

Child Advocacy Program
Art of Social Change:
Child Welfare, Education, & Juvenile Justice

Professor Elizabeth Bartholet
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ASSIGNMENT PACKET for Session #3
September 16, 2010

Representing Abused and Neglected Children:
Holding Attorneys Accountable

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and
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Response Panel:

Andrew Hoffman, Managing Attorney of the Boston Office, Children and
Family Law Division, Committee for Public Counsel Services

Sally Padden, First Justice, Essex County Juvenile Court

Session #3
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Assignment

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Georgia State U. L. Rev., Vol. 24, No. 2, 2007

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- S. Badeau and S. Gesiriech, *A Child's Journey Through the Child Welfare System*, The Pew Commission on Children in Foster Care
- *Evaluation of the Guardian Ad Litem System in Nebraska*, National Association of Counsel for Children
- *Kenny A., et al., vs. Sonny Perdue in his official capacity as Governor of the State of Georgia, et. al., Consent Decree (U.S. Dist. Court, ND Ga, Atlanta Div.)*

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Speaker Biographies

Erik S. Pitchal is an Assistant Clinical Professor of Law at Suffolk University Law School and founder of the Child Advocacy Clinic. Prior to joining the Suffolk faculty, Professor Pitchal was the director of Fordham University's Interdisciplinary Center for Family & Child Advocacy, where he also taught Children and the Law and Family Law. He received his J.D. from Yale and his B.A. in public policy from Brown. Professor Pitchal's expertise as a practicing lawyer is in the representation of children, primarily in care and protection, delinquency, and CHINS cases. Before entering academia, he was an attorney at the Legal Aid Society and Children's Rights, both in New York. He is co-counsel in *Kenny A. v. Perdue*, a federal class action lawsuit in Atlanta in which he represents 3000 foster children. In 2005, Professor Pitchal was named Child Advocate of the Year by the American Bar Association's Young Lawyers Division. He is a former law clerk to Judge Robert Patterson of the U.S. District Court for the Southern District of New York. Professor Pitchal's research interests are in family law, children and the law, and legal ethics. He is particularly interested in the relationships among lawyers for children, their clients, and the state. Some recent publications include *Where Are All the Children? Increasing Youth Participation in Dependency Proceedings*, 12 J. U.C. DAVIS J. JUV. L. & POL. 233 (2008); *Children's Constitutional Right to Counsel in Dependency Cases*, 15 TEMPLE POL. & CIV. RTS. L. REV. 663 (2007); and *Buzz in the Brain and Humility in the Heart: Doing It All, Without Doing Too Much, on Behalf of Children*, 6 NEV. L.J. 1350 (2006). He also recently completed an evaluation of Nebraska's guardian ad litem system for a project funded by the Nebraska Legislature.

Response Panel:

Andrew Hoffman is the Managing Attorney for the Boston office of the Children and Family Law Division (CAFL) at the Committee for Public Counsel Services, where he represents children and parents in child abuse and neglect cases. He previously served as staff counsel to CAFL and also practiced in civil legal services. He is the author of *The Role of Child's Counsel in State Intervention Proceedings: Toward a Rebuttable Presumption in Favor of Family Reunification*, 3 Conn. Pub. Int. L.J. 269 (Spring 2004) and several chapters in *Child Welfare Practice in Massachusetts*, MCLE (2006). He is a graduate of Princeton University and the University of Pittsburgh School of Law.

Sally Padden is First Justice of the Essex County Juvenile Court in Massachusetts.

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Session Description

Each state in America has a child welfare agency charged with ensuring the safety and well-being of children. As a backdrop for this session, Professor Pitchal will provide an overview of the child welfare system. He will describe how a child travels through the system, as well as how and when that child might interact with the courts.

Since children cannot advocate effectively for their own interests, most agree that they should be assigned strong advocates who can. Reports indicate, however, that abused and neglected children receive inadequate representation. Why don't abused and neglected children have zealous advocates? Why is the quality of lawyering for children arguably so poor? Why aren't children's voices being heard when critical decisions are being made about their lives? How can we hold attorneys for children accountable?

Prof. Pitchal will respond to these concerns. Last year, he evaluated the state of Nebraska's system for providing lawyers for children and will report on those findings. Additionally, Prof. Pitchal will discuss his work on impact litigation cases on behalf of abused and neglected children with a goal being increased accountability in the system to protect children.

Justice Padden, who heads the Juvenile Court System in Essex County (which includes juvenile courts in Salem, Lawrence, Lynn, and Newburyport, Massachusetts), will respond to Prof. Pitchal, remarking on the quality of lawyering for children from her perspective as a judge. Andrew Hoffman heads the Boston Office of the agency in Massachusetts which provides lawyers for children in abuse and neglect cases. Andrew will share his views on the quality of legal services for children as an advocate representing parents and children in abuse and neglect proceedings in our courts every day.

GEORGIA STATE UNIVERSITY LAW REVIEW

I. INTRODUCTION

A. *The Challenge of Child Advocacy*

Advocating for children is a challenge for many reasons. Children are powerless in ways that even other groups we describe as powerless are not. African-Americans, women, the elderly, and persons with disabilities can all vote, use their purchasing power to wield influence, and get out onto the streets to demonstrate. Children by definition cannot vote, and even those old enough to shop and to demonstrate are subject to their parents' decision-making power and to special state restrictions. Infants cannot even speak to express their needs and desires, and young children do not have the knowledge base or the developed reasoning powers to make rational decisions for themselves. Children depend on adults both to figure out what children's interests are and to protect those interests.

The challenge of child advocacy is to ensure that children's interests are served when, in the end, adults make the decisions. One favorite legal solution has been to rely on each child's birth parents to make decisions for that child, based in part on the idea that parents will be "naturally" motivated to promote their own children's best interests. Another favorite legal solution has been to rely on the state to act as *parens patriae*, based in part on the idea that parents cannot be entirely trusted, and therefore the state should ensure that at least certain basic interests of the country's children are served. In the United States, as in other countries, we rely on both solutions in combination.¹ We give parents powerful rights to raise their children without undue interference by others, including the state. At the same time, we give the state some right to intervene in the family to protect children against abuse and neglect by their parents, and to insist on certain basics in terms of education, health, and protection against such exploitation as child labor.

1. See DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 14-16, 19-25 (3d ed. 2007).

People who see themselves as child advocates tend to divide between those who argue for more powerful parents' rights, and those who argue for a more powerful state. Some also argue for giving children their own legal "rights"—rights, for example, to make certain decisions, to take certain actions, and to speak and be represented in court²—but this kind of solution has limited applicability. As noted above, many children are too young to speak or to make rational decisions, and appointing someone to represent them simply means assigning some adult to decide for them; moreover, it is obviously not practicable to provide paid representatives or individual hearing rights to all children for all of the issues that matter. In the end we have to rely on adults for almost all decisions regarding children, and as a practical matter this usually means relying either on their parents, or on the state in its *parens patriae* capacity.

The problem is that neither parents nor the state can be entirely trusted to promote children's best interests. Parents may be self-interested, or simply not fit as parents. The state may be helpful in countering parents' selfish interests or incompetence; however, the state is selected and administered by adults, and there is always the risk that it may operate to further various adult group interests at the expense of children's interests. Indeed, as I look at history and the current situation in terms of children's interests, it seems clear to me that children get the short end all too often, despite the regularly repeated mantra that children's best interests should be the guiding principle for law and policy. Policy-makers—themselves adults, of course—have to acknowledge the risk that children's interests will not be well served, and then rise to the challenge of trying to understand in different substantive areas involving children, what truly will serve their interests, and how best to structure legal systems to promote those interests in an ongoing way.

2. See discussions of children's liberation theories in *id.* at 108-20.

Sue Badreau and Sarah Gesiriech (2003)
Available at www.pewfostercare.org/research

A Child's Journey Through the Child Welfare System

This paper describes the typical progression a child makes through a state's child welfare system. Each state's child welfare agency¹ is responsible for ensuring the safety and well-being of children. Child welfare systems have several chief components:

- Foster care -- full-time substitute care for children removed from their parents or guardians and for whom the state has responsibility. Foster care provides food and housing to meet the physical needs of children who are removed from their homes.
 - Child protective services (CPS) -- generally a division within the child welfare agency that administers a more narrow set of services, such as receiving and responding to child abuse and neglect allegations and providing initial services to stabilize a family.
 - Juvenile and family courts -- courts with specific jurisdiction over child maltreatment and child protection cases including foster care and adoption cases. In jurisdictions without a designated family court, general trial courts hear child welfare cases along with other civil and criminal matters.
 - Other child welfare services -- in combination with the above, these services address the complex family problems associated with child abuse and neglect. They include family preservation, family reunification, adoption, guardianship, and independent living.
- ✓ While 542,000 children were in foster care on September 30, 2001, 805,000 spent some time in care over the course of that year.²
- ✓ Children in care in 2001 had been in foster care for an average of 33 months. More than 17 percent (91,217) of the children had been in care for 5 or more years.³

Once a child is known to the child welfare agency, he and his family become subject to a series of decisions made by judges, caseworkers, legal representatives, and others, all of whom have an important role to play. A child may encounter dozens of other new adults including foster parents, counselors, and doctors.

