



CENTER FOR THE RIGHTS  
OF ABUSED CHILDREN

## **Attorneys Protect Children's Fundamental Rights**

### **Executive Summary**

Children possess numerous legal and constitutional rights that must be protected. Amid the numerous interests in abuse and neglect proceedings, children's rights and interests are distinct from any other party - including their parents. These rights, ranging from family integrity and safety to education and permanency, are central to abuse and neglect proceedings. With so much at stake, children need an attorney to help them navigate the complex legal system, argue on their behalf, and zealously protect their rights.

Despite the significant need, children are often denied their constitutional rights and a meaningful opportunity to be heard. Instead, even though their rights are central to the case, children are relegated to the periphery of their own cases. They are left to silently navigate the complexities and bureaucratic obstacles of the child welfare and legal systems alone. Their voices are often silenced, and their constitutional rights and liberty interests denied.

Attorneys serve as a beacon of hope for victims of abuse and neglect. These advocates deploy their legal expertise to help children navigate the legal process in a traditional attorney-client relationship. Numerous ethical obligations come with the attorney-client relationship. These obligations can effectively build relationships of trust, help center children's interests, and guide competent and zealous advocacy to defend the rights and liberties of abused and neglected children. With legal counsel, children know someone is in their corner, protecting their interests.

While justice alone justifies the appointment of traditional counsel to children in dependency proceedings, securing individual rights and liberties and elevating children's voices positively impact children's lives. Researchers observed the transformative power of granting children a voice in their fate through high-quality legal representation. Thus, not only is justice served, but also the very trajectory of children's lives can change for the better.

In pursuing a more just and equitable child welfare system, one reform stands out: the imperative to give children a voice through traditional legal counsel. By securing constitutional rights and amplifying children's voices, we pave the way for a future where abused and neglected children can find permanency and thrive.

## Key Takeaways

- Children represented by legal counsel exited foster care to permanency at rates up to 3.5 times greater than children who were not.<sup>1</sup>
- From the time a child's case plan was approved, children represented by traditional attorneys achieved permanency at approximately twice the rate of children who were not.<sup>2</sup>
- While children represented by traditional attorneys significantly increased the rate of adoption and guardianship, these improved outcomes did not come at the expense of reunification. In fact, the reunification rate for children with an approved case plan was up to 1.72 times faster than for children not represented by counsel.<sup>3</sup>
- Children with legal representation had a 45% higher reunification rate, a 30% reduction in the rate of placement moves, and a 65% reduction in the rate of unnecessary school moves.<sup>4</sup>

## **Critical Elements of Reform**

To elevate children's voices, center children's rights in abuse and neglect proceedings, and more efficiently achieve permanency, statutes must:

- Appoint traditional legal counsel to children in dependency proceedings, including all ethical obligations attached to the attorney-client relationship.
- Ensure that every child receives an attorney, *regardless of age*.
- Clarify best practices for representing young children.
- Train attorneys to provide high-quality representation to children.
- Develop a governmental structure to ensure quality training, increase accountability for high-quality representation, and improve court procedures.

## **Introduction**

Children, like adults, possess fundamental rights. Among these rights are the right to basic necessities, education, family, and freedom from abuse.<sup>5</sup> Generally, parents are entrusted with the duties of providing for their children and protecting their children's rights. However, in cases of child maltreatment, through abusive or neglectful behavior, parents breach their parental duties, violating their children's rights. In these circumstances, states intervene to protect children from harm. Without fit parents and because the state's woeful inability to serve as a good substitute, children are often left without an advocate.

After being removed from their homes, child victims of maltreatment find themselves in abuse and neglect proceedings. In these legal proceedings, decisions that impact children's fundamental rights and liberties will be made. In abuse and neglect proceedings, judges decide what is in children's best interests, determinations that can influence familial and community relationships, as well as physical and mental well-

being,<sup>6</sup> educational attainment,<sup>7</sup> economic stability,<sup>8</sup> likelihood of incarceration,<sup>9</sup> and even mortality rates.<sup>10</sup>

Acknowledging the due process rights of abused and neglected children is imperative. When fundamental aspects of children's liberties hang in the balance, children must be heard and express their perspectives and concerns, facilitated by the appointment of a traditional attorney. In a traditional attorney-client relationship, lawyers can articulate children's wishes and safeguard their rights and interests.

## **Background**

In a landmark decision, the United States Supreme Court found the Due Process Clause of the Fourteenth Amendment applies to juvenile defendants.<sup>11</sup> Consequently, juvenile defendants must be notified of their right to counsel. If they cannot afford counsel, an attorney must be appointed in delinquency proceedings.<sup>12</sup>

The Court rejected arguments that other adults - such as parents, probation officers, and judges - could protect the child's interests effectively.<sup>13</sup> When facing a serious loss of liberty, the court found:

*The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."<sup>14</sup>*

Children in need of state care are *not* juvenile defendants accused of committing a crime. Rather, they are victims of abuse and neglect. Like youth in juvenile delinquency proceedings, children who are victims of abuse and neglect are placed in the state's custody and have serious liberty interests at stake. They are removed from their homes and granted limited, if any, visits with parents and siblings. Often children are placed in the care of strangers and moved from one placement to another, lacking crucial stability. They can experience significant educational disruption, leading to poor educational attainment. In summary, the decisions made in abuse and neglect proceedings have far-reaching impacts and can infringe upon children's fundamental rights. Children need genuine legal representation to manage legal proceedings, ensure due process, and chart the course for finding a family and flourishing.

## **Models of Child Representation**

While not every state mandates legal representation for children in foster care,<sup>15</sup> among the states that do, there exist two prevailing models of child advocacy within

abuse and neglect proceedings. These models are commonly similarly categorized as “representation” yet diverge in their fundamental focus.

One model represents the best interests of the child through the appointment of a guardian ad litem (GAL). The other model represents the child and the child’s position by appointing a traditional attorney. In the GAL model, a GAL represents and argues for what the GAL believes to be in the child’s best interest. In the traditional attorney model, the child is represented by a conventional attorney and the court decides what is in the child’s best interests after the child presents their wishes and desired outcomes to the court through their attorney.

The United States Constitution guarantees due process of law and equal protection of the laws.<sup>16</sup> Children’s rights in dependency proceedings should include the right to be heard, protection from harm, and, at a minimum, equal treatment by governmental entities.<sup>17</sup> Thus, constitutional principles of justice necessitate the appointment of traditional legal counsel to represent children in abuse and neglect proceedings as opposed to best-interest GALs.

### Guardian ad Litem

Many states nationwide employ GALs to represent the best interests of children in abuse and neglect proceedings. Within this model of representation, there are additional subsets. For example, some states offer child representation through GALs who are licensed attorneys. Other states have GALs who are non-attorneys who have typically completed some training for their roles.<sup>18</sup>

Upon appointment, GALs are tasked with investigating the facts of a case and advocating for what they perceive to be the child’s best interests. However, the result is a subjective determination that can be distorted by personal biases with little to no accountability.

As independent investigators and court advisors, GALs owe their duties primarily to the court rather than directly to the child. Thus, traditional duties associated with the attorney-client relationship, such as competency, confidentiality, diligence, and loyalty are not attached to the “best-interest” representation a GAL provides. Consequently, a GAL’s belief concerning a child’s best interests may not align with the child’s and, in such cases, the GAL typically has no obligation to represent the child’s wishes in court. This can limit the information available to the court and relegate the child to a position of silent observer in cases to which they are a party and have the most at stake.

Problematically, best-interest representation is often conflated with advocating for a child. The result is substantial confusion for children, parents, caregivers, and child welfare professionals. The bottom line is children represented by GALs lack an advocate to voice children’s positions and adequately protect children’s rights. When

so much is at stake in their lives, children need an advocate; they have a right to voice their opinions and be heard. While GALs can serve a purpose, states must differentiate the roles of GALs and traditional attorneys in abuse and neglect proceedings.

### Traditional Legal Counsel

The Center recommends appointing traditional legal counsel for *all* children in care, regardless of age, as a best practice aligned with the federal Child Abuse Prevention and Treatment Act.<sup>19</sup> In the traditional representation model, an attorney serves as the child's legal representative and advocates for the child's position. The child and the attorney form an attorney-client relationship. Numerous ethical duties are inherent in the attorney-client relationship, including competency, confidentiality, diligence, and loyalty. A GAL generally does not have similar obligations to a child who is the subject of a best-interest determination.

Traditional attorneys give children a voice in abuse and neglect proceedings, satisfying the demands of due process by providing children whose liberty interests are at stake an opportunity to be heard. While some object to traditional legal counsel, citing concern for a child's youth or diminished ability to direct the representation, as discussed further below, lawyers should already be familiar with long-standing guidance on determining diminished capacity and maintaining a normal attorney-client relationship to the maximum extent possible – including long-standing practice of substituting judgment. Ultimately, traditional legal counsel is the best way to ensure that a child is heard in abuse and neglect proceedings.

Even in states that have statutorily recognized children's rights, unless children have an advocate with the knowledge and skill necessary to advocate for and vindicate those rights, there is nobody to hold the system accountable for complying with the child's rights.<sup>20</sup> Not only do attorneys give children a voice in dependency proceedings, but they help advocate on behalf of a child and remedy violations of their client's constitutional and legal rights while they are in the child welfare system.

### Hybrid

While best practice demands traditional legal counsel, some states operate a hybrid model in which some children receive a GAL while others are appointed a traditional attorney.<sup>21</sup> In these states, typically, younger children are appointed a GAL until they attain a pre-established age at which a child receives legal counsel.

This dualistic approach creates apparent inequalities, granting the opportunity to be heard through traditional legal counsel only to some children while denying it to others based solely on age. Moreover, arbitrarily relying on age as the primary determining factor measuring children's ability to express their wishes, counsel with their attorney,

and direct the representation fails to account for individual development, competency, and circumstances.

## **Policy Recommendations**

### *(1) All Children Receive Traditional Legal Counsel*

States should prioritize the appointment of traditional legal counsel for all children involved in abuse and neglect proceedings. These appointed attorneys must establish a traditional attorney-client relationship with the child, assuming all corresponding ethical and legal obligations owed to a client.

