	128,600
C Personal Service Contract	77,000	77,000	77,000	77,000	77,000	77,000
E Goods and Services	24,700	24,700	24,700	24,700	24,700	24,700
G Travel	103,000	103,000	103,000	103,000	103,000	103,000
J Capital Outlays	28,000	7,000	7,000	7,000	7,000	7,000
N Grants, Benefits, and Client Services	54,000	54,000	54,000	54,000	54,000	54,000
T Intra-Agency Reimbursements	131,400	131,400	131,400	131,400	131,400	131,400
<b>Total Objects</b>	<b>949,800</b>	<b>928,800</b>	<b>928,800</b>	<b>928,800</b>	<b>928,800</b>	<b>928,800</b>

**Staffing**

<b>Job Class</b>	<b>Salary</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
SENIOR COURT PROGRAM ANALYST	101,100	2.00	2.00	2.00	2.00	2.00	2.00
SENIOR RESEARCH ASSOCIATE	111,500	0.40	0.40	0.40	0.40	0.40	0.40
ADMINISTRATIVE ASSISTANT	64,800	1.00	1.00	1.00	1.00	1.00	1.00
COURT PROGRAM ANALYST	91,500	1.00	1.00	1.00	1.00	1.00	1.00
<b>Total FTEs</b>		<b>4.40</b>	<b>4.40</b>	<b>4.40</b>	<b>4.40</b>	<b>4.40</b>	<b>4.40</b>

**Explanation of standard costs by object:**

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 31.89% of salaries.

Goods and Services are the agency average of \$3,800 per direct program FTE.

Travel is the agency average of \$2,500 per direct program FTE.

One-time IT Equipment is \$4,800 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$1,600 per direct program FTE.

Agency Indirect is calculated at a rate of 24.73% of direct program salaries and benefits.

**How does the package relate to the Judicial Branch principal policy objectives?**

- *Fair and Effective Administration of Justice* – Ensuring the fair and effective administration of justice requires continually monitoring the process and outcomes of services provided. In this case, it is necessary to continue to collect and review data regarding the operations and outcomes of Family Treatment Courts.
- *Accessibility* - The state FTC Team is able to provide support to local sites, especially in rural locations, that previously haven't had this type of external support. Expanding support and services to rural areas creates new opportunities to support court users in rural areas, which are often the areas with the least amount of services available. Including a Lived Expert on the FTC Team will support more effective engagement of parents, particularly BIPOC parents who are overrepresented in the dependency court system.
- *Commitment to Effective Court Management* - By monitoring and reviewing local site data regularly regarding specialized court processes, court teams are able to assess where their strengths and weaknesses are. Thus, teams can focus on areas that need additional support to continue managing their program effectively.
- *Sufficient Staffing and Support*- Best Practice Standards for FTCs have been introduced nationally; however, it is inappropriate to expect local sites to meet these new standards without additional staffing and support. The state FTC team has provided this additional staffing and support (and training and resources), that teams need to enhance their adherence to Best Practice Standards. Removing this resource would be detrimental to the needs of FTCs.

**Are there impacts to other governmental entities?**

As previously stated, local courts would be on their own to access training and technical assistance through piecemeal approaches. This would lead to inconsistent practices across courts, creating barriers to system improvement and meaningful evaluation. While FTCs would continue to have the benefit of the online training and data resources created by the FTC Team, they would lack the targeted support that courts have found so useful. Additionally, the statewide community building and peer learning opportunities would no longer be supported.

**Stakeholder response:**

Community providers have been very supportive of the work of FTC and ECC Teams and would welcome the long-term investment in training, support and access to resources for families with dependency cases.

**Are there legal or administrative mandates that require this package to be funded?**

No



**Does current law need to be changed to successfully implement this package?**

No

**Are there impacts to state facilities?**

No

**Are there other supporting materials that strengthen the case for this request?**

**Are there information technology impacts?**

No

Yes

## **Child Representation Practice Standards**

### **August 2022**

Children's Representation Workgroup members:

Jill Malat and Emily Stochel (co-chairs)

Dre Thornock (Tribal Foster Care Alumni)

Dorian Brajkovich (Youth Advocate)

Jolie Bwiza (Youth Advocate)

Esther Taylor (Youth Contributor)

Annie Chung, Colleen Shea Brown (Children's attorney, Legal Center for Youth and Children)

Tonia Maclanahan (Parent Advocate)

Chori Folkman (Youth Attorney, Tulalip Office of Civil Legal Aid)

Natalece Washington (Policy Counsel, National Association of Counsel for Children)

Professor Lisa Kelly (Bobbe and Jonathan Bridge Professor of Children and Family Advocacy,  
University of Washington School of Law)

Carl McCurley (Court Research Manager, Washington State Center for Court Research)

Judge Megan Valentine (Grays County District Court Judge, former youth attorney)

D'Adre Cunningham (Washington Defender Association)

Judge Sharonda Amamilo (Thurston County Superior Court Judge, former youth attorney)

Erin McKinney, LICSW, CMHS

Sarah Burns (Family and Youth Justice Program/Administrative Office of Courts)

Professor Suparna Malempati (Director of Advocacy Programs, Atlanta's John Marshall Law School, legal ethics expert)

## **PREFACE**

All children subject to dependency or termination of parental rights court proceedings should have legal representation as long as the court jurisdiction continues. These Child Representation Standards are meant to apply when a lawyer is appointed for a child in any legal action based on Chapter 13.34 RCW and Chapter 13.36 RCW (guardianship).<sup>1</sup>

### **1. Decision Making**

The child's trust and confidence in the decision-making process is often a function of the responsiveness of that process. The child's attorney may be the first contact the child has with the process; therefore, the attorney has a critical role in developing and guarding the child's trust, confidence, and participation in the process, including basing decision making within the attorney/client relationship on respect for the child's capacity to make informed decisions. A lawyer who provides legal services for a child owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(1) The child's attorney should determine whether the child's capacity to make adequately considered decisions in connection with a representation is diminished pursuant to the Rules of Professional Conduct (RPC 1.14) with respect to each issue in which the child is called upon to direct the representation. For the purposes of child representation in dependency and termination of parental rights proceedings, a determination of "diminished capacity" should never be based solely on the child's chronological age.

(2) As counselor and advisor, the attorney should provide the child with an informed understanding of the child's legal rights and obligations and explain their practical implications in a manner understandable to the child. The attorney should explain all aspects of the case and provide comprehensive counsel and advice on the advantages and disadvantages of different case options to assist the child in identifying case goals and making informed decisions. During these discussions, the attorney should address the child's legal rights and interests as well as issues regarding the child's safety, health, and welfare. At the same time, the attorney should be careful not to usurp the child's authority to decide and direct efforts to achieve the case goals consistent with RPC 1.2 and 1.4.

(3) When communicating with the child, the attorney must be proactive in raising with the child the issues and interests related to the child's care and well-being, making sure the child has all the information about an issue, and has considered consequences when developing their

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<sup>1</sup> *RCW 13.36 was added in the 2010 session to replace Washington State's former dependency guardianship system and allow for a dependency action to be dismissed after the successful appointment of a guardian through a 13.36 petition. These standards apply to an attorney's activities representing a child in the guardianship proceedings that resulted from a dependency proceeding as well as in actions covered by RCW 13.34 in which a statutory or constitutional right to appointed counsel exists.*

opinion. The attorney must continuously counsel their client in this manner to make updated, informed decisions.

## 2. Stated Interest and Legal Interest

Stated interest advocacy is the presumptive method of representation for all children capable of communicating their wishes. If the child is unable to communicate an interest, the attorney must focus representation on asserting, promoting, and defending the child's legal rights inherent in the proceedings (legal interests).<sup>2,3</sup>

(1) The attorney providing legal interest representation to a child has an ongoing duty to be aware of the child's evolving capacity to direct counsel. In assessing the child's capacity to direct counsel, the attorney should make firsthand observations of the child.<sup>4</sup>

(2) The attorney should undertake an initial trauma-informed and culturally responsive assessment of the child's ability to articulate their interests. This assessment should be regularly reviewed and updated. The attorney should seek information from collateral sources, such as parents, other family members and loved ones, supportive adults, daycare providers, teachers, and other professionals who have an ongoing relationship with the child.

(3) It may be necessary for the attorney to use the legal interests and stated interest models of representation on different issues based on the developmental capacity of the client.

(4) The attorney should make clear to the court and other parties which model of representation is being used on any given issue being negotiated or heard before the court.

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<sup>2</sup> "Legal interest advocacy" is distinguishable from "best interest advocacy," which may be embraced by the guardian ad litem. "Legal interest advocacy" is also distinguishable from the "substituted judgment" model which asks attorneys to place themselves in the shoes of the client to determine what the client would want while "substituted judgment" is the model recently embraced by the National Association of Counsel for Children (NACC). This model was considered but not adopted here and should not be used for child clients who have never had the opportunity to express their values or the goals they seek to attain through the legal representation.

<sup>3</sup> These standards reflect an understanding that the "stated interest" and "legal interest" models of legal representation are the best safeguards against both implicit and explicit biases that are unavoidable under the "best interest" model and are otherwise consistent with the ethical practice of law. Anti-racist lawyering is essential to the ethical and effective practice of law and critical in contexts where systems of state intervention, such as the child welfare system, have the potential to result in racially disproportionate harms to families and communities of color. It is imperative that lawyers for children do not infuse advocacy for children with their own notions of what is in their client's best interests.

<sup>4</sup> It is important for the attorney to facilitate conversations with the child or youth to identify the child's or youth's legal and non-legal needs, as well as how to get their needs met. For example, if a child is feeling hopeless or experiencing PTSD symptoms, a child may not even know that therapy is available to them or what it entails; or may have been discouraged in the past from seeking therapy due to cultural stigmas. The attorney must introduce the options and work to counsel and listen to the child's concerns.

## 2.1 Stated Interest

(1) The child's attorney should represent the child's stated interest, follow the child's direction throughout the course of litigation, and perform their duties in a manner consistent with the child's stated interests. A "stated interest" is an interest communicated to the attorney by the client either verbally, in writing, or through the use of techniques, such as American Sign Language, language interpreters, or assistive communication technologies that aid those children who are unable to communicate verbally.

(2) In soliciting a client's stated interests, the attorney has the duty to communicate in a developmentally appropriate and culturally responsive manner with clients of all ages, abilities, languages, cultures, and trauma experience. At all times, the attorney should be mindful that communication does not require sophisticated adult speech but does require an ability to express a preference communicated in a manner which allows the attorney to determine that the client has both: (a) formed an opinion as to the interest; and (b) that the client has the developmental ability to understand at least the general nature of the choice and relevant factors. It is not necessary that the client understand all the issues present before stated interest representation is required.

(3) In soliciting a client's stated interests, the attorney should take care not to impose the attorney's views upon the client and shall not substitute their own judgment as to what the client's stated interest should be.

## 2.2 Legal Interest

(1) Legal interest representation should be based on the laws that are related to the purposes of the proceedings. Accordingly, the attorney must be well-versed in applicable state and federal statutory and constitutional law regulations, caselaw, court rules, and administrative policies which confer rights upon the child and obligations upon the state. These rights include, but are not limited to, the child's substantive due process right to be free from the unreasonable risk of harm while in state care as outlined in *Braam v. State*.<sup>5</sup>

(2) The presumption is that legally recognized rights of the child<sup>3</sup> are in the child's best interest. Therefore, the first step for the attorney is to identify all the legally-recognized rights of the child that are relevant to a particular stage of the proceeding. The second step is for the attorney to gather and present to the court all facts that are relevant to all the legally recognized rights at issue and also present legal briefing. If the child has a clearly established legal right, the attorney has a duty to argue for that right. Where there are competing legal rights of the child, the attorney is to present facts and

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<sup>5</sup> 150 Wn.2d 689, 81 P.3d 851 (2003).

legal authority on all the legal rights at issue, but not take a position on which legal right should prevail. The attorney should not argue what is in the child's best interests, because it is the court's duty to assess and determine the best interest of the child. The focus is on providing to the court all facts and legal authorities that the court needs to weigh the applicable standards and reach an informed decision.

### **3. Experience, Education, & Training**

Attorneys need to be qualified through training or experience to effectively fulfill the duties of representing children in dependency court. Training is an essential component of any effective advocacy. Attorneys should be provided access to relevant training and continuing legal education related to the practice. Provision should be made to ensure that compensation models include expectations that attorney time will be spent achieving and maintaining competency in the practice.

#### **3.1 Experience**

Attorneys with no or little legal experience representing children in these proceedings should receive intensive training on effective representation consistent with these standards. Before undertaking representation, attorneys new to child representation practice should receive training covering the core competency areas below. It is assumed that attorneys new to this area of law will receive lower caseloads to meet the standards for child representation for at least a three-month period or until their proficiency is assessed to be sufficient, whichever is longer.

#### **3.2 Education and Training**

Before representing a child or youth in a dependency proceeding, an attorney should understand applicable federal and state laws and regulations, court rules, ethical duties, trial skills, interviewing skills, and relevant social science, including trauma and child and adolescent development. Attorneys should receive initial and ongoing training on the above topics along with cultural humility, the impact of systemic racism, and disproportionate and disparate outcomes experienced by black and indigenous children, as well as LGBTQIA+ youth. The following list is illustrative of topics with which the attorneys should be fluent.<sup>6</sup>

- (1) Relevant federal and state laws, regulations, policies, rules, and court decisions;
- (2) Trial advocacy and trial-related skills;
- (3) Infant, young child, and adolescent development needs and abilities, including the impact of trauma and disability;

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<sup>6</sup> A list of training areas developed by a subcommittee of the Children's Representation Standards Work Group is attached in the Appendix.

- (4) Developmentally appropriate interviewing and counseling skills;
- (5) The role of the attorney for the child and their ethical responsibilities to the client;
- (6) Racial disparity in treatment and legal outcomes in the dependency system;
- (7) Strategies for affirmatively representing clients to prevent adverse consequences of race-based or race-influenced decision making;<sup>7</sup>
- (8) Other biases that operate within the child welfare, juvenile, and criminal legal systems that could interfere with the ability of the attorney to successfully advocate for a child's stated interest;
- (9) The ability to ethically and effectively represent inter-, cross-, and multi-cultural children and youth clients. This includes understanding religious values and boundaries, including religions other than one's own, if applicable, and advocating for the youth's religious or spiritual preferences, including a preference not to practice a religion;
- (10) Effective and affirming representation of LGBTQ+ youth and children and youth, and those exploring their gender and sexual identities;
- (11) The practices, policies, regulations, program supports, and opportunities of dependent youth approaching dependency exit (age out);
- (12) Strategies for consulting with experts who can assist attorneys on various case issues;
- (13) Family dynamics and dysfunction, such as impacts of various trauma on family relationships. Knowledge of family preservation services and family supports available in the community;
- (14) The role and authority of the Department of Children, Youth, and Families (DCYF) and both public and private organizations connected to the dependency court system; and
- (15) Understanding the intersection of other systems and processes that often affect the trajectory of a case or the resource needs of individual children/youth (e.g., education/special education; juvenile justice; family civil litigation including domestic violence and child custody; and public and private resources available to children, youth, and families.)