Most children (60%) enter foster care when removed from their homes by a child protective agency because of abuse and/or neglect. Others (17%) enter care because of the absence of their parents, resulting from illness, death, disability, or other problems. Some children enter care because of delinquent behavior (10%) or because they have committed a juvenile status offense (5%), such as running away or truancy. Roughly 5

* Throughout the paper, the following bullets are used: ✓ for statistics; ⚖ for federal law and regulations; and † for a child's experience.

percent of children enter care because of a disability.⁴ For many, it represents their only access to disability services, for example, mental health care for a child with severe emotional disturbance. In these rare instances, in states that allow such placements, a child is placed in foster care voluntarily at the request of his parents.

Foster care is intended to provide a safe temporary home to a child until he can be reunited safely with his parent(s) or adopted. However, being removed from home and placed in foster care is traumatic for a child, and the period of time he may spend in care can be filled with uncertainty and change.⁵

A child in foster care is affected by a myriad of decisions established by federal and state laws designed to help him. At each decision point, action or inaction can profoundly influence the child's current circumstances and future prospects. The discussion that follows highlights typical decision points on a child's journey through foster care. Although the format is based on federal and common state law and practice, nevertheless it is only a model. Laws vary across states, as does the capacity and practices of child welfare agencies and courts to manage their caseloads. These factors can and often do create delays that complicate a child's journey through the child welfare system and often extend his time there.

DECISION POINT - Abuse or neglect is reported and the CPS agency responds.

The child's journey through foster care usually begins when a mandated reporter⁶ or concerned citizen makes a report of abuse or neglect to a state agency. For example, a doctor delivers a baby who has drugs in his system; a neighbor notices bruises on a child; a toddler is found abandoned in a public place; or a teacher notices a student who is unclean, unfed or severely ill.

☞ Child abuse and neglect, or maltreatment, are defined in both federal and state law. Federal law provides a foundation for states by identifying a minimum set of acts or behaviors that define physical abuse, neglect, and sexual abuse. The Federal Child Abuse Prevention and Treatment Act defines child abuse and neglect, at a minimum, as "any recent act or failure on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm" to a person under age 18.⁷ States can and do expand on or clarify definitions in a variety of ways that are particular to local needs. Although any of the forms of child maltreatment may be found separately, they often occur in combination.

The U.S. Department of Health and Human Services (HHS) estimates that in 2001, CPS agencies received nearly three million referrals of maltreatment involving five million children. Approximately 903,000 of these cases were substantiated after investigation.⁸

The following types of abuse and neglect occurred (some in combination with others):

Type of Abuse	Percentage
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Neglect	59.2%
Physical Abuse	18.6%
Sexual Abuse	9.6%
Emotional/Psychological maltreatment	6.8%
Other (abandonment, congenital drug addiction)	19.5% ⁹

The ages of the victims ranged as follows:

Age	Percentage
Birth to 3 years	27.7%
4-7	24.1%
8-11	22.8%
12-15	19.5%
16-21 or unknown	6% ¹⁰

More than half (56.5%) of substantiated reports were made by professionals, including teachers, law enforcement officers, and physicians. The remaining 43.5 percent were made by family members, neighbors, and other members of the community.¹¹

The majority of the victims were maltreated by a parent (birth, adoptive or step). The breakdown is as follows:

Relationship to the Child	Percentage
Mothers (acting alone or with a non-parent)	46.9%
Fathers (acting alone or with a non-parent)	18.7%
Mother and Father	19.3%
Non-parent	11.9%
Unknown	3.1% ¹²

In 2001, an estimated 1,300 children died from abuse or neglect. Eighteen of these deaths, (1.5%) occurred while a child was under the custody or supervision of the child welfare agency.¹³

Once a report of maltreatment has been made, the CPS agency investigates whether abuse or neglect has occurred and assesses the risks to the child.

DECISION POINT

The CPS agency finds that the allegations of abuse and neglect are unfounded and the case is closed.

or

The CPS agency finds evidence that the child is at risk for subsequent abuse or neglect and conducts an assessment to determine whether the child can remain safely at home with supervision or support services.

The assessment may include a visit to the family home and interviews with the family and persons outside the family. The family may help identify services that may be needed to better care for their child, such as parenting skills training or addiction services.¹⁴

- ✓ The majority of children entered foster care because of neglect, often the result of inadequate housing, poor child care, or insufficient food or medical care.
- ✓ A substantial percentage of parents with children in foster care have substance abuse treatment needs.¹⁵

DECISION POINT – The CPS agency petitions the court recommending the removal of the child from his home under the supervision of the child welfare agency. This petition initiates a series of judicial hearings.

If the CPS assessment indicates the child is at high-risk for subsequent abuse or neglect, the CPS agency conducts an investigation and requests a court order to remove the child from the home. Generally, in emergency situations, the agency will remove the child and place him in emergency or temporary foster care before receiving the court order.

DECISION POINT – Protective hearing: the court determines initial placement.

An emergency custody hearing, or protective hearing, will be held for the court to first determine whether the child has been abused or neglected. If the judge determines that abuse or neglect has occurred, the case then proceeds to an adjudicatory and dispositional hearing, where the judge will decide, based in part on the child welfare agency's recommendation, to do one of the following:

- (1) Send the child home without services;
- (2) Send the child home with supervision and support services; or
- (3) Remove the child from his home.

This same set of options will be considered at each subsequent hearing.

DECISION POINT – Adjudicatory and dispositional hearing(s): the court determines that the child must be removed and approves an initial placement and reunification plan.

Once the child is removed from his home, he and his parents become formally involved with the juvenile or dependency court system, and the child is considered in state custody and generally a ward or dependent of the court. The child and his family are assigned a case worker from the child welfare agency.

The child's case worker develops a case plan detailing:

- (1) The types of services that the child and his family will receive, such as parenting classes, mental health or substance abuse treatment, and family counseling;
- (2) Reunification goals, including visitation schedules and a target date for a child's return home; and
- (3) Concurrent plans for an alternative permanent placement options should reunification goals not be met.

The court reviews and may modify the recommended case plan.

- ☞ Federal regulations require that the child's case plan describe how the state will achieve a safe placement for the child in the least restrictive, most family-like setting in close proximity to the child's parents. The case plan must also describe how the placement is consistent with the child's best interests and special needs.¹⁶
- ✓ Many jurisdictions are experimenting with innovative approaches to develop effective case plans and facilitate safe reunification. Such approaches include mediation, family group conferencing, and co-location of services such as substance abuse assessment in the court.
- ✓ Before a State may receive federal reimbursement for the costs resulting from supporting a child after removal from his home into foster care, a judge must determine that reasonable efforts have been made to keep the family together by providing such services as parenting classes, substance abuse treatment, or subsidized child care.¹⁷ However, federal law does not require States to pursue reasonable efforts if a parent has committed specific types of felonies, or subjected the child to aggravated circumstances, such as abandonment, torture, or sexual abuse.¹⁸

In 2001, the case goals of 541,998 children in state custody were:

Case Goal	Percentage (number)
Reunify with Parent(s) or Principal Caretaker(s)	44% (241,051)
Adoption	22% (116,653)
Case Plan Goal Not Yet Established	11% (62,014)
Long Term Foster Care	8% (45,792)
Emancipation	6% (32,309)
Live with Other Relative(s)	5% (26,555)
Guardianship	3% (17,624) ¹⁹

In 2001, the placement settings for children in state custody were:

Placement Setting	Percentage (number)
Foster Family Home	48% (260,384)
Relative foster home	24% (130,869)
Institution	10% (56,509)
Group Home	8% (43,084)
Pre-Adoptive Home	4% (20,289)

Trial Home Visit	3% (16,685)
Runaway	2% (9,112)
Supervised Independent Living	1% (5,068) ²⁰

More than 20 percent of children in foster care will move at least three times and in some cases seven or more times.²¹ Children move for many reasons, including attrition and lack of training or support for foster families, lack of resources to address a child's special needs, or because the child's behavior may be difficult for some foster parents to manage.

† If the child is removed from his home, he is separated from his parents and may be separated from his siblings. He will meet new temporary "parents" and adjust to their lifestyle and house rules. Foster parents may have their own children or other foster children in their homes. The child may have to attend a new school, leaving old friends behind and adjusting to a new teacher and new classmates as well as new rules. The child will have a caseworker assigned to him. Ideally the caseworker will visit the child at least once a month. The emotional adjustments will differ for children placed with relatives, or placed in their own neighborhood. The child will have to make these adjustments each time he is moved.

DECISION POINT – The child is placed in the home of a relative.

☞ Federal law recognizes a preference for placement with relatives.²² However, the regulations clarify that health and safety are the paramount considerations when any placement decision is made regarding a child in foster care, including care with a relative.²³

✓ Generally, relatives do not receive foster care payments unless they are licensed foster care providers.

DECISION POINT - The child is placed in a non-relative foster family home.

Although the total number of licensed family foster homes in the United States is not known, in 1998, 38 states reported a total of 133,503 homes.²⁴ Unfortunately, turnover among foster parents is high; 30 to 50 percent leave the system every year.²⁵

Foster parents receive stipends to cover room and board, child care, and clothing. They may also receive Medicaid coverage for the children in their care.

