

# National Needs Assessment

## **Abstract**

This chapter explains how the QIC Needs Assessment examined data and empirical research from:

- State laws
- Stakeholder Discussions
- Surveys of State Report Cards on child representation
- Focus Groups, and
- Reviews of the few existing empirical studies of child representation.

Using that data, the project identified an emerging consensus as to duties and tasks of the child's legal representative and system supports that would allow high practice standards to be realized.

## **3.1 State Law**

In addition to tracing the evolution of the child's attorney role as reflected in federal law, authoritative recommendations and the academic literature, the QIC needs assessment reviewed the current state laws governing lawyers for children. We analyzed all the state laws and posted them on our website in a common template.<sup>1</sup> Some state laws

---

1. See <http://www.improvechildrep.org/ChildRep2010/StateLaws.aspx> The organizing template is the same as that for the 1996 ABA Standards and for the QIC Best Practice Model of Child Representation. The website includes state legal authority governing child representation

do an excellent job providing the needed legal structure for children's lawyers while others come up seriously short. Most reflect the general understanding as to core child lawyer functions but there are exceptions. State laws vary in the specification of the duties and tasks of the lawyer while others fail to require legal representation for all children in the child welfare system.<sup>2</sup> Despite the requirements of federal law (CAPTA), in some states children in dependency cases are not appointed counsel (or even a lay advocate) at all.<sup>3</sup> A serious lack of enforcement of CAPTA requiring a representative for each child contributes to this gap between national standards and the practice on the ground.<sup>4</sup>

Our findings are consistent with other commentators who have noted that law defining child representation is quite unsettled. The variation across jurisdictions may decrease the quality of representation and create confusion simply because the attorneys are not clear on what is expected of them. Prevailing opinion calls for increased clarity on the role of children's legal representation. A 2005 survey indicated that there are at least 56 variations in child representation models among the 50 states.<sup>5</sup> A variety of models are also present internationally.<sup>6</sup>

The law on the books may not reflect the "law in practice," however. Subsequent to the QIC Needs Assessment, the Children's Advocacy Institute (CAI) at the University of San Diego School of Law and First Star, a national child advocacy organization, produced a series of influential reports framed as "report cards" with respect to state laws regarding attorneys for abused and neglected children and do not paint a pretty picture of the status of child representation nationally.<sup>7</sup> Despite exemplary legal structures in

---

with links to the authoritative electronic compilation of each state's laws governing child representation.

2. Fla. Stat. § 39.822(1); Burns Ind. Code Ann. § 31-32-4-2; (Rev. Code Wash. § 13.34.100(6)(f)

3. *Shame on U.S.: Failings by All three Branches of Our Federal Government Leave Abused and Neglected Children Vulnerable to Further Harm*, (2015) at 59; available at [http://www.caichildlaw.org/Misc/Shame%20on%20U.S.\\_FINAL.pdf](http://www.caichildlaw.org/Misc/Shame%20on%20U.S._FINAL.pdf)

4. Glynn, *The Child's Representation under CAPTA: It Is Time for Enforcement*, 6 NEV L.REV. 1250 (Spring 2006)

5. Jean Koh Peters, *How Children are Heard in Child Protective Proceedings, in the U.S. and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 NEV. L.J. 966 (2006); See also JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS, 3d Edition, Lexis Nexis 2007.

Worldwide (2005), available at [www.yale.edu/rcw](http://www.yale.edu/rcw).

6. KOH PETERS, REPRESENTING CHILDREN, supra note 2. See also Bilson & White, supra note 66; Whybrow, supra note 123; Stötzel & Fegert, supra note 22; Patricia O'Kane, *The Developing Role of the Guardian Ad Litem under the Children*, 12 CHILD CARE IN PRAC. 157 (2006); Drews & Halprin, supra note 174

7. *A Child's Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children*, Third Edition, May 8, 2012. [http://www.caichildlaw.org/Misc/3rd\\_Ed\\_Childs\\_Right\\_to\\_Counsel.pdf](http://www.caichildlaw.org/Misc/3rd_Ed_Childs_Right_to_Counsel.pdf)

some states, there is plenty of room for improvement in the vast majority of states. In the third edition: 15 States earned an A or A+; 11 States earned a B; nine States earned a C; six States earned a D; and 10 States earned an F. Only 61% of states require the appointment of attorneys for abused or neglected children. More than 39% of states do not require that all abused and neglected children have legal representation. Only 24% of states require multidisciplinary training or education for child's counsel. Only 31% of states currently mandate the appointment of client-directed representation for the child.<sup>8</sup>

