



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

**12/07/15  
1:00 p.m.  
Reception Room  
Temple of  
Justice**

**Agenda**

1:00 pm	1. Welcome and Introductions	Jennifer Strus, Asst. Secretary Children's Administration
30 minutes	2. DSHS/Children's Administration Updates a) FAR b) Performance Based Contracting	Jennifer Strus, Asst. Secretary Children's Administration
30 minutes	3. QIC-ChildRep Update	Gina Cumbo Project Manager, CCYJ
15 minutes	4. Youth Summit Recommendations & Updates	Erin Shea McCann Mockingbird Society
20 minutes	5. OFOT Report and Q&A	Megan Walton, Justice Bobbe Bridge (ret.)
5 minutes	6. Needs of Foster Youth in Indian Country	Kristy Healing Tulalip Office of Civil Legal Aid, Attorney
10 minutes	7. November Adoption Celebrations & Updates	Lorrie Thompson AOC
45 minutes	8. Workgroup Reports a. Children's Representation Workgroup	Lisa Kelly University of Washington, Law
15 minutes	9. New Business  a. Member Binders – Revisited  b. Website Updates  c. 2016 Meeting Schedule – Proposed Dates i. March 21 <sup>st</sup> ii. May 16 <sup>th</sup> iii. August 3 <sup>rd</sup> iv. December 12 <sup>th</sup>	Open to All Commission Members  Kimberly Ong CCYJ Evans School Intern  Susan Peterson AOC  All Commission Members
4:00	Adjournment	Jennifer Strus, Asst. Secretary Children's Administration
	<u>Next Meeting:</u> 2016 meeting schedule TBD	



**Washington State Supreme Court  
Commission on Children in Foster Care  
May 18, 2015  
Meeting Minutes**

**Members Present**

Assistant Secretary Jennifer Strus (co-chair)  
Judge Kitty-Ann van Doorninck, Superior Court Judges' Association  
Mr. Jim Bamberger, Office of Civil Legal Aid  
Mr. Mike Canfield, Co-Chairs of Foster Parents Association of Washington  
Dr. Ken Emmil, Office of Superintendent of Public Instruction  
Mr. Patrick Dowd, Office of the Family and Children's Ombuds  
Mr. Ryan Murrey, Executive Director of Washington State CASA  
Ms. Tonia Morrison, Parent Advocate Representative  
Ms. Joanne Moore, Office of Public Defense  
Ms. Carrie Wayno, Attorney General's Office  
Ms. Christina Parker, Chair of the NW Intertribal Council

**Members Not Present**

Justice Bobbe Bridge (ret.), Washington State Supreme Court, Commission Co-Chair;  
Ms. Beth Canfield; Mr. Ryan Cummings, Youth in Foster Care Representative; Representative Ruth Kagi; Rep. Mary Helen Roberts, Washington State House of Representatives; Ms. Jeannie Kee, Foster Youth Alumni Representative;

**Guests**

Ms. Cindy Bricker, Sr. Court Program Analyst; Mr. Matt Orme, Washington State Center for Court Research; Ms. Megan Walton, Director of Strategic Partnerships, Amara; Ms. Laurie Lippold; Ms. Hillary Madsen, Columbia Legal Services, Ms. Jill Malat, OCLA; Ms. Julie Caruso, Counsel I, Washington State House Republican Caucus; Mr. Peter Dolan, Staff Counsel

**Staff Present**

Ms. Molly Donahue, CCFC Intern, Center for Children & Youth Justice (CCYJ)  
Ms. Paula Malleck-Odegaard, Administrative Office of the Courts (AOC)

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**Call to Order**

Mr. Jim Bamberger called the meeting to order at 1:10pm. He welcomed all Commission members and guests to the meeting.

**March Commission Minutes**

Ms. Molly Donahue apologized for the delay in distributing the March Commission meeting minutes. She will email them out next week to the Commission members.

### **Dependency Children in Washington: Case Timeliness and Outcomes**

Mr. Matt Orme and Ms. Cindy Bricker distributed the 2014 Annual Report. Ms. Bricker ran through a few of the highlights from the report as members read along. Mr. Orme hoped the meeting could continue as more of a conversation over the report. Guests introduced themselves.

Mr. Bamburger asked a question that I didn't hear.

Mr. Orme commented that this year the report is much easier to read than last years technical version. If Commission members are hoping to read more statistical data, the technical report will be available later this year. Mr. Orme directed the members attention to his powerpoint presentation, which allowed members to see some of the data broken down that highlight the keys to the report.

Mr. Orme opened the floor to questions from the Commission. Mr. Ryan Murrey asked about the recourses available to file the TPR findings, and how that influences the data collection. Mr. Orme posited that there might be a more robust component of data in the years to come that will allow us to explore more detailed cases.

Mr. Patrick Dowd asked which factors play into the data on the screen on court filings. The interactive report on continuances does exist. Mr. Murrey asked about fact-findings, continuance, and the 75-day deadline.

Judge Kitty-Ann van Doorninck asked what the goals were for the coming year in terms of data collection, and Mr. Orme discussed a more robust analysis of outcomes. Ms. Christina Parker wondered if any cases were tracked and counted from tribal court. There is a very generic code that collects that data, but they can't get any more specific than that right now. If tribal courts wanted to voluntarily participate in this project, and how would that be possible? Unsure, but Mr. Orme is hoping to open that discussion for the development of a case management system to allow for the tracking of these cases. The lack of infrastructure is the biggest barrier right now, but we need to start that exchange.

Mr. Orme encouraged members to read through the report and to contact him with any specific questions. Secretary Strus thanked Mr. Orme for bringing this report to the meeting and sharing with the group.

### **DSHS/Children's Administration Updates**

Suspending the implementation/expansion of Family Assessment Response (FAR) program, a Child Protective Services alternative to investigations of low to moderate risk screened-in reports of child maltreatment. It will be in 29 offices by the end of June, but there isn't any money left in any budget. Strus made the call to stop the expansion due to budget constraints. They received preliminary data that shows some initial savings in the foster care system, perhaps 10%, due to the FAR program. The main frustration is that the leg passed the bill, but didn't fund the program. The next six months will be spent enhancing what is already in place. Cross training will occur, to help eliminated the us v. them mentality, and the ensure the offices currently implementing the program are still working efficiently. Big concern is losing the momentum of the implementation, but it does raise the question of what the Leg sees as important and what

they are willing to fund, and it doesn't look like this so far very successful program hits high on the priority list for Washington State.

Since FAR implemented in January 2014, we have followed the implementation plan very carefully. Didn't want to make the same mistakes that Minnesota had previously had trouble with. Policy changed so that any child under 3 years old with bruising would go straight to investigation, and not to FAR. Mr. Bamburger asked what percentage the 29 locations would be – two thirds. Wont be able to implement that last third of the cohort. How is the data tracking? The evaluation (TriWest) covers the whole family intake process.

Strus asked if anyone wanted confirmation on rumors or news from CA. Judge van Doorninck asked about the turnover rate in CA – currently at 14%. Steep learning curve for social workers, and the constant turnover is really disruptive to services. Also a nationwide problem/trend.

Mr. Murrey asked what the Commission, acting as a group or through their organizations, could do to help. Funding FAR would help. Ms. Carrie Wayno reported that the court improvement training academy held a training and discussed what would make the system better.

### **Quality Improvement Center (QIC) Update**

Ms. Donahue reported on behalf of Gina Cumbo, Project Manager at the Center for Children & Youth Justice (CCYJ).

Data collection is now complete. Washington State attorneys consistently participated in the study at rates of approximately 90%, providing rich data for our QIC partners at Chapin Hall to analyze. This is a tremendous accomplishment! The final results of the study will be reported this fall. Preliminary findings are anticipated no later than September 2015.

With data collection complete, the project now shifts into sustainability mode. During the next six-months, the University of Washington Court Improvement Training Academy (CITA) will continue to provide statewide trainings in the core elements of the QIC model and support to attorneys representing children and youth in dependency hearings.

The most exciting part of this phase of the study is that these training and practice supports are now available to all attorneys in Washington State representing children in dependency proceedings!

CITA is working hard to cultivate leadership within the Communities of Practice so that they will be self-sustaining after the end of the QIC grant. The continuation of the Communities of Practice will provide a forum for all attorneys to learn new information and strategies for implementing new knowledge about child representation into practice.

Finally, a half-day celebration is planned for November 6, 2015, in Seattle, WA. The purpose of this event is to celebrate the hard work of study participants, announce study results, and plan for collaborative next steps.

Date: Friday, November 6, 2015  
Time: 10:00a – 3:00p, with a reception to follow from 3:00p-5:00p  
Location: Washington Athletic Club, Seattle, WA

Ms. Donahue asked than any questions on the progress of this project be asked directly to Ms. Cumbo.

### **Amara Family Court Project**

Ms. Megan Walton, Director of Strategic Partnerships at Amara, provided an update on the Family Court project. (40 min)

She opened the room for questions. Ms. Wayno asked specifically about the budget.

### **Children’s Representation Workgroup**

Mr. Patrick Dowd provided an update to the Commission on the Children’s Representation Workgroup. Chaired by Lisa Kelly, the group also includes members from (listed orgs). The purpose of the workgroup is to review barriers for children in dependency and termination hearings who are requesting counsel, as well as barriers to individuals who make referrals for the those children. The charge specifically asks for recommendations on the following:  
(get from charter, yo)

The workgroup met March 6, and May 8. They reviewed the relevant statutes to the charge, and broke into four subcommittees to begin addressing the specific recommendation areas. Agencies, Counsel for Parents and children, Caregivers/Service Providers, Executive and

May 8<sup>th</sup> meeting ended with a decision to review and edit of documents online. Next meeting is set for Monday, June 1<sup>st</sup>.

Ms. Parker asked for the motivation of why this workgroup was founded. Ms. Wayno explained the RCW. Ms. Parker asked if considerations were being made in the workgroup for extended foster care.

### **New Business**

Ms. Donahue reminded the Commission of their commitment to follow-up and oversee the recommendations made at the Decision Maker Summits. The final phase of her internship will involve addressing these commitments, presenting the unfinished business to the Commission, and setting the stage for a decision on the remaining items. She will also be presenting a recommendation on the Child Welfare Resource Databank, currently housed at CCYJ.

Mr. Murrey asked for a reminder on what those commitments were, and Ms. Donahue promised to send more information.

Ms. Hillary Madsen updated the Commission on the passage of the Youth Equality and Reintegration Act (Year Act). It eliminates (see handout)

Adjourned at 3:15pm

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**Washington State Supreme Court  
Commission on Children in Foster Care  
March 16, 2015  
Meeting Minutes**

**Members Present**

Justice Bobbe Bridge (ret.), Washington State Supreme Court, Commission Co-Chair  
Judge Kitty-Ann van Doorninck, Superior Court Judges' Association  
Mr. Mike Canfield, Foster Parents Association of Washington  
Dr. Ken Emmil, Office of Superintendent of Public Instruction  
Ms. Jeannie Kee, Foster Youth Alumni Representative  
Mr. Ryan Murrey, Washington State CASA  
Ms. Christina Parker, NW Intertribal Council  
Ms. Carrie Wayno, Attorney General's Office  
Mr. Jacob D'Annunzio, Office of Public Defense

**Members Not Present**

Assistant Secretary Jennifer Strus (co-chair), Department of Social and Health Services, Children's Administration; Ms. Beth Canfield, FPAWS; Representative Ruth Kagi; Ms. Tonia Morrison, Parent Advocate Representative; Ms. Joanne Moore, Office of Public Defense; Mr. Jim Bamberger, Office of Civil Legal Aid

**Guests**

Ms. Megan Walton, Director of Strategic Partnerships, Amara; Ms. Lauri Lippold, Partners for Our Children; Ms. Hillary Madsen, Columbia Legal Services, Ms. Jill Malat, Office of Civil Legal Aid; Ms. Gina Cumbo, Center for Children & Youth Justice; Ms. Catherine Pickard, Washington State Center for Court Research; Jim Theofelis, Mockingbird Society; Ms. Cindy Bricker, Administrative Office of the Courts

**Staff Present**

Ms. Molly Donahue, CCFC Intern, Center for Children & Youth Justice  
Ms. Paula Malleck-Odegaard, Administrative Office of the

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**Call to Order**

Justice Bobbe Bridge called the meeting to order at 1:06 p.m.

**Welcome and Introductions**

Justice Bridge welcomed the Commission members and guests. Slight changes to the agenda as people trickle in from other meetings in the area. Ms. Lippold is on a tight schedule, so we will fit her in when she arrives.

Ms. Carrie Wayno moved to approve the September and December minutes, and Mr. Mike Canfield seconded. The minutes were approved as drafted.

### **Amara – One Family, One Team model**

Ms. Megan Walton reminded the group that in December, proposed legislation was drafted by Representative Kagi. The bill dropped in January as H.B. 1724, and included funding, planning, and design. A public-private partnership for funding has been secured.

The proposed legislation has now been converted to a budget proviso. Ms. Walton distributed a copy of the proviso as well as a membership list of the Steering Committee. Building upon the FJCIP, H.B. 1724 was a negotiated bill, and it should serve as our framework moving forward. She also commented on the financial outlook for the project (detailed in the proviso).

### **WA-QIC Update**

Justice Bridge introduced the new project manager for the QIC program, Ms. Gina Cumbo. Ms. Cumbo is returning to CCYJ after several years of private law practice. This is the fifth and final year of the QIC study. March marks the end of data collection. Analysis of the data will extend for the next six months. Results of the study will be available in the fall.

Looking ahead, the Court Improvement Training Academy (CITA) will continue to run their Communities of Practice around the state. The funding extends through the next six months, allowing for those communities to build additional competencies to move forward independently once the funding ends.

There will be a half-day meeting to celebrate and present the results of the study. More information on that event will be distributed closer to the fall. Justice Bridge added that the rate of compliance for this program is remarkably high. Ms. Jill Mallet added that she and Mr. Jim Bamberger will be meeting with CITA to facilitate OCLA involvement to continue the Communities of Practice.

### **Washington State Center for Court Research**

Ms. Catherine Pickard distributed slides for her presentation. Ms. Pickard presented data on child welfare system involvement – the history of interactions of the 30,000 children who make up the 2010 cohort of youth entering the juvenile justice system. She highlighted disproportionality in the demographic breakdown of the cohort.

Mr. Ken Emmil posed a question about seeing the data at a school district level (right now it is presented at the county level). Ms. Pickard replied that they did have that data, and are exploring reporting at that level in the future.

Mr. Murrey asked about progression of events. Are they exploring trends across the state in terms of what happens and in what order? Justice Bridge wondered what, if any, impact the military presence has on the data coming out of Kitsap County?

Ms. Pickard explained some of the interpretations of the data, and how we can use this information moving forward. She also shared some example stories of youth involved in multi-systems, and expressed interest in pursuing more details to connect the data with real experience.

### **Legislative Update**

Ms. Lauri Lippold indicated that the legislative update was emailed before the meeting. She drew particular attention to:

- Extended Foster Care legislation – both House and Senate bills are still alive. The House version has a delay attached to it - it would go into effect July, 2016. Youth with a disabling condition would be eligible for extended foster care.
  - HB 1735 will be heard in the Senate Human Services, Mental Health, and Housing Committee on March 16th, 10:00am.
- HB 1883: Relating to investigations and family assessments in cases of child abuse and neglect.
- SB 5692: Relating to permanency plans of care for dependent children. It passed the House, and is waiting to be scheduled in the Senate
- HB 1999 relating to foster youth education outcomes. This bill creates important goals for our state – specifically, it aims to make Washington #1 in the nation for foster care high school graduation rates, enrollment in postsecondary education, and completion of postsecondary education. The State hopes to do this through greater advocacy for foster youth to eliminate barriers to education access and success; consultation with schools and DSHS caseworkers to develop education plans for and with participating youth; and monitoring education progress and providing interventions to improve attendance, behavior, and course performance of participating youth.
- HB 1879: Relating to directing the health care authority to issue a request for proposals for integrated managed health and behavioral health services for foster children
- HB 1932: Relating to improving medication management for youth – is dead, but this will likely become an amendment to HB 1879 above.
- SB 5486: Relating to creating the parents for parents program (Dependency 101)
- HB 1800: Relating to filing a petition seeking termination of parental rights.

### **Normalcy Workgroup**

Ms. Jeannie Kee reported that a ‘mythbuster’ document has been published and distributed. It identifies common myths about foster youth and suggests how to address them. The Normalcy Workgroup has been working to make a youth friendly version of this form that speaks directly to youth.

Other topics that are being discussed by the Workgroup include cell phone and computer usage in foster homes. The Workgroup will also begin reviewing group home normalcy.

### **Children’s Representation Workgroup**

Justice Bridge introduced Ms. Lisa Kelly from the Children and Youth Advocacy Clinic and the chair of the newly re-constituted Children’s Representation Workgroup. Ms. Kelly summarized the scope of the Workgroup as investigating the three Rs – requesting counsel, referring counsel, and retaining counsel for children in dependency.

Ms. Kelly reported that the Workgroup met last week, determined a work plan and identified other stakeholders it would like to have at the table. The workplan includes teams of constituent

groups who will work on the assigned tasks, and then come back together. Their goal is to have recommendations to the Commission by August.

Ms. Bricker asked if anyone on the courts is represented on the Workgroup. Ms. Kelly, Justice Bridge and Ms. Donahue are meeting Wednesday to figure out who else to get on board. Ms. Kee offered a recommendation for a foster alum representative.

### **New Business**

Ms. Donahue updated the Commission of the planning for the Youth and Alumni Leadership Summit. The August Commission meeting has been set for August 26, though the location and time are still yet to be determined. The Commission meeting would be held in the evening during that week. She also reminded the Commission members that there is a slight time change for the May meeting: it will be from 2pm-5pm rather than the usual 1pm-4pm at the Temple of Justice.

Ms. Moore and Ms. Bricker reported to the Commission on the Paternity Project. They are hoping to demonstrate with pilots that the new process for establishing paternity will save money for the state. Ms. Bricker offered to report back on this at the October or December meeting.

Mr. Canfield noted that Washington State has dropped from about 6300 to 4800 available and certified foster homes. Justice Bridge asked what recruitment efforts are being undertaken. Mr. Canfield postulated that the rising cost of administering foster care has eliminated homes and kept families from becoming foster parents. Research shows that a foster parent loses about \$2000 a year per foster child. Liability issues are also barriers, as well as qualifications to be foster parents. Justice Bridge reported that many same-sex couples are starting to show interest in becoming foster parents.

### **Adjournment**

There being no further business, Justice Bridge adjourned the meeting at 3:37pm. She thanked the Commission members for their service and commitment.