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<sup>7</sup> *The attorney should also be fully aware of their own privilege and the potential impact that their own biases may have on the conduct of their representation and the discharge of ethical duties to their clients.*

(16) Understanding issues that adversely impact children and youth in the dependency system, and having competency to identify and to either represent the client or refer the client for legal representation or legal advocacy in other legal systems, such as the education/special education system, juvenile court child custody proceedings, public and other benefits, and immigration-related proceedings.

### **3.3 Attorney Competency**

Attorneys can demonstrate competency by either (1) attending or reviewing recordings of mandatory trainings on the topics outlined above; or (2) showing competency in the topic areas through prior experience, CLE history, etc. Attorneys should endeavor to receive no less than eight (8) hours of continuing legal education credits per year on subjects related to the representation of children and youth in child welfare and related cases. At least one (1) hour of these annual requirements should be dedicated to skills and competencies required to engage in anti-racist and de-biased lawyering.

## **4. Caseloads**

Attorneys representing children and youth in dependency and termination hearings on a full-time basis should be assigned to represent no more than 45 trial-level (not appellate) dependency clients at a time and no more than 60 total cases (including dependency and cases collateral to the dependency case, in which representation is required to properly protect the client's interests in the dependency case).<sup>8,9,10</sup> Recognizing the unique nature of child representation practice, less experienced attorneys contracted to carry a full-time caseload should be assigned fewer cases

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<sup>8</sup> *The caseload standard assumes that the attorney's entire practice is exclusively devoted to the representation of children involved in Chapter 13.34 RCW and Chapter 13.36 RCW proceedings. For attorneys assigned to representing children on less than a full-time basis, the contract should be based on the actual percentage of time available for children's cases.*

<sup>9</sup> *The caseload standard establishes a maximum of sixty (60) total cases for an attorney representing children in dependency court on a fulltime basis. The proceedings may comprise dependency, terminations, guardianships, reinstatement proceedings, authorized family law proceedings, and authorized administrative or judicial proceedings. Attorneys should not maintain a caseload that will render them unable to abide by their ethical obligations and these Standards.*

<sup>10</sup> *The risk of ineffective representation is increased if the caseload of an attorney is not reasonably related to the actual work that must be done to represent their clients. The representation of children and youth in the dependency contexts requires a trained attorney to spend significant time building a relationship of trust with their client and making sure that the client understands a complex proceeding that has dramatic consequences in their life.*



until they have demonstrated competency to carry full caseload in a manner consistent with these standards.<sup>11</sup>

This caseload standard assumes the following:

- (1) Attorneys appointed to represent children and youth in dependency proceedings will have commensurate knowledge, training, experience, and ability to communicate effectively with children.
- (2) Attorneys appointed to represent children and youth in dependency court will have access to funding for support services, including, but not limited to: social workers, investigators, mitigation specialist, paralegals, experts, mentorship support, communities of practice, other technical assistance, and case-related travel.
- (3) That contracts for representation of children and youth in dependency proceedings contain provisions that allow for additional compensation for cases that demand an extraordinary amount of preparation and time.
- (4) Caseload adjustments should be made where attorneys represent a disproportionate number of children and youth with contested or complex litigation; children and youth with cultural, linguistic, behavioral, developmental, or other special needs; and/or where attorneys cannot comply with these Standards.
- (5) Attorney for children and youth meet minimum continuing training requirements outlined in these Standards.

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<sup>11</sup> The caseload standard (number of maximum cases for each attorney) reflects the majority recommendation from the Children Representation Standards workgroup. It was reached after significant deliberation and discussion among workgroup members, a minority of whom dissent-based on professional and lived experience that the maximum caseload number of 60 cases is too high to allow attorneys to meet these new practice standards; to recruit and retain a diverse group of attorneys; and to maintain, build, and continue support of children's representation in these matters. No member at any point advocated for a higher caseload than that reflected in these Standards. The recommendation of maximum of 45 clients, maximum of 60 cases, is being put forward in part because of the workgroup's unanimous recommendation that this caseload standard may need to be adjusted after further experience and objective, independent research.

Given the expansion of legal services to children passed by the legislature, the desire to recruit and retain a diverse, competent, and qualified group of attorneys, the desire to adequately compensate those attorneys for this important work, and the need to implement this program in a timely and efficient manner, the Children's Representation Standards workgroup further recommends that the caseload standard be reviewed, reconsidered and, if appropriate, updated by a workgroup of independent researchers, practitioners, young people with lived experience, and experts in the field convened by the Supreme Court Commission on Children in Foster Care by July 2027 at the latest; or sooner if requested by the Office of Civil Legal Aid (OCLA), in order to ensure effective implementation of the program.

## **4.1 Continuity of Representation**

Assignment of counsel for a child in dependency court should be prioritized to maintain continuity of representation where possible and where it benefits the child. To limit potential for further disruption of the child's trusted relationships and re-traumatization, it is best that the attorney of record continues to represent the child from the initial court proceeding through all subsequent dependency proceedings, including termination, until resolution or permanency is achieved.

## **4.2 Representation of Siblings**

Appointing one attorney to represent a group of siblings in the same legal proceeding is discouraged. The likelihood of a conflict of interest arising during the course of a dependency and/or termination proceeding is high, and therefore, sibling group appointments should be avoided. Only in rare circumstances, and only if the representation conforms to the ethical obligations of the attorney towards each and every prospective client under the applicable RPCs, should a group of siblings be represented by the same attorney in the same legal proceeding. The "rare circumstances" are, for example, when all the siblings' interests are aligned, the potential for a conflict of interest arising in the representation has been explained to each of them, and they each sign a statement acknowledging that the attorney will seek withdrawal from all the representations should a conflict of interest arise.

## **5. Communication**

### **5.1 Communication with the Child**

The attorney should be aware of the unique developmental issues facing the child and take appropriate steps to ensure that these issues do not interfere with effective legal representation. The child's attorney should ensure the child's ability to provide client-based directions by structuring all communications to account for the individual child's age; developmental level; level of education; race; immigration status and other cultural contexts; disability, if any; sexual orientation and gender expression; trauma; psychosocial and socioemotional well-being; and degree of language acquisition.

Attorneys must maintain sufficient and frequent contact with each child to establish a trusting relationship and maintain an attorney/client relationship that will enable counsel to understand the child's standpoint and what's important to them. It is important for the attorney to not only focus on issues and questions related to the case, but also engage each child about their interests and needs.<sup>12</sup> The attorney should work with each child to help them identify their legal interests, legal needs, and legal goals, including working with each

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<sup>12</sup> See *Response Ability Pathways (RAP) Framework*, <https://www.neassoc.com/response-ability-pathways>. See also *Maslow's Hierarchy of Needs*, <https://www.simplypsychology.org/maslow.html>.

child to identify the social and cultural supports and activities that matter to them, such as racial/ethnic or religious/spiritual events. Communication should include the following elements:

(1) The attorney's first contact with the child after receiving the child's contact information should take place within 72 hours following appointment and receipt of the child's contact information, or as shortly thereafter as possible. Attorneys should strive to make that contact an in-person or video contact.

(2) Provide the child and the child's caretaker with contact information in writing (electronic communication of said information is appropriate depending on available technology and other factors) and establish a message system that allows regular attorney/client contact.

(3) Attorneys should meet with the child in person well before court hearings at which the substantive interests of the child are at issue. For those cases where the attorney is assigned upon the filing of a dependency petition, an initial meeting between shelter care and the case conference is particularly important in establishing a trusting relationship with the child and gaining an understanding of the child's interests. At these meetings, counsel should listen to the child's understanding of the case; fully answer the child's questions; and assess the child's evolving capacity to understand. Counsel should make every effort to visit the child in each placement unless it is absolutely not feasible. In cases where dependency is established, counsel should have monthly contact with their child client and at least one in person contact every review period. The burden is on the attorney to ensure that the frequency and method of communication with the child is developmentally appropriate and allows the attorney to adequately assess the child's evolving capacity to direct counsel. See Section 1.1 (11).

(4) Attorneys should learn about and speak respectfully about the child-client's intersecting identities and how it impacts their experience, including their race, opinions or feelings about religion or spirituality, cultural background, immigration status, socioeconomic status, trauma history, sexual orientation, and gender identity.

(5) Attorneys should advise the child about all legal matters related to the case in a developmentally appropriate manner. Depending on the child's age and functioning, multiple meetings of short duration may be required to fully discuss the service plan, the child's rights and potential consequences in the pending proceeding, and any orders entered regarding expectations of the child and potential consequences of failing to obey court orders or cooperate with service plans.

(6) Attorneys must adhere to the Rules of Professional Conduct (RPC) 1.6 and other laws related to confidentiality of client information, including its disclosure.

## **5.2 Communication with Other Professionals**

Child welfare cases require the child's attorney to communicate regularly with numerous professionals involved in the child's dependency or termination case, as well as attorneys who may represent the child in offender matters, truancy, or other cases. Some of these individuals are parties to the proceeding and represented by counsel, while many others are not. The attorney should provide the assigned social worker or case manager with the order of appointment or notice of appearance, which includes attorney's contact information. The attorney should establish a professional working relationship with the social worker or case manager to facilitate the effective resolution of matters related to the child's case without undue delay.

The attorney should communicate regularly as indicated by the circumstances of each case with other parties and professionals, including professionals at the child's school and otherwise be involved in their client's case as required to obtain current information regarding the child. While dependency proceedings may at times appear informal, all attorneys should respect the attorney/client relationship and abide by the RPC's governing client confidentiality and communication with other parties to the proceeding and communications with third parties.

## **5.3 Confidentiality**

The child's attorney shall not disclose information to third parties, which would disclose or lead to disclosure of information relating to the representation of a client without the informed consent of the client pursuant to RPC 1.6.

## **6. Discovery and Court Preparation**

### **6.1 Meet with Child**

Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child's age, the child's attorney should visit the child prior to court hearings and when apprised of emergencies or significant events impacting on the child. *See also* Standard 2.

### **6.2 Investigate**

To support the client's position and subject to the client's consent if legally required, the child's attorney is expected to conduct thorough, continuing, and independent investigations and engage in discovery which may include, but should not be limited to:

- (1) Obtaining copies of the court file, all pleadings, and relevant notices;
- (2) Reviewing the child's social services, psychiatric, psychological, drug and alcohol,

medical, law enforcement, school, and other records relevant to the case;

(3) Filing notice of appearance and requests or demands for discovery and serving other parties and their representatives, including Guardians ad Litem and court-appointed special advocates. The notice of appearance and discovery demand should include, among other things, that the attorney is representing the child and expects timely notification of: case conferences, changes of placement, current contact information for the child, and other changes of circumstances affecting the child and the child's family;

(4) Participating in depositions, negotiations, other discovery, pretrial conferences, and hearings;

(5) Conducting thorough and independent investigations at every stage of the proceedings and utilizing expert services, as needed;

(6) Counseling the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;

(7) Investigate any concerns raised by the child client including, but not limited to, how they or their family are treated by professionals in the dependency court system as it relates to race, immigration status, cultural background, sexual orientation, gender identity, socioeconomic status, and trauma history;

(8) Identifying appropriate family and professional resources for the child;

(9) Investigating viability of a child's placement with parents and loved ones, including accessing expert resources if necessary to present the child's placement request;

(10) Contacting and meeting with parents or legal guardians and present and past caregivers of the child, with permission of their attorney(s), if represented;

(11) Obtaining necessary authorizations for the release of information;

(12) Interviewing individuals involved with the child, including case workers, court appointed special advocates or Guardians ad Litem, foster parents and other caretakers (such as daycare providers, and babysitters, etc.), neighbors, relatives, school personnel, coaches, clergy, therapeutic professionals, physicians, law enforcement officers, and other potential witnesses;

(13) Fully reviewing all relevant evidence including, but not limited to, physical and electronic photographs, video, and audio recordings;

(14) Learning about the substantive issues affecting the child's rights being addressed

in concurrent administrative hearings and other legal proceedings involving the child's legal rights that relate to the dependency court matter;

(15) Contacting or visiting with and interviewing the child's treatment provider and current placement;

(16) Attending school case conferences or staffing concerning the child as needed; and

(17) Developing a theory of the case and legal strategy to implement at hearings, including factual and legal issues.

### **6.3 File Pleadings**

After consulting with and taking direction from the child about the relationships that matter to them, the child's attorney should timely file appropriate pleadings in the case. Types of pleadings that can be filed include petitions, answers, reports, declarations, motions, responses, witness and exhibit lists, or objections as necessary to advocate for the child's expressed or legal interests. Examples of relief requested may include, but is not limited to:

- (1) An increase, decrease, or termination of contact or visitation;
- (2) A mental or physical examination of a party or the child;
- (3) A parenting, custody, or visitation evaluation;
- (4) Restraining or enjoining a change of placement;
- (5) Contempt for non-compliance with a court order;
- (6) Termination of the parent-child relationship;
- (7) Reinstatement of parental rights;
- (8) Establishment of paternity and child support;
- (9) Protective orders concerning the child's privileged communications or records, tangible or intangible property, or contact with other persons who are not parties;
- (10) Order on services for the child and/or family; and
- (11) Dismissal of proceedings.

### **6.4 Negotiate Settlements**

The child's attorney should participate in settlement negotiations to seek expeditious resolution of the case that is aligned with the child's stated or legal interests. The child's attorney should consult with the child and advise the child of their right to participate in mediation. If the child wishes to participate in mediation, the attorney should access suitable mediation supports as necessary.

## **7. Hearings**

### **7.1 Court Appearances**

The child's attorney shall attend all hearings and participate in all telephone, virtual, or other conferences with the court. If a child is attending a court hearing in person, the attorney must appear in person. If the child's attorney is unable to attend a hearing, the attorney is responsible for arranging a fully-prepared coverage attorney. Attorney participation in hearings includes, but is not limited to, the following actions:

- (1) Preparing and making all appropriate motions, including *motions in limine* with accompanying briefs if necessary, and evidentiary objections to advance the child's position at trial or hearing and to preserve issues for appeal;
- (2) Presenting and cross-examining witnesses, including experts;
- (3) Preparing and presenting exhibits;
- (4) Filing trial briefs;
- (5) Timely filing motions;
- (6) Making opening and closing arguments;
- (7) Preparing proposed findings of fact, conclusions of law, and orders when they will be used in the court's decision or may otherwise benefit the client; and
- (8) Avoiding continuances and working to reduce delays in court proceedings if doing so aligns with the child's interests.