The CAI and First Star recognize the potential gap between law on the books and the law in practice when the report concludes: "Grades do not imply any correlation between a state's law and the enforcement of, or compliance with, such law. . . . Our assumption is that good law is the cornerstone of any state's commitment to the rights of its children."<sup>9</sup>

## 3.2. Law in Practice

### 3.2.1 Method

Recognizing that the "law on the books" tells only part of the story of child representation in any given State, the QIC sought to assess the "law in practice," or at least perceptions of the "law in practice," through several additional means: 1) Stakeholder discussions in 10 sample states; 2) Survey of all state reports to the Federal government; 3) Focus groups with key stakeholders; 4) Notable office visits; and 5) Existing empirical evaluations of child representation.<sup>10</sup>

### 3.2.2 Stakeholder Discussions

Using ten sample states,<sup>11</sup> QIC developed and implemented structured interviews for key informants from each state, including, the U.S. Health and Human Services Administration for Children and Families (ACF) Regional Office staff person most familiar with the state, the CIP Director or equivalent knowledgeable person, two judges, five attorneys two child welfare caseworker supervisors and two to three CASAs. We were interested in how the duties set out in state laws compared with the law in practice as reflected by the key informants.<sup>12</sup> The discussions yielded a large amount of descriptive

---

8. *Id.* at 11

9. *Id.* at 15

10. QIC Phase II Implementation Plan, September 2010 Report to Children's Bureau, available at [www.ImproveChildRep.org](http://www.ImproveChildRep.org)

11. The ten sample states are: California, Colorado, Connecticut, Delaware, Georgia, Illinois, Iowa, New York, Texas, and Washington State.

12. The process of analyzing state laws, conducting the structured interviews with key state informants, focus groups etc, is reported on the QIC website, [www.ImproveChildRep.org](http://www.ImproveChildRep.org).

data, which was organized into tables, allowing analysis of the responses and comparisons within states, across all states, and among the stakeholder groups. The themes from these key state informants are as follows:

- **Performance is highly variable.** All reported much individual variation, with low marks given to attorneys who do not specialize in dependency cases. Lower variability was reported for attorneys under centralized state oversight or working for dedicated specialty offices, which received the best reports. Stakeholders cited training, oversight and guidelines as reducing variability.
- **Attorneys need more contact with the child.** In a variety of contexts, informants from every group raised the concern that attorneys do not really know their clients. Even some attorneys admitted that they do not have adequate time to spend on home visits with children. Many cited the standard practice of quickly touching base with children in the courthouse just prior to hearings.
- **Attorneys often have little support.** Informants reported very few supports for attorneys representing children. Attorneys often cited peers or even child welfare agency caseworkers as their sole sources of support. In comparison, attorneys in specialized offices received a range of supports, most commonly access to a social worker.
- **More training is needed.** Throughout the interviews, stakeholders mentioned the need for more attorney training. Stakeholders raised this issue frequently throughout the interviews. A caseworker comment reflected the opinions expressed by all stakeholders: “It takes more than a law degree to do this kind of work.” Across the board, every stakeholder group wanted to see more training, especially in child and family issues and courtroom practice.
- **Attorneys act as problem solvers.** Stakeholders described attorneys using their negotiating skills to resolve issues outside the courtroom. They noted that when attorneys actively advocate on behalf of their clients, they are also better able to resolve issues outside the courtroom.
- **Attorneys try to accommodate the child's wishes.** Regardless of the formal role, i.e., best interest or expressed wishes, attorneys found ways to accommodate the child's wishes, most often by bringing them to the attention of the court. They saw this more as an issue of determining the child's capacity, since age and maturity play a large factor in whether the attorney will take the child's wishes into account.
- **Caseloads are thought to be too high.** The consensus in most places is that attorneys simply do not have the time necessary to perform all the functions of their jobs. Attorneys described frustrations such as not being compensated for travel time.
- **CASA use varied among the jurisdictions we surveyed.** In some places, informants felt the CASAs form an essential component to the system. Where they are relied upon heavily, their main role is reported as contacting the child and collaterals and providing information to the court and to the attorneys.