DECISION POINT - The child is placed in a residential facility or in a group home.

The child may be placed in therapeutic foster care, residential child care, or residential psychiatric care if he has emotional, behavioral, physical or medical needs and requires a higher level of supervision and treatment. A child may be placed in group home care because of a shortage of foster family homes. Group home care is more frequently used for older children.

- ☞ A group home is a licensed or approved home providing 24-hour care for children in a small group setting that generally has from 7 to 12 children.²⁶
- ☞ An institution is a child care facility operated by a public or private child welfare agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experiences, i.e. child care institutions, residential treatment facilities, and maternity homes.²⁷
- ☞ Federal child welfare funds cannot be used to support children in public facilities that serve more than 25 children or used to maintain children in facilities that are operated primarily for the detention of delinquent youth.²⁸

DECISION POINT - The court reviews progress every six months and holds a permanency hearing after 12 months.

Periodic reviews are held in the court or reported to the court.

- ☞ Federal law requires states to review a child's case at least every six months after placement in foster care to determine whether the placement is still necessary and appropriate, whether the case plan is being properly and adequately followed, and whether progress has been made toward reunifying the family. The case review must also set a target date for the child's return home, adoption, or other permanent placement.²⁹

Permanency planning hearings are always held in court.

- ☞ Federal law requires states to hold a permanency planning hearing for each child in foster care within 12 months of initial placement, or after a determination that reasonable efforts to reunite are not required.³⁰ Some states require this hearing sooner. Foster parents, pre-adoptive parents, and relative caregivers must be given notice and an opportunity to be heard at case reviews and permanency hearings.

Some advocates believe that a child should not remain in foster care longer than 12 months. Other advocates believe that this is too short a period to address the complex and multiple needs of the family, particularly families with substance abuse or mental health needs.

A judge may choose from among several permanency options for the child. In 2001, 263,000 children exited foster care in the following ways:

Outcomes for Children Exiting Foster Care	Percentage (number)
Reunification with Parent/Primary Caretaker	57% (148,606)
Living with Other Relative(s)	10% (26,084)
Adoption	18% (46,668)
Guardianship	3% (8,969)
Emancipation	7% (19,008)

Transfer to Another Agency	3% (7,918)
Runaway	2% (5,219)
Death of Child ³¹	less than 1% (528) ³²

DECISION POINT – The child is reunified with his birth family.

If the parents are successful with the court-ordered treatment plan, the child is reunited with his parents, and the case is closed.

- ✓ In 2001, more than 57 percent (148,606) of children in out-of-home care were reunited with their families.³³
- ✓ However, other studies have noted that approximately 33 percent of children who were reunified with their families re-entered foster care within three years.³⁴ And, approximately 17 percent of children who entered foster care had been in foster care before.³⁵

DECISION POINT – The birth family does not complete the court-ordered reunification plan. The child welfare agency petitions the court for the termination of parental rights (TPR).

If a parent fails to comply with the reunification plan, the child welfare agency will petition the court to terminate the parents' rights to the child. At any point during the court process, a parent may seek to voluntarily relinquish their parental rights.³⁶ When the parents' rights are terminated, a permanent plan for the child will be created.³⁷

- ☞ Federal law requires states to initiate TPR proceedings for (1) children who have been in foster care for 15 of the most recent 22 months, (2) infants determined to be abandoned, or (3) cases in which a parent has killed another of his/her children, or (4) certain other egregious situations. States may opt not to initiate TPR if (1) the child is in a relative's care, (2) the child welfare agency has documented a compelling reason that TPR would not be in the child's best interest, or (3) the state has not provided necessary services to the family.³⁸
- ✓ In 2001, more than 65,000 children's living parents had their parental rights terminated.³⁹
- ☞ Federal law requires that the permanency plan document the steps taken to place the child and finalize the adoption or legal guardianship and document child specific recruitment efforts taken to find an adoptive family or legal guardian for a child.⁴⁰
- ☞ Federal regulations direct states to concurrently begin to seek and approve a qualified adoptive family for the child whenever a state initiates TPR proceedings.⁴¹

DECISION POINT - The child is placed with an adoptive family and the court holds an adoption hearing to finalize the adoption.

Some children will leave foster care through adoption.

- ✓ In 2001, 51,000 children were adopted.⁴² Nearly 59 percent were adopted by their foster family and nearly 24 percent were adopted by a relative.⁴³
- † Because children adopted from foster care may have been abused, neglected, or may have lived in multiple homes, the transition to an adoptive home can be difficult. Some states are beginning to explore ways to offer post-adoption services, such as respite care, to ensure the adoptions stay intact.
- ✓ In 2001, more than 126,000 children in foster care were considered waiting to be adopted because they have the goal of adoption or because of TPR.⁴⁴ These children had been in foster care for an average of more than 3½ years, and their average age was eight.⁴⁵

DECISION POINT – The child is placed with a legal guardian, often a relative.

Some children will leave foster care through placement in the custody of a guardian. The guardianship can be granted to relatives, foster parents, or another adult who has a relationship with the child.⁴⁶ Guardianship is not as legally secure as adoption. However, it does provide a measure of permanency and stability without requiring the termination of parental rights.⁴⁷

- ☞ Federal law defines legal guardianship as a judicially-created relationship between child and caregiver intended to be permanent and self-sustaining. The following parental rights with respect to the child are transferred to the caretaker: protection, education, care and control, custody, and decision-making.⁴⁸
- ✓ Subsidized legal guardianships are a means by which some states provide relative (and in some states non-relative) foster parents with financial assistance after they have obtained legal guardianship of the child and the child has exited the formal child welfare system. Subsidized guardianships can provide an alternative form of support for children whose relatives have chosen not to adopt.⁴⁹ The federal government does not provide States reimbursement for costs associated with subsidized legal guardianship payments.

DECISION POINT – The child reaches age 18 with no permanent home.

Some children will reach 18 and leave foster care without being reunited with their families, adopted, or placed in another permanent home. In these cases, the child welfare agency may provide basic living skills training, housing assistance, and educational opportunities through federally funded independent living programs.

- ✓ In 2001, approximately 19,000 youth left foster care when they reached the age of 18 (or 21, in some cases).⁵⁰

¶ Studies have found significantly lower levels of education, higher rates of unemployment, and higher rates of homelessness for adults who spent time in foster care as children.⁵¹ For example, a study by Westat, Inc. reported that only 54 percent of young adults who grew up in foster care had completed high school, 40 percent continued to rely on public support in some way (were receiving public assistance, incarcerated, or receiving Medicaid) and 25 percent had been homeless for some period.⁵² Other studies indicate that a significant percentage of the homeless population in many cities were adults who once had been foster children.⁵³

As this paper indicates, the rate at which a child progresses through the foster care system, and the nature of his experience there, depends on many factors. These include federal and state financing, timelines, and legal provisions: good and timely decisions; the availability of services for birth and adoptive families; and the availability of licensed foster homes willing to care for children. Many of these factors are interrelated. But each can contribute to the length and quality of a child's time in foster care.

¹Public child welfare agencies are often called by different names such as the Department of Human Services (DHS), Department of Health and Social Services (DHSS), Department of Children and Families (DCF), or the Department of Social Services (DSS).

²U.S. Department of Health and Human Services, Children's Bureau, *The AFCARS Report #8* (March 2003). Available online at www.acf.dhhs.gov/programs/cb/publications/afcars/report8.htm.

³Ibid.

⁴Karen Spar, Specialist in Social Legislation, Domestic Social Policy Division, Congressional Research Library, Library of Congress, Testimony before the Subcommittee on Human Resources, July 20, 1999. The figures in this paragraph represent Fiscal Year 1994 data.

⁵Ibid.

⁶State laws identify certain professionals who are mandated to report suspected abuse. They generally include medical professionals, teachers, day care workers, photo lab developers, and law enforcement.

⁷42 U.S.C. 5106g.

⁸U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2001*, p.21 (Washington, DC: U.S. Government Printing Office, 2003).

⁹Ibid, 21. The percentages total more than 100 percent of victims because children may have been victims of more than one type of maltreatment.

¹⁰Ibid, p. 23.

¹¹Ibid, pp. 3 & 7.

¹²Ibid, pp. 43 & 45.

¹³Ibid, pp. 51 & 55.

¹⁴The Oklahoma Department of Human Services, *The Child Welfare Journey*. Available online at <http://www.okdhs.org/cfsd/howtos/cw/journey.htm>.

¹⁵Child Welfare League of America, Behavioral Health Division, *Alcohol and Other Drugs*. Available online at <http://www.cwla.org/programs/bhd/aod.htm>.

¹⁶42 U.S.C. 675(5).

¹⁷U.S. Department of Health and Human Services, National Clearinghouse on Child Abuse and Neglect Information, *Overview of the Civil Child Protective Court Process*. Available online at www.calib.com/nccanch/pubs/usermanuals/courts/protect.cfm.

¹⁸42 U.S.C. 671(a)(15)(D).

¹⁹*The AFCARS Report #8*.