#### *Funding*

Undoubtedly, policymakers are curious about how appointing traditional attorneys for children in foster care would be funded. In most states, there is already a compensation structure in place, whether the states offer a GAL, a traditional attorney, or some hybrid model of representation. In practice, especially in states offering children a GAL who is an attorney, the only difference is establishing an attorney-client relationship vis-à-vis the child in care. Thus, there should be little fluctuation in the level of funding required. Operationally, the number and usage of GALs will go down, and the number and usage of attorneys for children in care will increase.

Where there is a need to meet increased costs, states should look at ways to maximize federal funds available to represent children in foster care. This includes competitive grants to nonprofits and courts and pass-through funds to states and local governments. Also, federal matching funds through Title IV-E of the Social Security Act can help pay the costs of attorneys representing certain children and their parents in child welfare legal proceedings, which many jurisdictions are not maximizing.<sup>22</sup>

Federal guidance explains how child welfare agencies can claim federal financial support for administrative costs associated with independent legal representation provided by attorneys representing eligible children. These administrative expenses can include “preparation for and participation in judicial determinations” in all stages of foster care legal proceedings.<sup>23</sup> Additionally, a federal regulatory change has been proposed to expressly allow federal aid to cover expenses related to the representation of a child in legal proceedings that could arise before abuse and neglect proceedings are initiated.<sup>24</sup>

#### *Attorney Availability*

Access to attorneys, especially in rural counties, is an issue that states must address as necessary. However, despite perceptions regarding an attorney shortage, states must find a way to ensure a child’s rights to due process and equal protection of the laws. The legislature and the judiciary should work collaboratively to identify barriers to attorneys practicing in dependency proceedings and develop the supports and

incentives necessary to recruit and retain attorneys to fill vacancies and satisfy the demand for this crucial role.

Through traditional legal counsel, states can address these issues and ensure equitable access to legal representation by appointing counsel to *all* children in the state's care. By removing arbitrary age barriers, this approach promotes fairness and upholds the principle of equal protection under the law, thereby safeguarding the rights and interests of all children involved in abuse and neglect proceedings.

## (2) Representing Young Children and Children with Disabilities

States should ensure that children, including the young and those with diminished capacity, have their wishes advocated for in abuse and neglect proceedings. Some children may not be able to voice their wishes because of infancy, while others may struggle to direct their representation due to disability. Each child has a unique voice, with needs as varied as individuals. Whatever the cause of diminished capacity, lawyers lift each child's voice, bringing equality before the law despite unequal circumstances. To bring about greater equality and elevate *all* children's voices, states, through statutes or court rules, should clearly define the mechanism for substituting judgment when necessary to ensure every child's position is represented and heard.

Legal representation for young children who cannot speak, express a point of view, or make considered judgments requires consideration of diminished capacity and substituted judgment. Determining diminished capacity and maintaining a normal attorney-client relationship to the maximum extent possible should be a concept that is familiar to all attorneys.

The American Bar Association (ABA) Model Rules of Professional Conduct include guidance to attorneys in making decisions regarding diminished capacity and protective action for all clients, not just young clients. The ABA rules require attorneys with clients who have a diminished capacity to "make adequately considered decisions in connection with a representation ... because of minority ... the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."<sup>25</sup> Comments to the rule further explain:

*[A] client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own wellbeing. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine*

*financial matters while needing special legal protection concerning major transactions.*<sup>26</sup>

Additionally, the ABA recommends substituting judgment when necessary to represent young children. This means lawyers must determine, “what the child would decide if he or she were capable of making an adequately considered decision and representing the child in accordance with that determination.”<sup>27</sup> This determination is fluid, fluctuating as the child’s capacity to direct the lawyer increases.<sup>28</sup>

When substituting judgment, the lawyer can “seek guidance from appropriate professionals and others with knowledge of the child.”<sup>29</sup> Commentary explains, “[a] lawyer should determine the child’s position based on objective facts and information, not personal beliefs. To assess the needs and interests of this child, the lawyer should observe the child in his or her environment and consult with experts.”<sup>30</sup>

Following the passage of Arizona law guaranteeing traditional legal counsel to all children in state care, the judiciary clarified the process of substitute judgment. Arizona Juvenile Court Rule 306(a)(C) provides:

*During any period in which a normal attorney-client relationship is not reasonably possible to maintain, the child’s attorney must make a substituted judgment. The attorney must advise the court of the determination of capacity that requires substituted judgment and any subsequent change in that determination. A substituted judgment includes determining what the child would decide if the child was capable of making an adequately considered decision and representing the child in accordance with that determination. The attorney should take direction from the child as the child develops the capacity to direct the attorney.*

*What if the child wishes to return to an unsafe environment?*

The lawyer is bound to advocate for the wishes of the child. If the child wishes to return home, the lawyer must advocate for the child’s wishes. However, the attorney can develop a strategy to *safely* return the child home. Furthermore, the ABA model rules provide an opportunity to protect a child from substantial harm. It states:

*When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to*

*take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.*

Every child has a right to be heard in dependency proceedings. Current rules of professional conduct already provide attorneys with significant direction in representing children and maintaining an attorney-client relationship. However, states can further clarify the process of substituting judgment for children in dependency proceedings through statutory or regulatory change.

*(3) Provide high-quality training.*

Children have the right to *high-quality* representation. Statutorily mandating the appointment of traditional legal counsel establishes the foundation for satisfying due process. However, it may have a negligible effect if lawyers do not provide quality representation.

One model of training studied by the University of Michigan, called *QIC-Childrep*, focused on six core skills:

- 1. Enter the Child's World: Engage with the child, learn their needs, guide them, counsel them and advocate for their needs while accommodating their stated interests consistent with state law.*
- 2. Assess child safety and protect the child but without over-reacting. "Remove the danger, not the child," whenever that can be done consistent with child safety. Distinguish between case plan and safety plan.*
- 3. Actively Evaluate Needs: Facilitate an appropriate assessment of the needs of the child and his/her family. Diagnose the problem.*
- 4. Advance Case Planning: Facilitate development of an appropriate case plan.*
- 5. Develop Case Theory: Develop an active and forward-looking theory of the case. What is going on here? Adopt, and maybe rule-out, alternative and tentative theories of the case. Provides force and direction to the advocacy.*
- 6. Advocate Effectively: Use advocacy corollaries in meeting a child's needs that stress problem-solving and non-adversarial approaches - but which include traditional adversarial modes when appropriate.<sup>31</sup>*

Research shows that trained attorneys who implement best practices related to child representation achieve improved outcomes for children, increase communication with people involved in the proceedings, are more engaged in conflict resolution, demonstrate a commitment to advancing the case, and help children exit care sooner.<sup>32</sup> Thus, it is incumbent on states to ensure high-quality representation.

Unlike adults, who are generally more capable of holding lawyers accountable, children are less likely to have the knowledge or means of challenging ineffective counsel. Consequently, states should play an increased role in ensuring appointed counsel is adequately trained and accountable for effectively representing children in dependency proceedings.

#### *(4) Structure the System to Ensure Quality and Accountability*

States vary in the methods of training attorneys who represent children, ensuring their quality, and holding the system accountable. While the structure to accomplish quality representation for all children in care can vary as widely as there are child welfare systems, we recommend a centralized quality assurance structure as the best practice.

For example, in addition to establishing a right to counsel in Missouri, proposed legislation would establish an “Office of the Child’s Representative” (Office) within in the state’s supreme court.<sup>33</sup> The Office’s primary function is to ensure “uniform, high-quality legal representation to children.”<sup>34</sup> It will accomplish high-quality representation by ensuring the provision of training, recommending minimum training requirements, establishing practice standards, conducting oversight of practitioners, establishing strategic partnerships, setting compensation rates, and discovering and enhancing funding sources.<sup>35</sup> The Office will also be responsible for developing a model to assess child representation and child outcomes. Similar existing programs can be found in states like Colorado and New Mexico.<sup>36</sup>

## **Conclusion**

Traditional legal counsel ensures children’s constitutionally guaranteed right to due process and protects their fundamental rights. Appointing attorneys who establish traditional attorney-client relationships gives children access to an adult advocate who can and must build trust, assert children’s voices, and help protect children’s liberty interests in complex proceedings. Moreover, research demonstrates traditional legal counsel’s positive impact on child welfare – particularly on expedited permanency and improved child wellbeing. With the support of dedicated advocates, children receive justice and have a chance to alter the trajectory of their lives for the better.

The Center for the Rights of Abused Children is often asked what is the most important child welfare reform a state can pursue to achieve a more just and equitable child welfare system and to improve child outcomes. Our answer is, “Give abused and neglected children lawyers.” The time to act is now. States must appoint high-quality, specifically trained legal counsel for all children in foster care, regardless of age or capacity. By amplifying children’s voices through traditional legal counsel, we pave the way for a future where abused and neglected children are heard, find permanency, and thrive.

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<sup>1</sup> Andrew E. Zinn & Jack Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County* 14-15 (Chapin Hall Center for Children 2008), <https://www.issueab.org/resources/1070/1070.pdf>.

<sup>2</sup> *Id.* at 20.

<sup>3</sup> *Id.*

<sup>4</sup> Wash. State Ctr. for Ct. Rsch., *Evaluation of the Washington State Dependent Child Legal Representation Program* 1 (2021), <https://www.courts.wa.gov/subsite/wscrr/docs/DCLR%20Report%202021.pdf>.

<sup>5</sup> Tim Keller, Ctr. for the Rts. of Abused Child., *Asserting, Arguing, and Appealing the Constitutional Rights of Children in Foster Care* 7 (2024), [https://www.thecenterforchildren.org/wp-content/uploads/2024/01/2024\\_Center\\_Practice\\_Manual\\_Digital\\_Final\\_012324.pdf](https://www.thecenterforchildren.org/wp-content/uploads/2024/01/2024_Center_Practice_Manual_Digital_Final_012324.pdf).

<sup>6</sup> Am. Acad. of Pediatrics, *Health Care of Young Children in Foster Care*, 109 *Pediatrics* 536, 536 (2002). See also, Md. Dep't of Legis. Servs., *Overview of Homelessness and Homeless Services in Maryland* 15 (Sept. 2015).

<sup>7</sup> Mark E. Courtney, et. al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26, 20* (Chapin Hall, 2011), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf>.