Respectfully submitted,  
Molly Donahue, CCYJ



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**NATIONAL QUALITY IMPROVEMENT CENTER ON THE  
REPRESENTATION OF CHILDREN IN THE CHILD WELFARE SYSTEM**

October 27, 2015

To: Washington State QIC Stakeholders:

From: Don Duquette, Director QIC-ChildRep  
Clinical Professor of Law  
University of Michigan Law School

Re: November 6, 2015 Review of QIC in Washington State

Dear Friends:

We are looking forward to our meeting on November 6 when we will have an opportunity to review Chapin Hall's quantitative findings from the QIC Project and to reflect with you about the meanings behind the numbers and the lessons for Washington State going forward.

Our November 6 meeting has three purposes. First we want to report the quantitative statistical results of the study and respond to your questions about them. Second we want to explore with you what this data means. The numbers themselves are not the whole story. What do these data mean to you? What is most interesting and most important to you? What meaning(s) do you find in all this? And third, we want to discuss what this means for Washington State, and for the field of child representation, going forward. Tim Jaasko-Fisher and Rob Wyman would probably summarize this as: *What? So What? Now What?*

From the very beginning our partnership with Washington State has been fantastic. Justice Bobbe Bridge and the Supreme Court Commission on Children in Foster care provided essential leadership and direction about how to proceed in Washington. The Center for Children and Youth Justice was an ideal administrative hub for our activities. Hathaway Burden and Gina Cumbo have been terrific. The Washington State Center for Court Research provided essential support in implementing the project and gathering the essential administrative data. Strong praise and appreciation go to Tim Jaasko-Fisher and Rob Wyman. These two were the face of the QIC project in Washington State and their deep personal commitment was a key ingredient to our success here. But, don't forget the lawyers – QIC and control group lawyers. You'll see that the cooperation of

Washington lawyers for children was off the charts. You all responded to our surveys trainings and our requests for data in rare and unheard of numbers. Thank you. It has been a pleasure working with you all.

Enclosed is Chapin Hall's Summary of the Statistical Analysis of the QIC Research in Washington State with some of the Georgia findings as well. Their memo represents the final numbers and the Chapin Hall quantitative analysis.

Many people coming to the November 6 conference may not be familiar with the Six Core Skills, so a very brief summary of those are included at the end of this memo.

## **I. HYPOTHESIS AND LIMITATIONS**

Remember the starting point: This random assignment experimental design project was designed to test the hypothesis of whether attorneys practicing according to the *QIC-ChildRep* Best Practice Model would change their practice and consequently improve safety, permanency and well-being outcomes for children involved with the child welfare system, relative to attorneys practicing "as usual", that is, whose practice was not influenced by the model. We gathered data from multiple sources over three years and have an unprecedented data set covering 250 lawyers representing about 4,500 children. The statistically significant findings have meaning, but so does the general profile of lawyers representing children, and the successes and challenges of implementing such an ambitious effort.

There are a couple of things to keep in mind as you review these data. First, there are limitations to our findings. Attorney behavior measures are based on attorney self-reports and limited to aspects of behavior that could be quantified based on survey questions. Not everything that counts can be counted. That is, there could be QIC effects that are not detected. For instance, QIC attorneys may have contacted the child just as many times as they would prior to our intervention but are doing it better. There may be as many contacts with other case participants, but the QIC lawyers are more focused and qualitatively better. Our data does not measure quality apart from behaviors that can be counted. Similarly, the statistical models analyze average impact of the QIC intervention so that the fact that an average difference is not found does not mean that the individual QIC attorneys did not change their practice in ways that benefitted their clients as a result of the QIC intervention.

With respect to child welfare outcomes, these data only report what is available through existing administrative data, which were limited to permanency and other substitute care outcomes. There are other outcomes affected by the QIC attorneys that we can't measure. For instance we can't measure whether a child feels more engaged or respected because of his or her attorney's attentiveness or whether a child feels less anxious and thus more comfortable because of the counseling and other attention provided by the lawyer. Also, because of the relatively limited observation period

(maximum of 3 years), permanency outcomes were not observed for approximately half of the children in the sample. That is, half the children remain in the child welfare “pipeline”. We intend to take another look at the administrative data in March 2016 and follow these children to see what difference another year makes.

## II. RESEARCH TAKE-AWAYS

Please review the Chapin Hall Summary for a more precise statement of our findings, but here are some of the major “take-aways”. What does this mean to you? What are the lessons to be learned from this QIC experience that will guide your future efforts to improve child representation in Washington State and nationally?

1. The data show that children represented by treatment attorneys in Washington State were *40% more likely to experience permanency within six months of placement* than children represented by control attorneys. No significant differences in permanency were found for children who stayed in care for longer than six months. Even though QIC attorneys achieved quicker permanency at the beginning of a case, there was no QIC advantage discernable once the placement extended beyond six months. Similarly, where a lawyer was appointed for a child who had been in care for some period of time prior to the lawyer appointment there is no detectable advantage to the QIC attorneys. Thus the big impact of the QIC treatment group appears to be at the beginning of the case, rather than at the beginning of the lawyer appointment. Note that more than half of the children are still in care as of the end of the study (March 31, 2015). We will follow up with them next March and may have more to report.
2. Washington lawyers were deeply engaged. More than three-quarters of the lawyers participated in full. This is a phenomenal level of commitment for such a complicated research effort. Why did so many people engage and engage so deeply? Other states and other communities will want to know: What are the essential ingredients for this level of commitment?
3. Pods and coaching were also implemented with greater fidelity to the *Six Core Skills* model in Washington State than in Georgia. All Washington pod meetings were done in person and coaching sessions in Washington followed a consistent format focused on the *Six Core Skills*. But how important is fidelity to the *Six Core Skills* Model? Can we get good results if we cut some things out? Was it the combination of the *Six Core Skills* and the regular support of the “community of practice” that really made the difference, or was one more important than the other?
4. Washington State lawyers seem receptive to changing their approach to cases, that is, they were receptive to changing their behavior. We encouraged QIC lawyers to understand the child’s developmental needs and respond to child trauma. We asked

them to advocate for a careful safety assessment to prevent unnecessary or unnecessarily long placement; advocate for services needed by the child and family and that they develop a cogent theory of the case. Each of the six core skills requires increased communication. The QIC attorneys *communicated significantly more* with various players, most notably with foster parents and other caregivers and other attorneys in the review stage. (Table #2)

5. QIC lawyers *spent their time differently* than the control group of attorneys. Table #3 shows that QIC attorneys spent more time influencing the case plan, developing a theory of the case, negotiating with other parties, and conducting interviews or reviewing notes. The robust difference in time spent developing a theory of the case is particularly notable. There is also an SS increase in reassessing child safety in current placement. Perhaps these changes will translate into significant outcome measures in our follow-up?
6. QIC attorneys *participated more in non-adversarial problem-solving* activities than the control group. Table #4 indicates that WA experimental (QIC) attorneys participated more in family team meetings. There are statistically significant differences in participation in motion hearings in WA. WA QIC attorneys are also more likely to initiate non-adversarial case resolution (NACR) processes. (Table #5) It appears that the QIC lawyers are pressing for movement on cases and are more likely to seek non-adversarial problem-solving approaches.
7. Here is a puzzling finding. In response to the question: “To what extent has your advocacy in court on behalf of this child agreed with this child’s expressed interests?” WA QIC attorneys reported their advocacy was *less likely to agree with the child’s wishes* than the control group (but by p-value of <.1) (Table #5). The result surprises me because I expected all WA lawyers to be client-directed. Why the difference? When would you not advocate for the child’s expressed interests?
8. QIC attorneys were urged to pay attention to *services for the child AND* for the child’s family. GA QIC lawyers were more likely to spend time advocating for services for the family and the child, but WA lawyers scored no differences on either of these measures. Why not? This appears to be a curious non-finding.

### **III. PROFILE OF THE LAWYERS AND THEIR TASKS**

Who are the lawyers representing children and what implications does this have for efforts to hire, train, support and retain a cadre of high quality child representatives? Our baseline survey data provide a picture of the child representation work force that does not accord with the conventional wisdom in the field. Our data show that these child attorneys are not fresh out of law school. Most had practiced law for many years

(mean of 13.5 years) and 56% had represented children for 5 or more years. The implications for training and recruitment may be that good child attorneys could be recruited at various stages of a legal career, and that training opportunities should be available to prepare not only the beginning lawyer but also the more experienced lawyer looking to add the personally rewarding child representation to an existing practice. A downside could be that attorneys who are already accustomed to representing children in a certain way may be less flexible and reluctant to change and accept practice innovations.

Child representation constituted a minority portion of the law practice for most attorneys. For 52% of the attorneys, child representation constituted less than 20% of their practice. Thirty-seven percent across both samples represented fewer than five cases in the last six months; 24% represented 6-10 cases. Thus, child representation constituted a small minority of the practice for most of these lawyers. The practice portfolio of the attorneys was also very broad and very heterogeneous. This heterogeneity of practice areas may be a function of the relatively low numbers of dependency cases in many jurisdictions or the varied legal needs of children and families involved in dependency cases. But regardless of the underlying reasons, this practice heterogeneity presents a challenge for training. This lack of specialization may make attorneys less willing to invest in the unique skills required for child representation. In recognition of the limited amount of time and resources that attorneys can devote to dependency law training, educators should carefully identify those aspects of dependency law practice that are most critical for achieving positive outcomes for children and families. Distance learning and on-line adult-education oriented courses that attorneys could take on their own schedules should be encouraged.

Attorneys were asked to identify which tasks were their responsibility and which were the responsibility of other participants in the dependency process. Variances in attorney opinions reflect differences in the state practice models (best interests or client directed) and the client populations. In Georgia the ages of child clients range from birth to adulthood with an expectation (at the time of the survey) of GAL best interests representation. In contrast, in Washington State, the clients were typically over age 12 and the practice model was clearly client-directed. Yet despite the fact that there were significantly different approaches to the child between these two states, attorneys from both states show a consistency of opinion that favors thoughtful, active, meaningful representation that involves a relationship with the child. In both states, a majority of attorneys viewed tasks that would be necessary to stay informed about their child's case as at least a shared responsibility with other parties to the case.

On the other hand, notable proportions of attorneys saw themselves having limited or no responsibilities for surveyed tasks. There was no consensus in either of these jurisdictions as to the proper elements of child representation. This great variation in what attorneys consider their responsibility is consistent with the view that lawyers

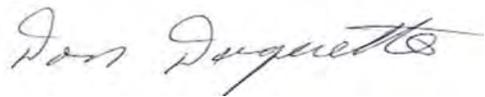
approach representing children in very different ways, reflecting a general ambiguity about how to interpret these roles. Any efforts to establish standards of practice and systematically train child attorneys must address and harmonize differing views on the actual tasks a child representative should undertake.

The findings of the current study suggest that most child representatives consider themselves poorly compensated. Happily, despite the compensation level, many attorneys find the work rewarding and have made it part of their law career for more than just a few years. But compensation levels may impose a barrier to improving practice standards going forward. Raising the expectations of attorneys is likely to require additional hours per case. How will this be paid? Even without the additional work suggested by more active standards, two thirds of attorneys reported that compensation was short of adequate. Reform efforts must take into account the current inadequate compensation.

An encouraging finding from our surveys is the commitment to the importance of the work and the willingness to assist others in doing it. Despite the fact that most attorneys were solo practitioners, more than 80% said that individuals were often or almost always available to discuss cases with them. These results suggest a willingness to collaborate, share information and form learning communities.

#### **IV. CONCLUSION**

That is a quick summary of our findings. What's the story? What meaning does the data have for you? What dimensions of analysis have we missed? Are there perspectives on the data and the whole experience that we have not identified – and should? We really appreciate your thoughts on all this. Thank you!





Here are the six **Core QIC Skills**:

**1. Entering the Child's World**  
**Accommodating the Child's Wishes**



- Listen - Engage with the child.
- Learn about child's world, needs and wishes
- Counsel the child
- Advocate for child's needs
- Accommodate the child's stated interests.



The first is what we call “**Entering the Child's World**”. We will focus on engaging with the child, learning about their life and their needs, and counseling them. We will ask you to advocate for the child’s needs while accommodating their stated interests as much as possible -- consistent with state law.

**2. Listen - Assess Child Safety**



- Listen to learn:
  - threats of danger
  - child vulnerability
  - protective capacities
- Participate in all placement decisions.
- Remove the danger, not the child.
- Distinguish between safety plan and case plan
- Don't equate compliance with progress.



The second core skill is to learn to assess **child safety** and protect the child but without *over-reacting*. We will encourage you to try to “remove the danger, not the child”, whenever that can be done consistent with child safety. We’ll introduce you to a new ABA model where the lawyer assesses the *threat* of danger, the *vulnerability* of the child and *protective capacities* of the caregivers and the child.

### 3. Assess/evaluate the case



- First identify the problem.
- Facilitate an appropriate evaluation of the needs of the child and his family.
- Learn how to evaluate the evaluation.



Third, we hope you learn more about how to facilitate an **appropriate evaluation/assessment** of the needs of the child and his/her family. The players in a dependency case can't solve a problem unless the problem is properly defined. We aim to give you some ideas as to how to *evaluate* the mental health or social agency *evaluation*.

### 4. Advance an Appropriate Case Plan



- Are parents and child consulted?
- Based on proper assessment?
- Does the plan target:
  - threats of danger
  - conditions that affect parents' protective capacities
  - Changes in behavior (not just compliance)
- Is it realistic?
- Does Case plan differ from safety plan?



The fourth core skill is to learn to facilitate development of an **appropriate case plan**. Are the parents and child consulted? Is the plan based on an adequate assessment? Does it target threats of danger and conditions that affect the parents' protective capacities? Is it realistic? Does the case plan differ from the safety plan?

### 5. Theory of the Case



Develop a theory of the case that --

- ✓ explains "what really happened"
- ✓ is consistent with the evidence
- ✓ is forward looking and addresses what you think should happen next.
- ✓ is active (drive the bus)



A fifth key skill is to learn to develop a **case theory** that is active and forward looking. Just like the *theory of the case* notion that we use in trial practice, your theory should explain what is really happening in the family and be consistent with the available evidence and evaluations. Importantly, it should be forward-looking. Where is this case going? Where is this likely to end up? We'll encourage you to adopt preliminary or tentative theories of the case as a way to give force and direction to your advocacy.

### 6. QIC Skills: Advocacy corollaries



- Identify child's needs.
- Identify the goal.
- Emphasize problem-solving.
- Use non-adversarial approaches if possible.
- Use traditional litigation as necessary.



Finally, we hope you learn certain **advocacy corollaries** to meeting a child's needs. We emphasize *non-adversarial methods* and problem-solving -- but your approach must include *traditional adversarial* modes when appropriate.

MEMORANDUM

**To:** Don Duquette, Robbin Pott, University of Michigan Law School  
**From:** Evaluation Team: Britany Orlebeke, Andrew Zinn,  
Xiaomeng Zhou, Ada Skyles  
**Date:** October 22, 2015  
**Subject:** Summary of QIC Evaluation Findings for Washington State Meeting,  
November 6, 2015

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The following memo presents excerpts from Chapin Hall's pending evaluation report for the Washington State partners and participating lawyers to share in advance of their meeting on November 6. Most of the findings are specific to Washington State. However, some general findings from Georgia are also presented. We look forward to presenting these results, taking questions, and hearing the conversation next month.

Both of our teams have many Washington partners to thank. Here, I would like to say that none of this data collection would have been possible without the staff of the Washington State Center for Court Research – Charlotte Jensen and Matt Orme, with the support of Carl McCurley. The cleaned SCOMAS data that they provided each month, and the link that they provided between SCOMAS and the Chapin Hall Foster Care Data Archive, provided the backbone of both the survey process (and resultant data) as well as the analysis of out-of-home care outcomes. We acknowledge their contribution, and we thank them.

The method used for assessing the impacts of the *QIC-ChildRep* intervention on attorney behaviors and case outcomes was to examine differences based on attorneys' assignments to control and treatment groups. This type of comparison, known as an intent-to-treat analysis, takes advantage of the randomization procedures used in the evaluation and provides estimates of the impact of being offered the intervention. Any attorney behaviors or case outcomes that differed between the two groups in a statistically significant way are assumed to be a result of the intervention and in theory would be replicated in other similar jurisdictions where the intervention was offered and taken up by attorneys at a rate similar to what occurred in these jurisdictions.

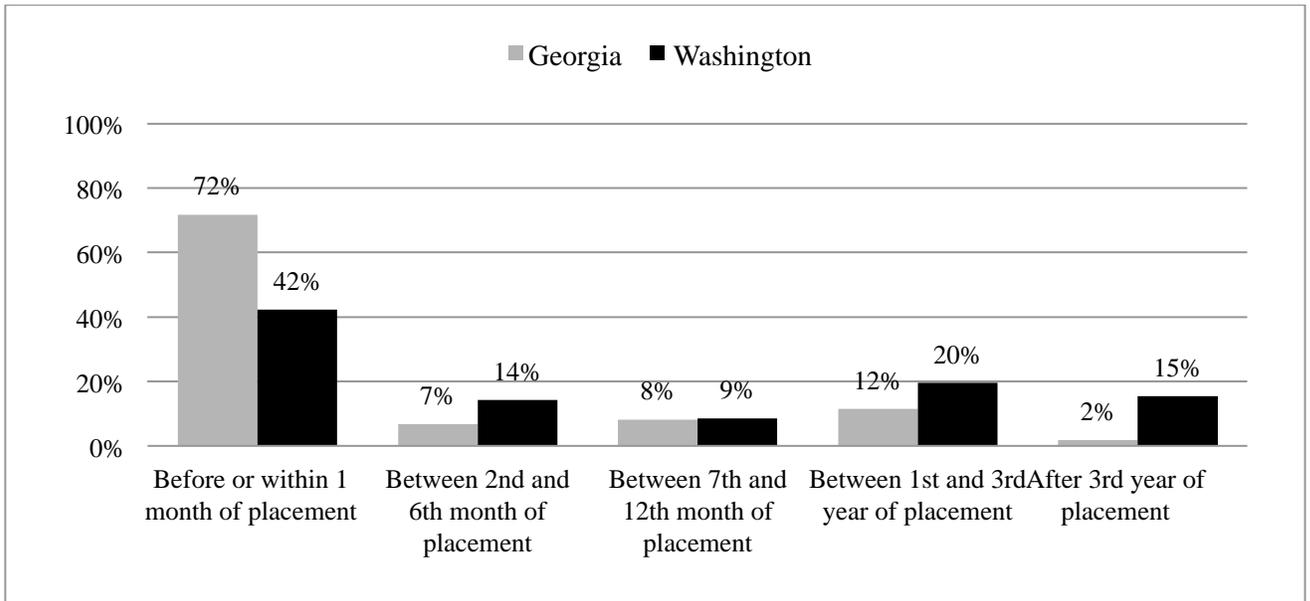
With respect to the statistical models, the models we used have the effect of comparing the behaviors and case outcomes of treatment and control group attorneys within each attorney and jurisdiction and then estimating the results over the treatment and control group samples. What is derived is an average impact of the intervention, to inform future efforts of a similar approach and scope, offered to all practicing attorneys. Even if an average difference was not found, it does not mean that individual treatment attorneys did not change their practice in ways that benefited their clients as a result of the QIC intervention.