### 3.2.3 *State Reports to the Federal Government*

QIC surveyed and analyzed reports that the 50 states themselves prepared for the Federal government regarding child welfare practices, including the CIP (Court Improvement Program) Annual Program Assessments and the Child and Family Service Reviews, to determine whether state policy makers identified priorities and challenges in child representation and if they had undertaken initiatives to support or improve practice. Within these reports states are not required to report on child representation, so the reporting is selective and not comprehensive. Despite these limitations, QIC uncovered some important points related to quality of child representation:

- **Training.** Training is routinely offered to child representatives, but the subjects reflect a broad range of topics, with no systematic approach. Only five states reported using a standard curriculum. Only a few states described measuring or evaluating need for training or the results of training. Twenty-eight states require training before appointment. Of the states listing barriers to representation, most cited lack of attorney training and preparation.
- **Oversight and Monitoring.** Only 14 states reported on specific initiatives to oversee attorneys through oversight and monitoring. Five states described statewide systems to ensure quality of representation.
- **Availability of Representation.** Ten states identified a shortage of qualified attorneys as a challenge.
- **CASAs.** Five states listed lack of CASAs as a challenge to providing quality representation. They described the CASAs' key activities as facilitating visitation, visiting clients and "supporting additional advocacy." Twenty-one states assisted volunteer advocate as a way to support better quality representation.
- **Contact with Children.** During CFSR stakeholder interviews, youth in three states said they had had infrequent contact with their attorney or GAL, and foster parents in one state reported not knowing the name of their foster child's attorney.

### 3.2.4 *Focus Groups with Key Stakeholders*

QIC conducted focus group sessions with representative of key stakeholders, including the National Council of Juvenile and Family Court Judges, Court Appointed Special Advocates, Midwest Child Welfare Tribes, the American Humane Association, and former foster children.

#### 3.2.4.1 *Judges*

A focus group of judges said that good training is the key to good advocacy. The judges also said that sometimes a separate attorney must be appointed because attorneys don't have knowledge about collateral issues, such as immigration, or navigating the educational system. Overall, judges said they feel an important role of the attorney is

that of problem solver. They believed that in representing children, most attorneys try to reflect the child's wishes to the court. Resources are an issue for paying lawyers and providing proper training. They emphasized the resource limitation they feel and also said, "Don't build us a Cadillac," meaning they would like to see models that are easily replicable and do not require a great deal of additional funding.

### 3.2.4.2 Court-Appointed Special Advocates (CASA) Focus Group

CASAs reported variability in attorney representation, but agreed that legal representation is necessary. They saw their role as providing information and helping balance the viewpoint presented by the child welfare agency. Participants reported the attorney role as representing the best interests of the child, and some said they work with the attorney and share information. CASAs said that they can spend more time on their cases than any attorney, and that they have more of an opportunity to get to know the child. They noted that they receive quality training and supervisory support, unlike most attorneys for children. Their recommendation for improving child representation includes better training, especially in interacting with children, and more uniform standards and expectations.

### 3.2.4.3 Tribal Focus Group

The tribal court system has a unique function in that it must meet cultural needs as it also metes out legal decisions affecting its members. In order to understand the specific considerations in representing Native American children, the QIC team conducted focused conversations with judges, attorneys and child welfare professionals at the Midwest Child Welfare Tribal Gathering.

The conversations revealed that tribal members place relatively less emphasis on legal representation in general and focus more on the community coming together to solve family issues. They place a great deal of importance on attorneys helping children maintain community connections and noted that the child's future is so connected with the tribe that the best interests of the child and the best interests of the tribe are interwoven and must be considered as one. Interventions in tribal communities should be crafted to respect and maintain the strong community approach and emphasis on problem solving. Any tribal interventions must take into account the cultural contextual variables.

### 3.2.4.4 American Humane Association Conference Attendees

Attendees at the American Humane Association Conference on Family Group Decision-making sounded themes consistent with other stakeholder groups. They said they would like to see attorneys get to know their clients better and that attorneys needed specialized training in how to communicate with children. Agency workers said attorneys should attend meetings and family group conferences which would give them

a better perspective on their cases and sometimes soften their attitudes toward relative placements. A judge called his court a “problem solving court,” and he said he encourages attorneys to find out of court solutions. Attendees also said attorneys need clearer expectations coupled with some form of oversight and accountability.