<sup>8</sup> U.S. Dep't of Health & Hum. Servs., *Coming of Age: Employment Outcomes for Youth Who Age Out of Foster Care Through Their Middle Twenties*, at i (2008), <https://www.urban.org/sites/default/files/publication/31216/1001174-Coming-of-Age-Employment-Outcomes-for-Youth-Who-Age-Out-of-Foster-Care-Through-Their-Middle-Twenties.PDF>.

<sup>9</sup> *Supra* note 8.

<sup>10</sup> U.S. Dep't of Health & Hum. Servs., *Child Maltreatment 2020*, 58 (2023) <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>.

<sup>11</sup> *In re Gault*, 387 U.S. 1, 41 (1967).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 35.

<sup>14</sup> *Id.* at 36 (citing *Powell v. State of Alabama*, 287 U.S. 45, 69, (1932).)

<sup>15</sup> “13 states do not guarantee right to counsel for children in child welfare cases: Alaska, Florida, Hawaii, Idaho, Illinois, Indiana, Maine, Minnesota, New Hampshire, North Dakota, South Carolina, Texas, Washington.” Nat'l Ass'n of Couns. for Children, *Right to Counsel Map*, <https://counselforkids.org/right-to-counsel-map/>.

<sup>16</sup> U.S. Const. amend XIV.

<sup>17</sup> Tim Keller, *supra* note 5 at 7.

<sup>18</sup> Nat'l Ass'n of Couns. for Children, *State Models of Children's Legal Representation* (2023), <https://counselforkids.org/wp-content/uploads/2023/05/Model-of-Rep-Chart-2023.pdf>.

<sup>19</sup> See Donald Duquette & Mark Hardin, U.S. Dep't of Health and Hum. Servs., Children's Bureau, *Guidelines for Public Policy and State Legislation Governing Permanence for Children* (1999), VII-21, <https://ia801609.us.archive.org/33/items/guidelinesforpub00duqu/guidelinesforpub00duqu.pdf>.

<sup>20</sup> Ctr. for the Rts. of Abused Child., *Enforcing the Rights of Children in Foster Care* (last accessed April 2024), [https://www.thecenterforchildren.org/wp-content/uploads/2024/02/CFC\\_Bill\\_of\\_Rights\\_Toolkit\\_022824.pdf](https://www.thecenterforchildren.org/wp-content/uploads/2024/02/CFC_Bill_of_Rights_Toolkit_022824.pdf).

<sup>21</sup> *Supra*, note 18.

<sup>22</sup> Nat'l Ctr. for State Cts., *Title IV-E Reimbursement for Lawyers Representing Children, Parents, and Pre-Petition Prevention Opportunities* (2022), [https://www.ncsc.org/\\_data/assets/pdf\\_file/0027/79524/Title-IV-E-Reimbursement.pdf](https://www.ncsc.org/_data/assets/pdf_file/0027/79524/Title-IV-E-Reimbursement.pdf); U.S. Dep. of Health & Hum. Servs., Admin. for Children & Families, ACYF-CB-IM-21-06, *Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being* (2021), <https://www.acf.hhs.gov/cb/policy-guidance/im-21-06>.

<sup>23</sup> *Id.*

<sup>24</sup> U.S. Dep't of Health & Hum. Servs., Admin. of Children and Families, ACF-2023-0008-0001, *Foster Care Legal Representation* (2023), <https://www.govinfo.gov/content/pkg/FR-2023-09-28/pdf/2023-20932.pdf#page=1>.

<sup>25</sup> Model Rules of Pro. Conduct r. 1.14 (Am. Bar Ass'n 2024).

<sup>26</sup> *Id.* at cmt. 1.

<sup>27</sup> ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings § 7(d) (Am. Bar Ass'n 2011), [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/aba\\_model\\_act\\_2011.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* cmt.

<sup>30</sup> *Id.*

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<sup>31</sup> Donald Duquette, *How to Improve Legal Representation of Children in America's Child Welfare System* 6 (2022), *Law and Economics Working Papers*, University of Michigan Law School Scholarship Repository, [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1343&context=law\\_econ\\_current](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1343&context=law_econ_current).

<sup>32</sup> Donald N. Duquette, Brittany Orlebeke, Andrew Zinn, et al, *Children's Justice: How to Improve Legal Representation of Children in the Child Welfare System* 163 [NACC E-version, 2021], <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1109&context=books>.

<sup>33</sup> Mo. S., S. B. 801, 46, <https://www.senate.mo.gov/24info/pdf-bill/comm/SB801.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See Off. of the Child's Representative, <https://coloradochildrep.org/>, and N.M. Off. of Family Representation and Advocacy, <https://www.familyrepresentationnm.org/>.

## **FAQs: Switching from guardians ad litem to client-directed attorneys in child abuse and neglect cases.**

### **Guardians ad Litem (GAL)**

### **Client-Directed Attorney**

#### **How does the role of guardians ad litem differ from client-directed attorneys?**

- GALs do not represent the child.
- GALs advocate for their own position.
- GALs are supposed to conduct an independent investigation and determine what they believe to be in the best interest of the child.
- Attorneys represent the child and have elevated ethical obligations to listen to the child and hold the child welfare system accountable.
- Attorneys advocate for the child's position.
- Attorneys work with the child to determine the child's position and expressed interests regarding outcome of abuse and neglect proceedings, including the living arrangement.

#### **How do the ethical obligations differ between GALs and client-directed attorneys?**

- GALs do not form an attorney-client relationship.
- GALs do *not* owe the child any ethical duties that accompany the attorney-client relationship such as loyalty and confidentiality.
- GALs have a duty to the court to assist the judge to determine a child's best interests.
- Attorneys form an attorney-client relationship with the child.
- Attorneys must advocate for the child's rights, remain loyal to the child's wishes, competently represent the child, and keep non-waived communications with the child confidential.
- An attorney's duty is to the child client alone while the judge determines the child's best interest having heard from all parties – especially the child.

#### **How do GALs and client-directed attorneys differ when handling children or youth with diminished capacity\*?**

*\*Diminished capacity indicates a full or partial inability to know and express what one wants and the related consequences, due to issues like age, maturity, and mental disabilities.*

- A GAL's job remains the same – make an independent determination about what is in the child's best interests – sometimes without ever meeting the child.
- An attorney would be required to maintain a normal attorney-client relationship to the maximum extent possible.
- If a child is unable able to express his or her wishes, the attorney determines what the child would want, if the child were able to express his or her wishes, not the attorney's opinion about what is best.

### **How are conflicts of interest addressed by GALs and client-directed attorneys?**

- When conflicts arise between children, any conflict of interests are not directly addressed. The GAL will continue to arrive at a determination of the children's best interests.
- In the event of a conflict of interest between the GAL's determination of child's best interests and the child's expressed wishes, states vary in the response. Some states require GALs to inform the court of the conflict and permit the appointment of an attorney.
- Conflicts of interest, whether they arise between clients, or between the attorney and the client, will be handled in the same manner as any other client – sometimes requesting the appointment of separate counsel for each child.
- Client-directed attorneys are bound to follow the directives of their client. Depending on state law, if the attorney fears for the safety of the child, they can request appointment of a GAL or can reveal limited information necessary to protect the child.

### **How are attorneys held more accountable than GALs for representing a child's wishes?**

- There are no meaningful measures to ensure that a child's wishes are adequately presented to the court.
- There are no meaningful measures to hold GALs accountable.
- Attorneys can be fired if the attorney fails to advocate for the client's wishes or face disciplinary action for failure to fulfill their ethical obligations.

### **How do client-directed attorneys improve outcomes for foster children?**

Children represented by client-directed counsel:

- Exited foster care for a permanent home at rates ranging from 1.7 to 3.5 greater than children who were not.
- Experienced a 45% higher reunification rate.
- Saw a 30% reduction in placement moves, and
- Were unnecessarily moved 65% less often.

### **What is the cost of switching from GALs to attorneys for kids?**

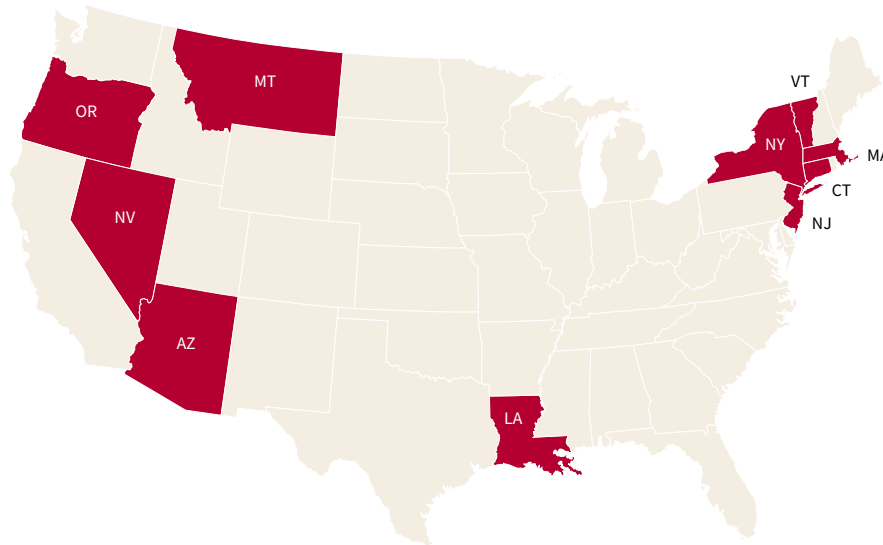
In states that already regularly assign attorney GALs to the cases of children in care, assigning client-directed counsel in lieu of GALs should not impact the budget.



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**STATES WITH RIGHT TO COUNSEL FOR CHILDREN**

We believe every child deserves a safe and loving home. When asked by lawmakers across the country for the single reform that will help protect the most abused and neglected children in foster care, our answer is always the same — attorney representation for children. The graphic below shows which states guarantee the appointment of client directed attorneys for all children.