This evaluation was designed to detect moderate, average effects on attorney and child outcomes. Detecting small average impacts would have required a greater number of attorneys and cases. For the outcomes where no statistically significant results were found, there may have been small, average impacts that the evaluation did not have enough power to detect.

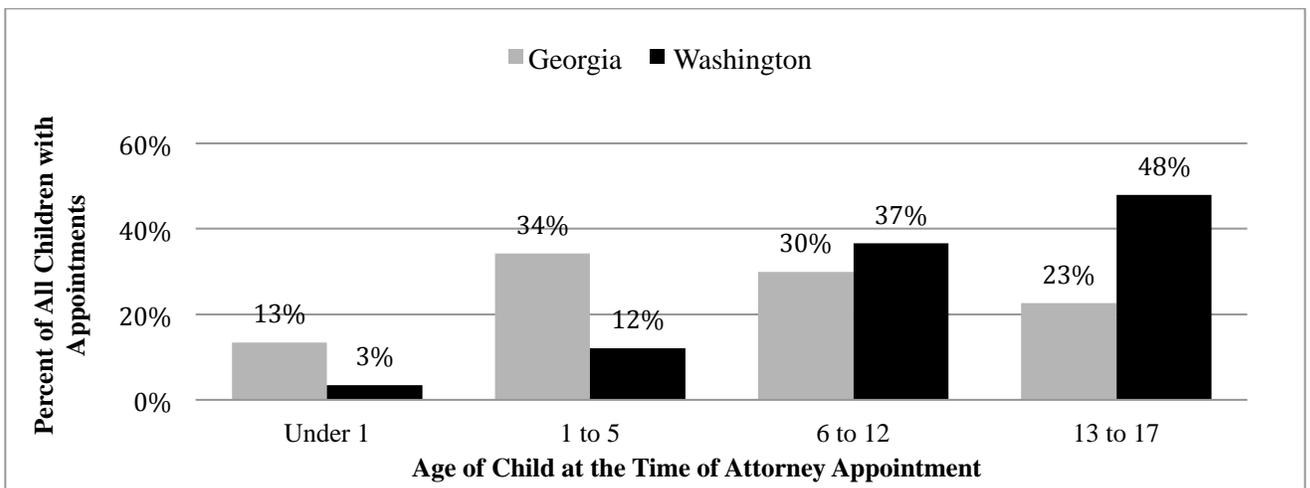
## Children Represented

Figures 1 and 2 present information based on links between the state’s administrative data system and court data, and the Chapin Hall Multistate Foster Care Data Archive. In the Washington State sample, attorneys were appointed to represent children at various points in an out-of-care experience. **Almost half (9%+20%+15%) were appointed to children who had been in placement six months or more.** In Georgia, almost ¾ were appointed before or within a month of placement. Children were younger at appointment in Georgia.

**Figure 1. Timing of Attorney Appointment for Children Placed**



**Figure 2. Distribution of Age of Child at the Time of Attorney Appointment for Children Placed**



## Implementation

Almost all Washington and Georgia attorneys attended the initial 2-day training. Only two out of the 63 attorneys assigned to the treatment group in Washington missed the initial training, and as a result, did not participate in the intervention.

Pod meetings and coaching sessions were offered for two and a half years after the initial 2-day training. Chapin Hall collected data each quarter on which attorneys attended pod meetings and participated in coaching sessions, as well as a list of which of six core skills were covered. Chapin Hall also collected de-identified notes for each pod session and for a random sample of ten coaching sessions each quarter.

Pods and coaching were implemented with greater fidelity to the intervention plan in Washington than in Georgia. Five out of seven Georgia pod meetings were conducted as online meetings, whereas all Washington pod meetings were done in person. Coaching sessions in Washington followed a consistent format, whereas Georgia coaching sessions did not.

For each pod meeting or coaching session offered, the participation rate was consistent and ranged from 70% - 80% of treatment attorneys for the majority of the quarters. Treatment attorneys attended a median of seven pod meetings (out of ten offered) and participated in a median of nine coaching sessions (out of 10 offered). Participation in pods and coaching in Georgia was lower. The median number of pod meetings attended by Georgia attorneys was three and the median number of coaching sessions among Georgia attorneys was also three.

Table 1 shows that all six core skills were widely and consistently discussed among the majority of the treatment attorneys at either a pod meeting or a coaching session for at least 3 times throughout the study. The percent of all treatment attorneys discussing a particular core skill at least 3 times ranged from 78% to 92%.

**Table 1. Six Core Skills – Frequency of Discussion in Washington**

Core Skill	Percent of All Treatment Attorneys Discussing Skill at Least 3 Times
Enter Child's World	92%
Evaluate Needs	89%
Advocate Effectively	89%
Assess Safety	78%
Advance Case Planning	89%
Develop Case Theory	79%

## Attorney Behavior Results

Chapin Hall posted a total of about 2,800 surveys to attorney dashboards in Georgia and Washington, and attorneys completed about 2,500 surveys -- a response rate of 89%. Forty-nine distinct attorney opinions and behaviors were analyzed based on data from the child-specific surveys. Questions were grouped into four domains – frequency of contact with individuals related to the case, time spent on selected activities, frequency of occurrence of certain events, and relationship and advocacy activities. Each question was analyzed over all survey types and separately for assignment surveys and review surveys. In addition, common response types for communication events and time spent questions were averaged and analyzed.

For Georgia attorneys, the analysis of surveys showed differences between treatment and control attorneys across all of these domains in the hypothesized direction. Georgia treatment attorneys met with their child client more frequently, contacted more parties to the case, spent more time on cases, and engaged in more advocacy activities.

Fewer differences were found between Washington treatment and control attorneys than in Georgia, but at least one question in each domain did show differences between the two groups in Washington. *The most significant differences observed for Washington treatment attorneys were increased contacts with foster parents or substitute caregivers, increased time developing the theory of the case, and more efforts to initiate a non-adversarial case resolution process. Family team meetings and motion hearings were also more likely to occur for cases represented by treatment attorneys, compared to control attorneys in Washington.*

The following tables provide the details by response. An odds ratio (OR) of above 1 means that the average response for treatment attorneys was higher, after controlling any correlations within attorneys and jurisdictions. An odds ratio (OR) below 1 means that the average response rate for treatment attorneys was lower. Indications of statistical significance are provided.

**Table 2. WASHINGTON. Odds Ratio (OR) of treatment effect on times attorney met in person, spoken on the phone, emailed, or texted with...**

Type of Individual	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Biological parent or original caregiver	1.48	†	1.16		1.84	†
Siblings	0.90		0.97		0.67	
Other individuals related to this child (e.g., grandparent)	1.27		1.13		1.61	
Foster parent or substitute caregiver	1.59	*	1.62	**	1.92	*
Caseworker(s)	1.34		1.18		1.51	
Attorney for this child's parent's	1.16		0.89		1.70	
Other attorneys or legal professionals	1.64	†	1.19		3.22	*
CASA	1.40	†	1.09		1.43	
Teacher or other education professional	1.23		1.41		1.05	

\*\* -  $p\text{-value} < 0.01$ , \* -  $p\text{-value} < 0.05$ , † -  $p\text{-value} < 0.1$ .

The largest difference observed between the treatment and control attorneys were communication with foster parent or substitute caregiver at the time of assignment ( $p < .01$ ).

**Table 3. WASHINGTON. Odds Ratio (OR) of treatment effect on time spent involved in the following activities in furtherance of this child’s case**

Activity	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Reviewing, assessing or seeking to influence this child's case plan	1.14		0.94		1.69	
Obtaining / reviewing this child's court file	0.79		0.80		0.85	
Developing the theory of the case	1.90	**	2.10	**	2.81	*
Legal research	0.98		1.08		1.28	
Consulting or negotiating with other parties to the case	1.19		0.85		1.76	
Assessing this child's safety with respect to removal or return to their home of origin	1.35		1.20		1.70	
Reassessing this child's safety with respect to home of the original care taker	1.19		0.96		1.92	
Assessing this child's safety with respect to current placement	1.01		0.92		1.41	
Reassessing this child's safety with respect to current placement	1.33		0.90		1.87	†
Reviewing this child's school records	0.88		1.00		0.97	
Reviewing this child's medical records or assessments	1.07		1.17		1.18	
Reviewing other evaluations and assessments	0.96		0.86		1.22	
Conducting interviews or reviewing interview notes	0.91		0.83		1.20	

\*\* - *p-value* < 0.01, \* - *p-value* < 0.05, † - *p-value* < 0.1.

Although there were not many statistically significant findings in time spent on various activities, the robust difference in time spent developing a theory of the case was notable. It showed that Washington treatment attorneys were more likely to spend time on developing the case theory at different points of the surveys ( $p < .01$ ). At the time of review, treatment attorneys were also more likely to spend time reassessing their client’s safety with respect to the placement ( $p < .1$ ).

**Table 4. WASHINGTON. Odds Ratio (OR) of treatment effect on whether the following events occurred since the last survey**

Event	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Mediation	1.81		1.48		Δ	
Family team or treatment team meeting	1.27		0.81		2.08	**
Other judicial, administrative, or educational proceedings	0.81		0.81		0.87	
Pre-trial hearing/settlement conference	0.91		0.89		1.14	
Motion hearing (non-reunification, placement change, etc.)	1.17		0.90		1.78	*

\*\* -  $p$ -value < 0.01, \* -  $p$ -value < 0.05. Δ - Not estimable..

Washington treatment attorneys participated more in family team meetings at the time of review ( $p < .01$ ). Also at review, a difference was observed in motion hearings ( $p < .05$ ) in the hypothesized direction.

**Table 5. WASHINGTON. Odds Ratio (OR) of treatment effect on relationship and advocacy activities**

Activity	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Number of times spoken, emailed or text with child	1.03		0.94		1.26	
Number of times met in person with child	1.04		1.04		1.31	
Met child outside of court at least once	1.17		1.18		1.50	
Have you made any efforts to initiate a non-adversarial case resolution process	2.09	*	1.62		2.94	*
Did you argue for, or make other concerted efforts to change, the array of services provided to this child	1.22		1.26		1.31	
Did you argue for, or make other concerted efforts to change, the array of services to this child's family	1.36		1.29		1.64	
Quality of relationship with child	1.04		1.09		1.04	
Level of understanding of goals and objectives	0.79		0.75		0.81	
Your advocacy agreed with child's wishes	0.60	†	0.70		0.73	

\* -  $p$ -value < 0.05, † -  $p$ -value < 0.1.

In comparison to control attorneys, Washington treatment attorneys initiated non-adversarial case resolution process ( $p < .05$ ) more frequently both across all surveys and at review. However, their advocacy was less likely to agree with the child's wishes ( $p < .1$ ).

## Child Outcomes

The evaluation addressed the question of whether children assigned to attorneys who received the intervention experienced differences in permanency outcomes, rates of kinship placement, and rates of movement within 1 year of assignment compared to children assigned to control attorneys.

The child outcome sample includes all children assigned either a treatment or control attorney and who entered out of home care in early to mid 2012 through November 30, 2014. Every child in the out-of-home care sample was represented by an attorney at some point, though timing of onset of representation varied. (Figure 1 shows the distribution of the timing of an assignment to an attorney.)

Children represented by treatment and control attorneys did not have different experiences of placement moves or placement with kin. For permanency outcomes, we found the following:

- There was no average difference in the likelihood of permanency associated with treatment attorneys compared to control attorneys, including all assignment and exit timings, in either state. (Table 6, Model 1)
- When analyzing the likelihood of permanency within 6 months (and by definition, having been represented by either a treatment or control attorney at some point during these six months), children represented by treatment attorneys were 40% more likely to experience permanency within six months than children represented by control attorneys. (Table 6, Model 2a) This was only true in Washington. In Washington, this sample was also older, with a median age of 13 at assignment.
- For the remainder of the sample, children assigned attorneys after at least 6 months in care, there was no average difference in the likelihood of permanency in either state (Table 6, Model 2b). In Washington, this sample was younger, with a median age of 6 at assignment.

**Table 6. Estimated Hazard Ratios of Exit to Permanence for Children Represented By QIC vs. Control Group Attorneys**

State	Observation Period	H.R.	Sig.
Washington	Model 1: First 3 years after entry to care	1.16	0.2994
	Model 2a: First 6 months after entry to care	1.40	0.0318*
	Model 2b: 6 months to 3 years after entry to care	1.02	0.8861
Georgia	Model 1: First 3 years after entry to care	1.17	0.2027
	Model 2a: First 6 months after entry to care	1.20	0.1980
	Model 2b: 6 months to 3 years after entry to care	1.15	0.2808

*H.R. = Hazard ratio. Hazard ratio of greater than 1 indicates faster permanency during observation period. \* - p-value < 0.05*

***In sum, for children who entered care at an median age of 13, when attorneys were introduced early in a child’s placement experience, children represented by attorneys who had received training in the QIC-ChildRep Best Practice Model were more likely to go home or to live with a relative within 6 months.*** This finding suggests that treatment attorneys were better able to

influence situations where the course of action was clearer (child should go home), and where the voice of the child may have had a stronger impact (child wants to go home). It suggests that treatment attorneys were better able than the control attorneys to address inefficiencies in the decision-making process in those situations.

For information, Table 7 shows the exits observed for both states through March 31, 2015. In both states, around 50% of these children were still in care on March 31, 2015 around 40% had exited to permanency.

**Table 7. Exit status from out-of-home care by permanent and other exit types, all assignments to project attorneys. Observed through March 31, 2015**

Exit Type	Georgia		Washington	
	#	%	#	%
Exit to family/relative	652	37%	451	25%
Guardianship	90	5%	51	3%
Adoption	64	4%	225	13%
<b>All Permanency Exits</b>	<b>806</b>	<b>45%</b>	<b>727</b>	<b>41%</b>
<b>Other Exits</b>	<b>104</b>	<b>6%</b>	<b>134</b>	<b>8%</b>
<b>Still in care on 3/31/2015</b>	<b>867</b>	<b>49%</b>	<b>926</b>	<b>52%</b>
Total	1,777	100%	1,787	100%



**Legal Counsel for Youth and Children: IMPACT REPORT**  
**December 1, 2015**

Legal Counsel for Youth and Children (LCYC) has conducted another review of our open and closed cases to assess our advocacy and impact for the youth and children we serve. The data collected this year, like last, continues to show a positive correlation between the time at which an LCYC attorney is appointed and the child's likelihood of residing with family and remaining or returning home.

**Report Highlights**

- **Placement:** Children with attorneys from the first hearing are more likely than children without counsel at the start to reside with parents, relatives or other caring adults they know throughout their dependency cases.
- **Permanency:** Children with attorneys from the first hearing onward are more likely to remain with or successfully return to their parents than children without counsel at the start.
- **Out-of-Court Advocacy:** The vast majority of all open cases require out-of-court legal advocacy in the areas of placement, family visits, education and services for the child. Out-of-court advocacy is also commonly provided on issues of permanency planning and timely permanency.
- **Motions:** 42% of the motions filed by LCYC on behalf of children in open cases related directly to placement, requesting that children be placed with their parents, family or known community members; 27% of the motions involved family visitation.
- **Child's Participation:** Children with attorneys from the first hearing are more likely to engage in the court process by appearing for hearings or submitting written testimony to the court.

Please read on for a more thorough review of LCYC's impact on children and families in and out of court in 2015.

**PLACEMENT:**

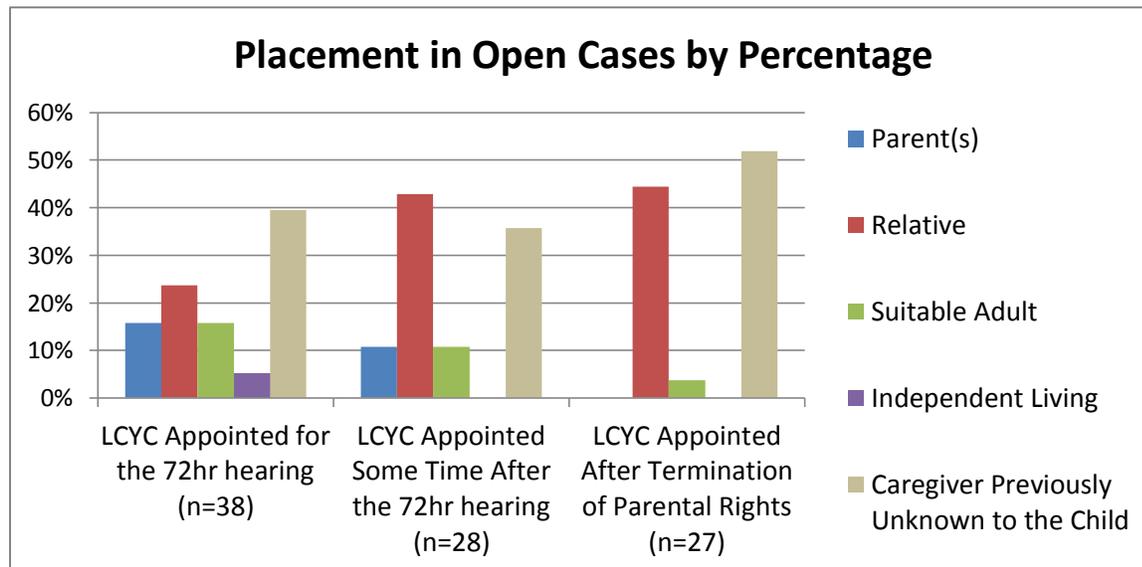
King County Juvenile Court may appoint LCYC to represent a child in a dependency action either (1) for the initial 72 hour hearing, (2) at some point after the 72 hour hearing, or (3) following termination of parental rights.

King County courts assigned LCYC to represent 61 children for the initial 72 hour hearing, a pivotal hearing at which the court makes its first determination as to where the children will reside, family visitation (if applicable) and services for the family. Unlike the rest of the country, the majority of children in Washington do not have any legal advocate in the courtroom to speak and argue on their behalf during these hearings.