### **7.2 Client Explanation**

The child's attorney should explain to the client in a developmentally appropriate manner what is expected to happen before, during, and after each hearing.

### **7.3 Child at Hearing**

The child has a right to be present at court hearings and should be encouraged to do so if appropriate. The child's attorney should consult with the child regarding the child's desire to be present at each court hearing, including procedural hearings at which the substantive interests of the child are not at issue and regardless of whether the child will testify. The child's attorney is expected to consult with the child prior to each scheduled hearing to ensure that the child understands their right to be present at the hearing, to advise the child on the nature of the hearing, what to expect during the hearing, and to determine whether

the child wishes to be present. After consultation, the attorney shall follow the child's decision regarding whether they will attend the court hearing. If the child wishes to attend the hearing, the attorney should work with the Department and or placement to ensure attendance at hearing. Attorneys should advocate for hearings to occur during times that have the least impact on child's schedule.

#### **7.4 Whether Child Should Testify**

The attorney's responsibility for developing and guarding the child's trust, confidence, and participation in decision-making is particularly important when it comes to the decision of whether a child should be called to testify in a dependency or termination proceeding. Consistent with RPC 1.2 and 1.4, the child's attorney is expected to fully counsel and advise the child regarding a decision as to whether to call the child as a witness, including assessing the child's competency to testify.

(1) Among the factors that should be considered is the child's need or desire to testify. Other factors include, but are not limited to, potential repercussions of testifying or not testifying, including potential criminal/juvenile offender liability; the necessity of the child's direct testimony; the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child; and the child's developmental ability to provide direct testimony and withstand possible cross-examination.

(2) As a child may be called to testify by any party, competency should be considered prior to all testimonial hearings regardless of whether or not the attorney and child intend to have the child testify. Relevant to competency, the attorney should consider prior to any testimonial hearing, the developmental ability of the child to recall and relate events and whether or not the child is able to understand the difference between a truth and a lie. The child's propensity for truthfulness is immaterial to competency, and competency is presumed regardless of age of the witness. If the attorney anticipates that their client will be called to testify and anticipates a challenge to the competency of their client, the attorney should explain in developmentally appropriate terms the purpose and procedure of a competency hearing.

#### **7.5 Child Witness**

If the child is to testify, the attorney should effectively prepare them to do so. This preparation should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Attorneys should ensure, through motions, if necessary, that testifying will cause minimum harm to the child. The child's attorney is expected to work with other parties who may call the child as a witness to ensure as much as possible that the child is afforded an opportunity to testify in a manner that safeguards the child's emotional well-being. The child's attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.



## **7.6 Challenges to Child's Testimony/Statements**

The child's competency to testify, or the reliability of the child's testimony or out-of-court statements, may be called into question. The child's attorney should be familiar with the current law and empirical knowledge about children's competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

## **7.7 Conclusion of Hearing**

The child's attorney should make a closing argument and provide proposed findings of fact and conclusions of law to the court. The child's attorney should ensure that a written order is entered.

## **7.8 Expanded Scope of Representation**

The child's attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, to further the child's stated interest, which may include permission to pursue appellate review. *See* Standard 7, below.

# **8. Advocacy for Services**

## **8.1 Services**

Consistent with the child's stated interest, the child's attorney or a member of the attorney's legal team should seek to set up appropriate and desired supports or services (by court order if necessary), to: access entitlements such as housing, food, clothing, and education; to protect the child's interests; and to implement a service plan tailored to meet the child's needs. These services may include, but are not limited to:

- (1) Family preservation or reunification services;
- (2) Sibling and parental visitation supports, such as transportation;
- (3) Trauma-related services;
- (4) Medical care, including treatment for substance use disorder and psychosocial conditions;
- (5) Parenting education;
- (6) Semi-independent and independent living services;
- (7) Financial supports and entitlements, such as survivors' benefits or social security benefits;
- (8) Services supporting the implementation of the permanent plan;
- (9) Recreational or social supports;
- (10) Gender affirming care, including health care and the procurement of legal gender marker and/or name changes.

## **8.2 Special Needs**

Consistent with the child's stated interest, the child's attorney should ensure that a child with special needs receives appropriate services to address the physical, psychosocial, or developmental conditions. These services may include, but should not be limited to:

- (1) Special education and related services;
- (2) Therapeutic and medical care, including occupational therapy;
- (3) Accessibility services and supports;
- (4) Therapeutic foster services;
- (5) Residential, in-patient, and/or outpatient psychiatric treatment.

## **9. Review: Appeals, Discretionary Review, & Revision**

### **9.1 Review of Court's Order**

The child's attorney should review all written orders to ensure that they conform with the court's verbal orders and statutorily required findings and notices.

### **9.2 Communicate Order to Child**

The child's attorney must discuss the order and its consequences with the child.

### **9.3 Implementation**

The child's attorney is expected to monitor the implementation of the court's orders; take reasonable steps to ensure that all parties comply with the court's order; assess and investigate material changes in circumstances that affect the child's stated interests and the effective implementation of court orders; and determine whether the case needs to be brought back to court.

### **9.4 Decision to Review**

The child's attorney should consider and discuss with the child, as developmentally appropriate, the possibility of review on appeal, revision, or discretionary review. If after such consultation, the child wishes to have the order reviewed, and there is a basis in law and fact for doing so, the lawyer shall take all steps necessary to initiate and perfect the review process. The child's attorney should seek, when appropriate, temporary orders or extraordinary writs necessary to protect the interests of the child pending review.

Whether an appeal or discretionary review is filed on behalf of the child or by another party, the child's attorney should take necessary steps to facilitate access to appellate counsel where a right to appointed counsel on appeal exists and support efforts to secure

that attorney's appointment. The attorney for the child should coordinate with the child's appellate counsel to ensure that appropriate steps are taken to protect the client's interests while the appellate review is pending.

## **9.5 Conclusion of Review**

When the decision after appeal, revision, or discretionary review is received, the child's attorney should meet with the child and explain the outcome of the case.

## **10. Withdrawal and Termination of Representation**

### **10.1 Withdrawal Upon Resolution of Case**

The child's attorney is expected to close their case and withdraw from the legal representation in a timely manner when a final resolution of the case has been entered by the court and the attorney's responsibilities to the client have been completed. In general, the attorney should close the case and withdraw from representation within 40 days of entry of a final order.

### **10.2 Withdrawal Prior to Resolution of Case**

(1) If circumstances necessitate the attorney's withdrawal prior to resolution of the case, pursuant to Civil Rule 71(b), the attorney must discuss the withdrawal with the child before filing the motion and order for withdrawal and substitution. If a motion to withdraw is granted, the attorney is expected to take all necessary steps to protect the client's interests and arrange for the orderly transfer of the client's file and discovery to substituting counsel.

(2) If an attorney is appointed to represent a child, there is an ongoing obligation to conduct conflict of interests checks regularly throughout the legal representation. If an issue arises that must be resolved by withdrawal by the attorney, the attorney must promptly note the motion and seek appropriate relief pursuant to Civil Rule 71(b).

### **10.3 Cessation of Representation**

The child's attorney should prepare the child for the end of the attorney/client relationship. Prior to case closure, the attorney should help the child identify legal goals and whether they have been met. If appropriate, the attorney should make every attempt to either aid the child with their legal goals or obtain appropriate referrals prior to case closure. Upon case closure, the attorney should make clear to the child in an age- and developmentally-appropriate manner that the attorney/client relationship has ended. Examples of legal goals that may need to be addressed at the end of the representation include, but may not be limited to:

- (1) Addressing remaining desires and interests related to a basic needs framework<sup>13</sup> and going beyond basic needs to address those things that empower children and youth and support their autonomy and agency;
- (2) Addressing who they are connected to, such as their siblings, parents, other relatives, mentors, educators, and other social supports;
- (3) Addressing whether the child's placement is supportive of other important identity and cultural values, including their approach to spirituality or religious beliefs, whether they're religious or not;
- (4) Developing a safety plan with the child, if necessary.

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<sup>13</sup> See Responsibility Pathways Framework, <https://www.neassoc.com/response-ability-pathways>; *See also* <https://www.simplypsychology.org/maslow.html>

**Appendix A**

**Training Topics for Youth Representation in Washington State**

**Legal Authority (Federal, State, Local) .....**

Statutes

Case Law

Regulations

Court Rules

Agency Policy

Rules of Professional Conduct

Revised Children’s Representation Standards.....

**Legal Skills.....**

Investigation/Discovery

Familiarity Application of Safety Assessment Tools

Developmentally Appropriate Client Interviewing and legal counseling

Working with Interpreters and experts

Trauma-Informed Advocacy

Case planning

Alternative Dispute Resolution

Trial Skills should include:

Shelter Care

Fact Finding

Termination

Guardianship

Adoption

Motions Practice

Children/Youth-Centered Reports to Court and Declarations

Contested Reviews

Reinstatement of Parental Rights

Legal Writing

Filing of appeal/appellate process

**Areas of Legal Knowledge:**

Required for standards-based Representation:

The Child Protective Referral and Investigation Process

Dependency (Indian Child Welfare Act, Extended Foster Care, Specialized Services, etc.)

Education (Protections and laws for youth in care,)

Adoption, Relative Guardianships

**Required for Issue-Spotting & Possible Referral/Collaboration:**

Special Education, School Discipline, Truancy

Delinquency/criminal law/crossover youth

Custody, paternity, child support issues

Identity Theft Prevention and Recovery

Public Benefits (SSI, SSDI, TANF, DDA, SNAP)

Immigration

Housing

Mental and Medical Health services and access

**Social Science .....**

Infant, Child and Adolescent Development

Attachment

Harms of Family Separation

Poverty

Mental Health

Trauma/ACES/Generational Trauma

Substance Abuse/Misuse

Commercial Sexual Exploitation

Dynamics of Sibling Relationships

Intrafamily Violence

Secondary Traumatic Stress/Compassion Fatigue

Protective Factors/Strength-based advocacy/Building Resilience

Importance of Building Long Term Connections

**Cultural Humility:**

Implicit Bias

Cultural Identity Concepts and Practices

White Supremacy and Racism

LGBTQUIA+ Considerations

Culturally Responsive and Respectful Lawyering

Adultism

Youth-led Trainings such as Culture of Foster Care, and Nothing Without Us

Youth/Adult Partnerships and Advocacy

# REPRESENTATION FOR CHILDREN UNDER 8 YEARS OLD

IN CHILD WELFARE CASES



CHILDREN'S  
REPRESENTATION  
WORKGROUP

MAY 2022



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With a special thank you to **Zoe Wood** and **Golnaz Camarada**

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## I. Executive Summary

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When a child enters the Washington child welfare system, they are immediately at the center of one of the most complex legal problems of their lifetime. The chief legal objective is obvious: permanency, either through reunification with their parents and when that's not possible, with a non-parental caregiver. But permanency is by no means the only issue litigated. Within the dependency process, children possess a panoply of rights, both statutory and constitutional, such as the right to be placed with relatives before strangers, to live with or visit their siblings, to visit their parents, and to be free from harm in their placements. Outside of the dependency process, a child in the care of the state may require advocacy in matters of public benefits law, education and special education law, family law, immigration law, housing law, and criminal law, not to mention appellate advocacy. [1] The child will be dependent on the state to fulfill their fundamental needs, among them doctor's visits, an interim safe placement, and legal enforcement of the right to have these needs met when they are not. And permanency itself is substantively and procedurally complex. The road to permanency contains a proliferation of dependent children's statutory rights to everything from the pace of proceedings to preferences for certain types of placements over others, depending on individual circumstances. In light of the complex legal rights that must be advocated for on behalf of young children, and informed by the research outlined below, we make four findings.

First, all children under the age of eight require legal counsel right from the beginning of the dependency process. Just like children need pediatricians to diagnose and treat their medical issues, they need children's attorneys to identify their legal rights and enforce those rights when they are in the midst of a complex dependency proceeding. [2] This finding is bolstered by national trends—the majority of states automatically provide counsel to all children from the beginning of the case—and by our interviews with lawyers from seven states, none of whom were willing to identify a particular age at which counsel becomes necessary. Some described such age-driven rules as “arbitrary,” pointing to a lack of child development-based rationale for providing counsel to only a subset of children. Empirical research from four data-driven studies shows that appointment of counsel for children of all ages at the outset leads to better outcomes. Moreover, non-attorney advocates such as CASAs and GALs (defined below) are not qualified and do not have the expertise to either identify or advocate for the many wide-ranging, complex and fundamental legal objectives, elaborated above, that inevitably arise during dependency.

Second, “stated interest” (also known as “expressed interest”) representation is the appropriate approach to representing children, as it is required by the binding and profession-defining ABA Rules of Professional Conduct. For those children unable to communicate their preferences, counsel should use “legal interests” representation. The legal interests model doesn't run afoul of the Rules of Professional Conduct, and minimizes the influence of attorney bias.

Third, the legal interests model for nonverbal and preverbal youth—already implemented in parts of Washington—is consistent with the legislature's goals of enforcing children's legal rights

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[1] Recommendations for Representation of Children in Abuse and Neglect Cases § V (Nat'l Assoc. Couns. for Child. 2022).

[2] As described by Jim and John Walsh, Supervising Attorneys at the Legal Aid Society of Palm Beach County.

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while minimizing advocate bias as a driving force behind litigation objectives. When an attorney is beholden to basing their advocacy around a prescribed set of rights, as is required by the legal interests model, there is far less room for the insertion of the attorney's own subjective assessments. Below, parents and lawyers alike explain the importance of advocacy that is driven by objective standards and carried out by professionals who are highly trained in those standards.

Fourth, lawyers for young children require specific training in: (1) childhood development, (2) the impact of trauma on a child's cognition and ability to communicate, (3) mental health, and use of psychotropic medications, (4) risks of secondary trauma, (5) lawyering skills that will allow for effective communication with young children, particularly those who have experienced trauma, (6) the legal rights of children that exist in state and federal statutes, regulations, departmental policies, and case law, including the substantive due process rights to family integrity and to be free from unreasonable risk of harm while in state care guaranteed under the Washington constitution, (7) guarding against bias, (8) the impact of implicit and overt bias on children involved in the child welfare system, (9) disproportionality in the child welfare system, and (10) relational permanency and permanency planning. This list is informed by the parents, young people, attorneys, and other professionals we spoke to.