STATE	STATE STATUTE
Arizona	Ariz. Rev. Stat. § 8-221 - 2021 Legislation <a href="#">SB 1391</a> required the appointment of Expressed/Stated-Interest legal counsel in all dependency cases
Connecticut	<a href="#">Conn. Gen. Stat. § 46b-129a (2)(c)</a> and <a href="#">§ 46b-135</a>
Louisiana	<a href="#">LSA-Ch.C. Art. 607</a> ; <a href="#">LSA-Ch.C. Art. 551</a>
Massachusetts	<a href="#">M.G.L.A 119 § 29</a>
Montana	Mont. Code Anno., § 41-3-425(2)(b); 2023 Legislation <a href="#">Senate Bill 148</a> required the appointment of Expressed/Stated-Interest legal counsel in all dependency cases.
Nevada	<a href="#">Nev. Rev. Stat. Ann. § 432B.420(2)</a> ; <a href="#">Nev. Rev. Stat. Ann. § 128.100(2)</a>
New Jersey	<a href="#">N.J. Stat. § 9:6-8.23</a> ; <a href="#">NJ Stat. §9:6-8.21(d)</a>
New York	<a href="#">NY CLS Family Ct Act § 241</a>
Oregon	<a href="#">O.R.S. § 419B.195</a>
Vermont	<a href="#">33 V.S.A. § 5112</a>

# Substituted Judgment & the Role of Child Party Attorneys

## Child Party's Attorney

- Appointed by Court to Every Dependent Child
- **Client-Directed**—Providing Representation to Child Party Just as Adult Party
- Owes Duties of Loyalty, Confidentiality, and Competent Representation
- Maintains Attorney's Ethical Obligations to Client
- **May** Advise Child Client on Believed Best Interest
- **Must** Represent Child Party's Wishes to Court



## Duties

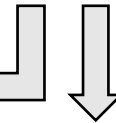
### Explain Role

- **Must** explain role of attorney and attorney-client privilege to child party *and* child's caregivers.



## Determine Capacity

- **It is the ethical obligation of child party attorneys to determine their clients' capacity to make adequately considered decisions regarding the case.**
- In making this determination for the child client, the attorney should consult other individuals (i.e. family, foster placements, medical experts).



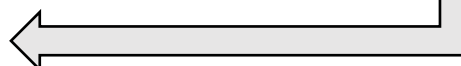
## Diminished Capacity

- If the child party's attorney determines his client does not have the capacity to express his wishes, **the attorney must make a good faith effort to determine the child's needs and wishes.**
- As far as possible, the attorney **must** maintain a normal attorney-client relationship with the child.



## Substituted Judgment

- If the child party's attorney determines his client has diminished capacity, he must:
  - **Inform the court of the determination (and any subsequent change, such as aging and gaining the capacity to express wishes).**
  - **Substitute his judgment to the court, as to what the child party's wishes would be—if the child could adequately consider decisions—for as long as the child's capacity is diminished.**
  - To do effectively substitute judgment, the attorney must:
    - **Continue to meet with the child, his caregivers, and others with knowledge of his wellbeing.**
    - **Engage fully in court proceedings—including keeping up with new records, testimony, and case reports.**



### Provide Information on Court Proceedings

- Keep child client apprised of nature of each court proceeding, in developmentally appropriate manner.
- Inform child client of right to attend proceedings, speak with judge, and potential benefits or risks related to attendance.
- Explain legal rights in proceedings, types of proceedings, and possible and actual outcomes.

### Participate in Proceedings

- Child party's attorney must:
  - Participate in discovery, file pleadings, and subpoena witnesses when appropriate.
  - Develop a position for each hearing.
  - Identify appropriate family and professional resources for child client.
  - Ask child client for preferred and potential placements.

### Meet with Child

- Meet in-person with child client before PPH.
- Maintain meaningful in-person communication with child client before every substantive hearing.
- Inform court of child party's position (including substituted judgment) at every hearing.
- If applicable, explain child's absence from hearing to court.

### Child Party's Attorney **Must** Also

- Observe child client with foster or kinship placement in foster home environment.
- Regularly confer with placement, case workers, service providers, CASA's, relatives, and other significant relationships to child.
- Attend all agency staffing, family team, and other meetings.
- Have knowledge of dependency proceedings and child resources.

# The Process of Substituting Judgment

## Determine Capacity

It is the ethical obligation of child party attorneys to determine their clients' capacity to make adequately considered decisions regarding the case.

In making this determination for the child client, the attorney must meet with the child in-person, become acquainted with the child and his situation, and assess his ability to express wishes.

The attorney should also consult other individuals (i.e. family, foster placements, medical experts).

## Diminished Capacity

If the child party's attorney determines his client does not have the capacity to express his wishes, **the attorney must make a good faith effort to determine the child's needs and wishes.**

As far as possible, the attorney *must* maintain a normal attorney-client relationship with the child.

Accomplishing both points requires regular in-person meetings with the child and, often, consistent communication with his caregivers.

## Substituted Judgment

**If the child party's attorney determines his client has diminished capacity, he must:**

*Inform the court of the determination (and any subsequent change, such as aging and gaining the capacity to express wishes).*

*Substitute his judgment to the court, as to what the child party's wishes would be—if the child could adequately consider decisions—for as long as the child's capacity is diminished.*

**To do effectively substitute judgment, the attorney must:**

Continue to meet with the child, his caregivers, and others with knowledge of his wellbeing.

Engage fully in court proceedings—including keeping up with new records, testimony, and case reports.

Keep the child updated on the status of his case and pending hearings or other court obligations.

Senate Engrossed

juvenile proceedings; appointment of attorney

State of Arizona  
Senate  
Fifty-fifth Legislature  
First Regular Session  
2021

## CHAPTER 228

# SENATE BILL 1391

AN ACT

AMENDING SECTIONS 8-221 AND 8-522, ARIZONA REVISED STATUTES; RELATING TO JUVENILES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-221, Arizona Revised Statutes, is amended to  
3 read:

4 8-221. Counsel right of juvenile, parent or guardian;  
5 appointment; reimbursement; guardian ad litem

6 A. THE COURT SHALL APPOINT AN ATTORNEY FOR A CHILD in all  
7 ~~proceedings involving offenses;~~ DELINQUENCY, dependency or termination of  
8 parental rights PROCEEDINGS that are conducted pursuant to this title ~~and~~  
9 ~~that may result in detention, a juvenile has the right to be represented~~  
10 ~~by counsel.~~ THE COURT SHALL APPOINT THE ATTORNEY BEFORE THE FIRST  
11 HEARING. THE ATTORNEY SHALL REPRESENT THE CHILD AT ALL STAGES OF THE  
12 PROCEEDINGS AND, IN A DEPENDENCY PROCEEDING, THROUGH PERMANENCY.

13 B. If a juvenile, parent or guardian is found to be indigent and  
14 entitled to counsel, the juvenile court shall appoint an attorney to  
15 represent the person or persons unless THE PERSON KNOWINGLY, INTELLIGENTLY  
16 AND VOLUNTARILY WAIVES counsel ~~for the juvenile is waived by both the~~  
17 ~~juvenile and the parent or guardian.~~

18 C. Before any court appearance ~~which~~ THAT may result in  
19 institutionalization or mental health hospitalization of a juvenile, the  
20 court shall appoint counsel for the juvenile if counsel has not been  
21 PREVIOUSLY APPOINTED OR retained by or for the juvenile, ~~unless counsel is~~  
22 ~~waived by both the juvenile and a parent or guardian with whom the~~  
23 ~~juvenile resides or resided prior to the filing of a petition. The~~  
24 ~~juvenile, parent or guardian may withdraw the waiver of counsel at any~~  
25 ~~time.~~

26 ~~D. Waiver of counsel pursuant to this section is subject to the~~  
27 ~~provisions of rule 6, subsection (c) of the Arizona rules of procedure for~~  
28 ~~the juvenile court.~~

29 ~~E. If a juvenile is entitled to counsel and there appears to be a~~  
30 ~~conflict of interest between a juvenile and the juvenile's parent or~~  
31 ~~guardian including a conflict of interest arising from payment of the fee~~  
32 ~~for appointed counsel under subsection 6 of this section, the juvenile~~  
33 ~~court may appoint an attorney for the juvenile in addition to the attorney~~  
34 ~~appointed for the parent or guardian or employed by the parent or~~  
35 ~~guardian.~~

36 ~~F.~~ D. The county board of supervisors may fix a reasonable sum to  
37 be paid by the county for the services of an appointed attorney.

38 ~~G.~~ E. If the court finds that the ~~juvenile or the~~ parent or  
39 guardian of a juvenile has sufficient financial resources to reimburse, at  
40 least in part, the costs of the services of an attorney appointed pursuant  
41 to this section, the court shall order the ~~juvenile or the~~ parent or  
42 guardian to pay to the appointed attorney or the county, through the clerk  
43 of the court, an amount that the parent or guardian is able to pay without  
44 incurring substantial hardship to the family. Failure to obey an order  
45 under this subsection is not grounds for contempt or grounds for

1 withdrawal by the appointed attorney. An order under this section may be  
2 enforced in the manner of a civil judgment.

3 ~~F.~~ F. In a county where there is a public defender, the public  
4 defender may act as attorney in either:

5 1. A delinquency or incorrigibility proceeding when requested by  
6 the juvenile court.

7 2. Any other juvenile proceeding that is conducted pursuant to this  
8 title if the board of supervisors authorizes the appointment of the public  
9 defender.

10 ~~F.~~ G. In all juvenile court proceedings in which the dependency  
11 petition includes an allegation that the juvenile is abused or neglected,  
12 the court ~~shall~~ MAY appoint a guardian ad litem to protect the juvenile's  
13 best interests. This guardian AD LITEM ~~may~~ SHALL be an attorney ~~or a~~  
14 ~~court appointed special advocate.~~ THE GUARDIAN AD LITEM IS NOT THE  
15 CHILD'S ATTORNEY.

16 ~~F.~~ H. ~~The~~ ANY guardian ad litem or attorney APPOINTED for a  
17 juvenile shall meet with the juvenile before the preliminary protective  
18 hearing, if possible, or within fourteen days after the preliminary  
19 protective hearing. The guardian ad litem or attorney APPOINTED for the  
20 juvenile also shall meet with the juvenile before all substantive  
21 hearings. ~~Upon~~ ON a showing of extraordinary circumstances, the judge may  
22 modify this requirement for any substantive hearing.

23 Sec. 2. Section 8-522, Arizona Revised Statutes, is amended to  
24 read:

25 8-522. Dependency actions; special advocate; appointment;  
26 duties; immunity

27 A. The presiding judge of the juvenile court in each county may  
28 appoint an adult as a special advocate ~~to be the guardian ad litem~~ for a  
29 child who is the subject of a dependency action. The court shall make  
30 this appointment at the earliest possible stage in the proceedings. A  
31 child, through the child's SPECIAL ADVOCATE, guardian ad litem or  
32 attorney, has the right to be informed of, to be present at and to be  
33 heard in any proceeding involving dependency or termination of parental  
34 rights.