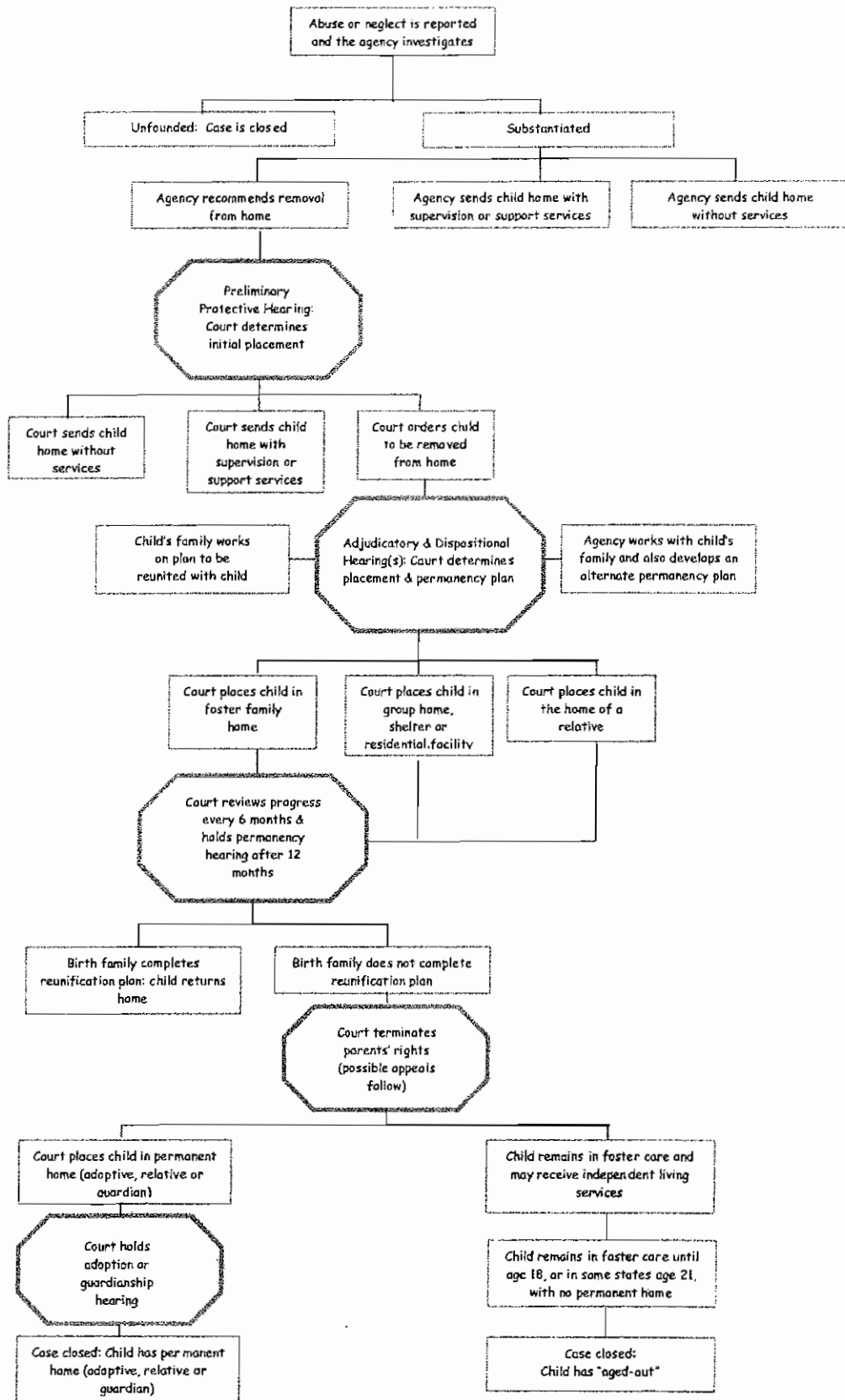
²⁰Ibid.

²¹Kathy Barbell and Madelyn Freundlich, *Foster Care Today* (Casey Family Programs, Washington, DC, 2001), pp. 3-4. These figures were based on 1994 data from the U.S. House of Representatives, 2000.

²²42 U.S.C. 671(a)(18).

- ²³ Children's Defense Fund, Child Welfare and Mental Health Division, *The Adoption and Safe Families Act (ASFA) Regulations and Kinship Care Families - Frequently Asked Questions* (Spring 2000) and *Federal Register*, Vol.65, No. 16, (January 25, 2000), pp. 4032-4033.
- ²⁴ U.S. Department of Health and Human Services, Administration for Children & Families, National Clearinghouse on Child Abuse and Neglect Information, *Foster Care National Statistics April 2001*.
- ²⁵ University of Tennessee Family Foster Care Project, *Foster Family Forum*, Issue 1, (July 2002).
- ²⁶ U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 1999: Annual Report* (Washington, DC: U.S. Government Printing Office, 2001). Some states may include settings with fewer than seven children as group homes.
- ²⁷ *Ibid.*
- ²⁸ U.S. Department of Health and Human Services, Administration for Children and Families, Administration for Children, Youth and Families, *Program Instruction*, ACYF-PI-89-09 (October 1989).
- ²⁹ *Overview of the Civil Child Protective Court Process*.
- ³⁰ 42 U.S.C. 675 (1)(5)(C).
- ³¹ These deaths resulted from all causes including accidental and natural. Only 18 resulted from abuse.
- ³² *The AFCARS Report #8*.
- ³³ *Ibid.*
- ³⁴ U.S. General Accounting Office, *FOSTER CARE Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain* (GAC-02-585) (Washington, DC: U.S. Government Printing Office, 2002), p. 10.
- ³⁵ *Foster Care National Statistics April 2001* (2000b).
- ³⁶ *The Child Welfare Journey*.
- ³⁷ *Ibid.*
- ³⁸ 42 U.S.C. 675(1)(5)(E). In the case of an abandoned child, regulations require States to initiate TPR within 60 days of a court determination of abandonment and in the case of a child whose parent has been convicted of a felony specified in the law 60 days of a court determination that reasonable efforts to reunite are not required.
- ³⁹ *The AFCARS Report #8*.
- ⁴⁰ 42 U.S.C. 675 (1)(E).
- ⁴¹ 42 U.S.C. 675 (5)(E).
- ⁴² *The AFCARS Report #8*. This figure is based on the most recent revisions to AFCARS, which only include adoption outcomes. This figure differs from the figure presented in the table showing outcomes for children exiting foster care. That figure is based on preliminary data which will be revised once all the outcomes are updated.
- ⁴³ *Ibid.*
- ⁴⁴ *Ibid.*
- ⁴⁵ *Ibid.*
- ⁴⁶ *The Child Welfare Journey*.
- ⁴⁷ Steve Christian, *A Place to Call Home Adoption and Guardianship for Children in Foster Care*, p.28 (National Conference of State Legislatures, 2000)
- ⁴⁸ 42 U.S.C. 675.
- ⁴⁹ *The Adoption and Safe Families Act (ASFA) Regulations and Kinship Care Families - Frequently Asked Questions*.
- ⁵⁰ *The AFCARS Report #8*.
- ⁵¹ State of Tennessee, Comptroller of the Treasury, *Foster Care Independent Living Programs* (1998).
- ⁵² *1994 Green Book* (Washington, DC: U.S. Government Printing Office, 1994).
- ⁵³ National Alliance to End Homelessness. *Web of Failure: The Relationship between Foster Care and Homelessness* (1995). Available online at <http://www.endhomelessness.org/pub/fostercare/webrept.htm>.

A Child's Journey through the Child Welfare System



Evaluation of the Guardian Ad Litem System in Nebraska

National Association of Counsel for Children

The NACC has prepared an exhaustive study of the Nebraska GAL system, evaluating it on 15 different measures. The Legislature asked for the report to highlight good practices and offer recommendations to improve weak areas, based especially on best practices occurring in other jurisdictions.

Overall, we found that the main challenge is that despite the best intentions of individual GALs, the system of child representation in Nebraska lacks basic accountability and is therefore failing Nebraska's children.

We identified the following **strengths** in the current system:

- Children have a statutory right to a GAL in every case, who must be an attorney
- GALs are in fact appointed in every case, very early in the life of the case
- GALs are present for almost every court appearance

However, we also found the following **areas crying out for reform**:

- There is not one GAL system in Nebraska; there are *93 different systems*,
- There is *no uniform, comprehensive set of practice standards* for GALs to follow
- GALs do not routinely tell the court what their child-clients' own views on the case are – in large part because they don't know what their clients' views are
- GALs are insufficiently familiar with their clients' needs
- GALs do not receive adequate training or supervision
- In one county in particular, individual attorneys' caseloads are crushingly high

The GALs job is to challenge DHHS, to make sure that it is doing *its* job, on a case-by-case basis. **Our findings reveal that instead of this model of the GAL being a zealous advocate for the needs of children, the Nebraska system permits them to serve as a rubber stamp.** In the words of one foster youth we talked to, having a GAL is “like having another caseworker.” In the words of one judge, “They just sit there.”