**A children’s access to an attorney at the initial 72 hour hearing makes a critical difference to placement decisions and impacts their lives and the lives of their families.**

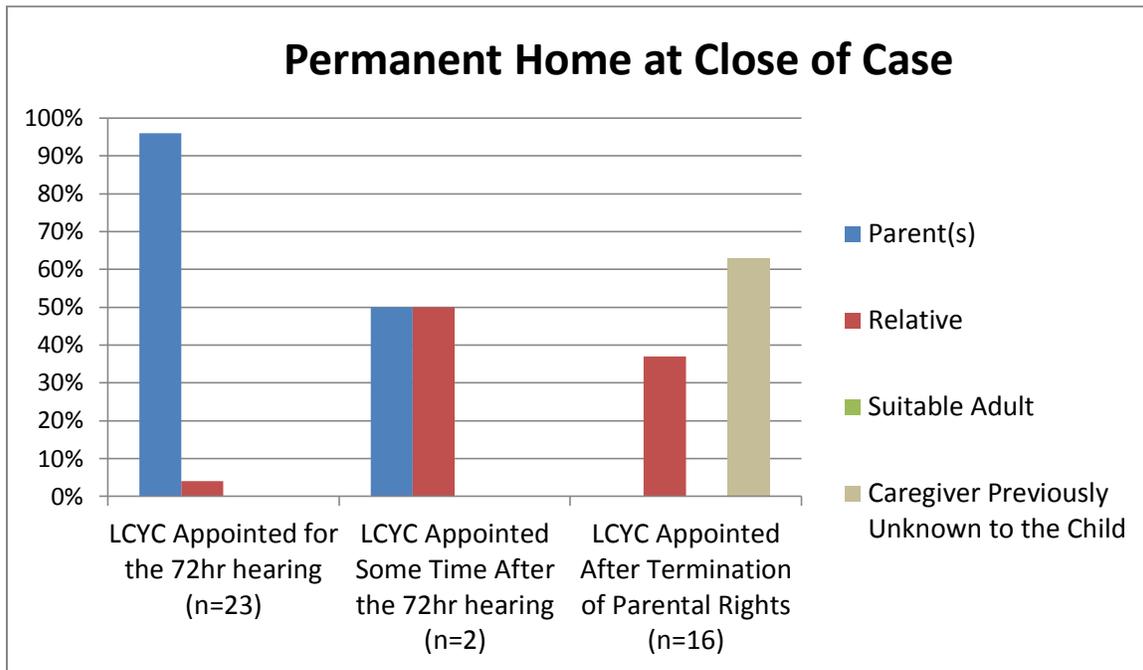
- Pursuant to the youth’s direction, LCYC has contested 74% of all initial hearings in which we have appeared.
- 22% of all children LCYC represented at the 72 hour hearing were never found to be dependent.
- 48% of all children LCYC represented at the 72 hour hearing have never spent a night in foster care. The percentage of children who never spent a night in foster care dropped to 28% for those children appointed attorneys sometime after the 72 hour hearing and down to 21% for those children without an attorney until after termination of parental rights.

The earlier a court assigns an LCYC attorney to advocate for a child, the more likely the child will reside with a parent during the dependency case. Appointing an attorney prior to termination of parental rights helps keep children connected to their parents, relatives and other suitable adults within their communities.<sup>1</sup>



**PERMANENCY:**

The earlier an LCYC attorney is assigned to advocate for a child, the more likely the child’s permanent home will be with a parent, relative or suitable adult previously known to the child. The graph below reflects the percentage of children as to their placements upon case closure, relative to the time LCYC began advocating for the child.



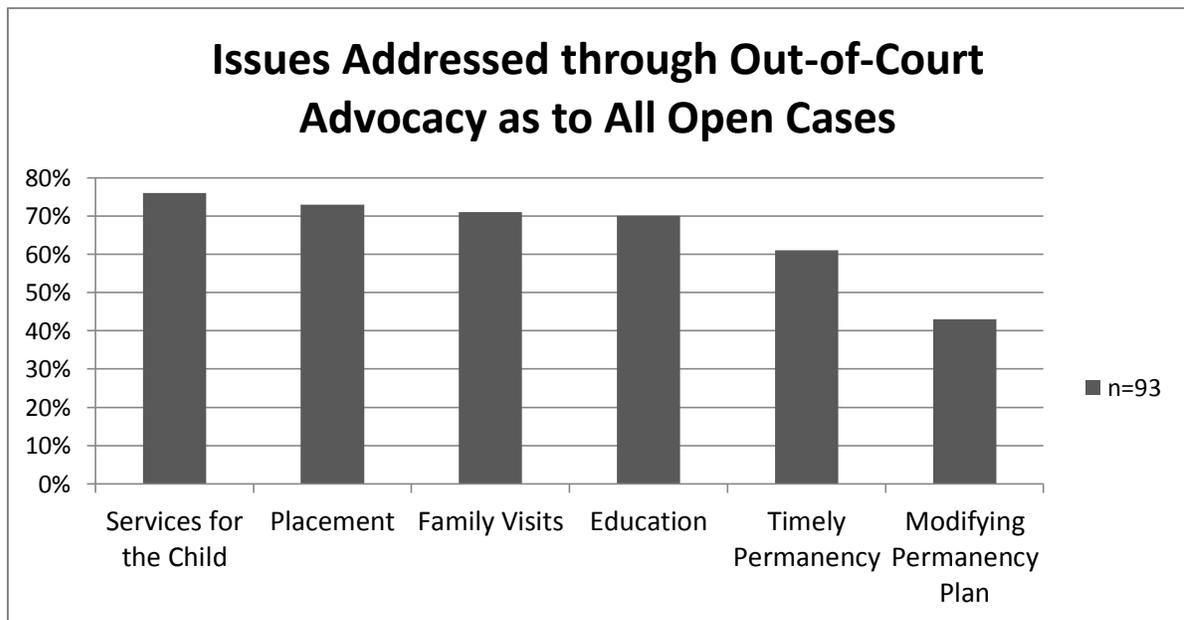
**OUT-OF-COURT ADVOCACY FOR THE CHILD:**

*“The LCYC attorney acts as an advocate – goes above and beyond! Thanks for being a valuable resource for the kids we serve.” - Foster Parent*

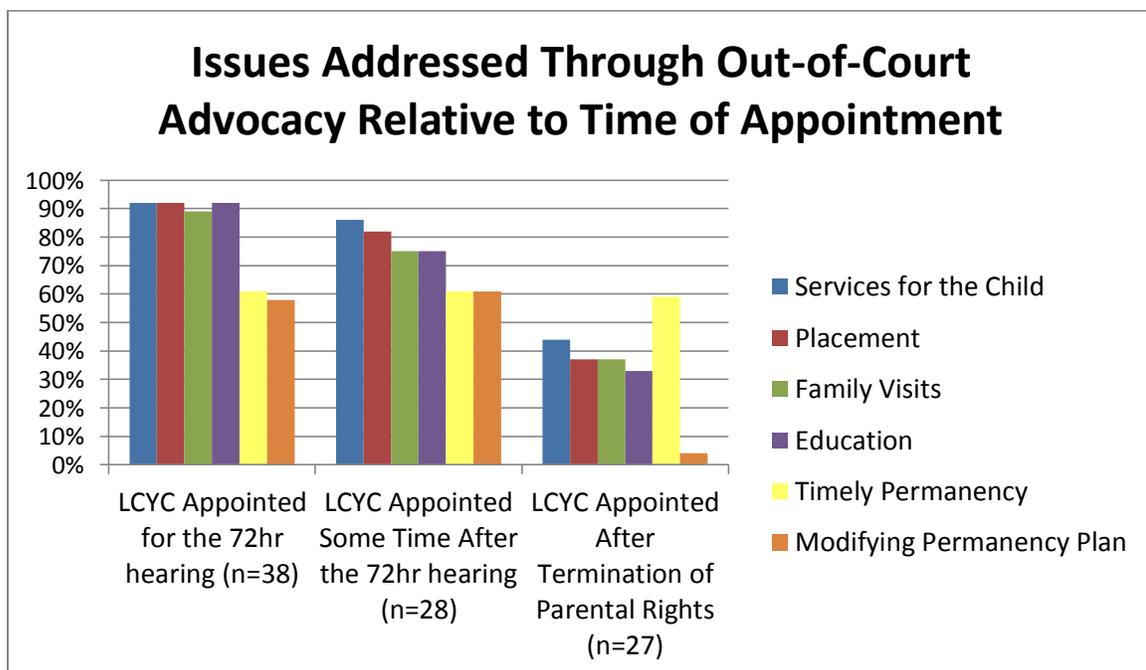
*“LCYC attorney has been irreplaceable.” - CASA Volunteer*

LCYC attorneys engage with the child and numerous people involved in that child’s court case and life – DSHS social workers, educators, counselors, family, caregivers, etc. When possible, LCYC works with the other attorneys and parties on a case to resolve issues outside of court, for example, to agree upon and ensure timely services, to increase family visitation, to plan a transition home, or to remove barriers for adoption of a legally free child. As an agency, LCYC is also committed to working with and improving each child’s educational experience, supports and success.

The graph below reflects the percentage of cases requiring out-of-court advocacy for the various issues most frequently requiring LCYC’s involvement. These cases are still open, and thus we expect the percentages to grow with time as numerous cases will require further and ongoing out-of-court advocacy in the future.



The graph below depicts the percentage of cases requiring out-of-court advocacy on various issues relative to the time at which LCYC was appointed to the case. Again, these cases are still open, and we expect the percentages to grow with time as numerous cases will require further and ongoing out-of-court advocacy in the future.



**MOTIONS FOR THE CHILD:**

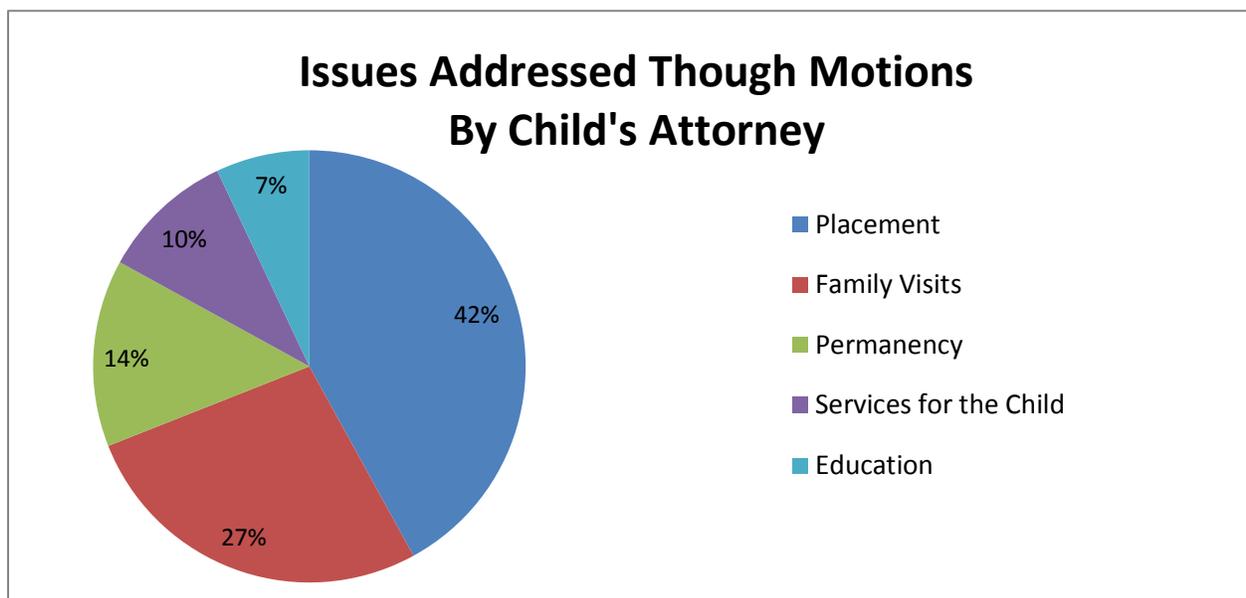
*“[The youth] had excellent legal representation...I heard her wishes loud and clear.”*  
–Judicial Officer

At times LCYC is not able to ensure the child’s legal needs and rights through out-of-court advocacy, team meetings and negotiations. When litigation is required to assist the child, LCYC attorneys file a motion and request the court to take a specific action.

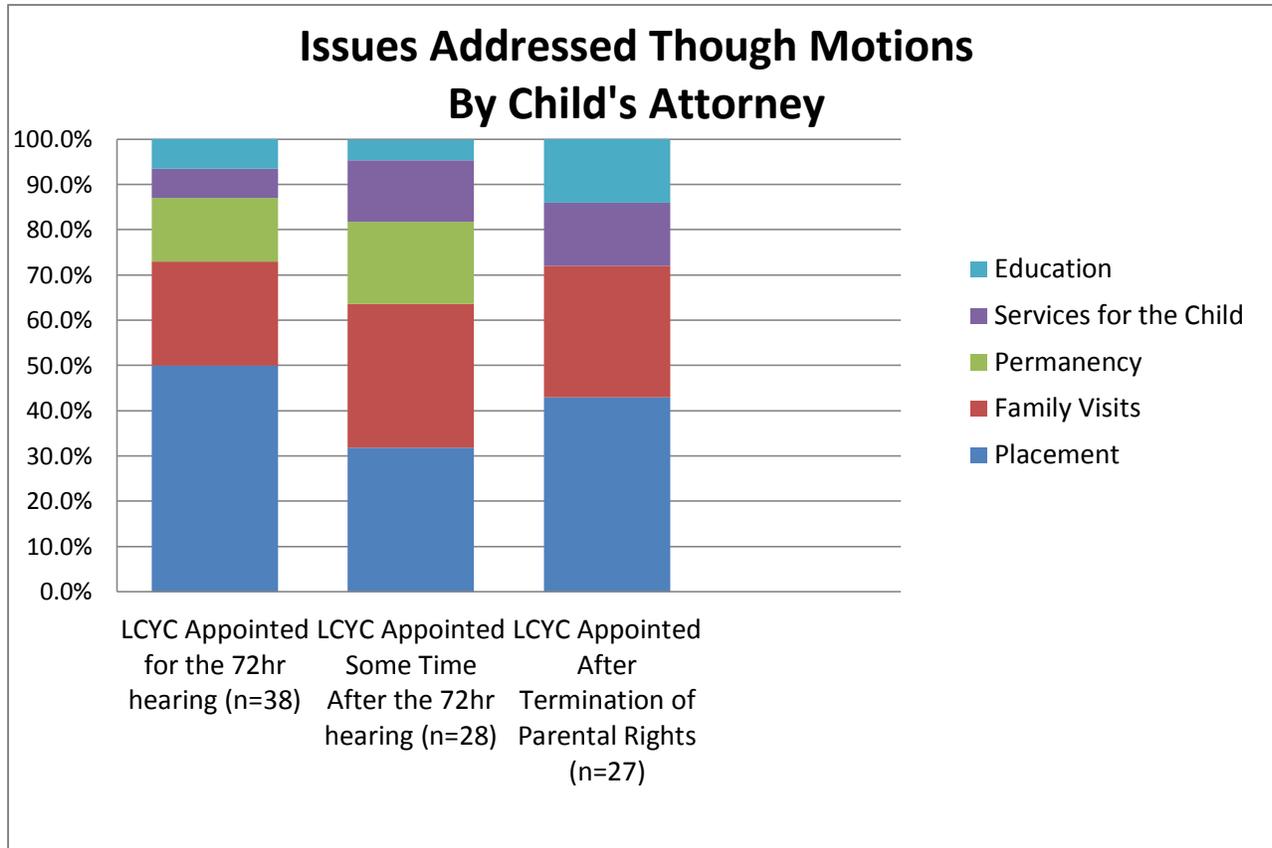
The table below reflects the percentage of cases requiring motions, relative to the time of appointment. These cases are still open, and thus the percentages are expected to grow with time as numerous cases will require litigation in the future.

<b>Time of LCYC Appointment</b>	<b>Percentage of Cases in Which LCYC has Already Filed a Motion for the Child<sup>ii</sup></b>
<b>Prior to 72 Hour Hearing</b>	<b>68%</b>
<b>Some Point After the 72 Hour Hearing</b>	<b>53%</b>
<b>After Termination of Parental Rights</b>	<b>22%</b>

LCYC compiled the various types of motions filed in all open cases to discern the most prominent issues requiring motions in court. This is what we found:



The graph below depicts the issues addressed through motions by LCYC attorneys relative to the time at which LCYC was appointed to the case. Regardless of when an LCYC attorney was appointed to represent a child, over 60% of the affirmative motions LCYC filed in court relate to placement and family visits – both of which keep children connected to parents, relatives and other suitable adults within their communities.



**CHILD’S PARTICIPATION IN COURT:**

**Our data shows that when a child has the ability to engage with legal counsel early on in the court proceedings, and is thereby given the opportunity to engage with the court, the child is more likely to participate in these important decisions impacting his or her life.**

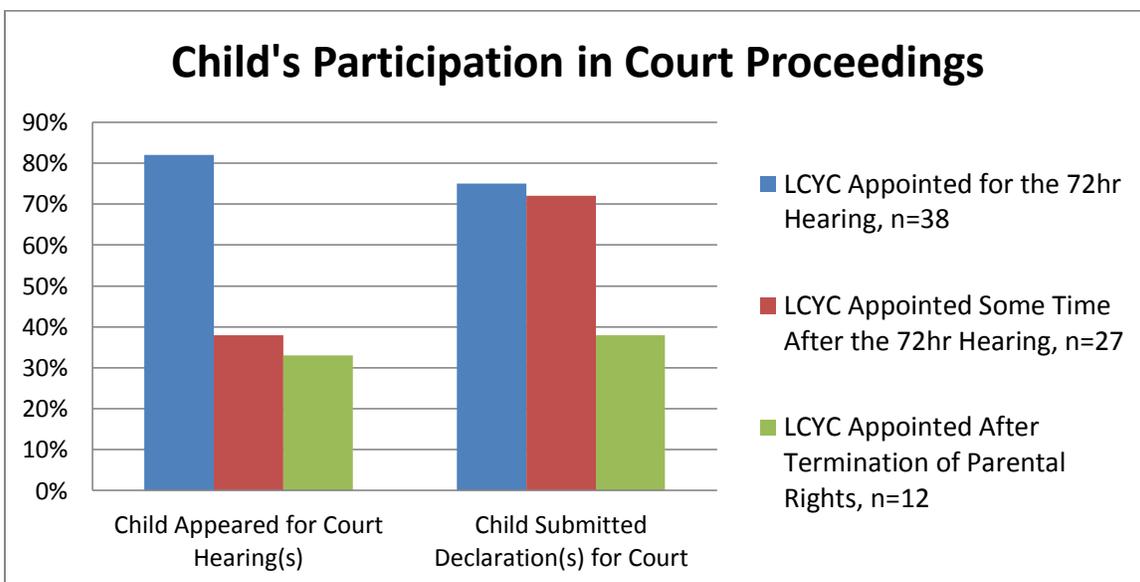
LCYC supports child clients of all ages to directly participate in the legal proceedings impacting their lives. LCYC encourages our clients to engage in their hearings by being physically present. We prepare each child, in a developmentally appropriate way, as to what he or she can expect during the court hearings ranging from where people sit and when we stand for the judicial officer to what issues will be addressed. When a child arrives at court for the first time, we make time to show them the courtroom while it is empty before the hearing begins. The child can decide to participate in any hearing or decline. The child may also opt to attend part of the hearing and have an additional supportive adult present to sit with in the courtroom or outside.