35 B. The supreme court shall certify special advocates pursuant to  
36 rules adopted by the court. Court rules for certification shall include  
37 compliance with qualification standards prescribed by the court.

38 C. The appointment of the special advocate continues until the  
39 court relieves the advocate of the advocate's responsibilities or until  
40 the court dismisses the action before it.

41 D. A special advocate serves without compensation but is entitled  
42 to reimbursement of expenses pursuant to guidelines prescribed by the  
43 supreme court by rule.

- 1           E. A special advocate shall:  
2           1. Meet with the child.  
3           2. Advocate for the child's safety as the first priority.  
4           3. Gather and provide independent, factual information to aid the  
5 court in making its decision regarding what is in the child's best  
6 interest and in determining if reasonable efforts have been made to  
7 prevent removal of the child from the child's home or to reunite the child  
8 with the child's family.  
9           4. Provide advocacy to ensure that appropriate case planning and  
10 services are provided for the child.  
11           5. Perform other duties prescribed by the supreme court by rule.  
12           F. A special advocate shall have access to all documents and  
13 information regarding the child and the child's family without obtaining  
14 prior approval of the child, the child's family or the court. All records  
15 and information the special advocate acquires, reviews or produces may  
16 only be disclosed as provided for in section 41-1959.  
17           G. The special advocate shall receive notice of all hearings,  
18 staffings, investigations and other matters concerning the child. The  
19 special advocate shall have a right to participate in the formulation of  
20 any agreement, stipulation or case plan entered into regarding the child.  
21           H. A special advocate is immune from civil or criminal liability  
22 for the advocate's acts or omissions in connection with the authorized  
23 responsibilities the special advocate performs in good faith.

APPROVED BY THE GOVERNOR APRIL 14, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2021.



CENTER FOR THE RIGHTS  
OF ABUSED CHILDREN

## **Support for HB 2033:**

### **Appointing Client-directed Attorney for Children**

Requiring the appointment of a client-directed attorney to represent children in abuse and neglect proceedings, giving children a voice.

#### **In-Person Testimony**

Kendall Seal, VP of Policy  
Center for the Rights of Abused Children

#### **House Children and Families Committee**

Tuesday, Jan. 16, 2024, at 10:00 a.m.

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#### ***Introduction***

Chair Kelly, Vice Chair Hausman, and Committee Members:

My name is Kendall Seal, Vice President of Policy at the Center for the Rights of Abused Children.

The lives of children are those most impacted by the child protection system. Consequently, children should have a meaningful opportunity to be heard, have their position represented, and have their rights and liberties protected. To accomplish these goals, the Center strongly supports passing HB 2033 to afford every child in care a client-directed attorney.

#### ***Argument***

Children's fundamental life and liberty interests are at stake in juvenile court. Court proceedings involving abused and neglected children will determine whether children can go home, whether they will see their siblings, whether they will be adopted or age out. These decisions have life-long consequences.

We often hear youth who have or are experiencing foster care lament the lack of voice. Decisions are made about and for children, often with little consideration for the child's wishes. They want a voice. They want to be heard.

Missouri can take a significant step toward affording children the voice they deserve by appointing client-directed attorneys to represent the child. These won't be best-interest attorneys, bound to arrive at an independent determination about what they



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believe the child needs. Instead, client-directed attorneys would be ethically bound to represent the child's position and zealously advocate for and protect the child's rights. Children should have such an advocate from the moment of state involvement.

*I. The GAL model of representation in Missouri Leads to Confusion.*

While state law may seem to imply that GALs are obligated to represent a child,<sup>1</sup> GAL standards clearly distinguish the roles of a lawyer for the child and a GAL.<sup>2</sup> They reinforce that GALs do not represent children's positions but conduct an independent analysis and advocate for what they believe is in children's best interests.<sup>3</sup>

Specifically, GALs must advocate for what they consider to be the best interests of the children they've been assigned based on their own independent evaluation.<sup>4</sup> While their review may consider children's wishes, the GAL is not bound to advocate for it on behalf of the child. Thus, GALs' duty is to the court to represent an independent position rather than representing the child ... advising the court as the court makes its best interest determination. Additionally, because GALs do not serve as lawyers for abused children, they generally have no ethical obligation to the child, such as attorney-client privilege and zealous advocacy for a child's position.

The conflation of a statutory provision describing legal representation with a GALs' duty to represent a concept - the best interests of a child - leads to confusion about if and how children are "represented." The bottom line is that most children do not have an advocate giving them the voice to which they are entitled when so much in their lives is at stake.

*II. Children's rights cannot effectively be enforced without client-directed attorneys.*

Children in foster care should be guaranteed rights ranging in nature from timely permanency in a safe and loving home to placement or ongoing contact with siblings. Any rights that the state of Missouri recognizes for children in foster care cannot be adequately enforced if the child does not have an attorney who is ethically bound to protect those rights.

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<sup>1</sup> Mo. Ann. Stat. § 210.160 (allowing a judge to appoint a guardian ad litem to "appear for and represent" a child).

<sup>2</sup> Missouri Courts, *Standards with Comments for Guardians Ad Litem in Juvenile and Family Court Division Matters*, Standard 3.0, comment, available at <https://www.courts.mo.gov/file.jsp?id=63973>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at Standard 4.0.



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Even if a GAL meets with a child and discovers the child's wishes, the GAL is under no obligation to advocate for the child's expressed wishes. In fact, if the GAL disagrees with the child, the GAL must advocate for the GAL's own position on what is in the child's best interest. Without a lawyer representing their position and advocating for their legal rights, children's voices are lost, and they are unjustly left to indirectly advocate for themselves.

*III. HB 2033 Reduces Confusion and Protects the Rights of Children.*

With HB 2033, courts will be required to appoint client-directed counsel to children who are the alleged victims of abuse and neglect. Representation must begin prior to the first protective custody hearing and extend through permanency, ensuring that the child's voice will be heard from the beginning until the child finds a safe home or some other form of permanency.

In addition to ensuring that children are directly represented, HB 2033 also contemplates the quality of representation. Because the pool of client-directed attorneys is likely to be substantially the same as those currently serving as GALs, ensuring quality representation training is crucial. Learning and developing skills associated with quality representation, including understanding the lawyer's ethical duties to the child, evaluating each child's capacity to direct the representation, and substituting judgment in cases of children who lack that capacity, are all crucial in quality control.

## **Conclusion**

We thank Rep. Murphy for sponsoring HB 2033 and committee members for considering this important legislation. The Center is committed to protecting children's rights and supporting the legislature, policymakers, and the courts to ensure that children's voices are heard, and their rights are protected. We urge your support for HB 2033.



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## Frequently Asked Questions

### **Will the switch to client-directed attorneys improve child representation?**

Yes. While we recognize that the same pool of attorneys currently serving as GALs will likely serve as client-directed attorneys for children, as explained further below, the subtle but significant difference between GALs and client-directed attorneys is the duties owed and to whom. A client-directed attorney must zealously represent the child's position and protect the child's rights in court. Theoretically, this also could contemplate disciplinary action for lawyers who shirk their ethical duties.

Additionally, this bill contemplates crucial quality training. In a multi-year study, researchers found that lawyers who were trained in a quality representation regime and received regular follow-up

*initiated more contact with the children they represented, created more discussion and collaboration with other players in the system, did more problem-solving, advocated for more services, and spent more time influencing the case plan and developing a theory of the case. Importantly, these different behaviors improved the child outcomes.<sup>5</sup>*

Improved outcomes included exiting the system more quickly (trained attorneys made children 20 to 40 percent more likely to achieve permanency within six months).<sup>6</sup>

### **What could quality training include?**

The model of training studied by the University of Michigan, called *QIC-Childrep*, focused on six core skills:

1. *Enter the Child's World: Engage with the child, learn their needs, guide them, counsel them and advocate for their needs while accommodating their stated interests consistent with state law.*
2. *Assess child safety and protect the child but without over-reacting. "Remove the danger, not the child", whenever that can be done consistent with child safety. Distinguish between case plan and safety plan.*
3. *Actively Evaluate Needs: Facilitate an appropriate assessment of the needs of the child and his/her family. Diagnose the problem.*
4. *Advance Case Planning: Facilitate development of an appropriate case plan.*

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<sup>5</sup> Donald Duquette, *How to Improve Legal Representation of Children in America's Child Welfare System* (2022), *Law and Economics Working Papers*, University of Michigan Law School Scholarship Repository, 3, [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1343&context=law\\_econ\\_current](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1343&context=law_econ_current).

<sup>6</sup> *Id.* at 3-4.



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5. *Develop Case Theory: Develop an active and forward-looking theory of the case. What is going on here? Adopt, and maybe rule-out, alternative and tentative theories of the case. Provides force and direction to the advocacy. (Drive the bus.).*
6. *Advocate Effectively: Use advocacy corollaries in meeting a child's needs that stress problem-solving and non-adversarial approaches - but which include traditional adversarial modes when appropriate.*<sup>7</sup>

### **What is the role of a GAL?**

Missouri has employed guardians ad litem (GAL) with the understanding that the GAL's "principal allegiance is to the court" and that "although the best interests of the child are always paramount, the guardian's relationship to the child is not strictly that of attorney and client."<sup>8</sup> In this traditional view, the GAL carries the imperative to "investigate and present its perspective to the trial judge, thereby enabling the court to render a decision in accordance with the statutory standard of 'best interests of the child.'"<sup>9</sup>

According to Missouri's [Standards with Comments for Guardians ad Litem in Missouri Juvenile and Family Court Division Matters](#):

- The GAL is always guided by the GAL's belief regarding the best interests of the child.<sup>10</sup> The comments to GAL standards clarify, "The roles of a guardian ad litem and a lawyer for the child are different and must be clearly distinguished. A lawyer guardian ad litem is not the lawyer for the child and, therefore, advocates the best interests of the child rather than merely representing the child's preferences."<sup>11</sup>
- The GAL is responsible for maintaining "independent representation."<sup>12</sup>
- The confidentiality owed by a GAL is nondisclosure to anyone other than another party.<sup>13</sup>
- "The guardian ad litem shall appear at all court proceedings to represent the child's best interests."<sup>14</sup>
- The GAL is obligated to inform the court when the GAL's determination of the child's best interests is out of line with the child's wishes.<sup>15</sup>

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<sup>7</sup> *Id.* at 6.