#### 3.2.4.5 Foster Care Alumni Focus Group

To put the findings into perspective, the QIC gathered the viewpoint of foster youth, those served by the service delivery systems under study. A conference call was held with foster care alumni at the Youth Council Meeting at the University of Minnesota-Duluth. The youth reported they felt the most important aspect of effectively representing children and youth is a need for the advocate to actively come to know the child. This echoed the responses of other stakeholders, who felt attorneys should be thoroughly familiar with the children they represent.

The youth believed that unless the attorney had gotten to know them, and came to understand their background and circumstances, he or she could not accurately convey their wishes. Youth noted their situations are extremely complicated and nuanced. They emphasized the difficulty of opening up to someone they hardly know, and emphasized that trust is necessary to building a relationship with their representative. The youth also said they would like to see more collaboration, with everyone coming to the table to work together for them. They felt planning for their future was an area where attorneys could be most helpful.

#### 3.2.5 Notable Child Law Offices

In order to identify best practices, as well as organizational structures that support the achievement of good legal service delivery, the QIC visited five notable offices known nationally for setting and achieving high standards. They are all devoted solely to the representation of children. After consultation with the QIC Advisory Group and other national contacts, these, five were visited:

- **The Children’s Law Center**, Washington, D.C.
- **Kid’s Voice**, Pittsburgh, Pa.
- **Lawyers for Children**, New York, N.Y.
- **Legal Aid Society’s Juvenile Rights Practice**, New York, N.Y.
- **The Connecticut Center for Child Advocacy**, Hartford, C.T. (which differs from the four above in that it represents a statewide model for oversight and delivery of legal representation for children)

At each site the QIC investigators spoke to supervisors, attorney and staff. They also spoke to human resources personnel and court staff, and attended case conferences and meetings which gave insight into the approach to representation. The QIC used a

standardized protocol structured around the ABA Standards of Practice. It was evident that these programs were delivering representation in a format largely consistent with the ABA Standards of Practice. In particular, programs emphasized:

- Timely appointment
- Meeting with the child to promptly assess the child and his needs
- Thorough investigation
- Attorney knowledge of case strategy and goals
- Supports and expertise
- Active in-court representation

All programs provided supports for attorneys, with four-of-the-five providing a teamed approach. All provided close supervision and mentoring, and frequent and comprehensive training. Though the offices differ in size, scope and emphasis, similarities exist which reflect common approaches and themes. Generally, all offices enforced strict initial training requirements, and mandated ongoing training. They all had orderly management structures, with hands-on supervision of attorneys. Attorneys worked with other staff in a teamed approach, with the attorney taking the lead on court matters. The programs made a variety of other supports available to their staff, including administrative support, specialized experts and computer tools, such as electronic case management. All the programs sought to keep caseloads reasonable.

### **3.3 Review of Existing Empirical Research on Child Legal Representation<sup>13</sup>**

One of the major goals of the QIC-ChildRep Project is to conduct empirical research on child representation to determine what approaches to child legal representation result in more desirable outcomes and what behaviors of the representative are likely to be most beneficial. To inform development of a QIC research design, we searched for research articles and evaluations specific to topics of child representation. In addition to traditional searches in law and social science literature, and the secondary literature identified by internet searches and the U.S. Children's Bureau Child Welfare Information Gateway, we asked members of the project's Advisory Committee and Study Team to suggest or provide any articles or evaluations they thought would be helpful. This process identified fourteen evaluations of child representation. Nine of these

---

13. Karl Ensign, Cynthia Samples and Robyn Ristau, of Planning and Learning Technologies in Alexandria VA contributed substantially to this section. The full reports of these research studies are available on our QIC-ChildRep website at: <http://www.improvechildrep.org/ChildRep2010/EvaluationsofChildRepresentation.aspx>

evaluations involved lawyer representation. Another five involved CASA representation. Only one of the evaluations was an experimental design.

Each of these articles and evaluations were reviewed to address the following questions:

- What topics within the field of child representation have been subject to empirical research?
- What types of research designs were utilized?
- What were the general findings from the previous empirical research?