## II. Introduction: The Status Quo in Washington

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### Right to counsel among children and youth

In Washington, the right to counsel for dependent children is undergoing significant change. By a process to begin this summer, and to conclude in 2027, all Washington children ages eight and up will have the right to counsel immediately upon the filing of a new dependency proceeding, “at or before the commencement of a shelter care hearing.” [3] Children under the age of eight will have automatic right to counsel upon the filing of a termination petition under the same phase-in schedule. [4]

During the phase-in period, all children of any age are still entitled to appointment of counsel six months after the finding of termination. [5] Further, any child may be appointed counsel at any point in the dependency proceeding on the court’s own initiative or if “a parent, the child, a guardian ad litem, a caregiver, or the department” requests it. [6] As children may not be aware of their ability to file a motion requesting an attorney, Washington requires that the department and a dependent child’s GAL notify the child of their right to request an attorney on the date of the child’s twelfth birthday. [7] It is important to note that the right to request an attorney does not automatically translate to appointment. Rather, requesting an attorney requires that someone file a motion requesting one, and the court has discretion to grant it or not. Empirical data suggests that such requests are rare. A 2015-2016 court observation study focused on King, Pierce, and Snohomish counties found that 15% of children in middle-stage dependency hearings had neither a CASA/GAL nor an attorney, and requests for appointment of counsel were raised in only 4% of those cases. Even then, the requests were granted only 25% of the time. [8]

The gradual acquisition of the statutory right to counsel for children at various ages and stages of the proceedings is further complicated by local practice. Some counties provide for automatic appointment of counsel at twelve; others at eight; two counties were previously subject to a legislatively created study funding appointment of counsel for children at all ages and stages of the proceedings; and others appoint only as required by statute. [9] Recent enactments giving all children eight years of age and older the right to counsel have gone a long way towards correcting this fragmented approach often referred to as “Justice by Geography.” But for the youngest of Washington’s children, the statutory right to counsel is available only to those who are six-months post-termination of their parents’ parental rights, those who happened to have had cases filed in jurisdictions where study funding was available, and per the most recent amendment, those whose parents’ rights are challenged by termination proceedings (and even then, pursuant to the six-year statutory phase-in schedule). [10] This leaves children under eight

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[3] RCW 13.34.212(3)(a)(ii).

[4] RCW 13.34.212(3)(a)(i).

[5] RCW 13.34.212(1)(a).

[6] RCW 13.34.212(3)(a)(i); *In re Dependency of E.H.*, 158 Wash. App. 757 (2010).

[7] RCW 13.34.212(2)(c).

[8] Alicia LeVezu, *Alone and Ignored: Children Without Advocacy in Child Abuse and Neglect Courts*, 14 STAN. J. C.R. & C.L. 125, 145 (2018). See also Marisa Forthun, *Judicial Discretion is Advised*, 96 Wash. L. Rev. 23, 38 (a 2020 court observation study suggests that “although trial courts have discretion from both statutes and case law to appoint attorneys for children in dependency proceedings, trial judges rarely utilize this discretion.”).

[9] See, e.g., Forthun, *supra* note 8 at 31.

[10] RCW 13.34.212(3)(a)(i).

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without a lawyer from the crucial decisions made at shelter care through to the filing of a petition to terminate parental rights, a period which often spans multiple years. This will remain true even after Washington's new statutory rights to counsel are fully implemented.

As it currently stands, some dependent children under age eight in Washington are represented not by attorneys but by volunteer CASAs or Guardians ad Litem who advocate for their own determination of the child's best interests, as required by statute. While there is some variation by county in how this statutory mandate is fulfilled, the CASA volunteer program is primarily relied upon to meet the demand for GALs, not just for young children but children of all ages in Washington state. Due to the shortage of volunteers, court observation studies have shown that some children have no CASA/GAL appointed to advocate for their best interests. [11]

### Youth Perspective: Appointment by Age

Lily Cory, a foster care alum and current MSW, works in systems reform and policy. She is passionate about making sure those with lived experience inform systems of care. She shared her own experience of having a lawyer appointed to her at age 12, several years into her dependency proceeding. She emphasized the arbitrariness of an age cutoff for appointment of counsel, and characterized it like this: one day she was unrepresented, as she had been for years. The next, she suddenly had a lawyer, although nothing else about her circumstances had changed. Her sibling, several years younger, remained unrepresented. This felt unfair, she explained, because she and her sibling had very different wants and needs from each other, but only one of them had legal counsel, and only because of their age discrepancy. This did not help the system's tendency to lump their wants and needs together, thereby misunderstanding both.

### How children and youth are discussed in dependency proceedings

A 2018 court observation study carried out in King, Snohomish, and Pierce counties provides insight into certain material effects that the presence of children's advocates—and the type of children's advocate—have upon the substance of dependency proceedings. [12] The study reports that, when a child is represented by legal counsel, the child is *mentioned* in proceedings 92% of the time. By contrast, when a child is represented by a best interests advocate—such as a CASA or GAL—the child is only mentioned in proceedings 79% of the time. [13] When a child has no advocate at all, the child is mentioned in proceedings only 67% of the time.

The study also took note of how often a children's *wellbeing* (i.e., mental and physical health, progress in school, or other qualitative information) was raised in proceedings. [14] Among children represented by legal counsel, wellbeing was raised in proceedings 76% of the time, compared with 64% of the time among children represented by best interests advocates and 28% of the time among children with no advocate.

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[11] See Levezu, *supra* note 8, at 144.

[12] *Id.*

[13] *Id.* at 146.

[14] *Id.* at 147.

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The study reported the most significant disparity in the rate at which children's preferences and opinions were relayed during proceedings. [15] Among children with legal counsel, their preferences and opinions were raised in the proceedings 80% of the time. Among children with best interests advocates, preferences and opinions were only raised 25% of the time. And the opinions of children without any advocate were raised in proceedings just 6% of the time.

### **Disparity in experience between children and youth of different races**

As of 2019, there is significant disparity between the experiences of children and youth of different races in the dependency system. To begin with, Black children and youth are 1.8 times more likely to experience an intake into the child welfare system than white children, and Black children and youth are 1.89 times more likely than white children and youth to be screened into the child welfare system post-intake. [16] The disparity remains as dependency proceedings progress. Black children are 1.74 times more likely than white children to be placed, 1.33 times as likely to move twice or more during the first 12 months in care, and 1.28 times as likely to remain in care for over two years. Furthermore, among children and youth who have been in care for over two years, Black children and youth are 1.51 times more likely than white children to move within a given year.

American Indian and Alaska Native children and youth are 1.8 times more likely to experience an intake than white children and youth, and 1.89 times more likely to be screened in. [17] As dependency proceedings progress, American Indian and Alaska Native children and youth are over twice as likely to be placed as white children and youth.

Although there is not a lot of data concerning racially disparate experiences of children and youth with respect to advocate relationship, a national evaluation of CASA conducted in 2004 found that "[c]ompared to children of other races, volunteers spent less time with African American children." [18]

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[15] *Id.* at 148.

[16] Wash. Dep't Child., Youth & Fam., 2019 Washington State Child Welfare Racial Disparity Indices Report (2019).

[17] *Id.*

[18] Caliber, Evaluation of CASA Representation (2004).

### III. The Legislative Charge

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In light of the recent amendments to dependent children’s right to counsel and the enduring unrepresented status of most children under eight, the legislature requested the Supreme Court Commission on Children and Foster Care to:

convene a children's representation workgroup composed of relevant stakeholders, to review the available research and best practices regarding representation of the legal interests of children under the age of eight, and submit to the legislature recommendations regarding the appropriate model of representation including timing of appointment, training and oversight needs, and other considerations. The recommendation shall be reported to the relevant committees of the legislature by March 31, 2022. [19]

This report summarizes a survey of the models and practice standards used by attorneys who represent children under the age of eight across the country. It is informed by parents and by youth who have experience in systems of care. Ultimately, this report recommends universal legal representation in addition to considerations and approaches to representing very young children.

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[19] Second Substitute House Bill 1219.



## IV. Methodology

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When it comes to representing children in dependency proceedings, “if you ask one hundred different lawyers, you’ll get one hundred different answers” about how it should be done. [20] As such, it is difficult to present a full or adequately nuanced picture of child representation throughout the country. This report attempts to capture the diversity of approaches, and some of the nuance, as follows:

First, we set out the four prevalent “models” of representation and two sets of widely implemented national standards. Together, the models and standards describe a general spectrum encompassing most approaches to representation. Crucially, this section includes comments by parents, professionals, and youth who have experienced the models and standards in action.

Second, we detail how the models and standards are implemented in seven states. Key to each state-specific section are interviews with attorneys who have extensive experience representing very young clients according to their state’s models and standards. The attorneys’ comments on the benefits and challenges of their state’s approach are interspersed throughout the tables. We have highlighted their most important examples and insight in colorful boxes that stand out from the text.

Third, we summarize the four existing empirical studies that provide data-driven support for the importance of children’s lawyers in dependency proceedings and the efficacy of different approaches to representation.

Finally, in response to the charge provided by the legislature, we offer recommendations for the representation of children under age eight informed by models, standards, empirical studies, and most importantly, the insight and experiences offered by counsel, experts, parents, and youth.

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[20] A common refrain among the lawyers we interviewed for this report.

## V. Summary of Models

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The “model” of representation refers to the manner in which a child’s attorney determines the litigation objectives in abuse and neglect proceedings and termination proceedings. Discourse on “models of representation” marks a sharp distinction between the legal representation of children and adults. Lawyers representing adults and children are bound by Rules of Professional Conduct to “abide by a client’s decisions concerning the objectives of representation.” [21] Even when representing a client “with diminished capacity,” lawyers must “as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” [22] And in fact, the rules include “minority” status as a type of diminished capacity. [23] Therefore, it is notable that certain of the models described below pose challenges for an attorney who is bound to abide by the Rules of Professional Conduct.

Still, representing children—and especially children who are very young, preverbal, or nonverbal—presents unique opportunities which demand creative, well-trained, standards-based approaches. To understand the nuanced ways in which the lawyers we spoke to approach their advocacy, it is crucial to understand the basic tenets of the four models set out below, which form the basis for most approaches to representation.

### **Stated Interests Model of Representation**

The “stated interest” approach to legal representation is fairly characterized as the default approach to representing clients. A “stated interest” is an interest communicated to the attorney by the client verbally, in writing, or through the use of other techniques, such as American Sign Language, language interpreters, or assistive communications technologies that aid those children who are unable to communicate verbally.

As described above, the American Bar Association’s rules of professional conduct define the stated-interest model in Rule 1.2, which requires that a lawyer “abide by a client’s decisions concerning the objectives of representation and . . . consult with the client as to the means by which they are to be pursued.” [24] Lawyers are obligated to adhere closely to Rule 1.2; to violate the rule is to be vulnerable to professional sanctions, suspension, or expulsion. Thus, even when a client is of “diminished capacity,” their lawyer cannot diverge from stated-interest representation unless or until the client “is at risk of substantial physical, financial, or other harm.” [25] In the presence of such risk, the lawyer may “take protective action,” which can include “consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.” [26]

This is what the stated interests model entails in the child advocacy context. Put very simply: under the stated interest model, the child’s lawyer adheres to the Rules of Professional Conduct, and proceeds by determining their client’s objectives to the best of their ability, and then

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[21] Model Rules of Pro. Conduct r. 1.2 (Am. Bar Ass’n 1983).

[22] *Id.* r. 1.14. See also Washington Rules of Professional Conduct r. 1.14 (Wash. Bar Ass’n 2021).

[23] *Id.*

[24] *Id.* r. 1.2.

[25] *Id.* r. 1.14(b).

[26] *Id.*

[27] *Id.* r. 1.2.

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advocating for those objectives in court. [27] Crucially, under the stated interest model, if a client will not express a position on an issue, their lawyer may choose not to take a position in court on that issue.

Because the stated interest model is committed to centering the voices of children and youth, rather than the voice of the advocate or other parties, it effectively promotes agency and autonomy on the part of children and youth in dependency proceedings. It also begins to address some of the issues outlined in the Status Quo section above, namely, the rate at which children, their wellbeing, and their preferences are raised in dependency hearings. In this way, the stated interest model also strives to address, in part, the systemic racial disparity discussed in the Status Quo section above, because it reduces the extent to which attorney bias can permeate litigation objectives.

### **Youth Perspective: Empowered to Think of Broader Opportunities for Self-Advocacy**

Emily Stochel, who is a foster care alum, a Mockingbird Society Advocate, and the Program Manager of Statewide Initiatives at the College Success Foundation, recounted her experience working with a lawyer. She explained how, after advocating strenuously for her own basic safety and fundamental needs, having a lawyer appointed empowered her to think not only about what she absolutely needed, but what she wanted in the course of her dependency. For example, her attorney filed a motion for custody of her dog. Although this motion wasn't ultimately successful, the fact that her lawyer told her it was possible and advocated strongly in its favor made Emily aware of broader opportunities for self advocacy she hadn't previously thought possible.

### **Youth Perspective: The role of attorneys; the role of GALs.**

Among a group of fifteen members of the board of Passion to Action (P2A), a statewide advisory board to Washington State's Children's Administration led by youth and alumni of foster care, several spoke to the importance of GALs and CASAs, especially for younger children. For example, someone spoke about a great GAL who came to meet with a client in their community. Another spoke to a GAL who brought Christmas presents. At the same time, another P2A member spoke to attorneys being preferable to GALs in the context of court proceedings, explaining that by their observations, GALs, who tend to be white, middle-aged and from the middle class, are more likely to express more biased positions. By contrast, attorneys would advocate on a more granular, legal level. It is also important, another board member added, to make sure that clients are clear on the difference between their attorney and a GAL.

### **Best Interests Model of Advocacy**

This model is not envisioned under the Model Rules of Professional Conduct and is contrary to the central tenet that the client directs the litigation. Therefore, it does not constitute legal representation of children and is referred to in this report as "advocacy" to distinguish it from direct legal representation. Under the best interest model of advocacy, a GAL is appointed by the court to make recommendations and take legal action based on the advocate's determination of what is best for the child, even when contrary to the child's stated position.

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Best interest advocacy across the country generally falls into three categories, where the role of the appointed advocate is fulfilled by: (1) a non-attorney guardian ad litem (GAL) or Court Appointed Special Advocate (CASA), who is sometimes represented by an attorney; (2) an attorney-GAL who does not directly represent the child but takes legal action based upon the attorney's determination of what is in the child's best interests; or (3) an attorney who serves in a dual role as a GAL and counsel.