To remedy these systemic, structural failings, the NACC ***recommends the creation of an independent, statewide entity to ensure that GALs are accountable to their clients and to practice requirements.*** Among other things, this entity would be charged with implementing the following reforms:

- The promulgation of comprehensive, mandatory practice standards
- The development of a client feedback system and monitoring to ensure GALs are visiting their clients in accordance with practice requirements
- Enforcement of new, mandatory training requirements and a caseload cap
- The development of a mentoring program to help new GALs learn this difficult but rewarding practice area

Children are entitled to effective assistance of counsel, as a matter of due process of law. Without significant structural reform to create a system grounded in accountability, Nebraska will continue to see poor outcomes for its children.



NACC
National Association
of Counsel for Children

Evaluation of the Guardian Ad Litem System in Nebraska

Conducted by the National Association of Counsel for Children

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Executive Summary

When the Nebraska Department of Health and Human Services (“DHHS”) believes a child has been abused or neglected, it often files a petition in court seeking authority to intervene in the family’s life to protect the child. In these cases, known nationally as “dependency” cases and in Nebraska as “3(a)” cases, the court appoints a guardian ad litem (or “GAL”) to advocate for the child. The GAL plays a critically important role in these cases, standing apart from DHHS and the parents to ensure that all necessary evidence and legal options are before the court, and when necessary to raise objections or appeals to help the court make the best possible decisions for the child.

Unfortunately, the findings documented in this report make clear that Nebraska’s current structure for providing GAL services results in uneven performance and lack of accountability. A child’s fate – whether she is reunited with her birth family in a timely manner, is shuffled through dozens of foster homes and institutions, or is promptly adopted – should not hinge upon the luck of the draw as to who is her GAL. Because children cannot be expected to routinely complain about the services adults provide them – and because they do not have sufficient political power to be listened to even when they do complain – appropriate structures must be put in place to ensure excellence in services provided and accountability in those instances where quality is poor.

There are a number of aspects of the Nebraska GAL system that function fairly well: children have a statutory right to a GAL in dependency matters; a GAL is appointed in every case; all GALs are licensed attorneys; the appointment happens very soon after the case is filed; and the GAL is present for almost all court appearances. However, scrutinizing below this surface, our findings reveal wide agreement within stakeholder groups that despite many good intentions, the structure of the GAL system in Nebraska undermines the ability of GALs to perform in compliance with reasonable practice standards. While there are individual GALs who are able to overcome the structural problems to provide good service, our findings show that, overall, GALs are not visiting their clients; they are not zealously advocating for appropriate permanency for their clients; they are not making their clients’ position known to the court; they are not using independent experts to assist them in understanding their clients and in presenting alternative service plans to the court; they are not actively investigating their clients’ education needs; and they are not receiving sufficient training or supervision. As one judge told us, “They just sit there.”

At its heart, the Nebraska GAL system is one in which the one person meant to be an independent check on the power of the state typically serves as a rubber-stamp to the state’s proposals and plans. In the words of one youth, having a GAL is “like having another caseworker.” Thus, the system as it is currently structured perpetuates a particularly cruel fraud on all citizens of Nebraska: it makes it look like there is a voice for Nebraska’s children in the court process, but in fact, that voice is mute.

This report was written by the National Association of Counsel for Children (“NACC”) in response to a 2008 request by the Nebraska Legislature to evaluate the GAL system on 15 different measures. The

Legislature mandated that the assessment “highlight promising approaches and innovative practices within the state and offer recommendations to improve weak areas.” Based on our findings, the NACC offers nine critical recommendations that, if implemented, would make Nebraska not just part of the mainstream in child advocacy services, but a national leader.

Methodology

Five counties, representing urban and rural areas, were selected for the evaluation. The evaluation utilized a mixed method approach: a process audit; analysis of quantitative data; surveys and follow-up interviews with identified groups of key stakeholders; interviews with key informants; and focus groups with young people. The process audit was comprised of two components: (1) a description of how the GAL system is designed to work in Nebraska based on a review of legal sources; and (2) interviews to further delineate how the GAL system is designed to work and the manner in which it functions in practices. Quantitative data were analyzed to answer two questions of research interest: the time between opening the child’s case to appointment of the GAL and permanency outcomes for children in foster care. Nine stakeholder groups were identified for the purpose of surveys and/or interviews. Surveys and follow up interviews were conducted with GALs, County Attorneys, Parents, Foster Parents, DHHS Caseworkers, CASAs, and Foster Care Review Board Members. Judges were interviewed to achieve two purposes in a single contact: to gain information as part of the process audit and to learn from the judges their assessments of the current GAL system. Interviews were conducted with court administrators or clerk magistrates in each of the five counties. Three focus groups were conducted with young people currently in foster care and youth formerly in foster care.

Key Findings

Adequacy of the Current GAL System (Structure and Resource Allocation). The process audit revealed a lack of clarity in current statute regarding key aspects of the legal process for children with open DHHS cases and wide variability across counties in how dependency and child abuse and neglect cases are handled. Courts reported different experiences regarding the extent to which there was an adequate number of GALs to appoint to represent children served by DHHS: some judges were quite satisfied with the pool of available GALs, others expressed a desire for more GALs, and others indicated that the issue was not quantity but quality. Judges expressed mixed opinions about establishing a statewide entity to oversee GAL practice with some seeing distinct benefits and others concerned about potential bureaucratic barriers. A review of national best practice standards revealed a number of successful centralized models for the provision of effective GAL representation of children served by child welfare agencies.

GAL Caseloads. GALs, generally, were satisfied with their GAL caseloads and did not express concerns about them, with the exception of attorneys who provide GAL services at contract firms. Judges, likewise, generally believed that GAL caseloads were appropriate, with the exception of the caseloads for lawyers at some of the contract firms. A review of national best practice standards provided information on the caseload caps that a number of jurisdictions have developed.

Timing of Appointments of GALs. There was wide agreement among all adult stakeholders, verified by quantitative data, that GALs are promptly appointed after case filing. Young people, however, reported that they did not meet their GALs for months or years and were, as a result, uncertain of when their GALs were appointed. National authorities in child welfare law agree that in order to comply with federal law and to truly protect children and vindicate their rights, the GAL should be appointed immediately, promptly meet with the child, and maintain the representation for the duration of the dependency proceedings.

Supervision of GALs. We found that most GALs are either satisfied with the level of supervision they receive or believe that they do not need any. In contrast, the judges we interviewed expressed a range of concerns about the level of supervision that GALs receive. National best practice standards make clear that good supervision helps ensure quality representation and fosters an environment of professional growth. Several jurisdictions have established models of supervision that meet both goals.

Appropriateness of Court Facilities for Dependency/Abuse and Neglect Cases. The majority of GALs and judges reported that it is difficult to find a private, quiet place for GALs to speak with their child clients at the courthouse. Most did not find court facilities to be a comfortable place for children and youth. More than three-quarters of the GALs stated that at least one of their child clients had expressed concerns about being in the court environment. Half or more of all stakeholder groups did not see the court environment as a comfortable place for children and youth to be. On site observations by the evaluation team confirmed these findings. The national best practices review revealed a range of simple steps such as creating a safe and welcoming space within an existing court facility that can be taken to encourage youth participation and minimize any possible negative effects from attending court.

Compensation for GALs. More than half of GALs, in their survey responses, believed that the compensation that they receive as GALs is inadequate. Judges, in general, believed that the compensation for GALs was reasonable. Several judges strongly objected to the flat rate/contract system in place in some localities, stating that under these payment systems, attorneys provide the bare minimum of representation. One key informant said that the contracts are “a guaranteed recipe to ensure that GALs are not going to be good” because there is no accountability as to the number of hours of service provide or services offered. A review of national best practices standards revealed several models for determining appropriate compensation levels for GALs to attract and retain quality attorneys.

Training for GALs. Most of the responding GALs did not think the training they received provided them with all the information they need to serve as a GAL. Nonetheless, 41% of the GALs said that would not want to receive more training on their roles and responsibilities as GALs. When asked on which topics training would be most helpful, more than 40% identified the following areas: the emotional needs of children with histories of abuse/neglect; placement options when children enter foster care; and children’s mental health issues. Almost two-thirds of GALs reported receiving no training before becoming a GAL, and almost one quarter reported receiving no continuing education hours related to GAL representation over the preceding 12 months. Several judges said that the training for GALs was good to very good, but expressed concerns about GALs taking full advantage of the

training. A review of national best practice standards identified several comprehensive training approaches to ensure that GALs obtain and maintain the basic competencies necessary to be effective and zealous advocates.

GAL Access to Experts. The majority of GALs reported that they have access to experts to help them in making assessments of the child's needs at least "sometimes," whereas only 19% reported having access to social workers independent of DHHS to assist with child assessments. In follow up interviews, however, GALs reported rarely if ever using such experts. Most judges said that GALs never use experts. A review of national best practice standards found that a steadily increasing number of jurisdictions, lawyers representing children work side-by-side with independent social workers and other professional consultants in collaborative advocacy on behalf of the clients. The review identified a number of models for professional collaboration.

GAL Understanding of Education Issues and Access to Educational Professionals. Few GALs reported "always" having some direct communication with children's teachers; most GALs said that they only "sometimes" do so. Most of the young people said that GALs knew very little, if anything, about their grades, school transfers, or school attendance issues. Most said that that GALs were not aware of their educational successes and challenges, their special education needs, or their favorite and least favorite subjects because they do not ask. National best practice standards make clear that it is absolutely critical for foster children's attorneys to be fully informed of their clients' educational status and to zealously advocate for any unmet needs to be addressed. A review of best practices revealed the work in a number of states to develop detailed standards of practice for dependency attorneys in addressing the educational needs of their child clients.