Information was reviewed and synthesized to address each of the three main questions. The following table lists of all of the evaluations that were included in this review. The primary findings from this review are the following:

- The majority of evaluations have focused on comparing *who delivers* child representation and attendant measurement of impact. Specifically the studies examined the impact of using CASAs as well as the role of private attorneys, staff attorneys, law students, and lay volunteers (not CASA).
- Less commonly evaluated subjects include the impact of caseload standards and training. Data collection and analysis of stakeholder perceptions and attitudes has also received relatively less attention.
- The most common type of evaluation design utilized was quasi-experimental, which reflects the difficulty of carrying out random assignment experimental design of systemic court interventions. Both historical and same-time comparisons were made between treatment and non-treatment groups.

Information was reviewed and synthesized to address each of the three main questions. The following table provides a listing of all of the evaluations that were included in this review.

Evaluation/Research Article	Topic/Focus	Research Design
Abramson, S. (1991). <i>Use of court-appointed advocates to assist in permanency planning for minority children</i> . Child Welfare, Volume 70, Number 4, July-August 1991.	Court-appointed special advocates (CASA)	Experimental Design
Berliner, L., Fitzgerald, M. and Alving, M. (1998) <i>Court appointed special advocates for children in Washington State: A review of effectiveness</i> . Washington State Institute for Public Policy, November 1998.	Court-appointed special advocates (CASA)	Descriptive

Evaluation/Research Article	Topic/Focus	Research Design
Caliber Associates. (2004). <i>Evaluation of CASA representation: Final Report</i> .	Court-appointed special advocates (CASA)	Quasi-experimental
Calkins, C. and Millar, M., Ph.D. (1999). <i>The effectiveness of court appointed special advocates to assist in permanency planning</i> . In, <i>Child and Adolescent Social Work Journal</i> Volume 16, Number 1, February 1999.	Court-appointed special advocates (CASA)	Quasi-experimental
CSR, Inc (1995). <i>Final report on the validation and effectiveness study of legal representation through guardian ad litem</i> . Washington DC: NCCAN, DHHS.	Guardian ad litem	Descriptive
Duquette, D.N. and Ramsey, S.H. (1987). <i>Representation of children in child abuse and neglect cases: an empirical look at what constitutes effective representation</i> . University of Michigan.	Type of representation and training	Quasi-experimental
Goodman, G.S., Edelstein, R.S., Mitchell, E.B., and Myers, J.E.B. (2008). <i>A comparison of types of attorney representation for children in California juvenile court dependency cases</i> . In, <i>Child Abuse &amp; Neglect</i> 32 (2008) 497–501.	Type of representation	Quasi-experimental
Hess, C., Swanke, S. and Batson, A. (2007). <i>An evaluation of the North Dakota guardian ad litem project</i> . HB Consultation and Evaluation Associates, Grand Forks, ND	Guardian ad litem project in North Dakota	Descriptive
Judicial Council of California. (2004). <i>Dependency counsel caseload study and service delivery model analysis</i> . San Francisco, CA: Administrative Office of the Courts.	Caseloads	Descriptive
Litzelfelner, P. (2000). <i>The effectiveness of CASAs in achieving positive outcomes for children</i> . <i>Child Welfare</i> ; Mar/Apr 2000; 79, 2.	Court-appointed special advocates (CASA)	Quasi-experimental
Lukowski, G.A and Davies, H.J. (2002). <i>A challenge for change: Implementation of the Michigan lawyer-guardian ad litem statute</i> . The American Bar Association Center on Children and the Law for the Governor's Task Force on Children's Justice.	Guardian ad litem statute in Michigan	Descriptive
Pitchal, E.S., Freundlich, M.D., Kendrick, C. (2009). <i>Evaluation of the guardian ad litem System</i> . Nebraska. National Association of Counsel for Children.	Guardian ad litem system in Nebraska	Descriptive