There is a significant difference between GALs and volunteer CASAs and counsel. While GALs and CASAs provide the court with “information about the child and the child’s circumstances,” they are “not trained to, nor is it their role to, protect the legal rights of the child.”[28] Conversely, lawyers “provide legal advice on potentially complex and vital issues to the child, ... are bound by [the] ethical duties” of the legal profession, and “maintain confidential communications.” [29] Additionally, lawyers help the child and the court by “explaining to the child the proceedings and the child’s rights,” and “facilitate and expedite the resolution of disputes, minimize contentiousness, and effectuate court orders.” [30]

Given that the best interest advocate’s representation is guided simply by their own judgment, this model of representation is rife with the potential to introduce bias. [31] Even in the states where GALs are attorneys with legal training and bound by Rules of Professional Conduct, legal representation is still based on “what the attorney deems best (often and inevitably based upon the legal representative's values and life experiences, albeit unwittingly at times).” [32] As explained by Professor Jean Koh Peters of Yale Law School, “[t]his level of discretion makes it inevitable that the [advocate] will sometimes resort to personal value choices, including references to his own childhood, stereotypical views of clients whose backgrounds differ from his, and his own lay understanding of child development and children's needs, in assessing a client's best interests. Especially for practitioners who must take cases in high volume, the temptation to rely on gut instinct, stereotype, or even bias is overwhelming.” [33]

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[28] *In re Dependency of M.S.R.*, 174 Wash. 2d 1, 21, 271 P.3d 234, 245 (2012).

[29] *Id.*

[30] *Id.*

[31] See Caliber, *supra* note 18 (Nationally, 83% of CASA volunteers were white according to a 2002 survey); see also Wash. Bar Assoc., *Diversity, Intersectionality & WSBA Membership* (2015) (overall, 89% of the WSBA's members are white, compared to 72% of the population).

[32] 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, 34 (2000).

[33] 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, 1526 (1996).

## **A Parent’s Perspective: Attorneys and GALs Have Meaningfully Distinct Roles.**

Tonia McClanahan is both a contracted social worker for OPD with years of experience and a parent with lived experience. She expressed appreciation for GALs, but emphasized that they are not a replacement for attorneys because “GALs pick and choose based on what they believe.” She recounted a case involving domestic violence and observed that the GAL was “anti-dad” and intimated “no faith that things would be different” even though the child’s mother was doing well. Because the GAL was advocating for adoption, an attorney was assigned to represent the child in order to provide balance and represent the child’s legal rights. In another case involving a seven-year-old, “the GAL was anti-parent” and the judge recognized that the child was articulate and appointed a children’s attorney. The attorney was able to “speak more to the bigger picture, whereas the GAL was only speaking to what was in the best interest of the child that day.” In another case, a child was placed in an abusive foster home and CASAs and GALs were not listening when the parent described this abuse. From Ms. McClanahan’s perspective, if an attorney had been representing that child, he would have not stayed in that abusive home as long as he did, and the permanent effects of trauma on this child would have been avoided.

### **Substituted-Judgment Model**

Under the substituted-judgment approach to representation, the advocate must “make a reasonable attempt to make the decision that the protected person would make” if they were able to make a decision. [34] A reasonable attempt must include consulting and adhering to the protected person’s “known and previously expressed preferences,” which are informed principally by reliable evidence of express preferences, past behavior, values, and secondarily, by the opinions of those close with the protected person who are familiar with their express desires and wishes. [35] The advocate might also review written evidence of preferences, including legal documents and letters. [36] As Professor Lisa Kelly, The Bobbe and Jon Bridge Professor of Child Advocacy at the University of Washington School of Law, explained in a recent article, substituted judgment “requires advocates to put themselves in the place of their client, and in the context of the client’s life, to make a decision that the client likely would have made had they been able to verbalize a position.” [37] There is an exception to the substituted judgment approach, which is that if a decision made under substituted judgment would result in “substantial harm” in a particular instance, then the decision maker should use a different approach in that particular instance. [38]

Advocates typically use the substituted judgment model of decision making with adult clients who have become unable to direct their own representation. [39] However, in some places,

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[34] Fam. & Volunteer Guardian’s Handbook p. 19 (King County Bar Ass’n 2010).

[35] Id.

[36] Id.

[37] Lisa Kelly & Alicia LeVezu, *Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children*, 50 Fam. L.Q. 383, 391 (2016).

[38] Id.

[39] Lisa Kelly & Alicia LeVezu, *Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children*, 50 Fam. L.Q. 383, 396 (2016).

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children’s attorneys use this approach in the course of representing even very young clients. As with adult clients, the decision maker must determine what the child would decide if the child were able to make an “adequately considered decision.” [40] And, just as an attorney for an adult would do when using substituted judgment, an attorney who is substituting their judgment for that of a child may consult a variety of resources, including observations of the child in their environment, information from those who know the child, and information from experts. [41] The substituted-judgment approach differs from best interests principally because it is based, at least in theory, not on the personal beliefs of the advocate, but rather on what the child would seemingly decide based on the information that the decision maker has sourced. [42]

The substituted judgment model is ultimately subject to many of the same pitfalls as the best interests model. By definition, very young children do not have a large compendium of expressed preferences, past behavior, values, or wishes. Even those closest to a baby would struggle to identify that baby’s basic preferences, let alone core values. As such, “the advocate is left to imagine what he or she would want if he or she were in this baby’s booties.” [43] So, just like the best interest model, here the decision is ultimately subject to the attorney’s own values, gut instinct, and racial and class biases.

### **Legal Interests Model**

The legal interest model of representation is the model currently in place in Washington for pre-verbal and non-verbal children and youth. Under the legal interest model of representation, an attorney is bound to identify and advocate for a child’s legal rights that are enumerated by the constitution, federal statutes, state statutes, and case law. These laws would set objective criteria for a legal interest attorney to represent the child. [44] As Professor Kelly explains, a legal interest representation “ highlights the unique skill set of lawyers —that of identifying legal issues and utilizing court processes.” [45]

The legal interest approach differs from best interest advocacy and substituted judgment representation in that the attorney is not charged “with telling the court what the advocate thinks is best or what the advocate imagines the child would want.” [46] Thus, this approach to representation minimizes the influence of bias, and allows lawyers to exercise their skills to protect the child’s legal rights, even when that child is unable to direct counsel.

Moreover, the legal interests approach ensures that children and their wellbeing are raised in dependency hearings. Recall from the Executive Summary that children in care require advocacy in matters beyond dependency, including public benefits law, education and special education law, family law, immigration law, and housing law, to name a few. It is the job of the legal interest

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[40] Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, § 7(d).

[41] Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, Commentary to § 7(d).

[42] *Id.*

[43] Lisa Kelly & Alicia LeVezu, *Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children*, 50 *Fam. L.Q.* 383, 384 (2016).

[44] *Id.*

[45] *Id.*

[46] *Id.*

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attorney to identify any and all legal issues which their young client faces in these diverse areas of law, and to ensure that these issues are raised, attended to, and solved throughout the course or proceedings. The legal interest model also places an emphasis on agency and autonomy in that it preserves the rights of young people before the court until the point at which they can determine their own legal objectives. In this way, it strikes a balance between attending to the wellbeing of preverbal and nonverbal clients and reducing opportunities for attorneys to project their biases into litigation objectives.

While the legal-interest model was recommended by the American Bar Association in the 1996 Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, Washington is the only state to implement the model. Therefore, there is only very limited quantitative and qualitative information available about its drawbacks. Still, it is conceivable that the legal-interest model makes sacrifices in the interest of objectivity. Namely, it limits advocacy to areas where there is a statutory or other legal entitlement and therefore may allow other parties to the given dependency to have access to more robust and creative advocacy than the child.

### **A Judge’s Perspective: Legal Interests and the Bias Towards Adult Perspectives**

Judge Megan Valentine of the Grays Harbor District Court spoke to how the benefits of the legal interest model reverberate in the courtroom. She explained that juvenile court judges face a significant bias in favor of assuming that the adults in the room are the ones who are in control. That assumption can function to discount the values and desires of the children also before the court. The stated interest/legal interests dichotomy guards against this bias by diminishing the opportunities for a child’s lawyer—an adult in the room—to put forward their own opinions and judgments that a judge may unconsciously weigh more heavily than those of the child.

### **A Lawyer’s Perspective: Comparing Models in Action**

Karen Lindholdt, who has extensive experience representing children in dependency proceedings in Grant County, spoke to the differences between legal interests and GAL-determined best interests. She recounted parallel stories in which she had been appointed to represent very young children, both from Latinx families. By the time Ms. Lindholdt was appointed in each case, the children had been placed with white foster families. In both cases, Ms. Lindholdt identified relatives who not only wanted to raise the children, but who were already raising their siblings. Under RCW 13.34.130, which states a statutory preference for placement with relatives and with siblings when parents aren’t an option, Ms. Lindholdt emphasized that her young clients had the right to be placed with their family members. Her clients’ GALs in each case advocated instead that it was in the best interests of each child to remain with their foster families with whom the children had bonded, despite the opportunity that each child had to be raised with family alongside siblings. In each case, Ms. Lindholdt’s clients were ultimately placed with family in accordance with Washington’s statutory preference for placement with relatives and siblings where possible.

## VI. Distribution of Models Across the U.S.

As depicted in the graphic below, currently the majority of states (72%) and Puerto Rico and the US Virgin Islands, require independent counsel for all children at all stages of abuse and neglect proceedings. [47] Of these states with universal representation, about one third require client-directed counsel [48] and the rest use attorney best-interest representation and/or a hybrid form of representation (i.e., best interests for youth under a specific age). [49] When an attorney is appointed, most state statutes require that the attorney is appointed for all phases of the case.[50] Furthermore, a majority of states now require multi-disciplinary training for child’s counsel or GAL. [51] And a vast majority of states give the child legal party status with all rights of a party. [52]

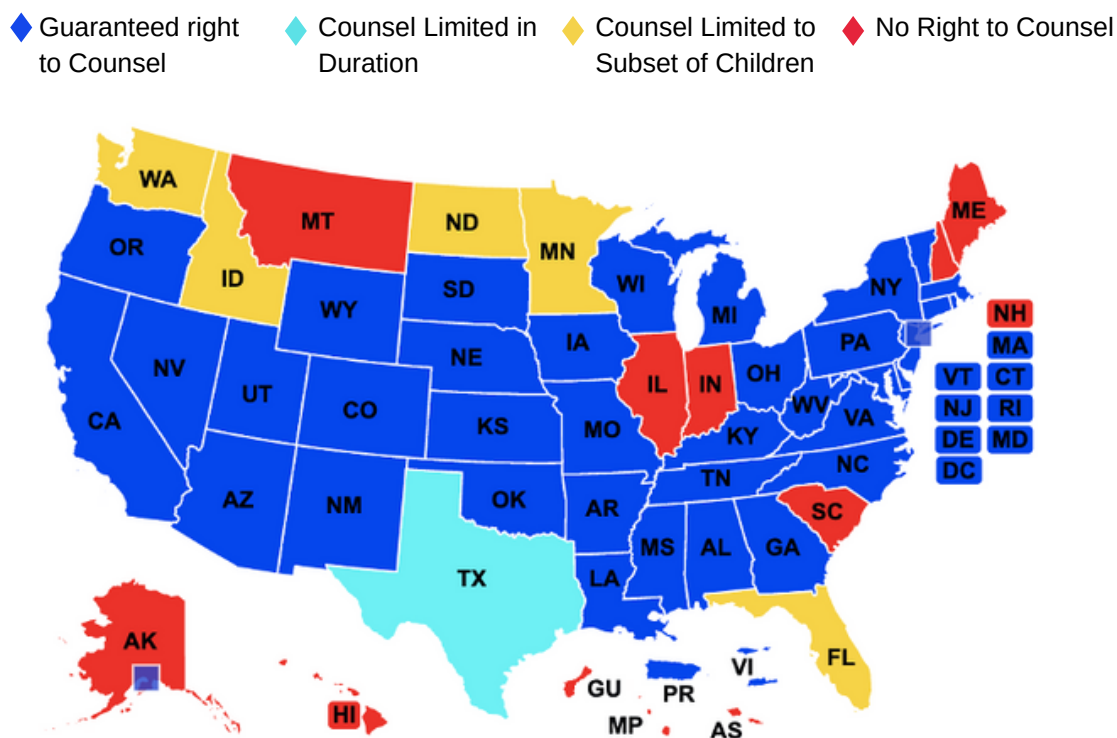


Figure 1: Models of Children’s Legal Representation by State [53]

[47] Nat’l. Assoc. Couns. for Child., State Models of Children’s Legal Representation 2-7 (2021).

[48] Client-directed counsel includes the use of substituted-judgment representation when the client is determined to be at “diminished capacity” or is nonverbal. It is defined as representation where the attorney’s duty of loyalty is to the child. Client-directed counsel must advocate for their client’s expressed preferences and positions to the extent possible consistent with any diminished capacity of the child, including age.

[49] Id. (Client-directed counsel)

[50] Id.

[51] Id.

[52] Id.

[53] Recreation of the NACC Model of Representation Map (2021).



## VII. National Standards and Guidelines

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The practice standards and guidelines governing child advocacy are distinct from the models set out above. While the models name the approach a child advocate takes to determine the objectives of the litigation, standards and guidelines address both preferred models of representation and further aspects of the attorney-client relationship, such as confidentiality, continuity, and training. While several states, Washington included, have produced their own standards, there are two prominent national organizations that have offered guidance in this area: the American Bar Association and the National Association of Counsel for Children. [54] The recommendations of both organizations frequently serve as the basis for state-specific standards, and attorneys and judges often cite to them independently. While there is a lot to learn from both, we have focused on their recommendations for the appropriate model of representation for very young children. In developing its standards in 2010, Washington relied heavily on the ABA standards that were in effect at the time.

### **ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases**

In 1996, the ABA published its standards and recommended a stated interest approach as default. For example, it recommends that “[t]he child’s attorney should elicit the child’s preferences in a developmentally appropriate manner, advise the child, and provide guidance.” [55] In court, “[t]he child’s attorney should represent the child’s expressed preferences and follow the child’s direction throughout the course of litigation.” [56] However, when a child “cannot express a preference,” such as “in the case of a preverbal child,” the ABA standards recommended that “the child’s attorney shall make a good faith effort to determine the child’s wishes and advocate accordingly or request appointment of a guardian ad litem” (emphasis added). [57] When an attorney cannot determine the child’s wishes, the attorney should operate under the legal interests model. [58] The ABA standards were careful to distinguish the legal interests model from the best interests model, and explain that “this limitation distinguishes the scope of independent decision-making of the child’s attorney and a person acting as a guardian ad litem.” [59] Guardians ad litem operate under the best interest model by definition; this is not, according to the ABA standards, the province of the child attorney. Washington’s standards, adopted in 2010, endorsed the ABA default of stated interest as well as its recommendation for legal interest advocacy for child clients unable to direct counsel.