<sup>8</sup> *State ex rel. Bird v. Weinstock*, 864 S.W.2d 376, 385 (Mo. Ct. App. 1993); see also *Guier v. Guier*, 918 S.W.2d 940, 950 (Mo. Ct. App. 1996).

<sup>9</sup> *Id.*

<sup>10</sup> Standard 2.0

<sup>11</sup> Standard 2.0 (Comment).

<sup>12</sup> Standard 3.0

<sup>13</sup> Standard 7.0

<sup>14</sup> Standard 11.0

<sup>15</sup> Standard 13.0



### **How does a client-directed attorney differ from a GAL?**

In contrast to a GAL, lawyers engaged in an attorney-client relationship perform various functions – as advisors, advocates, negotiators, and evaluators.<sup>16</sup> In the attorney-client relationship, the attorney owes the client specific duties. For example, a client-directed lawyer:

- must provide competent representation. The lawyer must have "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."<sup>17</sup>
- is generally required to "abide by a client's decisions concerning the objectives of representation" and consult with the client about how to achieve that objective.<sup>18</sup>
- must act with diligence and promptness and maintain ongoing communication with the client to keep the client informed and consult with the client.<sup>19</sup>
- must maintain the client's information confidential.<sup>20</sup>

### **How does a lawyer represent infants, toddlers, and other children with diminished capacity?**

Often, legislators are concerned that children cannot direct representation in a traditional attorney-client relationship. However, addressing diminished capacity should not be a foreign concept to lawyers. The rules of professional conduct provide a mechanism for assessing capacity and maintaining the relationship to the maximum extent possible.

Missouri's rules of professional conduct state:

*When a client's capacity to make adequately considered decisions in connection with a representation is diminished ... because of minority ... the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.<sup>21</sup>*

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<sup>16</sup> "As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others." MO R BAR Rule 4, Preamble.

<sup>17</sup> MO R BAR Rule 4-1.1.

<sup>18</sup> MO R BAR Rule 4-1.2.

<sup>19</sup> MO R BAR Rule 4-1.3 – 4.1.4.

<sup>20</sup> MO R BAR Rule 4-1.6.

<sup>21</sup> MO R BAR Rule 4.1.14.



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*...[A] client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve years of age, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. It is also recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions."*<sup>22</sup>

A lawyer can use substitute judgment when a child cannot direct the representation. Current ethical rules permit lawyers to take protective action for their clients with diminished capacity. "Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools."<sup>23</sup> However, when contemplating protective action "the lawyer should be guided by ... the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections."<sup>24</sup>

A GAL is not out of the question, even in this traditional relationship. Current ethical rules permit the appointment of a GAL "[w]hen the lawyer reasonably believes that the client has diminished capacity; is at risk of substantial physical, financial or other harm unless action is taken; and cannot adequately act in the client's own interest."<sup>25</sup>

### *Arizona Substitute Judgement*

When providing attorneys for all children in care, the Arizona Supreme Court implemented a unique mechanism for substitute judgment when a child cannot direct the representation. In relevant part, the rules state:

*Substituted Judgment. During any period in which a normal attorney-client relationship is not reasonably possible to maintain, the child's attorney must make a substituted judgment. The attorney must advise the court of the determination of capacity that requires substituted judgment and any subsequent change in that determination. A substituted*

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<sup>22</sup> MO R BAR Rule 4-1.14 (Comment 1).

<sup>23</sup> MO R BAR Rule 4-1.14 (Comment 5).

<sup>24</sup> MO R BAR Rule 4-1.14 (Comment 5).

<sup>25</sup> MO R BAR Rule 4-1.14.



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*judgment includes determining what the child would decide if the child was capable of making an adequately considered decision and representing the child in accordance with that determination. The attorney should take direction from the child as the child develops the capacity to direct the attorney.*<sup>26</sup>

*Determine Capacity.* It is the ethical obligation of an attorney for a child to determine their client's capacity to make adequately considered decisions regarding the case. In making this determination for the child, the attorney must meet with the child in person, become acquainted with the child and the child's situation, and assess the child's ability to express wishes and direct the representation. The attorney should also consult other individuals such as family, foster placements, medical experts, and others with relevant information to determine the child's capacity.

*Diminished Capacity.* If the child's attorney determines that the child lacks the capacity to express wishes and direct representation, the attorney must make a good faith effort to determine the child's needs and wishes. As far as possible, the attorney must maintain a normal attorney-client relationship with the child. Accomplishing both points requires regular in-person meetings with the child and, often, consistent communication with the child's caregivers.

*Substituted Judgment.* If the child's attorney determines the child has diminished capacity, the attorney must inform the court of the determination and substitute the attorney's judgment, advocating what the child part's wishes would be if the child could adequately consider decisions. To do this effectively, the attorney must continue to meet with the child, the child's caregivers, and others with knowledge of the child's wellbeing; engage fully in all court proceedings, including keeping up with records, testimony, and case reports; and keeping the child updated on the status of the case and pending hearings or other court obligations.

### **Will confidentiality undermine the safety of the child?**

While confidentiality is a fundamental component of an attorney-client relationship in Missouri, there are limited exceptions.<sup>27</sup> As a general rule, a lawyer is prohibited from revealing information relating to the representation of a client absent the client's informed consent.<sup>28</sup> In this context, confidentiality protects information "relating to the representation of a client during the lawyer's representation of the client."<sup>29</sup> Maintaining confidence is crucial to ensuring a relationship in which the client (child)

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<sup>26</sup> AZ ST JUV CT Rule 306.

<sup>27</sup> MO R BAR Rule 4-1.6

<sup>28</sup> *Id.* at (a).

<sup>29</sup> *Id.* at Comment 1.



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OF ABUSED CHILDREN

trusts the lawyer and the lawyer possesses sufficient information to effectively represent the client.<sup>30</sup>

One of the exceptions, important in cases of abuse and neglect, is the freedom to disclose information that would otherwise be confidential to prevent reasonably certain death or bodily harm. Specifically, a lawyer may reveal confidential information when it is necessary "to prevent death or substantial bodily harm that is reasonably certain to occur."<sup>31</sup> Thus, an attorney can disclose confidential information when the "overriding value of life and physical integrity" justifies "disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm." This harm must be imminent or present a "substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat."<sup>32</sup>

In sum, confidentiality does not mean that a lawyer must be resigned to argue for the child's ongoing abuse. For example, if a child wishes to return home to an abusive situation, the lawyer may be permitted to reveal confidential information to protect the child from imminent or substantial likelihood of future harm. Given the child has already been removed from a home where harm has been alleged and substantiated, showing imminent or future harm would seem to be a low bar.

While disclosure of confidential information could be justified, it may not be necessary to simultaneously argue for the child's wishes and keep the child safe. A creative attorney should be able to advocate for a child's wish to return home, even if to a presently abusive environment, by arguing for the timely implementation of remedial services or specific actions designed to remove the threat to the child. For example, securing a court order that eliminates a perpetrator from the home and prevents

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<sup>30</sup> *Id.* at Comment 2.

<sup>31</sup> MO R BAR Rule 4-1.6; *see also* Office of Legal Ethics Counsel & Advisory Committee of the Supreme Court of Missouri, Informal Opinion 2020-03 ("Rule 4-1.6(b)(1) permits Attorney to disclose Client's threats to the extent reasonably necessary to prevent death or substantial bodily harm that is reasonably certain to occur. Death or substantial bodily harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Rule 4-1.6, Comment [6]. The decision as to whether Attorney reasonably believes disclosure is necessary to accomplish the purpose specified in Rule 4-1.6(b)(1) will require the use of Attorney's professional judgment in light of all the circumstances known to Attorney. *See* Informal Opinion 2019-05; *see also* Rule 4, Scope, at [14]; Rule 4-1.6 permits, but does not require, disclosure in accordance with paragraph (b). Rule 4-1.6, Comment [13]. Any disclosure per 4-1.6(b) should be no greater than what Attorney reasonably believes is necessary to accomplish the specified purpose. Rule 4-1.6, Comment [12]. If Attorney believes Client is suffering from diminished capacity because of mental impairment, or for some other reason, Attorney should review Rule 4-1.14, Client With Diminished Capacity. Rule 4-1.14 may permit Attorney to take other reasonably necessary protective action to protect Client from substantial physical, financial, or other harm if Client is unable to act in his or her own interest.)

<sup>32</sup> *Id.* at Comment 6.



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OF ABUSED CHILDREN

further contact with the child could mitigate the threat to the child's safety while advocating for the child's wish to return home. Or, perhaps, in other situations, the lawyer could argue for the timely provision of substance abuse treatment, closely track rehabilitation, pursue the provision of mental health services, or any number of strategic avenues to help the child return safely home. Ultimately, it is up to the judge to determine what is in the child's best interest.<sup>33</sup>

### **Must we address the structural issues of the Juvenile Office?**

There may be a separation of power issue with the unique structure of Missouri's juvenile court structure. One legal scholar argues that the current structure violates the constitutional separation of powers, concentrating power in the judiciary that belongs to the executive, and raises several problems in the context of child welfare. These problems include impeding executive authority to operate a statewide child welfare system and wasting resources and funding on duplicative personnel."<sup>34</sup>

The appearance of partiality, systemic inefficiency, and the diminished voice of a child is concerning to the overall welfare and safety of a child. The structural issues should be addressed.

There are multiple ways of structuring child representation in juvenile court. For example, one model that the Center is currently watching was recently created in New Mexico - a statewide *Office of Family Representation and Advocacy* (OFRA).

OFRA is an instrumentality of the executive branch, though not administratively attached to any other department. Oversight is provided by the Family Representation and Advocacy Commission (Commission). OFRA possesses policymaking and administrative autonomy.<sup>35</sup> It is funded by the state.

Duties of OFRA include:

- Working with the Children, Youth and Families Department (CYFD) to leverage IV-E funding,
- Appointing, compensating, evaluating, and retaining attorneys for
  - [Eligible adults](#) under the Fostering Connections Act (extended foster care), and
  - Children, and

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<sup>33</sup> *Id.* at (b).