Evaluation/Research Article	Topic/Focus	Research Design
Stotzel, M. and Fegert, J.M. (2006). The <i>representation of the legal interests of children and adolescents in Germany: a study of the children's guardian from a child's perspective</i> . International Journal of Law, Policy and the Family 20, (2006), 201-224	Guardian ad litem	Descriptive
Zinn, A. E. & Slowriver, J. (2008) <i>Expediting Permanency: Legal Representation for Foster Children in Palm Beach County</i> . Chicago: Chapin Hall Center for Children at the University of Chicago.	Legal Aid's Foster Children's Project	Quasi-experimental

The full reports of these research studies are available on our QIC-ChildRep website at: <http://www.improvechildrep.org/ChildRep2010/EvaluationsofChildRepresentation.aspx>

### 3.4 Consensus Begins to Emerge

During the first year Needs Assessment, the QIC-ChildRep team reviewed all academic literature, studied state laws, and talked with judges, attorneys, caseworkers, CASAs, state regional office directors, tribes, and former foster youth themselves. Given the varied viewpoints included in the Needs Assessment, as well as the geographic and population diversity, it is striking that the informants and the academic literature raised such similar issues and concerns. But in addition to criticisms of the current state of child representation, a shared positive vision of the child's lawyer also came to light:

- Attorneys must develop a relationship with their client. Attorneys should be actively engaged with their clients in order to understand their needs and advocate effectively. Attorneys must engage with children more by having frequent and more meaningful contact, and should understand the child's living situation, school, and home life.
- Effective representation includes a thorough investigation in order to develop a clear theory of the case and effectively advocate in court. Attorneys must gain a thorough understanding of their cases in order to develop effective strategies and advocate zealously for their clients.
- Attorneys effectively solve problems for their clients by engaging in active out-of-court advocacy. Negotiating solutions and settlements is an important function of the attorney role. By actively seeking solutions on behalf of the child, attorneys can resolve problems quickly and cooperatively.
- Attorneys should take a holistic view of the child's needs. A child in the dependency system often has needs that cannot be met by the dependency system alone.

Often, an attorney must monitor a vast array of services, as well as coordinate other legal issues, such as financial assistance, or educational programs.

- Practice in this area requires comprehensive training which includes child and family issues. Attorneys need to understand child and family issues, as well as agency policies and procedures. They should also have solid courtroom skill and grounding in children's law. Current training of attorneys is ad hoc, lacking a standard curriculum or protocol.
- Attorneys must meet initial and ongoing qualification standards. Children's law is a highly specialized and complex area of law. Attorneys should meet basic qualifications in order to practice in this area, and should have to meet ongoing requirements, which are monitored and overseen.
- Supports help attorneys accomplish the multiple tasks which allow them to be successful advocates. Attorneys need supports in order to accomplish all the duties with which they are tasked. Some supports reported to make a difference include administrative help, investigators, social workers, and strong supervision.
- Caseloads must be reasonable in order for attorneys to accomplish the essential duties of their jobs. Quality practice requires that the system support adequate time and resources for attorneys.<sup>14</sup>

The Needs Assessment did not resolve the controversy on whether the child's legal representative should be client-directed or serving in the best interest of the child. But even best interest jurisdictions tend to agree that the child's wishes should be considered as the child's lawyer determines his or her position. It may also be in the best interests of a child to have their views clearly and aggressively advocated for in court. Informants agree that greater weight should be given to a child's stated goals as the child gains in age and maturity. Achieving harmony between the client directed and best interests view is discussed in the next chapter. The divide is not as wide as many assume.

But no matter how the goals of the case are established and no matter who sets the objectives of the case, whether as directed by the child or by a substituted or best interest judgment of the lawyer, there seems to be an emerging consensus as to the duties and tasks of the legal representative of the child. As the 1996 ABA Standards say: "The chief distinguishing factor between the [client-directed and best interests] roles is the manner and method to be followed in determining the legal position to be advocated."<sup>15</sup>

---

14. QIC Phase II Implementation Plan, September 2010 Report to Children's Bureau, page 18, available at [www.ImproveChildRep.org](http://www.ImproveChildRep.org).

15. 1996 ABA Standards, A-2 Commentary.

An ideal view of child representation practice emerged which includes lawyers selected because of a passion for the work who are highly skilled, well qualified, well informed, and held accountable to a high standard that includes engaged-client interaction and a problem-solving ethic. The informants also identified system supports that would allow high practice standards to be realized. This emerging consensus forms the basis of the QIC Best Practice Model of Child Representation.