In 2011, the ABA revised its approach and adopted the Model Act Governing the

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[54] Meaningful Legal Representation for Children and Youth in Washington’s Child Welfare System draws heavily on the ABA Standards; American Bar Association, Model Act Governing the Representation of Children in Abuse and Neglect Proceedings (2011); NACC Recommendations, Revised.

[55] ABA Standards § B-4.

[56] Id.

[57] ABA Standards § B-4(1).

[58] Id. (“Under such circumstances, the child’s attorney should continue to represent the child’s legal interests and request appointment of a guardian ad litem.”)

[59] Id.

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Representation of Children in Abuse, Neglect and Dependency Proceedings. [60] In this version, the ABA retained stated interest as its default position but chose instead to endorse the use of the substituted judgement model for those children unable to direct counsel. [61]

### **NACC Recommendations for Representation of children in Abuse and Neglect Cases**

The NACC published updated recommendations in February 2022. Crucially, NACC recommends that “[r]egardless of model, children and youth should have party status in their own cases and enjoy access to effective assistance of legal counsel at all stages of welfare proceedings, from initiation through final appeal.” [62]

Regarding the model of representation, “NACC supports express-interest representation as the preferred model of children’s legal representation.” NACC refers to this model also as the “Child Attorney” model in which “[t]he attorney owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client” in addition to “active client counseling and investigation.” [63]

For children “of diminished capacity (such as infants),” NACC recommends substituted judgment “as the preferred approach to legal representation.” [64] This substituted judgment representation requires that attorneys first make “firsthand, trauma-informed and culturally responsive observations of the client and seek guidance from collateral sources (e.g., family, supports, experts, and other professionals)” to develop a position. [65] With these observations as a foundation, NACC recommends that attorneys using the substituted judgment model “further consider the child’s legal rights and interests in safety, permanency, and wellbeing (presently and into the future) and factors such as attachment, identity and cultural connection, sibling relationships, health, etc.” [66] NACC emphasizes that “[i]mportantly, a child’s age, in and of itself, is not sufficient to make a diminished capacity determination that triggers a substituted judgment approach.” [67]

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[60] American Bar Association, Model Act Governing the Representation of Children in Abuse and Neglect Proceedings (2011).

[61]

[62] NACC Recommendations, Revised, Comment to § 1.

[63] NACC Recommendations, Revised, Definitions.

[64] Id.

[65] Id.

[66] NACC Recommendations, Revised Comment to § 1.

[67] Id.

## VIII. State-Specific Approaches to Representation

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The seven states studied in depth were identified for several reasons: They (1) represented a comprehensive sample of the various models and practices used across the country, (2) encompassed a complete range of the ratings provided by the First Star's latest edition of A Child's Right to Counsel, [68] and (3) provided an opportunity to interview practitioners who are well known for their expertise in this area of the law.

The states we studied have a variety of approaches to representation of children. A majority of these states have some form of best interest representation model. The challenges associated with each of these models are diverse, but they all have one challenge in common: they are prone to the advocates' biases. Different states have put different measures in place to protect against biases, but there is still much work to be done in this area across the board.

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[68] FIRST STAR ET AL., A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN (4th ed.) (Evaluating state laws relating to the legal representation of children in civil child abuse and neglect proceedings).

## Arizona

<b>Interviewee</b>	Paul Bennett, Professor of Law and Director of the Child and Family Law Clinic at the University of Arizona.
<b>Right to Counsel</b>	As of 2021, Arizona enacted a new statute that provides all children with a right to counsel, regardless of age. [69] The statute provides:  "The court shall appoint an attorney for a child in all ... dependency or termination of parental rights proceedings that are conducted pursuant to this title. The court shall appoint the attorney before the first hearing. The attorney shall represent the child at all stages of the proceedings and, in a dependency proceeding, through permanency."
<b>Model</b>	Stated interest: Arizona requires a stated interest lawyer to represent children in juvenile court. Additionally, "the court may appoint a guardian ad litem to protect the juvenile's best interests." However, "the guardian ad litem is not the child's attorney." [70] In cases where the child is preverbal or has diminished capacity, there is no statewide model of representation. Rather, attorneys proceed in accordance with the rules and practice standards of their jurisdiction.  Under new regulations, which have not passed yet, if the attorney is not able to determine what the child's stated interest is, they must inform the court and get permission to proceed.
<b>Bright-Line Age Rule</b>	None.
<b>Counsel's Critiques</b>	Potential for attorney biases to affect the child's answers if the attorney is not properly trained in how to interview and counsel young children.
<b>Interdisciplinary Training</b>	Arizona has requirements for interdisciplinary training. In accordance with Arizona Rules of Procedure for the Juvenile Court, [71] attorneys and GALs shall complete "six (6) hours of court approved training prior to their first appointment and an additional two (2) hours within the first year of practice in juvenile court." [72] Additionally, there is a requirement to complete "eight (8) hours each year of ongoing continuing education and training. Education and training shall be on juvenile law and related topics, such as child and adolescent development (including infant/toddler mental health), effects of substance abuse by parents by and upon children, behavioral health, impact on children of parental incarceration, education, Indian Child Welfare Act, parent and child immigration status issues, the need for timely permanency, the effects of the trauma of parental domestic violence upon children and other issues concerning abuse and/or neglect of children." [73]

### An Attorney's Perspective: The Importance of Trauma-Informed Interviewing

Interviewing in a developmentally appropriate manner is critical. Mr. Bennett recounted a case where the child's siblings were murdered by one of his parents. "We were all worried that the child did not know about the murder. We did not want to deliver this message, and cause additional trauma just so that we can do our job." but when they asked the child if he knew why they were there, they found out that he already knew what had happened. And so, they were able to counsel the child and determine his stated interest.

### An Attorney's Perspective: We Must Support Lawyers for Children

Mr. Bennett points out that as part of any representation model, we must consider supporting children's representatives in their work to improve longevity of trained lawyers in this profession. "It is not easy to do this work for a long period of time," Mr. Bennett explains, and "we are not successful more often than we are, in anybody's measure of success." So he urges Washington to think about the issues of burnout and secondary trauma and make sure our attorneys have the proper support.

[69] Ariz. Stat § 8-221.

[70] *Id.*

[71] Ariz. R. Juv. P. 40.1(J)

[72] *Id.*

[73] *Id.*

# California

<b>Interviewee</b>	Susan Abrams, Policy Director, Children's Law Center of California. CLC represents half of all children in dependency proceedings in California.
<b>Right to Counsel</b>	"If a child . . . is not represented by counsel, the court shall appoint counsel for the child." [74] One exception, allowing the court to refrain from appointing counsel "if the court finds that the child . . . would not benefit the appointment of counsel," [75] is in practice never used.
<b>Model</b>	Model is dictated by statute. Stated interests for children 4 and older. [76] Best interests (attorney GAL) for children under 4. [77]  CLC policy requires counsel to advise the court of the child's wishes, regardless of age. The policy is driven by a commitment to be "youth centered."
<b>Bright-Line Age Rule</b>	Age does not factor in appointment of counsel. Age 4: counsel to switch to stated interest representation. [78] Age 8: children must attend court hearings.
<b>Counsel's Critiques</b>	Bias is "always" an issue in making best interests determinations. Clearer laws could ameliorate bias in best interests representation. A stated interest model would also be less subject to bias, in some situations.
<b>Interdisciplinary Training</b>	Statutory training requirements:  "Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care." [79]  "Authorization, uses, risks, benefits, assistance with self-administration, oversight, and monitoring of psychotropic medications; trauma, and substance use disorder and mental health treatments, including how to access those treatments." [80]

## An Attorney's Perspective: Babies have distinct positions

Ms. Abrams spoke about representing a very young baby who had sustained serious injuries—allegedly from being shaken by one of their parents. Both the State and the parents acquired experts, and Ms. Abrams acquired her own. Her analysis, combined with her expert's opinions, yielded a different position from either the state or the parents. While the State advocated to bypass reunification services and fast track to terminating parental rights, and the parents advocated for dismissal of the petition, Ms. Abrams advocated for services and psychological evaluations for the parents before considering termination. She was successful, and therefore, better able to balance her client's right to being raised by their biological parents with their right to safety than the state or the parents were prepared or willing to do. Absent legal representation, this client's crucial rights would not have been fully represented.

[74] CA Welfare and Institutions Code Division 2 Part 1 Ch. 2 Art. 7 § 317(c)(1).

[75] Id.

[76] CA Welfare and Institutions Code Division 2 Part 1 Ch. 2 Art. 7 § 317(e)(2).

[77] Id.

[78] Id.

[79] CA Welfare and Institutions Code Division 2 Part 1 Ch. 2 Art. 7 § 317(c)(5)(B)(i).

[80] CA Welfare and Institutions Code Division 2 Part 1 Ch. 2 Art. 7 § 317(c)(5)(B)(ii).

## Colorado

<b>Interviewee</b>	Ashley Chase, Staff Attorney and Legislative Liaison of the Colorado Office of the Child's Representative (OCR). OCR is the state agency mandated to provide competent and effective best interests legal representation to children involved in the Colorado court system.
<b>Right to Counsel</b>	All children have a statutory right to advocacy, regardless of age. [81] Children under age 12 have the right to GAL advocacy, carried out by an attorney. [82] Children aged 12 and up have the right to legal representation, and are automatically appointed client-directed counsel. [83]  Children under 12 may have legal counsel in limited circumstances, including when the child faces contempt of court or the court has determined that the child holds their own patient-therapist privilege. [84] Serving in these limited situations, counsel has a traditional attorney-client relationship with the child.
<b>Model</b>	Best-interest advocacy (by attorney-GAL, not a volunteer) for under youth 12; stated interest for 12 and older  Representing the "best interests of the child" means that the GAL does not work in the traditional attorney-client role where an attorney advocates on behalf of the client's stated interests. The GAL must advocate independently on behalf of the child's health, safety, and well-being. The GAL is tasked with investigating as needed "to ascertain the facts," and "shall talk with or observe the child involved," and "make recommendations to the court concerning the child's welfare." [85]  Once the child turns 12, an attorney represents the child's stated interests. [86] In this role, lawyers have a traditional attorney-client relationship and advise their client about the issues pending before the court and advocate according to the child's wishes.
<b>Bright-Line Age Rule</b>	Yes, CO draws a line at 12. Those younger receive GAL advocacy; those 12 and older receive legal counsel.
<b>Counsel's Critiques</b>	This model of representation is subject to attorney biases, and Colorado has tried to mitigate this concern to the extent possible through implementing proper recruitment practices, and training.
<b>Interdisciplinary Training</b>	OCR trains all of its attorneys on the law, social science research, child development, mental health and education issues, and best practices relating to issues impacting children involved in court proceedings. Additionally, GALs must meet OCR's Core Competencies. [87] The Core Competencies are grounded in understanding ethical obligations, having substantive knowledge of the law, advocacy skills, effective engagement with youth, and ability to conduct meaningful investigations.  The Colorado standards also require use of a Tool for Assessing and Planning for Child Safety. This tool includes a set of six questions to gather information about the child's safety, followed by a rubric to analyze the gathered information and assess safety. If the child is determined to not be safe, the attorney establishes a safety plan as provided in the form.
<b>Standards</b>	The roles and responsibilities of a GAL, are governed by the Colorado practice standards, [88] the professional standards governing all attorneys, the attorney's contract with OCR, and OCR practice standards.  GALs must independently and timely investigate the matters to which they are appointed, make recommendations that are in the best interests of the child, and advocate on the child's behalf. Additionally, GALs must meet each child in each placement and communicate with the child and other parties throughout the case. A few key practice standards point to the GALs' obligation to (1) visit the child within 30 days of appointment, (2) independently investigate and interview parties involved in the child's life within the first 45 days of appointment, and (3) to obtain 10 hours of OCR-sponsored training. [89]

[81] Colo. Rev. Stat. §19-1-115(8)(d).

[82] *Id.*

[83] *Id.*

[84] *L.A.N. v. L.M.B.*, 11 SC 529 (Jan. 22, 2013).

[85] Colo. Rev. Stat. §19-3-203(3).

[86] Colo. Rev. Stat. §19-1-115(8)(d).

[87] See <https://coloradochildrep.org/wp-content/uploads/2019/11/OCR-Core-Competencies-for-DN-Attorneys.pdf>.

[88] Chief Justice Directive 04-06.

[89] *Id.*

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**An Attorney's Perspective: Practice Standards and Trainings Are Key to an Effective Model**

From Ms. Chase's perspective, Colorado's practice standards help address some of the critiques of the best interest representation model. Because "they require you to meet with the child outside of court, to ascertain what the child wants and inform the judge of the child's wishes." And "ultimately the judge makes the final decision in dependency proceedings." So, "states should focus on high quality standards."

## Florida

<b>Interviewee</b>	Gerry Glynn, Chief Legal Officer of Embrace Families Jim Walsh & John Walsh, Supervising Attorneys at the Legal Aid Society of Palm Beach County.
<b>Right to Counsel</b>	There is no universal representation in Florida. Children get appointed GALs who are primarily volunteers. [90] As provided in the statute, a GAL shall be appointed “at the earliest possible time to represent the child.”[91] GALs are required to file a written report including a statement of the wishes of the child. [92] Florida requires appointment of attorneys only under a very narrow set of factors as defined by statute. [93] It is important to note that GALs have a right to counsel, unlike most children. In Florida this has mostly been driven by funding and only few of the 67 counties have received funding to appoint attorneys. There is an additional complication in Florida where under rules of juvenile procedure, judges are allowed to appoint an attorney in any case. [94] Only children who have an attorney appointed receive client-directed representation. [95]
<b>Model</b>	Best interest (non-attorney GAL) throughout most jurisdictions.  However, because there is no statewide model of representation in Florida, practitioners may differ in their approaches. For example, the Children’s Services Council of Palm Beach County provides client-directed council for children three years and older.
<b>Bright-Line Age Rule</b>	None.
<b>Counsel’s Critiques</b>	GALs have very limited training, and they do not have rules of professional conduct to abide by. Their representation of a child is highly subject to bias.
<b>Interdisciplinary Training</b>	No multidisciplinary training is required for attorneys except for a narrow subset of cases involving child sexual abuse.
<b>Standards</b>	Florida has developed Florida Guidelines for Lawyers who Represent Children in Abuse and Neglect. These guidelines, modeled after the ABA and the NACC standards, are mostly educational and are not binding.

### An Attorney’s Perspective: We Are the Pediatricians of the Child Welfare System

As Jim and John explain, children are coming to us with the most complex legal problem of their lifetime. We are experts with interpreting, and enforcing the law. And our job is to get these children out of foster care and into permanent homes as soon as possible, preferably with their biological parents.