It is vital for children to actively participate in the decisions affecting where they will live and whether they will maintain a legal relationship with their parents. We have witnessed firsthand the impact a judicial officer can have when directly addressing the child from the bench, acknowledging the child’s wishes and the court’s concerns. This communication can have a tremendous impact on the child and his or her reaction to a court order, regardless of whether the judicial officer agrees with the child’s position.

Regardless of whether children choose to attend their court hearings, we strongly encourage all children who are able to work with us to write a declaration, which serves as the child’s letter to the judge. We may suggest the child update the court on how things are going at home and school, to discuss family contact and future permanency plans.

LCYC strongly believes that by encouraging children to engage with the judicial officer, even when there are no pressing issues or concerns, the children will learn and be reminded that the court is genuinely motivated by the children’s well-being and wants to hear when things are going well and when they are in need. The hope is that when a child *is* in need of assistance or when a difficult decision is before the court, the child will experience a sense that they can be heard, that their voice is valued in these changing decisions that impact them more than anyone else. We also inform all children that they do not need to weigh in on any decisions before the court if they wish to remain silent or defer to the judicial officer.

The graph below depicts the percentage of children appearing for court or submitting declarations to the court. The numbers below exclude children who are presently developmentally unable to create a declaration for the court; in such cases, LCYC attorneys submit written reports from counsel.



**CONCLUSION:**

LCYC attorneys provide much needed legal advocacy to some of King County’s most vulnerable youth and children. Children involved in the child welfare system face a constant risk of being temporarily and permanently separated from their parent(s), relatives, siblings, neighbors, schools and communities. LCYC’s child directed advocacy focuses on helping children maintain connections with their loved ones and communities. Sadly, legal advocacy is also needed in and out of court to ensure that children found to be dependent upon the State are properly cared for and nourished and that they timely receive necessary services and permanency. LCYC attorneys help children in the moment, as to the crisis of the day, with an eye towards planning for tomorrow and for the long-term future in a permanent home, be it with a parent or a new caregiver.

LCYC employs a unique, multidisciplinary model of service with low caseloads, high quality holistic legal advocacy, supervision and teamwork. LCYC’s approach to serving children in need makes a difference.

For more information about LCYC please visit us online at [www.lcycwa.com](http://www.lcycwa.com).

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<sup>i</sup> None of the children involved in this data collection received the benefit of legal counsel prior the appointment of an LCYC attorney. Youth who are placed in “Independent Living” are at least eighteen-years-old and voluntarily participating in Extended Foster Care.

<sup>ii</sup> The open cases from which data was collected have been open for varying degrees of time for months to years. No data was collected on cases open less than one month as of October 27, 2015.

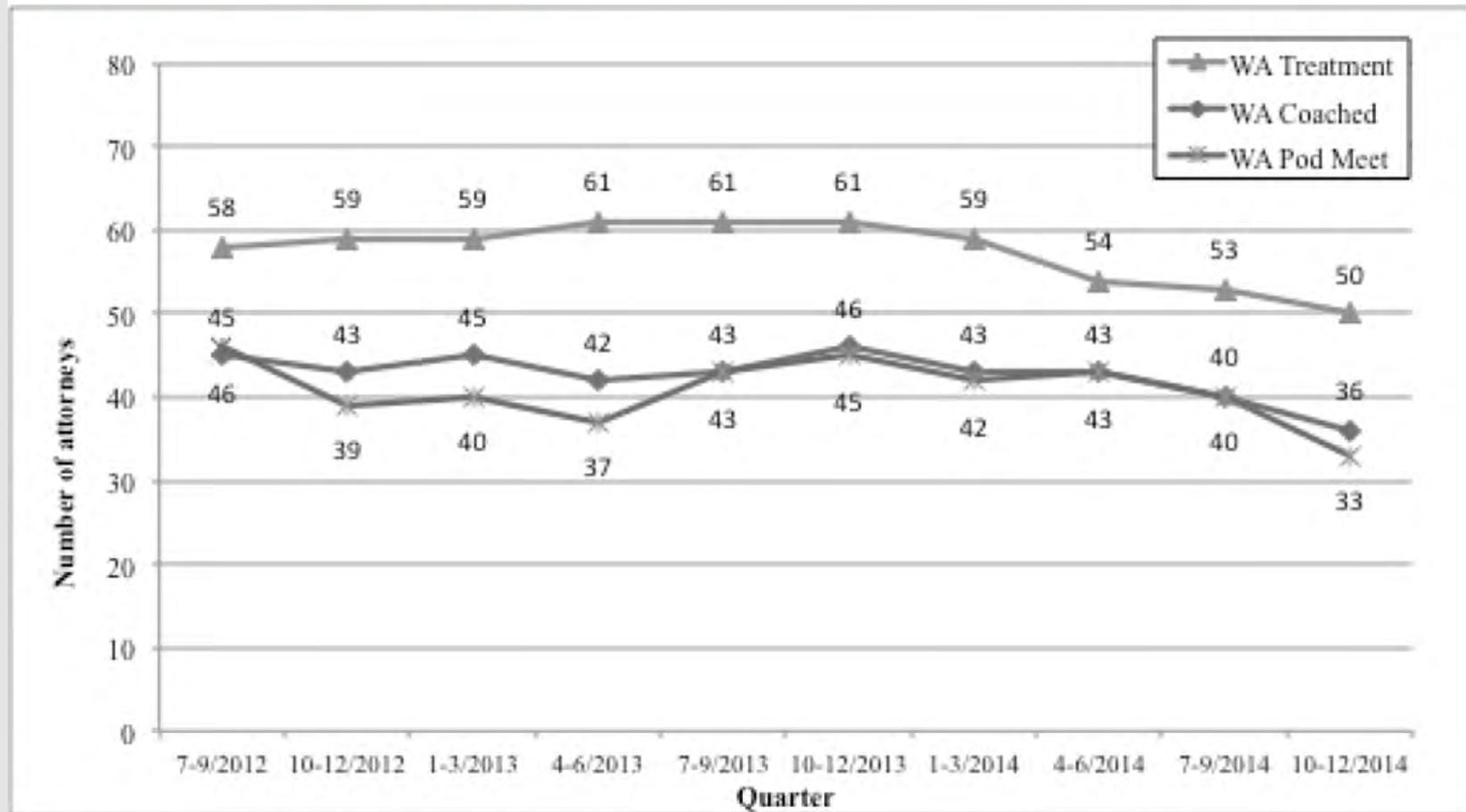
Hypothesis: An attorney trained in and supported to practice according to the *QIC-ChildRep* model will, on average, improve fundamental child welfare outcomes for his or her clients, compared to an attorney who is not so trained and supported.

# Research Design: Experimental

- Created a group of attorneys who represented *what would have happened* to the treatment group had they not received the treatment.
- Why random? Because random assignment is the best way to equally distribute things that would affect behavior across the two groups so as to *isolate treatment effect*.
- Why random within jurisdiction? So that *jurisdiction differences aren't erroneously associated* with treatment or control groups.

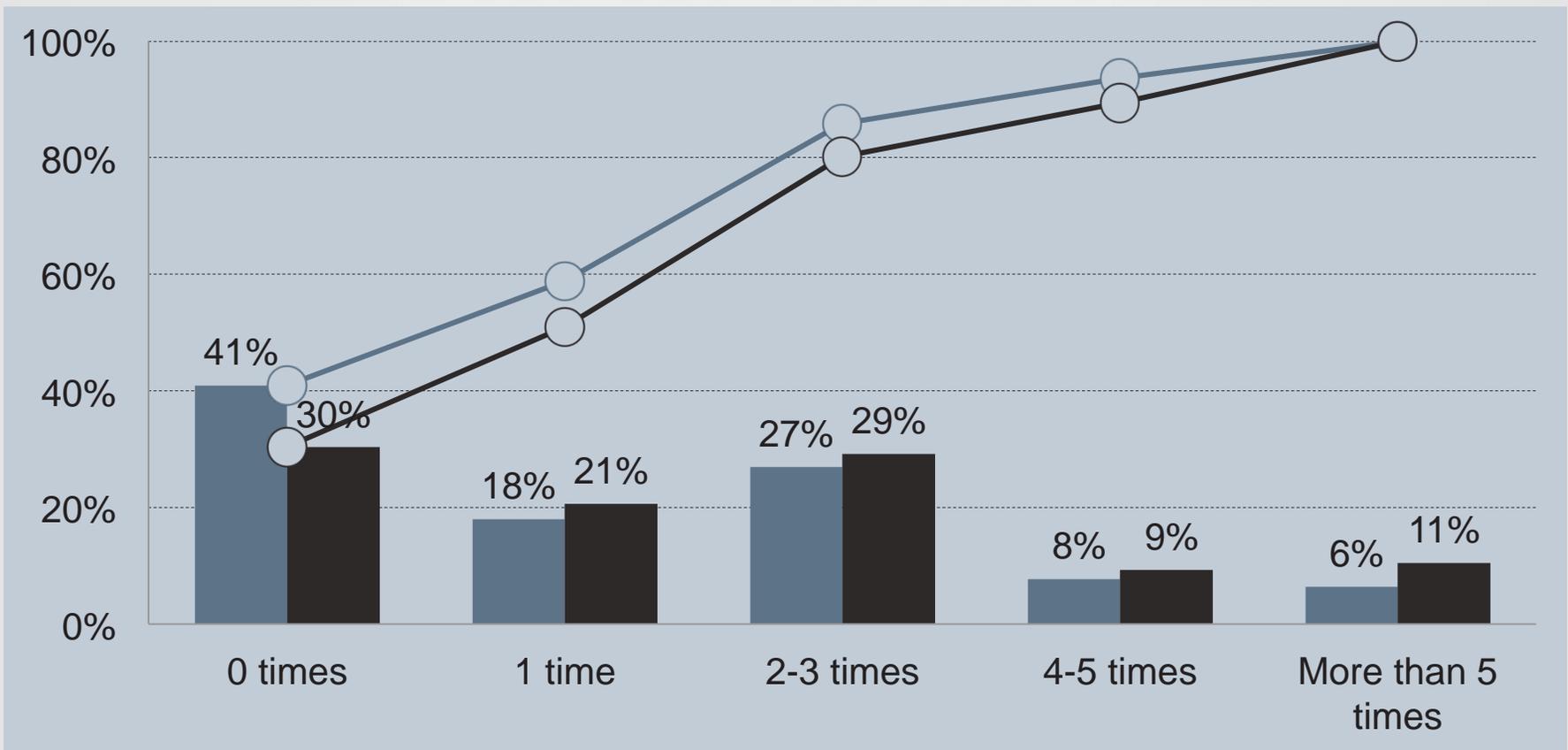
**ChapinHall**

**Figure 1. Washington: Number of Practicing Treatment Attorneys (All) and Attorneys Who Participated in Pods and Coaching**



**ChapinHall**

Example of raw responses: Frequency of contact with foster parents or substitute care givers since last survey, all surveys.



Light grey is control. Black is treatment



**Table 2. WASHINGTON. Odds Ratio (OR) of treatment effect on times attorney met in person, spoken on the phone, emailed, or texted with...**

Type of Individual	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Biological parent or original caregiver	1.48	†			1.84	†
Siblings						
Other individuals related to this child (e.g., grandparent)						
Foster parent or substitute caregiver	1.59	*	1.62	**	1.92	*
Caseworker(s)						
Attorney for this child's parent's						
Other attorneys or legal professionals	1.64	†			3.22	*
CASA	1.40	†				
Teacher or other education professional						

\*\* -  $p$ -value < 0.01, \* -  $p$ -value < 0.05, † -  $p$ -value < 0.1.

**Table 3. WASHINGTON. Odds Ratio (OR) of treatment effect on time spent involved in the following activities in furtherance of this child's case**

Activity	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Reviewing, assessing or seeking to influence this child's case plan						
Obtaining / reviewing this child's court file						
Developing the theory of the case	1.90	**	2.10	**	2.81	*
Legal research						
Consulting or negotiating with other parties to the case						
Assessing this child's safety with respect to removal or return to their home of origin						
Reassessing this child's safety with respect to home of the original care taker						
Assessing this child's safety with respect to current placement						
Reassessing this child's safety with respect to current placement					1.87	†
Reviewing this child's school records						
Reviewing this child's medical records or assessments						
Reviewing other evaluations and assessments						
Conducting interviews or reviewing interview notes						

\*\* -  $p$ -value < 0.01, \* -  $p$ -value < 0.05, † -  $p$ -value < 0.1.

**Table 4. WASHINGTON. Odds Ratio (OR) of treatment effect on whether the following events occurred since the last survey**

Event	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Mediation						
Family team or treatment team meeting					2.08	**
Other judicial, administrative, or educational proceedings						
Pre-trial hearing/settlement conference						
Motion hearing (non-reunification, placement change, etc.)					1.78	*

\*\* -  $p$ -value < 0.01, \* -  $p$ -value < 0.05.

**Table 5. WASHINGTON. Odds Ratio (OR) of treatment effect on relationship and advocacy activities**

Activity	All Surveys		Assignment		Review	
	OR	Sig.	OR	Sig.	OR	Sig.
Number of times spoken, emailed or text with child						
Number of times met in person with child						
Met child outside of court at least once						
Have you made any efforts to initiate a non-adversarial case resolution process	2.09	*	1.62		2.94	*
Did you argue for, or make other concerted efforts to change, the array of services provided to this child						
Did you argue for, or make other concerted efforts to change, the array of services to this child's family						
Quality of relationship with child						
Level of understanding of goals and objectives						
Your advocacy agreed with child's wishes	0.60	†				

\* -  $p$ -value < 0.05, † -  $p$ -value < 0.1.

**Table 6. Estimated Hazard Ratios of Exit to Permanence for Children Represented By QIC vs. Control Group Attorneys**

<b>State</b>	<b>Observation Period</b>	<b>H.R.</b>	<b>Sig.</b>
Washington	Model 1: First 3 years after entry to care	1.16	0.2994
	Model 2a: First 6 months after entry to care	1.40	0.0318*
	Model 2b: 6 months to 3 years after entry to care	1.02	0.8861
Georgia	Model 1: First 3 years after entry to care	1.17	0.2027
	Model 2a: First 6 months after entry to care	1.20	0.1980
	Model 2b: 6 months to 3 years after entry to care	1.15	0.2808

*H.R. = Hazard ratio. Hazard ratio of greater than 1 indicates faster permanency during observation period. \* - p-value < 0.05*

## Georgia

- 146 attorneys
- 13 jurisdictions
- Not informed consent
- no “firms”, 77% solo
- Payment by hourly rate based on voucher most common (8 of 13). \$45-\$60 per hour.

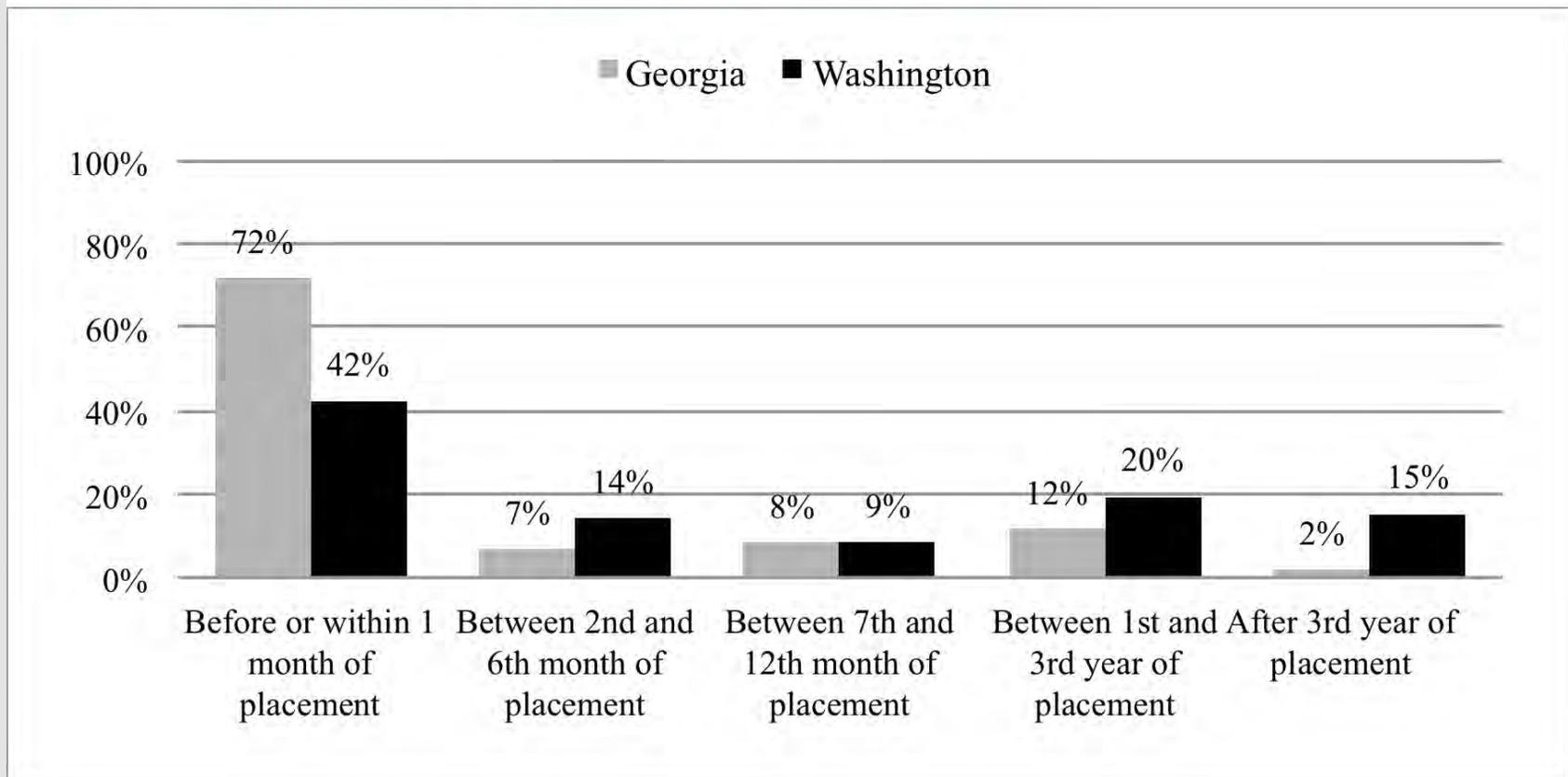
## Washington

- 118 attorneys
- 25 jurisdictions
- Informed consent
- 8 “firms” mostly in King, 50% solo
- Payment by hourly rate based on voucher most common (12 of 24). \$60-\$65 per hour