Time to Permanency. Data show that there is considerable variation among the five counties examined in this evaluation regarding average length of stay in foster care among children who eventually return home, ranging from two years (24 months) in one county to 15 months in another county. Variation also was found among counties regarding the average length of stay in foster care for children who leave care to adoptive families. Some counties averaged just over two years (25 months) for these children while other counties averaged more than three years. When asked about the permanency outcomes for the children they represent, the GALs identified a number of factors as prolonging children's stays in foster care: judges' reluctance to return children home without there being an absolute assurance that there are no risks; failure of county attorneys to file petitions to terminate parental rights; failure to follow the requirements of the Adoption and Safe Families Act regarding filing petitions to terminate parental rights; the costs associated with GALs' filing petitions to terminate parental rights; parents' decisions to take termination of parental rights actions to trial; and too few judges. Reports from GALs and judges indicated that few GALs file petitions to terminate parental rights when it is in the best interest of the child to do so. In the federal Child and Family Service Reviews, Nebraska was not in compliance with Permanency Outcome 1 (Children have permanency and stability in their living situation) or Permanency Outcome 2 (The continuity of family relationships and connections is preserved for children). A review of national best practices in achieving permanency revealed a range of practice models and models for safely achieving reunification with parents, permanent placements with relatives, and adoption.

Coordination with Delinquency Cases. The great majority of GALs (93%) stated that they were able to coordinate with their child clients' lawyers in delinquency cases. In general, GALs reported being notified of a child's arrest and the appointment of a delinquency attorney. Judges said that when children in dependency/abuse and neglect cases cross over to delinquency, they appoint the Public Defender or a private defense attorney to represent the child, but they expect the GAL to be present at delinquency hearings and serve as the child's GAL on the delinquency matter. A national best practice review revealed that jurisdictions take different approaches to the question of what role the child's dependency attorney should play in the delinquency proceeding. The review suggests that the best practice is for the same attorney to represent the child in both matters (so long as the attorney is qualified to do so), as this ensures continuity of representation and complete transfer of knowledge and information.

The Nature of the Relationship Between the GAL and their Child Clients. Young people in focus groups most often stated that they did not know their GALs, they met with them infrequently, and when they did meet with their GALs, the meetings were rushed. Of the 16 youth who spoke with the evaluators, only one definitively said that having a GAL made a positive difference in his/her life. In contrast, GALs generally rated themselves highly on their timeliness, frequency and responsiveness in meeting with their child clients. Both GALs and young people commented on GALs sending paralegals, law students/interns, and secretaries to meet with young people prior to review hearings.

A large majority of GALs reported that they had a good understanding of the child's strengths and needs. Other stakeholders, including youth in care, were less convinced of GALs' understanding of their child clients' strengths and needs. Extremely few county attorneys, CASAs, DHHS caseworkers, and Foster Care Review Board Members stated that GALs personally meet with the child "always." Stakeholders, including judges, expressed concerns that GALs were not meeting with their clients. Neither parents nor foster parents expressed high levels of confidence in the work that GALs do. One key informant stated, "The dual role is not the biggest problem with the GALs in Nebraska. The biggest problem is that GALs don't talk to their clients or ever meet with their clients, so they don't even know what the child's position is."

GALs' responses indicated some confusion about the dual role that they are expected to play as children's advocates and legal counsel. That confusion was reflected in the comments of two judges who stated that GALs do not have dual roles. Other judges, however, agreed that GALs have a dual role under Nebraska law and the majority agreed that most GALs are able to balance their dual responsibilities. The majority of GALs rate themselves as "very strong" or "strong" on all legal and professional skills, ratings that suggested that GALs believe themselves to be more skilled than did the others surveyed. Judges tended to give mixed reviews of GALs' legal and advocacy skills. Both CASAs and Foster Care Review Board members evidenced disagreement with statements about GALs being effective advocates for their child clients.

The evaluation found that only a minority of GALs report providing a report to the court at every dispositional and review hearing for their child client or making written recommendations to the court for all of their child clients. Slightly more than half of the GALs reported that they did not always make

recommendations independent of the court. Most judges expressed the sentiment that GAL reports were not helpful at all or gave GAL reports mixed reviews at best. Several judges found the GAL reports to be unhelpful because they simply agreed with the Department's position. A number of respondents stated that GAL reports merely repeat information that is already in other reports.

In interviews, GALs said that they let the court know what the child wants and why they disagree with the child's position and what they think the child's best interest is. Several judges, however, said that GALs often do not alert the court to the client's wishes because they have not met with the client. Other stakeholders made the same observation. The majority of GALs indicated that they had never sought separate counsel when the child's position and what they thought was in the child's best interest differed. This sentiment seems ironic in view of the earlier reported finding that over 40 percent of the GALs said they would not want to receive more training on their roles and responsibilities as GALs.

In general, GALs reported contacting other key stakeholders (DHHS Caseworkers, CASAs, and Foster Care Review Board Members, parents, and foster parents) more often than the stakeholders reported being contacted by GALs.

Most judges said that they have ceased appointing GALs when they do not perform well, but many made a distinction between being able to do so when an attorney was in private practice and when an attorney worked for a contract firm.

A review of national best practice standards revealed a number of existing models in which attorneys are guided by clear standards on the nature of the representation of their clients, the timing and frequency of in-person meetings with their clients, their legal and advocacy obligations, and client satisfaction.

Youth Participation in their Own Court Proceedings. The great majority of surveyed GALs said that they "always" or "usually" advocate for the child's presence at court and that they "always" or "usually" promote the child's opportunity to speak to the judge. In interviews, however, many GALs expressed a lack of support for children's presence in court. In contrast to GALs, youth consistently expressed the desire to be at their own court hearings. Young people reported various experiences with respect to court participation. Some reported that the GAL told them what would happen in court and others said that the GAL did not. Most judges expressed strong support for all children coming to their court hearings. A review of national best practice standards reveals long standing support for the concept of youth coming to dependency court and speaking to the judge, particularly in regards to dispositional matters, conditions of care, and their service plan and developments in a number of jurisdictions to implement this concept.

Recommendations

Based on the foregoing findings and discussion, the NACC recommends that Nebraska take a number of steps to improve its system of child representation in 3(a) cases. In our view, Nebraska needs to undertake significant reform in order to bring its child representation system into line with national standards.

Though serious reform efforts are necessary, they need not be difficult or expensive to implement. With an eye towards helping Nebraska begin the critical work of improving the child representation system quickly, we offer two sets of recommendations.

In the first set of recommendations, we identify changes that can be undertaken in a short time frame with minimal or moderate financial cost that nevertheless will have an immediate impact.

In the second set of recommendations, we identify strategies that are no less critical to implementing true reform in Nebraska than the first set. However, we recognize that these recommendations, unlike those in the first group, will likely require a change in culture, political will, and/or financial investment. Because they will take longer to put in place, we urge that work on them begin immediately.

Short Term Reforms

Recommendation 1: *Because attorneys for children should have clearly defined case responsibilities, Nebraska should clearly enumerate the powers and duties of the GAL in 3(a) cases through statute or mandatory, enforceable practice standards promulgated by the Supreme Court.*

- a. The standards should be well publicized among courts, foster parents, CASAs, foster youth networks, and other stakeholders, so that the entire community can assist in holding children's attorneys accountable for the quality of their practice.
- b. Practice standards should be modeled on the ABA and NACC standards; the vague directive to provide "quality representation" in the current Guidelines is insufficient. Additionally, they should include these specific provisions:
 - i. The child's attorney should ordinarily procure a new client's complete school records upon being appointed; remain in contact with appropriate school officials as well as the foster parents, so as to keep updated with the child's school progress; and take necessary steps to ensure that the child is receiving appropriate education services, including engaging in special education advocacy where necessary.
 - ii. If a 3(a) child client is charged with a law violation, the 3(a) attorney should remain closely involved in the new matter. If the attorney is qualified to provide delinquency representation, ordinarily the attorney should seek to be appointed in that case as well. If the attorney is not qualified to be a juvenile defender, then the attorney at a minimum should attend the delinquency proceedings and actively communicate with (with client consent) the defender. Under no

- circumstances should a child's 3(a) attorney waive the child's right to counsel in the delinquency proceeding.
- iii. The child's attorney should be a champion for the child's permanency. Assuming the attorney supports the permanency goal that is approved by the court, the attorney should be a zealous advocate for services to any party that furthers that goal – whether it is reunification, adoption, or guardianship.
- c. State law should be changed to require that attorneys meet in person with the child:
- i. Before the temporary custody hearing;
 - ii. on a quarterly basis, in the client's environment; and
 - iii. whenever the child experiences a placement move.
 - iv. Exceptions for children placed more than 100 miles from the court with jurisdiction over the case should be permitted, but should be rare and should be reviewed on a case-by-case basis by the appointing judge, on the GAL's motion. (If Nebraska implements Recommendation 7 below, then the entity created to administer the system of child representation should be charged with granting this permission.) In these cases, private and confidential contact should be made on the same timeframes by telephone or video conferencing.
 - v. GALs should be compensated (even if at a reduced rate) for travel time and for work outside of court.
- d. Attorneys for children should be held accountable to satisfy their mandatory duties. Ideas for how this may be accomplished are detailed in Recommendations 7 and 8(c) below.