[90] Fla. Stat. §39.822(1).

[91] Id.

[92] Fla. Stat. §39.807(2)(b)(1).

[93] Fla. Stat. §39.01305(3).

[94] Fla. R. Juv. P., Rule 8.255(b)(1).

[95] Fla. Stat. §39.4085(20).



# Georgia

<b>Interviewee</b>	Natalece Washington, JD, CWLS, Policy Counsel, National Association of Counsel for Children. Former attorney for dependent children in Georgia.
<b>Right to Counsel</b>	Statutory right to counsel for all children in dependency proceedings. [96] Counsel must be appointed “as soon as practicable to ensure adequate representation of the child.” [97] The right cannot be waived. [98]
<b>Model</b>	Hybrid: counsel + GAL. Counsel can serve as both “unless or until there is a conflict of interest between the attorney’s duty . . . as . . . attorney and the attorney’s considered opinion of such child’s best interests” as a GAL. [99] In such a situation, counsel files a motion for new GAL and continues their role as counsel.  Counsel for all children “owes his or her client the duties imposed by the law of this state in an attorney-client relationship.” [100] Thus, for nonverbal children, counsel is required to apply the ethical rules governing representation of clients with diminished capacity to guide representation.
<b>Bright-Line Age Rule</b>	None, pertaining to either right to counsel or appropriate model.  Ms. Washington emphasizes the importance of case-specific inquiry to determine the approach to representation, based on the capacity of the child.
<b>Counsel’s Critiques</b>	Any model in which the client is not telling counsel what to do is vulnerable to counsel’s biases.
<b>Interdisciplinary Training</b>	Ethical obligation of competence requires interdisciplinary training for children’s counsel, including in child development and interviewing, and immigration, disability, and social security law.  Ms. Washington emphasizes the importance of understanding early childhood development, especially the point at which decision-making capacity develops.

### An Attorney’s Perspective: Basic childhood wellbeing

In advocating for nonverbal children, Ms. Washington emphasizes an essential aspect of counsel’s role: advocating for basic childhood wellbeing. Counsel for very young children must be hyper-vigilant and place high importance on understanding how their client is doing on a day-to-day basis. She also emphasizes the importance of noticing whether a client has a bruise on their arm or leg, of speaking regularly to daycare teachers, and of routinely asking basic questions such as “how are you doing” and “did you eat today”?

Ms. Washington’s discussion of day-to-day attention to clients’ basic wellbeing emphasize the importance of counsel for very young dependent children. Counsel not only advocates for a position on permanency; counsel advocates throughout the pendency of the case, which can be years, for their client’s right to have their basic needs met. This may be especially important for preverbal children.

[96] GA Code § 15-11-103(a) (2014).

[97] GA Code § 15-11-103(b) (2014).

[98] GA Code § 15-11-103(f) (2014).

[99] GA Code § 15-11-104(b).

[100] GA Code § 15-11-103(c).

# Iowa

<b>Interviewee</b>	Judge Brent Pattison, Iowa Judicial District 5.
<b>Right to Counsel</b>	In Iowa, all children have a right to counsel, regardless of age. [101] And the appointment of counsel occurs upon filing of a petition. [102] The statute provides that the court shall “appoint counsel and a guardian ad litem” and that the same person may serve both roles unless the “same person cannot properly represent the legal interest of the child as legal counsel and also represent the best interest of the child as guardian ad litem.” [103]
<b>Model</b>	Hybrid: counsel + GAL. Counsel can serve as both “unless or until there is a conflict of interest between the attorney’s duty . . . as . . . attorney and the attorney’s considered opinion of such child’s best interests” as a GAL.[90] In such a situation, counsel files a motion for new GAL and continues their role as counsel.  Counsel for all children “owes his or her client the duties imposed by the law of this state in an attorney-client relationship.”[91] Thus, for nonverbal children, counsel is required to apply the ethical rules governing representation of clients with diminished capacity to guide representation.
<b>Bright-Line Age Rule</b>	None.
<b>Counsel’s Critiques</b>	Attorney bias Assessment of when to withdraw as a GAL.
<b>Interdisciplinary Training</b>	Iowa does not require specialized multidisciplinary education and/or training for attorneys representing children in dependency proceedings.

**A Judge’s Perspective:  
Regardless of the Model, Effective, Zealous, and Active Representation of Children’s Rights is Needed**

Before becoming a judge, Judge Pattison represented a child whose parent had requested different visitation times. The state disagreed with the parent, arguing that current visits were not going well and were disruptive to the child’s daycare. The consensus was that the parent was not handling the situation well. Judge Pattison took the case and approached it with zealous advocacy. He interviewed the child, and the preschool teacher, to find out what was happening. He learned that the visits were scheduled during nap time so there was no chance they would go well regardless of how the parent was handling them. This was also the main reason behind the parent’s request to adjust visitation times. So following this investigation, they scheduled visits in between nap time, just as frequently, and the outcome was highly successful. “All it took was zealous advocacy, interviewing the parties and considering the child’s rights!”

[101] Iowa Code §232.89(2); §232.113(2); §232.126  
[102] Id.  
[103] Iowa Code §232.89(4).

# Washington

<b>Interviewee</b>	Judge Megan Valentine, Grays Harbor District Court. Former legal interests study attorney.
<b>Right to Counsel</b>	As of 2022, statutory right to counsel for children 8 and up, pursuant to six-year phase-in schedule, and all ages upon the filing of a termination petition. [104] Statutory right to best interests GAL for children under 8. [105] Exception: statutory right to counsel for all children 6 months post-termination. [106]
<b>Model</b>	Stated interests for clients able to direct counsel. [107] Legal interests for preverbal and nonverbal children. [108]
<b>Bright-Line Age Rule</b>	Yes. Statute draws a line at age 8 for right to counsel in dependency. [109] None for termination or six months post-termination. From her experience, Judge Valentine does not think it is possible to identify one specific age at which representation should begin or change.
<b>Counsel's Critiques</b>	The legal interests model minimizes the extent to which counsel's judgment influences their advocacy. This is a far better approach than using the substituted judgment or best interest model, where counsel is ultimately advocating for their own judgment. This is exacerbated by the fact that many advocates do not understand the lived experience of foster youth well enough to understand the proper role of children's advocacy.
<b>Interdisciplinary Training</b>	Judge Valentine emphasizes the importance of training that teaches counsel how to talk to children and how to discern whether a child is at a stage, developmentally, at which the stated interest model is appropriate.
<b>Practice Standards</b>	WA attorneys are guided by Meaningful Legal Representation for Children and Youth in Washington's Child Welfare System, a set of standards modeled on the ABA's standards, summarized above.

## An Attorney's Perspective: Basic Right to Care

Judge Valentine shared her experience representing a very young child who could speak but not communicate their needs. This client, whose parental rights had been terminated, was gravely injured in their foster placement and hospitalized for two months as a result.

Since Judge Valentine's client was out of their foster placement for over two months due to the hospitalization, they did not automatically get a new placement. As a result, save for a monthly thirty-minute visit with a caseworker, Judge Valentine's client had no one outside of their medical team to care for them during their hospital stay. However, Judge Valentine's appointment as counsel obligated her to ensure that her client's basic right to care was met. Judge Valentine visited the hospital frequently, and filed a motion with the court requesting an order compelling the department to find a placement for her client at the end of their hospitalization. Through this motion, Judge Valentine secured a foster placement that would not only care for the client post-hospitalization, but also visit the hospital and assist with the client's respiratory needs.

As Judge Valentine said: this client's story is a strong and highly emotional example of how a very young, nonverbal client required an attorney to advocate for their rights. The legal interest model provided a framework for Judge Valentine to advocate for her client who was physically safe in the hospital but whose rights beyond physical safety--to basic care and permanency--would not have been enforced throughout the hospital stay without legal counsel.

[104] RCW 13.34.212(3)(a)(i).

[105] RCW 13.34.212(2)(a).

[106] RCW 13.34.212(1)(a).

[107] Meaningful Legal Representation for Children and Youth in Wash. Child Welfare Sys. § 1.1(1) (Wash. Courts 2011).

[108] Id. at § 1.1(7).

[109] RCW 13.34.212(3)(a)(i).

## IX. Outcome Studies

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Four outcome studies are available nationally that provide data-driven support for the importance of children’s lawyers in dependency proceedings and the efficacy of advocacy and representation for children. These studies are summarized as follows. Additionally, during the interviews practitioners pointed to anecdotes that are consistent with these results, noting that children who are represented by attorneys, especially using stated interest models, typically spend less time in care, and have more favorable outcomes.

### **2021 Evaluation of the Washington State Dependent Child Legal Representation (DCLR) Program**

The DCLR Program offered standards-based legal representation to all dependent youth in Grant and Lewis counties. [110] It identified three outcomes to assess at the program’s conclusion, including permanency, placement stability, and school stability. [111] To determine the efficacy of the DCLR program, evaluators identified a control jurisdiction, comprising Whatcom and Douglas counties where the DCLR was not implemented, and a control time period, comprising the two years before the start of the DCLR program. [112] Then, evaluators compared the outcomes for 434 children in Grant and Lewis counties who entered shelter care during the study period with the outcomes for three control groups: (1) 322 children who entered shelter care in Grant and Lewis counties during the control time period, (2) 265 children who entered shelter care in Douglas and Whatcom counties during the study period, and (3) 430 children who entered shelter care in Douglas and Whatcom during the control time period.

Evaluators found that children represented by DCLR attorneys were 45% more likely to experience reunification with their biological parent(s) than children in the comparison group. Moreover, the DCLR program decreased the change of placement rate by 30% across all age groups. Finally, the DCLR decreased the rate of non-normative [113] school transitions by 65%.

### **Alone and Ignored: Children Without Advocacy in Child Abuse and Neglect Cases**

In her court observation study, Alicia Levezu observed 596 hearings regarding 872 children in Snohomish, King, and Pierce Counties. She explains that Washington State is somewhat unique in that it is home to various methods of advocacy. “When a child is appointed an advocate,” she explains, “depending on the child’s age, geographic location, and random luck, that person could either be an unpaid best interest volunteer, a professional best interest lay advocate, or a stated interest attorney.” [114] Therefore, she was able to observe how each type

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[110] Evaluation of the Washington State Dependent Child Legal Representation Program (2021); Page 1 (study attorneys used legal-interest for preverbal and nonverbal youth and stated-interest otherwise; the study did not evaluate the efficacy of the models per se, rather, but of universal, standards-based legal representation in general).

[111] Id. at page 7-9.

[112] Id. at page 7.

[113] Id. at page 1. (non-normative school transitions was measured by the “number of transitions from one school to another, for reasons other than grade promotion”)

[114] Alicia LeVezeu, *Alone and Ignored: Children Without Advocacy in Child Abuse and Neglect Courts*, 14 STAN. J. C.R. & C.L. 125, 137 (2018).

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of advocate functioned in practice. Levezu’s conclusions ranged from foundational observations—the type of advocate present was a stated interest attorney 13% of the time, a best interest advocate 69% of the time, both 6% of the time and none at all 15% of the time [115]—to more complex ones: stated interest attorneys offered arguments in favor of their client’s relayed preference 68% of the time, and best interests advocates did so just 30% of the time. [116]

While Levezu observed that both types of advocates could improve their practice to better focus on the voices of their clients, her findings provided more support for the efficacy of stated interest attorneys than best interest advocates. Namely “[c]hildren who were appointed client-directed legal counsel were more likely to be mentioned, to have their well-being discussed, to have their preference relayed and argued for, and to be present for their hearing, than children with best interest advocates.” [117]

### **QIC Best Practice Model of Child Representation**

The QIC-ChildRep Intervention was a five-year study designed by the University of Michigan Law School as a contribution to the U.S. Children’s Bureau National Quality Improvement Center on the Representation of Children in the Child Welfare System. [118] Based on the hypothesis that a lack of adequate legal representation creates a significant barrier to permanency, the study set out to “raise the level or practice among attorneys representing children in child welfare dependency cases and evaluate how those changes affected attorney behavior and child welfare outcomes.” [119] Researchers implemented the study in Washington and Georgia. [120]

In its final analysis, the QIC studied three outcomes: placement stability, placement with kin, and time spent in foster or group care. [121] The study found that in Washington, the children who were appointed counsel by QIC-trained attorneys appointed early in the case experienced faster permanency than children represented by control attorneys. Because the children who are appointed counsel in Washington are generally twelve or older, and represented under a client-directed model, the QIC concluded that its finding in Washington suggests QIC trained attorneys were “better able to influence situations where the course of action is clearer . . . and where the voice of a child may have a stronger impact . . . .”

Ultimately, the QIC drew two broad, but poignant conclusions. First, the QIC identified an “appetite” among participating lawyers in both Washington and Georgia to “learn from behaviors to be more in alignment with a nationally recognized best practice model.” Second, the QIC found that for older children in the welfare system, client-directed attorneys trained on QIC best practices achieved, on average, “more permanency within six months.”

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[115] Id. at 144.

[116] Id. at 149.

[117] Id. at 158.

[118] Evaluation of the QIC-ChildRep Best Practices Model Training for Child Representatives in the Child Welfare System (2016); Page 9.

[119] Id.

[120] Id.

[121] QIC Study at 85.

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## **Expediting Permanency: Legal Representation for Foster Children in Palm Beach County**

In 2001, the Children’s Services Council of Palm Beach County contracted with the Legal Aid Society of Palm Beach County (Legal Aid) to provide legal representation to children under the age of three. Legal Aid’s Foster Children’s Project (FCP) uses an attorney ad litem model of representation (representing a child’s stated interests) for the duration of children’s dependency cases and its advocacy is centered around four core activities: (1) filing of legal motions, (2) filing of termination of parental rights petitions and recruitment of adoptive homes, (3) attendance at staffing and case plan meetings, and (4) service advocacy. In 2006, Chapin Hall Center for Children at the University of Chicago, conducted a third-party evaluation of the FCP for children placed in foster care from 2001 to 2004. The study found that children represented by the FCP had a significantly higher rate of exit to permanency compared to children without legal representation. [122] This “appears to be a function of much higher rates of adoption and long-term custody.” [123] Fiscal implications of FCP are also noteworthy. The study found that implementation of FCP results in a reduction of substitute care and case management costs. While this reduction may not quite offset the program costs of FCP, the net cost for each additional day of permanency was estimated to be as low as \$32 per day. Given the pilot project’s desirable outcomes, FCP has expanded twice since its inception to include children 12 years of age and younger.