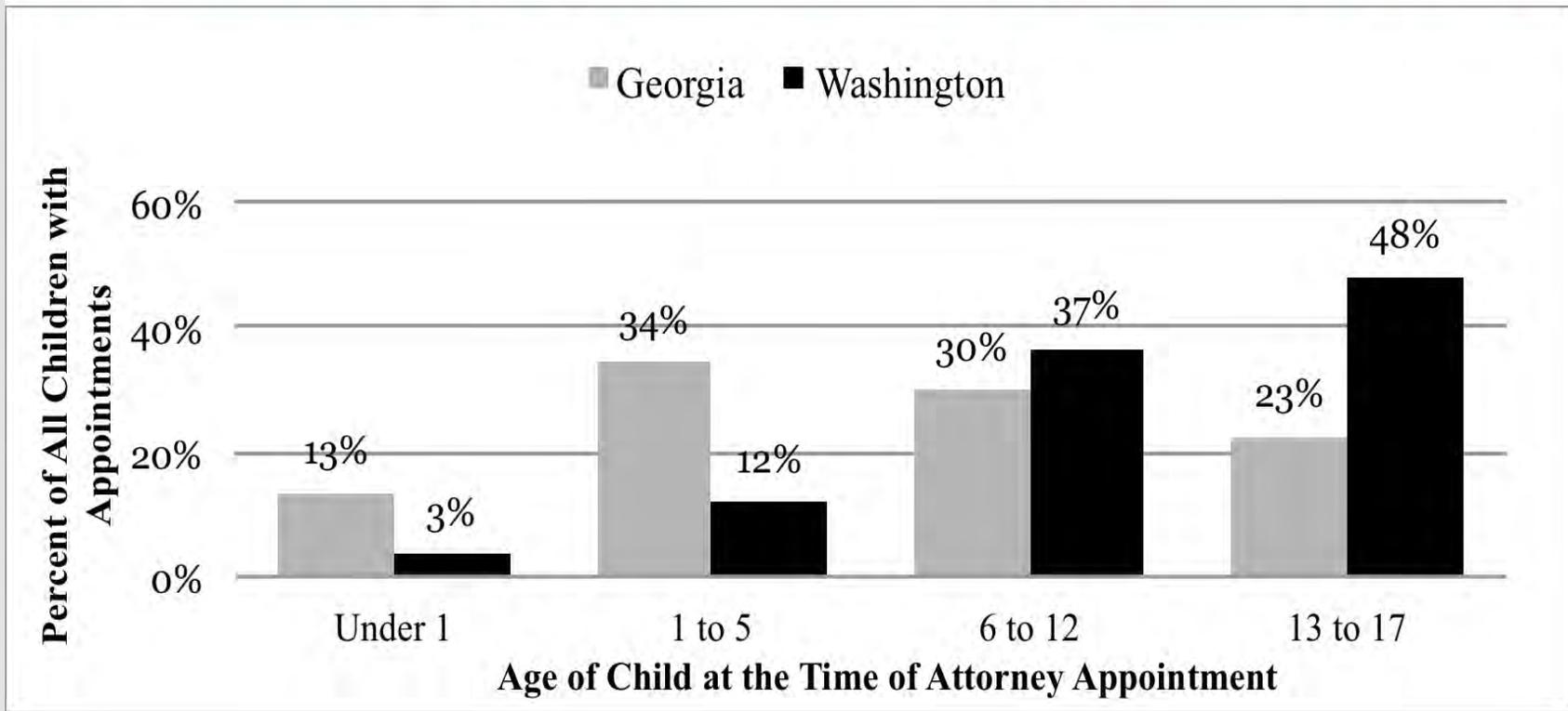
More information about attorneys from the baseline survey: Orlebeke, B., Andrew, Z., Don, D., & Zhou, X. (in press). Characteristics of Attorneys Representing Children in Child Welfare Cases. *Family Law Quarterly* and Zinn et.al. in *Family Court Review*

**ChapinHall**

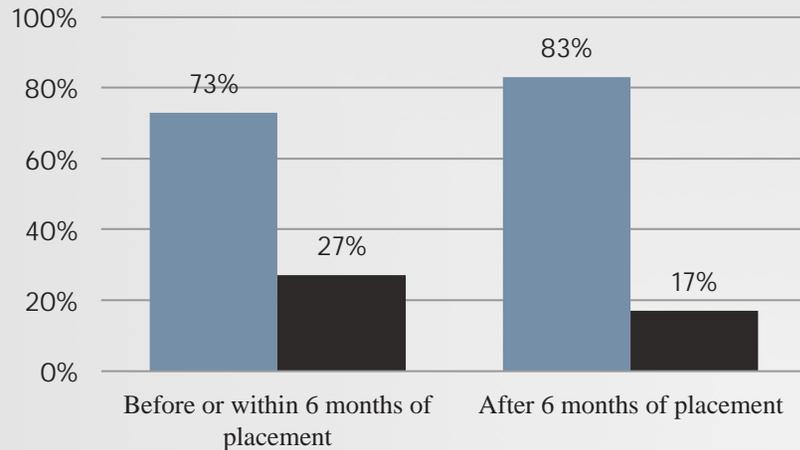
**Figure 1. Timing of Attorney Appointment for Children Placed**



**Figure 1. Distribution of Age of Child at the Time of Attorney Appointment for Children Placed**



### Georgia



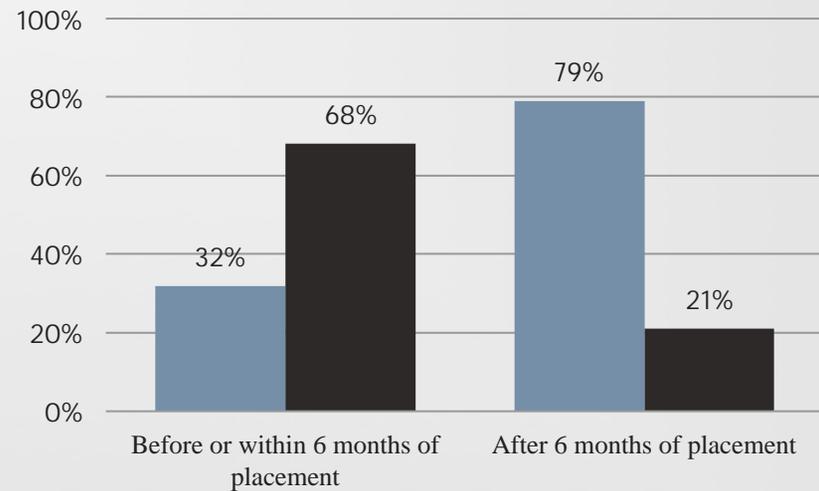
Among represented children in Georgia, children under age 12 at appointment are most prevalent, regardless of timing of appointment.

*Grey-blue is under age under age 12 at appointment.*

*Black is age 12 or over at appointment.*

Among represented children in Washington, children 12+ at appointment are most prevalent in the early appointment group.

### Washington



# Foster Youth and Alumni Leadership Summit

## ONE UNITED VOICE FOR CHANGE

### 2015 Mockingbird Youth Network Chapter Topics

#### SPOKANE CHAPTER

##### Topic

Require LGBTQ Sensitivity Training for Foster Parents

##### Solution Recommendation

Given that many foster youth identify as LGBTQ, the Spokane Chapter feels it is important for all foster parents to have the knowledge and skills to support this population of young people. Currently, it is optional for foster parents to attend trainings to learn how to work with and support LGBTQ youth in care. It is critical for young people to feel accepted and respected! By making LGBTQ sensitivity trainings mandatory and not optional, our state will take an important step in ensuring that LGBTQ youth are placed in homes that are better equipped to welcome and care for them.

#### YAKIMA CHAPTER

##### Topic

Increase Access to an Attorney for Children and Youth in Foster Care

##### Solution Recommendation

Currently, Washington is rated as one of the worst states when it comes to providing legal counsel to children and youth in foster care. The way counsel is assigned is not consistent across the state and has been referred to as "justice by geography." While the Yakima Chapter believes that **all** foster children and youth should automatically be provided an attorney when they enter foster care, the Chapter also realizes the proposal is a difficult one to fund. At this time, the goal of the Yakima Chapter is to require the automatic appointment of an attorney to all children age 12 and older.

2015 FOSTER YOUTH & ALUMNI LEADERSHIP SUMMIT



# Foster Youth and Alumni Leadership Summit

## ONE UNITED VOICE FOR CHANGE

### OLYMPIA CHAPTER

#### Topic

Create a Host Home-inspired Community for Youth in Extended Foster Care

#### Solution Recommendation

The Extended Foster Care (EFC) program has produced fantastic results for foster youth and alumni in Washington state. However, the success youth experience in Supervised Independent Living Placements (SILPs) varies. The Olympia Chapter would like Children's Administration to introduce the Host Home model as a new SILP option for EFC youth. Host Home models connect safe community volunteers who have an extra room in their home with young people who are looking for affordable, supportive housing. The model allows young people to have a voice in choosing who they live with. Additionally, it provides youth with opportunities to build positive, lasting relationships with their hosts, connects them to community, and reduces feelings of loneliness and isolation.

### TACOMA CHAPTER

#### Topic

Implement the Mockingbird Family Model in Pierce County

#### Solution Recommendation

Foster youth want to be safe in their homes and in their communities, and the Tacoma Chapter sees the Mockingbird Family Model (MFM) as a promising avenue to safety and normalcy for foster youth. Youth would be able to access the Hub Home provider when respite care, crisis care, or other support is needed. The MFM will also benefit foster parents, as they have a 97 percent satisfaction rate when they are part of an MFM constellation. The MFM has already proven itself a successful model in other regions in Washington, as well as in other states and countries. At this point, the implementation process has already started for the MFM in Pierce County through private foster care providers, and the Tacoma Chapter would like to engage with the Children's Administration in implementing the model as quickly as possible.

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2015 FOSTER YOUTH & ALUMNI LEADERSHIP SUMMIT



# Foster Youth and Alumni Leadership Summit

## ONE UNITED VOICE FOR CHANGE

### EVERETT CHAPTER

#### Topic

Evaluate and Create More Oversight of Group Care in Washington

#### Solution Recommendation

The Everett Chapter is asking that a formal evaluation of group care in Washington state be completed to better understand the experiences and outcomes of foster youth in these settings. The last evaluation of group care was conducted in 2007, so up-to-date information about foster youth in group care is limited. The Everett Chapter would like an evaluation to focus on the quality of group care, lengths of stay, outcomes and permanency rates, demographics, and services provided to foster youth while in group care. The Chapter believes that formally evaluating group care in Washington will not only provide the information our state needs to improve the experiences of youth, but will also continue to make Washington a national leader on this critical issue.

### SEATTLE CHAPTER

#### Topic

Increase Foster Youth Access to the Passport to College Promise Scholarship

#### Solution Recommendation

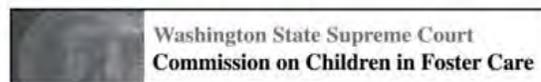
The Seattle Chapter wants to expand the Passport Scholarship eligibility for youth in foster care and make financial support for higher education more accessible and less confusing to navigate. The Seattle Chapter proposes that:

- ✓ A student is eligible if they have spent at least one year in foster care subsequent to his or her **13<sup>th</sup>** birthday (currently they must have spent a year in care after their 16<sup>th</sup> birthday)
- ✓ A student is eligible if they are enrolled or will enroll on at least a half-time basis with an institution of higher education in Washington by the age of **26** (currently must enroll by age 21)
- ✓ Mirror State Need Grant (SNG) Eligibility: Each student is entitled to a **maximum of 15 quarters** of Passport in their lifetime—students may not exceed 125% of their published program length
- ✓ Youth in International Foster care **are** eligible to receive the Passport to College Scholarship
- ✓ Conduct an **evaluation** of the Passport to College Scholarship program

Education creates opportunities for our future!

3

2015 FOSTER YOUTH & ALUMNI LEADERSHIP SUMMIT





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

**Children’s Representation Workgroup Roster**

Updated 5/11/15

<p><b>Ms. Lisa Kelly (Chair)</b>          Children &amp; Youth Advocacy Clinic          University of Washington School of Law  <a href="mailto:lisak2@uw.edu">lisak2@uw.edu</a></p>	<p><b>Ms. Kirsten Haugen</b>          Snohomish County          Attorney GAL  <a href="mailto:Kirsten.Haugen@snoco.org">Kirsten.Haugen@snoco.org</a></p>
<p><b>Ms. Peggy Lewis</b>          DSHS/ CA IL Program Manager  <a href="mailto:Lopp300@dshs.wa.gov">Lopp300@dshs.wa.gov</a></p>	<p><b>Ms. Carrie Wayno</b>          Attorney General’s Office  <a href="mailto:carrieh@atg.wa.gov">carrieh@atg.wa.gov</a></p>
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<p><b>Mr. Ryan Murrey</b>          Exec. Director Washington State CASA  <a href="mailto:ryan@wacasa.org">ryan@wacasa.org</a></p>	<p><b>Mr. Patrick Dowd</b>          Office of Children and Family Ombudsman  <a href="mailto:patrick.dowd@ofco.wa.gov">patrick.dowd@ofco.wa.gov</a></p>
<p><b>Ms. Jill Malat</b>          Office of Civil Legal Aid, Children’s          Representation Program Manager  <a href="mailto:jill.malat@ocla.wa.gov">jill.malat@ocla.wa.gov</a></p>	<p><b>Ms. Christie Hedman</b>          Washington Defender Association  <a href="mailto:hedman@defensenet.org">hedman@defensenet.org</a></p>
<p><b>Beth and Mike Canfield</b>          Foster Parents Association of Washington  <a href="mailto:mkbeth@comcast.net">mkbeth@comcast.net</a></p>	<p><b>Mr. Jacob D’Annunzio</b>          Parents Representation Project  <a href="mailto:jacob.dannunzio@opd.wa.gov">jacob.dannunzio@opd.wa.gov</a></p>
<p><b>Ms. Tonia Morrison</b>          Parent Engagement Coordinator          Mason and Thurston County  <a href="mailto:Tonia@familyess.org">Tonia@familyess.org</a></p>	<p><b>Ms. Michelle Ressa</b>          Spokane County Superior Court          Commissioner  <a href="mailto:MRESSA@spokanecounty.org">MRESSA@spokanecounty.org</a></p>

**Ms. Crystal O'Grady**  
Center for Children & Youth Justice  
LFI Intern / Alumna Representative  
[COGrady@ccyj.org](mailto:COGrady@ccyj.org)

**Ms. Maren Andersen**  
Counsel for the Lummi Tribe  
[MarenA@lummi-nsn.gov](mailto:MarenA@lummi-nsn.gov)

1. **The role of AAG, Caseworkers, and CASA: clarify the roles and responsibilities of the Department, AGO, and CASA in assisting children and youth to obtain legal representation.**

**DSHS**

- a. Department social workers shall provide information to youth twelve years of age and older about their ability to request counsel as required by statute.

Additionally, Department social workers will provide all caregivers information about the ability of children and youth of all ages to request legal representation and the right of caregivers themselves to request appointment of counsel for the child, to retain a lawyer to make the request on the child's behalf or refer a child to a lawyer for purposes of making such request.

- b. The Department agrees to provide any individuals seeking legal representation for a dependent youth the form developed by the workgroup.

**CASA**

- a. GALS/CASAs shall provide information to children and youth twelve years of age and older about their right to request legal representation as required by statute.
- b. The CASA program will continue to provide information to its staff and volunteers on the right of all children to request counsel under RCW 13.34.100 and on the responsibility to inform the children of their rights to request an attorney.

**OCLA**

- a. The Workgroup recommends that the Office of Civil Legal Aid be charged with the responsibility to refer youth, caregivers and others to available legal resources to assist in the filing of motions for appointment of counsel. The Office of Civil Legal Aid is willing to take on this responsibility.

2. **Parties' Positions: develop agency-wide policies governing motions for appointment of counsel**

**DSHS/AGO**

The AGO/Department will not object to appointment of an attorney to a child who is 12 or older. The AGO/Department also affirmatively believes that counsel should be appointed to any child or youth who is subject to contempt proceedings. Otherwise, the AGO takes the position that the court's decision to appoint is discretionary under the statute, and at a minimum, the AGO takes the position that it must be governed by a Mathews analysis, as laid out in M.S.R. For children younger than 12, the AGO will determine its position on a case-by-case basis.

**CASA**

CASA is unable to make any agency-wide policy regarding motions for the appointment of counsel; decisions will be made on a case by case basis on the best interest of the child.

**3. Referrals: develop policies to inform and protect caregivers and other involved individuals who wish to retain counsel for a child or make referrals to counsel for purposes of filing motions for appointment.**

Under the statute, any individual may refer a child to a lawyer to file a motion to request appointment of counsel at public expense. When a youth is of an age to make the contact on his or her own without adult assistance, the youth may certainly do so. However, the Workgroup understands that many children, and even teenagers, may need adult support to facilitate a meeting with a lawyer to discuss his or her right to request an attorney at public expense.

The Workgroup agrees that when the child, the child's care giver, or any individual makes a request for the appointment of any attorney, this request will be brought to the court's attention in a timely manner with consideration given to the facts of the case and the nature of the circumstances of the request. Furthermore, the Workgroup has developed a form that any individual may use to bring the matter of attorney representation for the child to the courts attention. Local practice and policy will dictate how the court will handle the request for the youth's appointment of an attorney.