Recommendation 1 is supported by our findings on pp. 17-18; 27-31; 55-59; 78-82; 85-88; 103-06; 170-74; our description of national best practice standards on pp. 31-40; 59-62; 83-85; 98-100; and 145-51; and our discussion on pp. 175-77 and 185-87.

Recommendation 2: *Training for GALs in Nebraska must be significantly increased and enhanced, and there must be organized opportunities for GALs to network with and learn from each other.*

- a. Judges should enforce current training requirements. Judges should not be permitted to appoint a lawyer to be the a child's attorney in a 3(a) case who does not have a contract, unless it is established on the basis of the court's certification that no such attorney is available in the county or region.
- b. All contract attorneys should be required to attend a multi-day training program that is a combination of substantive knowledge building and trial skills development. (Attorneys with significant trial experience in other fields of law could be excused from the trial skills modules.) Attorneys should be required to attend this program before receiving their first appointment in a 3(a) case.
 - i. Among other areas that must be covered, the training should include modules on adolescent development; client interviewing; client counseling; identifying

- issues for which expert assistance could be helpful; working with experts; and preparing a client to participate in court hearings.
- c. Once an attorney has a contract to provide GAL representation, he or she should be required to attend at least eight hours of CLE relevant to the field of child welfare law each year. Documentation should be a requirement of maintaining and renewing one's contract. (Should Nebraska implement Recommendation 7 below, attorneys should be charged with the affirmative duty of submitting CLE certificates to the entity created to administer the system of child representation, in order to maintain their status on the panel.)
 - d. An organized "training needs assessment" should be conducted annually, with consideration given to the differing needs in each judicial district as well as uniform statewide needs. Additional training programs should be designed to meet these identified needs.
 - e. Nebraska should create an informal system for information sharing between guardian ad litem state-wide.
 - i. Attorneys should have a mechanism to communicate with each other, such as a listserv, which can be set up for free and does not require any administrative support. This would help provide GALs access to non-legal professional resources, leading cases, and issues arising in immediate cases.
 - ii. At training events there should be opportunities for attorneys to discuss challenges and success and a formal exchange of contact information for all attorneys in the state who have Guardian ad Litem contracts.

Recommendation 2 is supported by our findings on pp. 62-67; 72-74; 165; and 167; our description of national best practice standards on pp. 67-72; and 74-77; and our discussion on pp. 183-85.

Recommendation 3: *The relationship between the GAL and the child must be changed to become client-focused, not adult-focused.*

- a. A robust client feedback system should be established, to solicit the views of current and former clients as to the quality of services received from attorneys. This information should be provided to judges and used to guide decisions regarding future training needs.
- b. Practice standards (see Recommendation 1(c)) should require quarterly meetings with the client and whenever there is a placement change. Attorneys should be required to provide their contact information (telephone and e-mail address) to clients age 10 and older, and to caretakers for all of their clients.
- c. The state should establish a hotline for children, foster parents, and others to call to determine the name of a child's attorney or to lodge a complaint.

Recommendation 3 is supported by our findings on pp. 100-45; 151-58; 161-64; 168-69; and 170-71; our description of national best practice standards on pp. 145-51 and 158-61; and our discussion on pp. 180-81 and 186-90.

Recommendation 4: *Nebraska should establish mandatory caseload standards for GALs in 3(a) cases.*

- a. A "case" should be defined as being an individual child's matter, as distinct from one family or one sibling group.
- b. Caseload standards should be written into contracts with individual GALs and law firms.
- c. The caseload standards should take into account the possibility that attorneys will do non-3(a) work.

Recommendation 4 is supported by our findings on pp. 40-42; 163; 165; 167; and 169; our description of national best practice standards on pp. 42-44; and our discussion on pp. 177-79.

Recommendation 5: *All counties that still use the law firm / flat-fee system should phase this system out, given the evidence that attorneys working on an hourly basis have more reasonable caseloads and adequate compensation.*

Recommendation 5 is supported by our findings on pp. 55-59; 165; and 166; our description of national best practice standards on pp. 59-62; and our discussion on pp. 175-77 and 181-83.

Recommendation 6: *Youth should participate in 3(a) proceedings in court.*

- a. There should be a presumption that all children over a certain age (such as 10) should be present in court. The burden should be on the child's attorney to demonstrate good cause for why the child should not participate; the attorney should be required to present a written motion to excuse the child at least a week before the court hearing is scheduled.
- b. Nebraska should contract with the ABA Bar-Youth Empowerment Project to receive technical assistance on improving practice in this area.

Recommendation 6 is supported by our findings on pp. 151-58 and 161-63; our description of national best practice standards on pp. 158-61; and our discussion on pp. 180-82 and 187-90.

Longer-term, Systemic Changes to the Delivery of Legal Services to Children in Nebraska

Recommendation 7: *Nebraska should establish a centralized system for oversight of GAL services.*

Responsibility for administering and funding the system of legal services to children in 3(a) cases should be shifted to an independent state entity, whether within the state Administrative Office of the Courts or the executive branch. This entity should be an autonomous unit responsible for this function, what we will call here an “Office of Child Advocacy,” or OCA.

The OCA would:

- a. Contract with non-profit legal services organizations in counties with a sufficiently large 3(a) docket to support them; consideration should also be given to establishing a child welfare law office (CWLO) in more rural areas to cover multiple counties. These contracts should not create a flat per case system. The contracts with CWLOs must be structured in such a way to provide automatic payment increases as certain caseload levels are reached.
 - i. The contracts must include provisions requiring the CWLOs to have a multidisciplinary practice model; to provide appellate representation; to ensure that all attorneys practice in accordance with mandatory practice standards (as described further in Recommendation 1) reasonable caseloads per attorney (see Recommendation 4); structured supervision of attorneys; and to guarantee the training requirements in Recommendation 2.
- b. Create a centrally administered panel system to cover those counties not covered by a CWLO and/or to provide conflict and overflow attorneys in those areas where there is a CWLO.
 - i. Attorneys should be required to apply for admission to the panel, pursuant to published admission requirements.
 - ii. Attorneys should have to apply to renew their status as panel members on a regular basis, pursuant to published renewal standards.
 - iii. The pay structure for panel attorneys should be an hourly rate of pay, including travel and court time, with no per-case caps. (i.e., attorneys should be permitted to spend as much time per case as they deem necessary.) Different rates for different regions of the state may be appropriate, based on cost of living considerations. Mileage expenses for visiting clients and attending out-of-court meetings should be reimbursed.
 - iv. The OCA should create a panel of experts in various fields; these experts would agree to a set rate of pay for any 3(a) case. A staff member should be responsible for recruiting and screening members of the expert panel and assisting panel attorneys in finding appropriate experts as requested. The budget for experts should also be funded by the state.
 - v. The OCA should hire a part-time county coordinator in each county (or region, where appropriate); this coordinator would be a member of the panel in that county who receives an extra stipend from the OCA to help administer training

and mentoring programs; to serve as the panel's ambassador to the court(s) and other stakeholders in the community; and otherwise coordinate activities of the panel attorneys in that geographic area.

- vi. The OCA should implement a mentorship program:
 1. All attorneys in their first year on the panel should be required to work with an experienced attorney mentor as assigned by the OCA. Mentors should be paid for the time they spend with mentees at their hourly panel rate, plus a premium.
 2. At the end of the first year, the mentor and mentee should discuss the mentee's need for continuation in the mentorship program. If either party believes that continued mentoring would be advisable, then the mentoring should continue for a second year. The OCA should also be involved in some manner in the decision to continue or terminate mentorship.

Recommendation 7 is supported by our findings on pp. 16-17; 28-32; 48-56; 72-74; 161-65; 168-69; 170-71; and 172-74; our description of national best practice standards on pp. 32-40; 50-51; and 74-77; and our discussion on pp. 175-77; 179-80; and 183-85.

Recommendation 8: *Nebraska should adopt, by statute, a client-directed model of representation.*

Building on Recommendation 3 above, the child's attorney should follow the Nebraska Rules of Professional Conduct just like all attorneys.

- a. The terminology should be changed from "GAL" to "child's attorney," to emphasize the nature and role of the position.
- b. The "dual role" should be eliminated; the child's attorney should be charged with representing the client's goals and "maintaining a normal attorney-client relationship" in accordance with the Nebraska Rules of Professional Conduct. For clients who are pre-verbal, and for clients whose reasoning capacity is diminished AND whose directives would place them at substantial risk of serious harm, the child's attorney should follow Nebraska Rule of Professional Conduct § 3-501.14.
- c. Legislation should be enacted to overturn the Nebraska Supreme Court's decision in *Billups* to clarify that the role of "child's attorney" is distinct from the role of GAL and that, prospectively, children's attorneys should not be immune from malpractice claims.
- d. To preserve the court's option of appointing someone to investigate the child's best interests, the state should provide funding to the CASA program. However, consistent with the Nebraska Rules of Professional Conduct, the child's attorney is still permitted to take protective action for young clients. If children's attorneys are successful at client counseling, it will be the rare case that will require the court to appoint a paid GAL in addition to the lawyer.