<sup>34</sup> Josh Gupta-Kagan, *Where the Judiciary Prosecutes in Front of Itself: Missouri's Unconstitutional Juvenile Court Structure*, 78 Mo. L. Rev. (2013), available at: <https://scholarship.law.missouri.edu/mlr/vol78/iss4/10>.

<sup>35</sup> NMSA § 9-1-3.



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OF ABUSED CHILDREN

- Parents, custodians, or guardians whose children are or are "at risk of being placed" in state custody.
- Establishing an appellate division led by a chief appellate attorney.
  - This division provides representation before the Court of Appeals and the Supreme Court in proceedings involving persons represented by the office pursuant to the Act.
- Establishing at least five regional offices that align with CYFD's regional offices spread geographically across the state.
  - Each regional office is managed by an attorney that serves as the regional manager.

OFRA is headed by a director, appointed by and responsible to the commission. The director manages all office operations. In addition to the general management and operation OFRA, the director sets standards relating to the experience, training, qualifications, monitoring, evaluating, caseloads, workloads, and competent and efficient representation for contract and staff attorneys and employees. Among other duties, the director is to research ways to improve the operation of the office and provide courses of instruction and practical training for employees. The director must also collect and analyze statistical data, including for child and family outcomes and the effectiveness of OFRA.

The commission is composed of 13 members as follows:

- The Director of UNM Law School's Corinne Wolfe Center for Child and Family Justice
- The Director of the Administrative Office of the Courts' Improvement Project
- Dean of the NMSU or NMHU school of social work
- Three members appointed by the governor who demonstrate a commitment to high-quality legal representation
- Five members appointed by the Chief Justice of the Supreme Court
  - Two former children's' court judges or attorneys in the child welfare system,
  - one youth with experience in CYFD custody,
  - a parent who had children in CYFD custody, and
  - another person with experience as a parent or a youth with CYFD or another child welfare agency
- An appointee of the Speaker of the House
- An Appointee of the President Pro Tempore of the Senate

The commission is required to meet at least four times per year. The commission has rulemaking authority and must keep a record of its proceedings. The commission's duties include:



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OF ABUSED CHILDREN

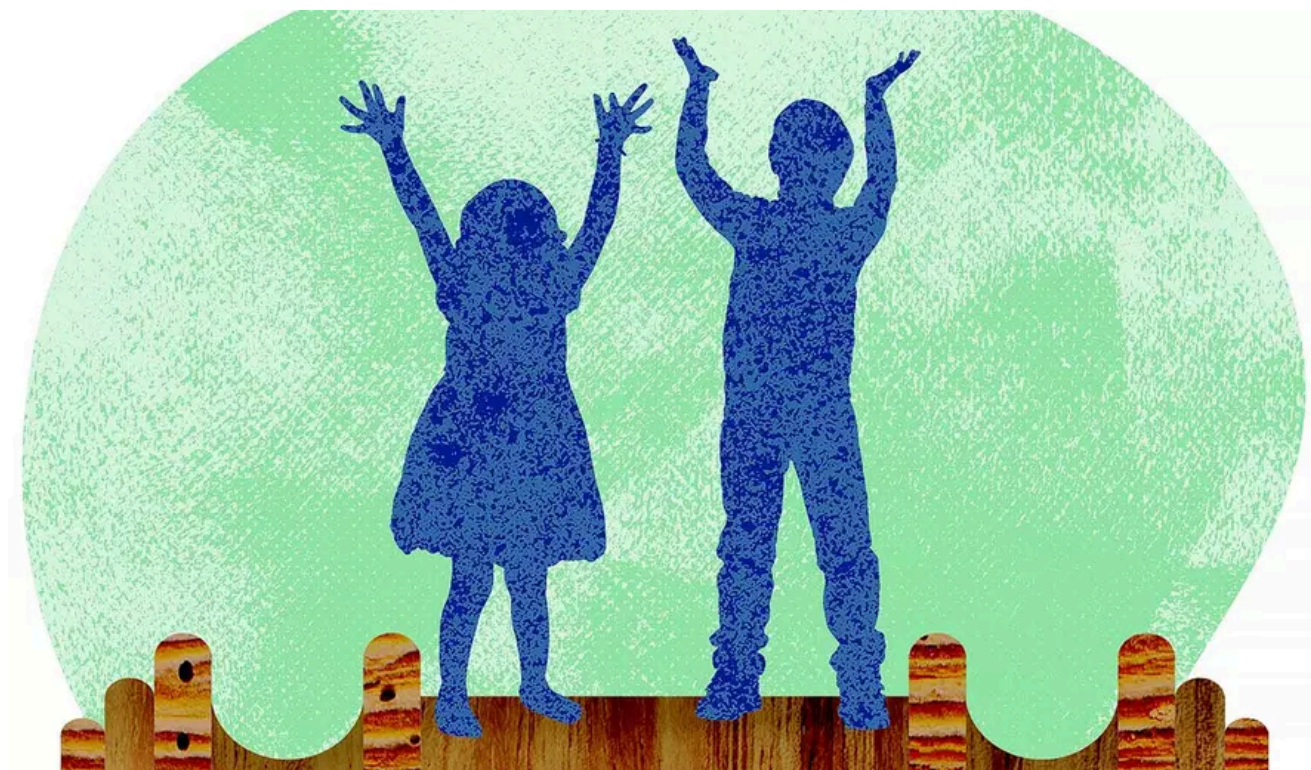
- Independent oversight of OFRA to review and approve standards and provide guidance and support to the director
- Review and approve policies for operating OFRA and providing services to eligible adults and children
- However, the commission is prohibited from interfering with the discretion, professional judgment, or advocacy of attorneys, contract employees, or office staff in representing and advocating for a client.

**Will this pose an existential threat to existing programs?**

If structured correctly, this program should not cost more than the current structure utilizing GALs. We recognize that some counties may do an excellent job representing children with client-directed attorneys. This change will expand this model and afford the same voice and quality representation training to all children throughout the state. Additionally, the state can better leverage federal funding to improve legal representation of children, including pre-petition legal services.

# Kids in foster care have right to counsel

Those who die of abuse often have long histories of involvement with child protection



*Foster Care Children Need Counsel Illustration by Greg Groesch/The Washington Times Foster Care Children Need Counsel Illustration ... more >*

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## COMMENTARY

By Darcy Olsen

## OPINION:

It's 9 o'clock in the morning when the phone rings asking me to collect a newborn from the hospital. She'll be my fourth foster baby in two years, and I'm exhausted. But I still say yes.

I know the community needs all hands on deck. The city's shelters and office buildings overflow with newborns and young children. It's the peak of the opioid crisis, and every 15 minutes, another drug-exposed infant struggles into the world.

By this time, I think I know what to expect: the complications from withdrawal, the sweating and shaking, the sleepless nights, the near-daily visits to the pediatrician.

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What I didn't expect is that to best care for this baby, I'd need to hire a lawyer.

As the baby's first birthday neared, her mother asked me to adopt her permanently. She saw her toddler growing, thriving and loved. But the child protection agency filed a motion to block the mother's wishes. In its estimation, my home worked fine temporarily, but the toddler should be raised with "her own kind."

I felt sad. And angry. But above all, I felt like a mom. I started researching the law and making calls.

I couldn't wrap my head around the fact that there would be no one to speak for the toddler in court. Although her future hung in the balance, she'd be the only party in court without representation.

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## MY TIMES

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So, I did what any mother would do. I hired two law firms to give her a voice. We successfully intervened in the case and after two grueling days in court, justice prevailed. Today, my school-aged daughter devours graphic novels, loves her rescue cat, and protests folding the laundry.

After that experience, I had to act. With three adoptions behind me and a seventh foster baby on my hip, I founded the Center for the Rights of Abused Children. We opened a pro bono Children's Law Clinic and subsequently passed a consensus reform giving abused children the right to an attorney in Arizona, our headquarters.

Most children in the foster care system across the U.S. still lack this basic due process right — a right noticeably extended to the criminally accused who abuse them.

The Supreme Court in *In re Gault* guaranteed children accused of delinquency the right to counsel to protect their life and liberty interests. For the same reasons, the court should extend this guarantee to abused and abandoned children who are wards of the state.

Children in state care experience severe restrictions on their liberties, including a limited right to associate with family and placement in group homes, jails and even psychiatric facilities. One young man I met lived in state custody nearly his entire life, placed in 47 different homes from age 3 to 17.

Fundamentally, children's lives are saved or lost in court proceedings. Children who die of abuse often have long histories of involvement with child protection. Consider the gruesome torture and murder of Gabriel Fernandez, baby Dylan Groves, and Chaskah Smith.

Representation won't prevent every tragedy, but it would give more children a fighting chance. Research shows children in foster care with legal representation have better outcomes than those without. Children with counsel spend less time in foster care and group settings and move more

quickly to adoption, guardianship or reunification.

Attorneys also provide a critically important backstop when state workers operate from ignorance or bias or simply get a child's removal wrong.

One of our pro bono cases involved an 8-year-old girl. Adopted by relatives due to severe physical abuse, Baylee thought she'd found safety. Sadly, her nightmare had just begun. Doctors discovered grim physical evidence of sexual abuse on her tiny body.

Baylee bravely told workers about the repeated acts of sexual abuse she'd suffered, but the child welfare agency didn't seek her protection. Instead, the agency sought reunification and forced Baylee to visit her abusers. The child was so frightened that she couldn't get through the front door of their home without wetting herself.

We took Baylee's case and won. Without an attorney in her corner, Baylee likely would have been returned to her rapists.

At her final hearing, Baylee chose a new name for herself. It was telling that she chose to take the name of our litigator who had fought for her. Baylee thanked our attorney for giving her a voice and protecting her life when no one else would.

Children in foster care face odds few of us can imagine. Up to 80% of these children enter care with a significant mental health need. Children in foster care need special education more often than their peers, and just over half graduate from high school. Less than 5% graduate with a college degree.

The least we can provide innocent children is access to justice. We invite lawmakers to act now to guarantee counsel for these vulnerable and voiceless wards of the state, a first and necessary step to justice, family, and a future.