The perceived barrier by some members of the workgroup was that if the request was not made by formal motion (for example, in a CASA report, an oral report), any appellate action could be severely limited by how the matter was brought before the court. The workgroup was unable to reach consensus on this issue.

In some jurisdictions, legal assistance may be available for those seeking to file a motion for legal representation for youth at public expense. For these types of limited appointments, The Department, and the AGO on its behalf, should provide basic case information to an attorney who represents a caregiver or a child (either directly or by third-party retainer), when such representation is indicated through a formal notice of appearance on the attorney's letterhead. This notice should be directed to the social worker, if known, and/or the AGO. This letter then authorizes the Department and AGO on its behalf to share otherwise confidential information under RCW 13.50.100(7).

Basic case information includes the case number, the caption of the case, the names of assigned counsel for the parties, and any other information necessary to enable the counsel to file a limited notice of appearance. It also includes, but is not limited to at the court's discretion: the age of the child; the status of the case; the names of the child and other parties in order to facilitate conflicts checking; the county in which the child resides; and the county with jurisdiction over the case. Caregivers, social workers, and others connected to the child are also permitted to relay this basic information to an attorney to facilitate the representation once the letter of representation has been provided.

4. Attorney-Client Privilege: develop policies designed to educate all parties on the protections of confidentiality and privilege between attorneys and children.

- a. Upon the court's ruling on the appointment of counsel for the youth, the Department social worker may assist in facilitating this contact by notifying the caregiver that this contact is acceptable, and should be in private.
- b. The relationship between the attorney and his or her child client is subject to the Rules of Professional Conduct and should be guided by the Meaningful Legal Representation Standards adopted by the Administrative Office of the Courts and referenced in RCW 13.34.100(6)-(7). As such, attorneys maintain a confidential relationship with their clients and disclose information only in accordance with the Rules of Professional Conduct. However, under both the Rules of Professional Conduct and the applicable standards, it is understood that attorneys for children will engage in information sharing (to the extent of the client's consent), and will problem-solve with necessary parties and non-parties in order to achieve their clients' goals. A child, like any other client, may permit or restrict the attorney's disclosure of information.
- c. The Department will provide information for social workers, caregivers, and service providers to understand confidential role that attorneys have with their child clients.
- d. CASA will continue to provide information for its volunteers to understand the confidential role that attorneys have with their child clients.

5. Children With Disabilities: identify protective measures for children with significant disabilities as well as children who may be requesting counsel pro se without the assistance of an attorney

The Workgroup was charged with "identifying protective measures for children with significant disabilities." The Workgroup recognizes that very young children as well as those with significant disabilities have legal interests that attorneys can protect. The Workgroup recommends that the policies developed herein be applied with equal force and effect to all children, without respect to cognitive ability or disability.

6. Discovery and Other Records: develop policies for the AGO and the Department when responding to discovery requests related to motions for appointment of counsel

The Workgroup agrees that an attorney appointed to a child shall have full access to discovery and other records just as any other full party to the case.

There's a divergence of opinion on discovery and other records requests when the attorney appointment is limited. Some workgroup members prefer that that a limited notice of appearance be filed and the court rule on granting access to the dependency court file prior to the release of discovery or other records pertaining to the child. Other workgroup members suggest that providing a letter from the limited notice attorney on letterhead should suffice for

access to records.

The Workgroup does agree that in a case-by-case analysis, each case will present its own individual discovery needs. However, below is a list of documents that may be relevant to the child's motion:

- Any evaluations of the child
- Any progress reports from the child's treatment providers
- IEPs, if any
- Info re SAY issues, if any
- Potential criminal investigations and charges
- Case notes regarding the child.

7. How Children May Be Accessed for Purposes of Filing Motions for Appointment of Counsel: develop policies with regard to how counsel may obtain access to children and youth in order to respond to a request by the child, a referral or retainer to file a motion for appointment of counsel.

Much like the discovery issue, the workgroup is unable to come to consensus on how this may be successfully achieved. There are those who believe that the court should rule on the attorney appointment prior to granting access to the child, and those who believe that in order to file a compelling motion, access should be granted prior to the court's decision.

8. Transportation: develop policies for the options for transportation of children and youth to legal meetings
- a. Meetings between the child and the child's counsel should take place at reasonable times and locations that are familiar to the child, which may include the child's home (when agreed to by the caregiver), school, and other familiar settings. Meetings also may take place at attorney's offices when necessary to achieve privacy or to otherwise meet the child's wishes. When possible, the child's attorney should attempt to avoid disrupting the child's schooling. The Department may help facilitate this contact by communicating the need for the attorney to meet in private with the child to the child's caregiver. By agreeing to facilitate the Department is not agreeing to transport all foster children to meet with their attorneys.
  - b. The Department should presume that it will be transport all children to hearings on their motions for appointment of counsel, unless it is informed otherwise



## Washington State Supreme Court Commission on Children in Foster Care (CCFC)

### Children's Representation Workgroup

In response to new legislation (SB 6126), the Washington State Supreme Court Commission on Children in Foster Care is reconvening its Workgroup to review practical barriers for children in dependency and termination proceedings requesting counsel and for individuals making referrals to children for an attorney.

#### **Workgroup Goal**

*The new provisions of RCW 13.34.100 will increase the numbers of children, youth, and other individuals who will request legal representation for children in dependency and termination proceedings. The Workgroup will ensure that Commission members' respective agencies are aware of these changes in the law and assist them to develop statewide practices and procedures, which will serve to remove barriers to children and other individuals designated by the statute as they seek to exercise their rights under RCW 13.34.100.*

#### **Chair**

- Professor Lisa Kelly, Children & Youth Advocacy Clinic, University of Washington School of Law

#### **Background**

Washington State has consistently been ranked in the bottom ten states in each of the *First Star's National Report Cards*, most recently earning an "F" grade because children and youth are routinely unrepresented in their dependency and termination proceedings. The Commission supports providing counsel to all children and youth.

Senate Bill 6126 (2014) partially responds to the need for counsel for children and youth in dependency and termination proceedings in Washington State. Effective July 1, 2014, appointment of counsel is required six months after entry of the order that makes the child legally free. However, the court has discretion to appoint an attorney for children and youth earlier in the dependency process. Requests for appointment may now be made by a parent, child, GAL, caregiver, or the department. The statute also provides that the child's caregiver or any individual may refer a child to an attorney for the purposes of filing a motion for appointment of counsel, and that the child him or herself may retain counsel for the purpose of filing such motions.

#### **Workgroup Tasks**

The Children's Representation Workgroup is tasked with making consensus recommendations to the Commission regarding:

1. The role of AAG, Caseworkers, and CASA: clarify the roles and responsibilities of the Department, AGO, and CASA in assisting children and youth to obtain legal representation.
2. Parties' Positions: develop agency-wide policies governing motions for appointment of counsel
3. Referrals: develop policies to inform and protect caregivers and other involved individuals who wish to retain counsel for a child or make referrals to counsel for purposes of filing motions for appointment.

4. Attorney-Client Privilege: develop policies designed to educate all parties on the protections of confidentiality and privilege between attorneys and children.
5. Children With Disabilities: identify protective measures for children with significant disabilities as well as children who may be requesting counsel pro se without the assistance of an attorney
6. Discovery and Other Records: develop policies for the AGO and the Department when responding to discovery requests related to motions for appointment of counsel
7. How Children May Be Accessed for Purposes of Filing Motions for Appointment of Counsel: develop policies with regard to how counsel may obtain access to children and youth in order to respond to a request by the child, a referral or retainer to file a motion for appointment of counsel.
8. Transportation: develop policies for the options for transportation of children and youth to legal meetings



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

Social & Health Services Division  
PO Box 40124 • Olympia, WA 98504-0124 • (360) 586-6565

December 2, 2015

Justice Bobbe Bridge, Co-chair  
Jennifer Strus, Co-chair  
Washington State Supreme Court Commission on Children in Foster Care  
c/o Nichole Kloepfer  
Administrative Office of the Courts-Commissions  
1112 Quince St SE  
Olympia, WA 98501

RE: Children's Representation Workgroup

*Workgroup Goal: The new provisions of RCW 13.34.100 will increase the numbers of children, youth, and other individuals who will request legal representation for children in dependency and termination proceedings. The Workgroup will ensure that Commission members' respective agencies are aware of these changes in the law and assist them to develop statewide practices and procedures, which will serve to remove barriers to children and other individuals designated by the statute as they seek to exercise their rights under RCW 13.34.100.*

Professor Lisa Kelly was designated as the Chair of the Children's Representation Workgroup. Professor Kelly has completed a report based on the contributions of the members of the Workgroup. The Office of the Attorney General (AGO) and the Department of Social and Health Services (the Department) participated fully in the Workgroup, worked to achieve consensus when it could be achieved, and these areas are addressed in Professor Kelly's report. The purpose of this letter is to explain the reasons why the AGO and the Department did not agree with certain proposed procedures recommended by a majority of the Workgroup members.

Based on contributions from all involved, consensus was reached on a number of areas addressed by the Workgroup's charter, including with regard to the use of a form to alert the court that an interested person believes the child needs a court-appointed attorney. Where the Department and the AGO were not in agreement, our concerns related to ensuring both the necessary level of confidentiality for child welfare records and appropriate access to our most vulnerable children. To that end, the AGO and the Department agree to share basic case information with an attorney who sends a letter indicating that he or she has been retained to represent a youth and the attorney will be filing a Limited Notice of Appearance and a Motion

## ATTORNEY GENERAL OF WASHINGTON

December 2, 2015

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for Appointment of Counsel for the Child. The AGO and the Department also agree that once an attorney files a Limited Notice of Appearance, he or she is representing that child for the purposes of filing a motion. The AGO and the Department recognize that the attorney will need enough discovery to be able to file a motion for appointment of counsel for the child which addresses the *Mathews v. Eldridge* factors. Discovery needs will be case specific, depending on the circumstances of each child. The AGO and the Department agree that the documents that may be relevant to the motion for appointment of an attorney are those presented on page 7 of Professor Kelly's report.

The AGO and the Department recognize that the child's attorney will need access to the child as part of his or her representation of that child. The AGO and the Department understand that if an attorney is contacted by an individual interested in securing counsel for a child, the attorney will want to confirm with that child that the child actually wants an attorney to represent him or her. However, the AGO and the Department do not agree with the general proposition that any attorney who submits a notice of intent to file a Limited Notice of Appearance on letterhead will have access to the child. First, the children in the Department's care and custody have been abused or neglected and have suffered some amount of trauma. Additionally, in some cases, the attorney may not be able to confirm whether the child wants an attorney due to the child's age and developmental level. In these cases, it is not clear whether an attorney will proceed if the attorney is unable to confirm that the child would like to have an attorney. This practice probably varies from attorney to attorney. Further, under RCW 13.34.100, "any individual" may refer the child to an attorney or retain one for the child. "Any individual" could encompass a great deal of people: parents (offending as well non-offending), caregivers, relatives, teachers, service providers, or community members. In order to protect children from the risk of harm, the AGO and the Department advocate moving cautiously when "any individual" decides to contact an attorney because he or she believes the child should be appointed an attorney. There should be transparency regarding the identity of the individual who is seeking appointment of an attorney for the child and the reason for appointment before the attorney has access to the child and the child's confidential records.

Therefore, the AGO and the Department propose that if an attorney is going to file a motion to appoint an attorney for the child, the attorney should file a Limited Notice of Appearance before being granted access to the child and the child's confidential records, and should request a preliminary hearing to address access to the child and the child's confidential records. A preliminary hearing provides notice to the parties that a motion to appoint an attorney for the child will be filed and it gives the parties an opportunity to indicate whether there will be any objections to the motion. If there are no objections and the court agrees to appoint an attorney for the child, there will be no need for the attorney to obtain a court order for discovery and an agreed order of appointment would obviate the need for a further hearing. The preliminary hearing could potentially save a great deal of time and energy for all involved, while ensuring transparency and safe and appropriate access to children and their confidential records. If a party does intend to object to appointment of an attorney, the hearing would allow the court

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to determine the appropriate scope of discovery and access to the child needed to pursue the motion, based on the facts of each particular case.

In addition, the AGO and the Department are concerned about, and do not agree to, the following proposals contained in Professor Kelly's report:

1. The Preamble. The preamble contains legal argument with which the AGO and the Department do not agree. While some of these statements may be the position of certain advocacy groups who seek universal representation of dependent children in active appeals, they are not the position of the AGO and the Department. Instead, the AGO and the Department propose that the preamble should describe the statutory changes made to RCW 13.34.100(7) and the tasks assigned to the Workgroup.
2. Workgroup Tasks. Currently, Professor Kelly's report contains under Informing Children and Youth of their Right to Counsel: "The Workgroup recommends that the Office of Civil Legal Aid be charged with the responsibility to refer youth, caregivers and others to available legal resources to assist in the filing of motions for appointment of counsel. The Office of Civil Legal Aid is willing to take on this responsibility." In order to avoid possible conflicts of interest or preferences of one agency over another, the Department cannot agree to recommend any specific agency when asked about referrals for legal resources for children and youth.
3. Under Facilitating the Representation of Children for Purposes of Moving for Appointment of Counsel at Public Expense, Professor Kelly's report goes too far in describing what the Department's policies should say in regard to the appointment of an attorney for a child. The Department retains the discretion to develop its own policies. Traditionally, the Department has worked with external stakeholders when developing its policies. The Department should be allowed to follow its own procedures for developing its own policies.
4. In regard to transportation, the report contains the following under Facilitating the Attorney-Client Relationship for Represented Children Bringing Motions: "The Department should presume that it will be transport all children to hearings on their motions for appointment of counsel, unless it is informed otherwise." The needs of each child vary and the resources available to a caseworker also varies. Therefore, the Department proposes the following language: "With sufficient notice of a hearing and the child's wish to attend the hearing, the Department will agree to transport children to court. The child's schedule and impacts on the child's ability to attend school and participate in extracurricular activities should be considered when setting a court date."

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5. Regarding youth or other individuals who decide to request an appointment of an attorney directly from the court without the assistance of counsel, the majority of Workgroup members agreed that it was worth exploring whether a form could be developed which provided the information necessary for a court to determine whether an attorney should be appointed or not. Such a form was created, and is attached. However, the Workgroup participants disagreed regarding the best way to incorporate the form into the various attorney appointment processes used in each of the 39 counties. In recognition of the diversity in appointment procedures used across the state, the AGO recommends that the form be made available to the courts and that the stakeholders in each county should determine whether and how best to incorporate it into their practice and procedures.

Sincerely,

KAREN M. DINAN  
Senior Counsel

## PREAMBLE

In the Spring of 2015, the Washington State Supreme Court Commission on Children in Foster Care reconstituted the Children’s Representation Workgroup for the third time. The last convening resulted in the establishment of the Meaningful Legal Representation Standards for Children and Youth in Washington’s Child Welfare System.<sup>1</sup> These standards, which were adopted by the Commission and the Administrative Office of the Courts and which now govern state-funded children’s attorneys, endorse the principle that every child should be appointed counsel in dependency and termination proceedings in Washington State. The aspiration that all children be appointed counsel was echoed in the letter of invitation for workgroup members for this third convening.<sup>2</sup> While automatic appointment of counsel has yet to be enacted, in 2014, the legislature amended 13.34.100 to increase and strengthen dependent children’s access to competent counsel in Washington State by:

1. Requiring the automatic appointment of counsel for children six months post-termination of parental rights;<sup>3</sup>
2. Providing state funds for those children entitled to automatic appointment of counsel<sup>4</sup> and subjecting their attorneys to the standards previously recommended by this Workgroup, approved by the Commission and adopted by the Administrative Office of the Courts;<sup>5</sup>
3. Providing that, for those children not covered by the statutory guarantee of counsel, “the court may appoint an attorney to represent the child’s position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department,”<sup>6</sup> thereby removing the requirement that a child be twelve years of age before she or he can make a request and broadening the pool of individuals who can request that counsel be appointed to a child;
4. Providing that, for those children not covered by the statutory guarantee of counsel and who have not already retained counsel, “the child’s caregiver, or any individual, may refer a child to an

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<sup>1</sup> Meaningful Legal Representation for Children and Youth in Washington’s Child Welfare System, available at: [http://www.courts.wa.gov/content/PublicUpload/Commission on Children in Foster Care/HB 2735 Full Final Report with Appendices.pdf](http://www.courts.wa.gov/content/PublicUpload/Commission%20on%20Children%20in%20Foster%20Care/HB%202735%20Full%20Final%20Report%20with%20Appendices.pdf).

<sup>2</sup> “The Commission supports providing counsel to all children and youth,” see Letter from Justice Bobbe Bridge and Jennifer Strus, Assistant Secretary Children’s Administration, attached.

<sup>3</sup> RCW 13.34.100(6)(a) The court must appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights.

<sup>4</sup> RCW 13.34.100(6)(c)(i) Subject to amounts appropriated for this specific purpose, the state shall pay the costs of legal services provided by an attorney appointed pursuant to subsection (a) of this subsection, if the legal services are provided in accordance with the standards of practice, voluntary training and case load limits developed and recommended by the children’s representation workgroup pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must be calculated pursuant to (c)(ii) of this section.

<sup>5</sup> Meaningful Legal Representation for Children and Youth in Washington’s Child Welfare System, available at: [http://www.courts.wa.gov/content/PublicUpload/Commission on Children in Foster Care/HB 2735 Full Final Report with Appendices.pdf](http://www.courts.wa.gov/content/PublicUpload/Commission%20on%20Children%20in%20Foster%20Care/HB%202735%20Full%20Final%20Report%20with%20Appendices.pdf).

<sup>6</sup> RCW 13.34.100(7)(a)

attorney for the purposes of filing a motion to request appointment of an attorney at public expense;”<sup>7</sup> and

5. Providing that “the child or any individual may retain an attorney for the child for the purposes of filing a motion to request appointment of counsel at public expense.”<sup>8</sup>

The Commission reconstituted the Workgroup in order to bring together representatives of key constituencies in the child welfare system to develop recommended procedures to implement these amendments to RCW 13.34.100. The Workgroup’s charge primarily concerned the implementation of the latter three provisions.<sup>9</sup> It is important to note that the final two provisions, allowing for referral of a child to an attorney or retaining an attorney for the child for purposes of filing a motion for appointment at public expense, are qualified by the statement that they should not “be construed to change or alter the confidentiality provisions of RCW 13.50.100.”<sup>10</sup>

RCW 13.50.100 provides that a juvenile’s records<sup>11</sup> are confidential and shall be released only as allowed by statute. This statute allows for release of information to the juvenile’s attorney.<sup>12</sup> Where the workgroup has been unable to reach consensus, the cause is largely due to differing readings of this statute. A majority of the workgroup believes that individuals who seek to refer a child to an attorney or retain an attorney for a child under RCW 13.34.100(7) may disclose information to that attorney under the juvenile attorney exception of RCW 13.50.100.