### **Youth perspective: An essential role of attorneys is to explain the process to their clients.**

Several P2A board members emphasized the importance of being well-informed about court proceedings. This means it is essential for attorneys to help their clients understand what they’re going through. That includes making sure their client knows they’re not in trouble, that the dependency proceedings are not meant to decide how to punish them, but a process to determine how to support them. It is also critically important for lawyers to explain what it looks like for them to speak on their clients’ behalf.

For example, one P2A member recounted that, when someone in their family was facing criminal charges related to their dependency case, their attorney provided them with a diagram/timeline of the criminal proceedings so that they could understand exactly what would happen and when. They referred back to this diagram often. Another member spoke to the usefulness of clearly marking the hearings throughout the dependency process on a calendar. A third member recommended going through DCYF’s “Know Your Rights” document even with very young clients.

### **Youth Perspective: Consistent Attorney Relationship**

A P2A member spoke to having a lawyer appointed at age nine. They remained with the same lawyer until they turned twenty-one and exited foster care. They explained that this lawyer was the only consistent presence in their life throughout their time in foster care. They spoke to the importance of how their lawyer spoke with them one-on-one, made it clear that they were there just for them and that they wanted to hear what their client wanted. This was empowering. For example, this P2A member recounted being drowned out during a hearing. Their lawyer stopped the discussion and ensured that their client had the opportunity to speak.

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[122] Expediting Permanency: Legal Representation for Foster Children in Palm Beach County (2008).

[123] Id.

## X. Recommendations

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Among the states surveyed, there was no consensus as to the model of representation for very young children. However, in the course of our research and interviews with lawyers, parents, youth, and experts, we observed many common threads. These common threads inform our recommendations:

### **First:**

Children under the age of eight require legal counsel from the beginning of the dependency process. In fact, attorneys in Washington have been representing children under the age of eight since 2014 when children whose parental rights had been terminated for six months were first given counsel. [124] This recommendation is informed primarily by the following:

- That two thirds of states automatically provide counsel to all children in dependency proceedings indicates that a large majority of the country recognizes the importance of the right.
- Throughout the course of our interviews, no one was able to single out a particular age at which counsel becomes necessary. Some described bright-line age rules as “arbitrary.”
- Empirical research from three different data-driven outcome studies shows that appointment of counsel for children of all ages at the start of a dependency leads to better outcomes.
- Most importantly, every single person interviewed emphasized the fact that dependent children require advocacy not just for a disposition on permanency, but for many wide-ranging and fundamental objectives during the pendency of the case, from independent educational plans to regular doctor visits to safety in an interim placement. CASAs and GALs are not prepared to either identify or advocate for many of these essential rights. Moreover, the youngest children are least able to voice these rights on their own.

### **Second:**

Stated interest representation is the appropriate approach to representing children, as it is consistent with the ABA Rules of Professional Conduct. For those children who are unable to communicate their preferences and direct counsel, counsel should use legal interest representation. Unlike the best interest model, which may be inconsistent with the Rules of Professional Conduct, and the substituted judgment model, the legal interests model does not allow advocates to structure the litigation objectives according to their own subjective evaluation of their client’s situation.

- Just as there is no accurate bright-line age rule in the access to counsel context, there is no bright-line age rule that indicates when any particular child can direct counsel. Rather, attorneys must constantly assess the developing capacities of their clients. [125] Counsel may even find it appropriate to use legal interests representation for some issues and stated interests for others.

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[124] RCW 13.34.100(6) (children’s right to counsel was recodified in 13.34.212 in 2021).

[125] Model Rules of Professional Conduct; comments to r. 1.14 (“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.”)

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**Third:**

Stated interest representation, alongside legal-interest representation for preverbal and nonverbal youth (which is already implemented in parts of Washington), are the two models that are consistent with the legislature's goals of enforcing children's legal rights and minimizing advocate bias as a driving force behind litigation objectives. This recommendation is informed primarily by the following:

- Minority children, and in particular African American children are overrepresented in the child welfare system. [126] In 2017, Black children were 2.2 times and Native American children were 2.9 times more likely to be placed in out-of-home care compared to white children. [127] Explicit and implicit bias is one of the main factors responsible for this disproportionality.
- Bias influences the decisions made at every stage of the child welfare system, and as a result, minority children who have the same problems and characteristics as white children, enter the system at higher rates and stay in the system longer. As described above, both the "best interest" and "substituted judgment model" leave room for bias and using either of these models would only perpetuate the disproportionality problem. [128]
- Moreover, as described above in the Status Quo section, children, their wellbeing, and their preferences and opinions are raised less frequently when they are represented by best-interests advocates than when they have legal representation. [129]
- Conversely, when an attorney is beholden to basing their advocacy around a prescribed set of rights, as is required in legal interest representation, there is far less room for the insertion of their own subjective assessments. As detailed above, parents and lawyers alike explained the importance of advocacy that is driven by objective standards and carried out by professionals who are highly trained in those standards.

**Fourth:**

Based on interviews with practitioners and parents and children with lived experience, lawyers for young children require specific training in:

- childhood development,
- the impact of trauma on a child's cognition and ability to communicate,
- mental health, and use of psychotropic medications,
- risks of secondary trauma,
- lawyering skills that will allow for effective communication with young children, particularly those who have experienced trauma,

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[126] See Disparity Indices, *supra* note 16. Refer back to footnotes 16-18 for further discussion of racial disparity.

[127] Partners For our Children, Child Welfare Data at a Glance, <https://partnersforourchildren.org/data/quickfacts>.

[128] See footnotes 31-33 for further explanation of how best interests advocacy implicates advocate bias; See footnote 43 for further explanation of how substituted judgment legal representation implicates attorney bias.

[129] See footnotes 12-15 for further discussion of how children and youth are discussed in dependency proceedings.



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- the legal rights of children that exist in state and federal statutes, regulations, departmental policies, and case law, including the substantive due process rights to family integrity and to be free from unreasonable risk of harm while in state care guaranteed under the Washington constitution,
  - guarding against bias,
  - the impact of implicit and overt bias on children involved in the child welfare system,
  - disproportionality in the child welfare system,
  - importance of relational permanency and permanency planning.

# Washington State Judicial Branch 2023-25 Decision Package Template

**Agency:** Administrative Office of the Courts

**Decision Package Title:** Stabilize and Improve Best Interests Model in Dependency Cases

**Budget Type:** Operating

Request **Budget Period:** 2023-

25 Biennial Budget **Cost Type:**

Custom - (a mix)

**Subject Matter Expert / Program Contact:** Dave Reynolds, Washington Association of Juvenile Court Administrators; Ryan Murrey, Washington Association of Child Advocate Programs

## **Agency Recommendation Summary Text:**

The Administrative Office of the Courts, on behalf of Juvenile Court Administrators, requests \$8.7 million in General Fund-State funding in order to stabilize funding for and improve the model of best interests representation efforts in dependency cases. This includes an inflationary adjustment for county-level CASA/Child Advocate programs to cover increased costs of recruiting and managing volunteer Guardians ad Litem, additional funding for centralized technical assistance to advise these local programs on implementing best interests representation models, the addition of a central statewide Diversity, Equity, and Inclusion Program Officer to advise local programs, and a comprehensive study by the Washington State Center for Court Research on the impacts of volunteer guardians ad litem on dependency cases.

## **Package Description:**

A recent statewide survey of Superior Court judicial officers who preside over dependency and termination matters identified three areas of need for volunteer best interests Guardian ad Litem (VGAL) representation. The Administrative Office of the Courts is requesting additional funds to support the following efforts:

- Better emphasize, through training and statewide coordination, a child's race and cultural needs as volunteer guardians ad litem represent the child's best interests to a court in a dependency case;
- Provide timelier and improved technical assistance regarding how guardians ad litem participate in the court/judicial process,
- Increase funding to match historical levels adjusted for inflation, and
- Conduct a comprehensive study on the best interests representation model as part of the overall dependency process.

### **1. Diversity, Equity and Inclusion Program Officer**

In order to better meet the racial and cultural needs of the children and families that our volunteers and staff serve statewide, we are requesting funds for a full-time Diversity, Equity and Inclusion officer to be centrally housed at the Washington Association of Child Advocate Programs, the statewide network of the 35 child advocate/CASA programs in Washington State.

Duties of this position will include:

- Developing and providing ongoing training and education to staff and volunteer on issues around diversity, equity and inclusion
- Support in the recruitment and retention of a more diverse volunteer base that more closely resembling the communities and families currently served
- Auditing current training, practices and procedures as it relates to best interests advocacy for children served by guardians ad litem
- Convening and supporting statewide BIPOC program staff and volunteer work groups
- Representing the statewide network in meetings and workgroups where racial equity is a primary focus of the meeting

To support this position and their work, AOC requests \$120,000/year.

## **2. Centralized enhanced technical assistance for VGAL participation in legal proceedings**

Guardian ad litem programs and their volunteers essentially appear before courts as pro se litigants in all but 3 counties in Washington. While our volunteers and program staff in their capacity as GALs can technically file motions and cross-examine witnesses (even in situations such as a termination of parental rights trial), having access to technical support to assist with and perform these duties on behalf of the program will allow for a more proper and consistent way for the court to consider best interests determinations.

Programs indicate that not every case or child needs an attorney to appear with them at every single hearing. But when issues become critical and contested, sometimes the best interests of the child is lost because of the inability to effectively and substantially participate in the proceedings. Providing these local programs with technical assistance combines the best attributes of both advocates and attorneys: volunteers have the time to understand the unique situation and challenges each child and family faces and the additional technical assistance can help these volunteers ensure that issues are properly noted for consideration by the court.

AOC and WAJCA request funding to support a total of four positions, based at WACAP, to provide technical support to serve advocates and programs across the state for a total of \$593,600 per year. Services supported by these positions will include:

- Assist advocates at contested dependency and termination hearings, trials, appellate matters, depositions, related motions, and settlement conferences, assist with motions on the GAL's behalf.
- Provide legal advice and consultation to GALs and their program regarding specific cases to which the GAL is assigned. Advise program staff and volunteers of new procedures, court decisions and statutes in a specialized area of practice.
- When in the best interests of the child and with agreement of all parties, assist GALs in the filing of title 13 guardianships as a means of resolving the need for continued court involvement.
- In support of the GAL assigned to the case, research, write and respond to briefs, memoranda, pleadings and other legal papers.

## **3. Local program funding inflationary adjustment**

Local volunteer advocate programs have not received a statewide increase in state funding since 2008 – over 15 years. At that time, 4 million dollars were allocated to 28 programs. In the year immediately following, that funding was reduced to 3.2 million due to cuts associated with the Great Recession.

Since then, our network of programs in the state has expanded to 35 programs, including new programs in Skagit, Whatcom, Grays Harbor, Mason Counties as well as 3 new Tribal programs on the Kalispel, Port Gamble S'Klallam, and Quileute reservations. Additionally, due to increase costs and inflation, the ability to serve children with

volunteer GALs has been decreasing each year. Soon after receiving the state funding, our volunteers were serving 6,500 children per year – this has fallen to 4,700 children in 2021.

In 2008, the total funding for the programs across all sources totaled \$9.2 million dollars. According to the Consumer Price Index, the value of one dollar in 2008 is worth \$1.38 in 2022. In order to adjust for this inflation and using these previously stated values, AOC requests \$3.5 million dollars in additional state funding to be allocated and distributed to local volunteer advocate programs.

#### **4. Statewide evaluation of the VGAL model in Washington**

As the Office of Civil Legal Aid (OCLA) rolls out the Children’s Representation Program (CRP) in counties through 2027, courts and court-based programs will need to adapt to the addition of CRP-trained and supported children’s attorneys, especially in those jurisdictions where courts have not historically appointed attorneys to represent dependent children and youth. This presents an opportunity to study the impact of the VGAL model in Washington and to assess its utility in dependency cases in the future.

AOC requests \$250,000 in funding for the Washington State Center for Court Research to commence a study that includes a literature review, program mapping, and quantitative analysis regarding the impact of the VGAL program in dependency cases regarding judicial best interest decision-making. This study will also examine the impacts of the program with regards to structural racism, the inequities that have existed in the dependency system, and how we can enhance the VGAL model to be a more modern and effective tool for juvenile courts today.

#### **Fully describe and quantify expected impacts on state residents and specific populations served:**

These funds will be used to focus on assigning a volunteer for every child under 12 as a starting point (85% of all new dependency filings involve a child under 12), and to have those volunteers appointed to children as quickly as possible in the process, with a goal of GAL assignment within 30 days of the petition filing.

These funds will double the statewide volunteer pool to 3,000 active CASA volunteers advocating for 8,000+ children by the end of the biennium.

#### **Explain what alternatives were explored by the agency and why they were rejected as solutions:**

In many of the mid- to large sized counties, programs rely on staff guardians ad litem to fulfil the requirement of 13.34.100. Caseloads for these paid professionals range anywhere from 50 to 100+ children per person. While the appointment of staff GALs to children in dependency meets the technical requirements of best interests’ advocacy, staff GALs’ high caseloads prohibit them from providing the same level of advocacy that a volunteer (who generally are advocating for 2-3 children at a time) can provide.

#### **What are the consequences of not funding this request?**

CASA programs in urban areas will be unable to meet the statutory mandate for GALs to represent children’s best interests. The 1500 currently active volunteers will not have the level of support and supervision needed to ensure retention. Staff with higher number of volunteers to supervise (who often carry dependency cases themselves) will continue to have excessive workloads and be unable to engage in adequate recruitment and support activities, thus continuing the cycle of losing and replacing the same number of volunteers each year. In addition, high caseloads contribute to high staff turnover, which impacts the stability and quality of the program. Insufficient funding puts dependent children at serious risk and presents liability issues for the child representation in the dependency system.

Due to COVID, the backlog is growing: there are over 1,000+ children on a wait list to receive a GAL. Statewide, 7,190 children were served at the peak year of 2014 – that figure is down to 4,500 kids served with 400 fewer active volunteers. It’s a disturbing trend, and it’s uncertain how it can be reversed without increased resources in the next biennium.

**Is this an expansion or alteration of a current program or service?**

Expansion. The 3.5 million dollars requested for local programs will restore funding to previous levels lost during the great recession and inflation since then. Legal technical assistance will provide a more formalized method for advocates and programs to participate in court proceedings, and the DEI program officer and study will further enhance our advocacy for BIPOC children and families.

**Decision Package expenditure, FTE and revenue assumptions:**

AOC will hire necessary staff at the Washington State Center for Court Research to conduct the comprehensive study.

Grants or Pass-Through Funding:

- AOC will pass-through \$714,000/year to the Washington Association of Child Advocate Programs to implement this request.
- AOC will pass-through \$3.5 million/year to local advocate programs to implement this request.