*• Darcy Olsen is the founder and CEO of the Center for the Rights of Abused Children.*

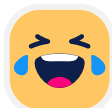
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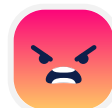
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**0%** Sob



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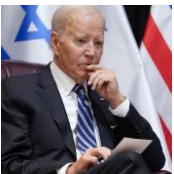
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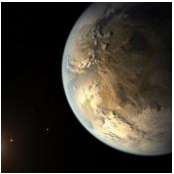
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**COMMENTARY**



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# New Arizona Law Appoints an Attorney for Every Child in Foster Care



## UNANIMOUS REFORM PROTECTS CHILD ABUSE VICTIMS

PHOENIX – Senate Bill 1391, sponsored by Arizona Sen. Nancy Barto, passed the Arizona legislature unanimously and today was signed into law by Arizona Governor Doug Ducey. The momentous law gives every child in foster care legal representation.

Gen Justice Chief Counsel, Rebecca Masterson, the architect of the bill, said, “When a child enters foster care, a court case is initiated. Parents are appointed lawyers to protect their rights, the Arizona Department of Child Safety is appointed lawyers, yet the victim in the case – the abused child – was not given legal representation. Lawmakers from every corner of our state stood arm-in-arm to remedy this injustice for Arizona’s abandoned and abused kids.”

Research shows that children with attorney representation in their court cases exit foster care up to 3.5 times faster, without affecting rates of family reunification. Children who can safely return home do so while children who need families are adopted quicker and with fewer delays.

“We can put a million laws on the books to ensure a child’s time in foster care is safe and temporary, but without an attorney to argue the law on a child’s behalf, the law means nothing,” says Darcy Olsen, Gen Justice CEO. “An attorney with a legal and ethical duty to the child is among the most important protections we can give a child who has been abandoned or abused. Representation is a cornerstone of the American justice system.”

SB1391 guarantees children the legal representation necessary to protect their rights. For example, Arizona law requires the Department of Child Services search for a child’s relatives and extended family right away. If this law is violated, the child’s attorney can immediately work to ensure compliance. Similarly, if a child goes [missing](#) from the system, the child’s attorney must advocate on behalf of the child to ensure search and rescue.

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Center for the Rights of Abused Children

January 10 · 🌐

...

The Center is at work in Missouri! 🙌 Kendall, our VP of Policy, is at the Missouri Capitol today, working on a Right to Counsel Bill. Way to go, Kendall!

Did you know that the Center for the Rights of Abused Children has impacted the passage of over 40 laws and reforms across the country to help abused children? AND we have only been doing this for 6 years!! Can you imagine what we will do in the next 20 years? 🙌❤️ With your help, we can change the world for every abused child.

EVERY CHILD DESERVES A SAFE AND LOVING HOME!

#ChildrenMatter #WeFight





Center for the Rights of Abused Children

March 7, 2023 · 🌐



We have momentum in Missouri!

- [The Office of Sen. Greg Razer](#) introduced SB 646 to mandate searches for missing children.
- [Sen. Elaine Gannon](#) introduced SB 665 to require the diligent search for relatives in dependency actions.
- [Senator Steven Roberts](#) filed SB 668 to guarantee a child's right to counsel in foster care cases.

Read bills:

SB 646: <https://tinyurl.com/2p8kp8u6>

SB 665: <https://tinyurl.com/2s3jwj3n>

SB 668: <https://tinyurl.com/546z68u8>



Center for the Rights of Abused Children

February 23, 2023 · 🌐



Thank you to the [National Association of Counsel for Children](#) for supporting a child's right to counsel in Kansas. Read their testimony: <https://tinyurl.com/ss7cxpwk>

**NACC**

**National Association  
of Counsel for Children**



Center for the Rights of Abused Children

May 8, 2019 · 🌐



7 states do not appoint attorneys for children in abuse and neglect proceedings and 14 states only appoint counsel for children in "limited" instances. This means that in many instances, the child has no legal voice in their own court case.

[#justicecantwait](#) [#fostercaremonth](#)



**ABUSED CHILDREN ARE NOT GUARANTEED  
AN ATTORNEY IN THEIR COURT CASES.**



Center for the Rights of Abused Children

April 14, 2021 · 🌐

...

Arizona Governor Doug Ducey signs historic law to appoint an attorney to every child in foster care; Unanimous reform protects child abuse victims!

PHOENIX – Senate Bill 1391, sponsored by Arizona Sen. Nancy Barto, passed the Arizona legislature unanimously and today was signed into law by Arizona Governor Doug Ducey. The momentous law gives every child in foster care legal representation.

Gen Justice Chief Counsel, Rebecca Masterson, the architect of the bill, said, "When a child enters foster care, a court case is initiated. Parents are appointed lawyers to protect their rights, the Arizona Department of Child Safety is appointed lawyers, yet the victim in the case – the abused child – was not given legal representation. Lawmakers from every corner of our state stood arm-in-arm to remedy this injustice for Arizona's abandoned and abused kids."

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SB1391 guarantees children the legal representation necessary to protect their rights. For example, Arizona law requires the Department of Child Services search for a child's relatives and extended family right away. If this law is violated, the child's attorney can immediately work to ensure compliance. Similarly, if a child goes missing from the system, the child's attorney must advocate on behalf of the child to ensure search and rescue.

Gen Justice is an award-winning charitable organization working to mend the broken child protection system through nonpartisan policy changes and a pro bono Children's Law Clinic.

For press opportunities, please contact Matt Shupe at Praetorian Public Relations: (415) 735-8491 or matt@praetorianpr.com.

  110

42 comments 36 shares



Center for the Rights of Abused Children

December 5, 2023 · 🌐



👉 It's time for change! 👉

Did you know that predators have more rights under the law than the innocent children they abuse? It's a startling fact. The criminally accused have a constitutionally protected right to counsel, but child victims don't.

We believe that justice requires all parties be represented. Together, let's work towards a more just legal system that protects the youngest and most vulnerable among us. ❤️👊👏

[#JusticeForChildren](#) [#EqualityUnderTheLaw](#)

Her... See more

**Criminals have the  
right to a speedy trial.**





Center for the Rights of Abused Children

February 23, 2023 · 🌐



Our founder and CEO, Darcy Olsen, testified in Kansas on HB 2381 to secure a child's right to counsel in foster care cases. Watch her testimony (32:50): <https://tinyurl.com/4a8bedpw>



Center for the Rights of Abused Children

March 2, 2023 · 🌐



Children with counsel exit foster care for family up to 3.5 times faster. [ABA Center on Children and the Law](#) created this helpful infographic to show the benefits of counsel: <https://tinyurl.com/8e8pafjr>

**ABA**  
— ABA Center on Children and the Law —

## Legal Representation in Child Welfare Proceedings

### Benefits of high-quality legal representation

-  Protects parents' and children's legal rights.
-  Increases parties' participation in and out of court.
-  Improves all parties' perceptions of fairness.

### Structuring a system of high-quality representation

- ✓ Clearly define roles and expectations.
- ✓ Set reasonable caseloads.
- ✓ Offer fair compensation and benefits.
- ✓ Follow standards of practice.
- ✓ Provide specialized child welfare law training.
- ✓ Ensure effective supervision.
- ✓ Seek client feedback on representation.
- ✓ Give attorneys access to an interdisciplinary model of representation.



Center for the Rights of Abused Children

June 19, 2023 · 🌐



The Center for the Rights of Abused Children fought for a model reform giving abused children the right to an attorney in Arizona, where we are headquartered. Most children in the foster care system still lack this basic due process right — a right guaranteed to the criminally accused.

Don't miss Darcy Olsen's op-ed in [The Washington Times](#) about extending this guarantee to abused children in the foster care system. "We invite lawmakers to act now to guarantee counsel for these vulnerable and voiceless wards of the state, a first and necessary step to justice, family, and a future," said Darcy Olsen, CEO.

<https://ow.ly/WLIM50ORgaL>





Center for the Rights of Abused Children

August 20, 2021 · 🌐



Gen Justice was honored to participate in Arizona Governor Doug Ducey's signing ceremony of multiple child protection reforms today, including our signature effort giving every child in foster care an attorney. "With the signings of Senate Bills 1391 and 1660 and House Bill 2410, Arizona is taking steps to ensure more children across the state are safe. Senate Bill 1391 protects a child's right to be represented by legal counsel in dependency cases, Senate Bill 1660 helps protect vulnerable children from sexual abuse and sex trafficking, and House Bill 2410 increases the age of a newborn which can be delivered into the safe haven program from 72 hours to 30 days old," said the Office of the Governor. Thank you Senator Nancy Barto for your outstanding leadership for these children. Nancy Barto Rebecca Smith Masterson [Tim Keller](#)





Center for the Rights of Abused Children

March 3, 2023 · 🌐

...

Rep. Brad Hudson introduced HB 1170 to secure a child's right to counsel in foster care cases. Read the bill: <https://tinyurl.com/y3rezyp4>



Center for the Rights of Abused Children

February 27, 2023 · 🌐

...

Thank you to the [Children's Alliance of Kansas](#) and their 19 private, non-profit child welfare agency members for supporting a child's right to counsel in Kansas. Read their testimony: <https://tinyurl.com/yc3nct28>



Children's Alliance  
of KANSAS



Center for the Rights of Abused Children · Follow

May 1, 2022 · 🌐



Today we celebrate Law Day! President Dwight Eisenhower established this national day in 1958 to mark the nation's commitment to the rule of law. Every day, we fight for abused children in our pro bono Children's Law Clinic and champion common-sense laws such as their right to an attorney in their dependency cases so they can have the opportunity to live in safe, loving homes. Thank you to [The Missouri Bar](#), [Kansas Bar Association](#), [State Bar of Arizona](#), [American Bar Association](#) and [National Association of Counsel for Children](#) for your commitment to the rule of law!

<http://ow.ly/rBLK5005NX0>



Center for the Rights of Abused Children · Follow

May 1, 2022 · 🌐



Congrats to CO for passing HB22-1038 unanimously through the CO Legislature! Signed into law by [Governor Jared Polis](#) last month, this bill gives more abused kids the right to an attorney and strengthens their rights by giving them clear party status and the right to attend court. Gen Justice believes abused children have a constitutional right to counsel. Sharing our work nationwide means more states develop common sense reforms that keep more abused children safe.



LEG.COLORADO.GOV

**Right To Counsel For Youth | Colorado General Assembly**

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