The Department and the AGO have indicated that they would be willing to provide basic case information, such as the case number, the caption of the case, the county where the case is pending, the names of assigned counsel for the parties, the names of the child and other parties, to an attorney seeking to file a limited notice of appearance for purposes of filing a motion to appoint counsel on behalf of a child. In order to access this information, the attorney would need to provide the AGO or the Department with a letter stating that he or she has been retained to file a motion for the child. The Department, AGO, and CASA take the position that access to the child and any other confidential records relating to the child should be limited until after the filing of a Limited Notice of Appearance and that court approval should be sought and granted before an attorney for the child for this limited purpose can meet with his or her client and before any confidential information is provided. The remainder of the Workgroup believes that these strictures are neither required by RCW 13.50.100, nor are they workable in the often emergent circumstances under which a child would desire or need a lawyer. Instead, the remainder of the Workgroup believes that the purpose of the recent changes to RCW 13.34.100 was to facilitate the filing of such motions by children and caregivers and to allow for any individual to retain a lawyer to file a motion for appointment of counsel for a child. Having to go through the Department, the AGO and the court to access a child client and the child client’s information does not further the underlying purpose of the statute.

Caregivers are often holders of confidential information regarding the child and his or her family. Much of this information is relevant to the reasons why a child may need an attorney. Similarly, much of the information is instrumental in constructing an adequate motion for counsel at public expense. There is a concern that many caregivers are confused and concerned as to how they can proceed under RCW

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<sup>7</sup> RCW 13.34.100(7)(b)(i)(A)

<sup>8</sup> RCW 13.34.100(7)(b)(i)(B)

<sup>9</sup> See Children’s Representation Workgroup Charter, attached.

<sup>10</sup> RCW 13.34.100(7)(b)(ii)

<sup>11</sup> “Records,” for these purposes, includes “the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.” RCW 13.50.010(c).

<sup>12</sup> RCW 13.50.100(7).

13.34.100 in ensuring a child’s statutory right to access an attorney, and their right to make a referral for counsel or request counsel, without unwittingly breaking a confidentiality prohibition. Of note, RCW 13.50.100(5) states that when the Department discloses information regarding a child’s case, confidentiality is not waived and the person receiving that information is required to “maintain it in such a manner as to comply with such state and federal regulations and to protect against unauthorized disclosure.”<sup>13</sup> So long as the Department maintains that caregivers (licensed or otherwise) unlawfully breach confidentiality when referring a child to an attorney or in discussing the child’s situation with the attorney for purposes of filing a motion for counsel, caregivers will remain reluctant to seek legal help for a child in need, thereby rendering ineffective the most recent amendments to RCW 13.34.100.

Finally, in order to fully understand the complexity of requesting appointment of counsel and why children need legal assistance to make such requests, one must understand the nature of the governing substantive law. Under *In re Dependency of M.S.R. and T.S.R.*, the Washington Supreme Court held that children *in termination of parental rights proceedings* may have a due process right under the federal constitution to appointment of counsel, but that appointment must be determined on a case-by-case basis. The *MSR* Court also held that the child’s right to counsel is protected by “case by case appellate review.”<sup>14</sup> Under *M.S.R.*, courts are required to apply the *Mathews v. Eldridge* procedural due process standard when considering a motion for appointment of counsel for the child in termination proceedings. Many courts have applied it to dependency proceedings as well, though there is no governing case law on its applicability there.<sup>15</sup> The *Mathews* test requires the court to balance three factors: 1) the private interests at stake; 2) the government’s interests; and 3) the risk of error if the motion is not granted. Requests for counsel are brought before the court for consideration, presumably by motion to ensure a more thorough development and presentation of the facts and legal argument. The desirability of a formal motion is underscored by the Washington Supreme Court’s statement that the child’s right to counsel is protected by appellate review.<sup>16</sup>

This mix of statutory and case law demonstrates the need for counsel in order to file and argue the requisite motions. While members of the Workgroup may differ as to their views of the confidentiality provisions in light of the language in 13.34.100 and 13.50.100, a simpler system that does not place the onus on children and others to bring their own motions for appointment of counsel is recommended. Existing barriers directly impact the ability of willing counsel to timely file motions for counsel on behalf of children. Timing may be of the essence, e.g., when the issue at hand is the potential disruption of a child’s long term placement and attachments. Nationally, Washington State is an outlier in putting

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<sup>13</sup> RCW 13.50.100(5).

<sup>14</sup> *In re Dependency of M.S.R. and T.S.R.*, 174 Wn.2d 1, 21 (2012), reconsideration denied (May 9, 2012), as corrected (May 8, 2012).

<sup>15</sup> The ruling in *M.S.R.* was confined to motions for appointment in termination of parental rights actions. *In re Dependency of M.S.R. and T.S.R.*, 174 Wn.2d 1, 22 n.13 (2012), reconsideration denied (May 9, 2012), as corrected (May 8, 2012). However, given the Court’s analysis, which took into account the impact of dependency itself upon the child, many of the motions filed on behalf of children have argued that, *at the very least*, the standard enunciated in *M.S.R.* provides a constitutional floor to be applied in motions filed in the dependency context. Nevertheless, a strict reading of *M.S.R.* makes it clear that the Court has yet to precisely rule on the nature of the child’s right to counsel under the United States Constitution in the dependency context.

Similarly, the Court has not yet ruled on the nature of the child’s right to counsel in dependency or termination proceedings under the Washington State Constitution.

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

children, caregivers, and others in this Catch-22 situation of needing to file fulsome motions that require access to complete and protected information.<sup>17</sup> The Workgroup is aware of no other state that requires such a cumbersome procedure for children.

Nevertheless, the Workgroup has endeavored to develop and recommend protocols that will assist in the implementation of the new requirements found in RCW 13.34.100. The Workgroup was charged with the following goal:

*The new provisions of RCW 13.34.100 will increase the numbers of children, youth, and other individuals who will request legal representation for children in dependency and termination proceedings. The Workgroup will ensure that Commission members' respective agencies are aware of these changes in the law and assist them to develop statewide practices and procedures, which will serve to remove barriers to children and other individuals designated by the statute as they seek to exercise their rights under RCW 13.34.100.*

### **Workgroup Tasks**

The Children's Representation Workgroup was tasked with making consensus recommendations to the Commission regarding the following matters. Consensus has not been achieved on all matters. However, below is a recitation of the recommendations of the majority of the Workgroup. Those not in agreement have been invited to provide the Commission with how they would recommend addressing these issues and where they do not agree with the proposals set forth:

1. Informing Children and Youth of their Right to Request Counsel: In order for children and youth to act on the provisions of RCW 13.34.100, they need to be made aware of their right to request counsel.
  - a. Department case workers shall provide information to youth twelve years of age and older about their right to request counsel as required by statute. Additionally, Department case workers will provide all caregivers information about the right of children and youth of all ages to request legal representation and the right of caregivers themselves to request appointment of counsel for the child, to retain a lawyer to make the request on the child's behalf or refer a child to a lawyer for purposes of making such request. Finally, case workers will provide youth and their caregivers with contact information for a central clearinghouse that will handle referrals to available resources.
  - b. GALs/CASAs shall provide information to children and youth twelve years of age and older about their right to request legal representation as required by statute, and will provide contact information for a central clearinghouse that will handle referrals to available resources.
  - c. The Workgroup recommends that the Office of Civil Legal Aid be charged with the responsibility to refer youth, caregivers and others to available legal resources to assist in the filing of motions for appointment of counsel. The Office of Civil Legal Aid is willing to take on this responsibility.

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<sup>17</sup> See, First Star, *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused & Neglected Children 22-23* (3rd ed. 2012) available at: <http://www.firststar.org/wp-content/uploads/2015/02/First-Star-Third-Edition-A-Childs-Right-To-Counsel.pdf>

d. The Department will provide information to case workers and social work supervisors on how all children can request counsel and how children can retain counsel for full representation or for the limited purpose of assisting with a motion for appointment and on the duties of case workers to provide children and youth with information necessary to request counsel under RCW 13.34.100(7).

e. The CASA program will continue to provide information to its staff and volunteers about how children can request counsel under RCW 13.34.100 and on the responsibility to inform the children of their ability to request an attorney.

2. Facilitating the Representation of Children for Purposes of Moving for Appointment of Counsel at Public Expense:

a. Under the statute, a caregiver may file his or her own motion for appointment of counsel for a child in his or her care. In doing so, a caregiver may or may not seek representation by an attorney to file the motion. The Department should develop policies to make clear that a caregiver may share information regarding the child and his or her case with an attorney in order to support the motion for appointment of counsel.

b. Under the statute, any individual may refer a child to a lawyer to file a motion to request appointment of counsel at public expense. When a youth is of an age to make the contact on his or her own without adult assistance, the youth may certainly do so. However, the Workgroup understands that many children, and even teenagers, may need adult support to facilitate a meeting with a lawyer to discuss his or her right to request an attorney at public expense. The Department should develop policies to make clear that caregivers, service providers, and other individuals with whom the Department may share confidential information regarding the child are permitted to refer a child to an attorney and facilitate meetings with an attorney who may represent the child in a motion for appointment of counsel at public expense. Departmental policy should state that such meetings should respect the child's rights to attorney-client confidentiality under the Washington Rules of Professional Conduct Rule 1.6 and that the caregiver is not required to seek prior permission or approval from the Department before referring a child to an attorney or facilitating a meeting between the attorney and the child.

c. Under the statute, any individual may retain a lawyer for a child to file a motion to request appointment of counsel at public expense. When a child is of an age and developmental ability to consent to this representation, then the attorney's first responsibility should be to meet with the child to determine whether the child does in fact want the lawyer to file a motion on his or her behalf. Department policy should make clear that caregivers, service providers, and other individuals with whom the Department may share confidential information regarding the child are permitted to retain and facilitate meetings with an attorney who may represent the child in a motion for appointment of counsel at public expense. Department policy should include a statement that such meetings should respect the child's rights to attorney-client confidentiality under the Washington Rules of Professional Conduct Rule 1.6, that the scope of authority in representation is allocated to the child as required by Rule 1.2, and that the caregiver is not required to seek prior permission or approval from the Department before referring a child to an attorney or facilitating a meeting between the attorney and the child.

3. Facilitating the Requests for Appointment of Counsel: Given the limited legal resources available to file motions for appointment of counsel, the Workgroup believed that it was important to acknowledge the reality that many children and caregivers will need to act *pro se* in their requests for counsel while

some will have the benefit of having legal counsel represent them. Accordingly, recommendations are made separately as to the categories of “represented” and “unrepresented” movants.

**a. Represented Movants:**

Some movants will have legal representation to assist them in making a motion for appointment of counsel at public expense. Nevertheless, these movants themselves may not know the basic information necessary for an attorney to file a motion for appointment of counsel in the case. In such cases:

- i. The Department, and the AGO on its behalf, should provide basic case information to an attorney who represents a caregiver or a child (either directly or by third-party retainer), when such representation is indicated through a letter of representation on the attorney’s letterhead. This letter should be directed to the social worker, if known, and/or the AGO. This letter then authorizes the Department and AGO on its behalf to share otherwise confidential basic case information under RCW 13.50.100(7).
- ii. Basic case information includes the case number, the caption of the case, the names of assigned counsel for the parties, and any other information necessary to enable the counsel to file a limited notice of appearance. It also includes, but is not limited to: the age of the child; the status of the case; the names of the child and other parties in order to facilitate conflicts checking; the county in which the child resides; and the county with jurisdiction over the case. Caregivers, social workers, and others connected to the child are also permitted to relay this basic case information to an attorney to facilitate the representation once the letter of representation has been provided.

**Unrepresented Movants:** Legal resources available to assist children and youth with the filing of motions for appointment of counsel at public expense are limited. Given the finite nature of such assistance, the Workgroup realizes that children will be required to move forward *pro se*. In order to get the issue before the court, the Workgroup recommends the use of the attached form. The Workgroup recommends that completed forms be submitted to the Office of Civil Legal Aid. From there, the forms will be routed to the appropriate judicial officer. The Workgroup recommends that the judicial officer then set the matter for hearing as soon as possible.

4. Facilitating the Attorney-Client Relationship for Represented Children Bringing Motions:

a. Attorney-Client Privilege and Confidentiality:

- i. When an attorney has submitted to the Department a letter on letterhead stating that he/she represents the child, the Department agrees that the attorney-client privilege applies, and the attorney will be allowed to meet privately with his/her child client. Upon request of the attorney, the Department social worker may assist in facilitating this contact by notifying the caregiver that this contact is acceptable, and should be in private.
- ii. The relationship between the attorney and his or her child client is subject to the Rules of Professional Conduct and should be guided by the Meaningful Legal Representation Standards adopted by the Administrative Office of the Courts and referenced in RCW 13.34.100(6)-(7). As such, attorneys maintain a confidential relationship with their clients and disclose information only in accordance with the Rules of Professional Conduct. However, under both the Rules of Professional Conduct and the applicable standards, it is understood that attorneys for children will engage in information sharing (to the extent of the client’s consent), and will problem-solve with necessary parties and non-parties in order to

achieve their clients' goals. A child, like any other client, may permit or restrict the attorney's disclosure of information.

iii. If the attorney submits a letter to the Department on the attorney's letterhead stating that he/she represents the child, then he/she will be treated as the child's attorney.

iv. The Department will provide information for social workers, caregivers, and service providers to understand the confidential role that attorneys have with their child clients.

v. CASA will continue to provide information for its volunteers to understand the confidential role that attorneys have with their child clients.

**b. Transportation:**

i. Meetings between the child and the child's counsel should take place at reasonable times and locations that are familiar to the child, which may include the child's home (when agreed to by the caregiver), school, and other familiar settings. Meetings also may take place at attorney's offices when necessary to achieve privacy or to otherwise meet the child's wishes. When possible, the child's attorney should attempt to avoid disrupting the child's schooling. The Department may help facilitate this contact by communicating the need for the attorney to meet in private with the child to the child's caregiver. By agreeing to facilitate the Department is not agreeing to transport all foster children to meet with their attorneys.

ii. The Department should presume that it will be transport all children to hearings on their motions for appointment of counsel, unless it is informed otherwise..

**5. Discovery:**

a. Once the limited notice of appearance has been filed on behalf of the child, the court is authorized to provide access to the court file to the child's attorney of record.

b. Counsel is entitled to access to all records under RCW 13.50.100(7) "*A juvenile, his or her parents, the juvenile's attorney, and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained*" unless there is a court order preventing such disclosure. In the interests of expediency, counsel for the child is urged to request previously filed records from the court wherever and whenever possible and to narrowly tailor his or her initial requests to those documents believed to be necessary for the filing of the motion with additional records requested thereafter.

c. The Workgroup recognizes that each case will present its own individual discovery needs. However, below is a list of documents that may be relevant to the child's motion:

- i. Any evaluations of the child
- ii. Any progress reports from the child's treatment providers
- iii. IEPs, if any
- iv. Info regarding SAY issues, if any
- v. Case notes
- vi. Individual Service and Safety Plans

d. The Department agrees to provide releases where necessary to obtain information held by third-party service providers that could lead to discoverable information in support of motions for appointment of counsel.

6. Positions with Respect to Motions for Appointment of Counsel:

The AGO/Department will not object to appointment of an attorney to a child who is 12 or older. The AGO/Department also affirmatively believes that counsel should be appointed to any child or youth who is subject to contempt proceedings. The AGO/Department will move for counsel for any child who runs from care. For children younger than 12, the AGO/Department will determine its position on a case-by-case basis.

7. Communication between Limited Appointment Attorneys for Children and Caregivers:

Once the Department has received a letter stating that an attorney represents a child, caregivers and others connected to the child should treat the limited appointment attorney as they generally would treat a child's attorney – including facilitating meetings with the child and relaying information to the attorney. The caregiver may relay information to the attorney orally or in writing. The caregiver may also share documentation regarding the child such as an IEP, mental health evaluation, or service plan

8. The Rights of Children with Disabilities and Very Young Children:

The Workgroup was charged with “identifying protective measures for children with significant disabilities.” The Workgroup recognizes that very young children as well as those with significant disabilities have legal interests that attorneys can protect. The Workgroup recommends that the policies developed herein be applied with equal force and effect to all children, without respect to cognitive ability or disability. If a child is either preverbal or nonverbal, it is even more important that other individuals be provided with the necessary information to be aware of their rights to secure counsel for the child under RCW 13.34.100(7). The Workgroup also notes that GR 33 contemplates the appointment of counsel to litigants with a disability, and is applicable to dependencies and terminations.

### **INSTRUCTIONS ON USE OF FORM**

This form will be distributed to the following entities and put on their websites if possible:

- CASA office
- Children's Administration
- Office of Public Defense
- Office of Civil Legal Aid
- FPAWS
- Public Defender Offices
- Kinship Navigators/Resource Agencies

The recommendation is that it be added to the independence.wa.gov website. It is also recommended that information on the form should be part of the UW Alliance for Child Excellence's core training.

Completed forms will be sent to the Office of Civil Legal Aid. From there, OCLA will route the form to the appropriate judicial officer. The Workgroup recommends that the judicial officer then set the matter for hearing as soon as possible.

**REFERRAL FORM FOR APPOINTMENT OF ATTORNEY FOR CHILD**

Name of Child: \_\_\_\_\_ Child's Date of Birth: \_\_\_\_\_

Location of Court: \_\_\_\_\_ Case Number: \_\_\_\_\_

Next Court Date: \_\_\_\_\_ Name of Case Worker: \_\_\_\_\_

Your Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_

Your Phone Number: \_\_\_\_\_ Your Email: \_\_\_\_\_

Is the appointment of an attorney emergent?  Yes  No

Why? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has the child expressed a desire to have an attorney?  Yes  No

Reasons why the child should have an attorney appointed? (Please check all that apply)

- Placement issues
- Services
- Sibling visits
- Parent visits
- Permanency planning issues
- Other: \_\_\_\_\_

**This form is to be used if you are trying to get an attorney appointed to represent a child or youth in a dependency case and you have not already had contact with an attorney. This form can be used either by the child/youth or it can be used by anyone who feels that the young person needs an attorney to represent their stated wishes and legal rights.** Please mail to Office of Civil Legal Aid, P.O. Box 41183 Olympia, WA 98507 or send via email to: [jill.malat@ocla.wa.gov](mailto:jill.malat@ocla.wa.gov).