Recommendation 8 is supported by our findings on pp. 99-144; 151-58; and 161-63; our description of national best practice standards on pp. 145-51 and 158-61; and our discussion on pp. 179-81 and 186-90.

Recommendation 9: *Nebraska should renovate court facilities to make them adequate for the needs of children and youth.*

Every courthouse where 3(a) cases are heard should alter its physical plant so that:

- a. There is a designated space for children and youth to wait for their case to be called; the space should be age appropriate and properly staffed;
- b. There is appropriate space for children and youth to meet with their attorney or CASA; this space should be child-friendly in furnishing and design; and
- c. Seating arrangements in courtrooms where 3(a) cases are heard should be adjusted so that children's attorneys have their own table separate from the other parties.

Recommendation 9 is supported by our findings on pp. 52-54; 161-69; and 171-74; our description of national best practice standards on pp. 54-55; and our discussion on pp. 180-81.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

-----x

KENNY A., by his next friend,)	
Linda Winn; et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 1: 02-CV- 1686-MHS
)	
SONNY PERDUE, in his official)	
capacity as Governor of the)	
State of Georgia; et al.)	
)	
Defendants.)	

-----x

CONSENT DECREE

1. INTRODUCTION

Plaintiffs brought this class action lawsuit by the filing of a complaint on June 6, 2002, in the Superior Court of Fulton County, seeking declaratory and prospective injunctive relief against Defendants based upon alleged violations of constitutional and statutory rights arising out of the operation of foster care systems in Fulton and DeKalb Counties. Plaintiffs alleged both federal and state law claims. As relates to Fulton County, plaintiffs alleged that the County failed to provide adequate and effective legal counsel to plaintiffs in all deprivation and termination of parental rights proceedings, and that this failure violated plaintiffs' rights under the Georgia Juvenile Code and the Georgia Constitution. All Defendants joined in removing the case to this Court, invoking the Court's federal question jurisdiction and denying that they violated any constitutional or statutory obligations.

Appendix A

**GUIDELINES FOR FULTON COUNTY
CHILD ADVOCATE ATTORNEYS**

The Fulton County Juvenile Court recognizes the important role child advocate attorneys play in ensuring that the child's best interests are protected in court proceedings involving child abuse and neglect. Children lack the capacity to speak for themselves in court proceedings and need someone else to speak and act on their behalf. For that reason, the Court is committed to ensuring that children have access to adequate and effective child advocate attorneys. The Court is dedicated to ensuring that child advocate attorneys are diligent and knowledgeable professionals and that they have adequate resources to carry out their responsibilities.

Currently, there are no uniform standards for attorneys representing children in Georgia. Georgia law has no special requirements regarding quality, training or qualifications for child advocate attorneys. These guidelines were developed by the Court with three goals in mind. First, to outline the role of Fulton County child advocate attorneys. Second, to promote guidelines for the adequate and effective representation of children. Third, to ensure that child advocate attorneys are sufficiently trained and educated in the field of child representation.

The Court recognizes that every case is unique and will present its own difficulties and challenges. In addition, each child will have different needs and require different levels of advocacy. As a result, these guidelines are by no means an exhaustive listing of the responsibilities of child advocate attorneys. Instead, they provide a framework that will assure adequate and effective legal representation for children involved in child abuse and neglect proceedings in Fulton County Juvenile Court.

I. QUALIFICATIONS AND TRAINING

All Fulton County child advocate attorneys shall be an active member and in good standing with the State Bar of Georgia. In addition, all Fulton County child advocate attorneys shall have sufficient training. Training is especially important for child advocates due to the unique needs of children. Child advocate attorneys shall receive a minimum of four (4) hours of training each year in one or more of the following areas:

- role and responsibilities of the child advocate
- applicable laws governing child abuse, neglect, deprivation, foster care and termination of parental rights
- child development
- child abuse and neglect
- foster care
- domestic violence
- mental health
- ethical considerations which are unique to child law practice
- school law
- substance abuse
- custody-visitation
- adoption
- cultural and ethnic awareness
- social services programs and availability of community resources
- any other topic which the child advocate may select as helpful to a given caseload

The training need not be Georgia Continuing Legal Education (CLE) training, and may instead include formal or informal training from organizations such as Court Appointed Special Advocates (CASA), local public schools systems, mental health programs, DFCS, youth centers, and other community based agencies.

A certification of attendance or some other form of evidence of attendance at training shall be placed in the child advocate attorney's personnel file.

All Child Advocate Attorneys will also receive and be familiar with the Fulton County Child Advocate Attorney Trial Notebook.

In addition to the training listed above, attorneys for children are encouraged to join and participate in at least one professional group or organization that will be a resource for needed information about child advocacy. Such groups may include, National Court Appointed Special Advocates (CASA), the National Association of Counsel for Children (NACC), the Georgia Association of Counsel for Children, and State Bar committees focusing on child law issues.

II. THE ROLE OF THE FULTON COUNTY CHILD ADVOCATE ATTORNEY

Georgia state law does not fully define the role of attorneys who represent children. In Fulton County, child advocate attorneys represent the best interests of the child, while at the same time representing the child's expressed preferences. This model allows the child to explain what he or she believes is in his or her best interests. If the child advocate determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the child advocate attorney may request appointment of a separate guardian ad litem and continue to represent the child's expressed preference as the child's attorney, unless the child's position is prohibited by law or without any factual foundation.

III. DUTIES OF THE CHILD ADVOCATE

Child advocate attorneys are expected to provide adequate and effective legal representation. The work performance of each child advocate attorney will be evaluated annually pursuant to Fulton County's Personnel Regulations.

A. Initial Responsibilities

1. Determine the facts of the case by interviewing the child, family members, caseworker, CASA volunteers, and others as necessary and appropriate.

2. Where appropriate and necessary to the case, obtain and review the court files and agency records of the child and any siblings; school records; medical records; social services records; psychiatric, psychological, and drug and alcohol records; law enforcement records; photographs; audio/videotapes and other physical evidence.
3. Where appropriate and necessary to the case, contact the attorney(s) for the biological parents, and other persons who are respondents to the case.
4. Where appropriate and necessary to the case, contact other individuals involved with the child such as school personnel, foster parents, neighbors, relatives, medical and mental health providers, family friends and any other potential witnesses or sources of information.
5. Meet with, observe, and establish and maintain a relationship with the child. Assess the child's needs and wishes with regard to the representation and the issues in the case, and explain the proceedings to the child according to the child's ability to understand.
6. Maintain available information concerning the child's location and contact information for the child and other necessary parties or witnesses readily accessible in the child's file. Take reasonable steps to ensure that the placement and contact information in the child advocate attorney's file is current.
7. Conduct additional investigation as determined to be necessary and appropriate to the case, in the exercise of the child advocate attorney's professional judgment.

B. Preparation for and Representation at Hearings

1. Participate as an attorney at all hearings concerning the child.
2. Make informed recommendations for specific and clear orders for evaluation, services, and treatment for the child and the child's family.
3. File all necessary pleadings and papers.

4. Ensure that relevant testimony and documentary and physical evidence is introduced to the court and, when necessary, subpoena witnesses.
5. Monitor the implementation of court orders and determine whether services ordered by the court for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. Where necessary and appropriate, take steps to ensure compliance.
6. Promote a cooperative resolution of the matter.
7. Consult with other persons knowledgeable about the child and the child's family to identify the child's interests, current and future placements that would be best for the child, and necessary services for the child.
8. Where necessary and appropriate for legal representation, attend all meetings involving the child.
9. When appropriate, collaborate with the CASA to provide the best possible representation for the child.
10. Inform the court of the child's wishes.
11. Adequately maintain case file.
12. Explain to the child the disposition of his or her case.

C. Post Dispositional Representation

1. Inform the child of his or her right to appeal.
2. Exercise child's right to appeal, if under the reasonable judgment of the attorney, an appeal is necessary.
3. Where necessary and appropriate, represent the child's interests in an appeal filed by another party.
4. Discuss the end of the legal representation with the child and determine what contacts, if any, the attorney and child will continue to have.

IV. CONFLICTS OF INTEREST

Child advocate attorneys should decline to represent children in conflict of interest situations, including in the following circumstances:

- i. The attorney, or other child advocate attorneys on staff in the Fulton Juvenile court, represents, or has represented, the biological parent in a deprivation proceeding.
- ii. Children in a sibling group have conflicting accounts of facts material to the deprivation or TPR determination.
- iii. Positions to be taken on behalf of children in a sibling group are mutually exclusive and conflict in a material way.

Fulton County File Review			File Reviewed Date & By:		
File #		# of Children			
Date Opened		# of Judges	# of CAAs	# of Hearings	
Scoring of Compliance					
3 = Exceeds Expectations; 2 = Meets Expectations; 1 = Fails to Meet Expectations; 0 = Not Applicable					
Score	Document In File		Score	Content	
Complaints & Pleadings			Attorney Hearing Notes		
	Safe Keeping - Complaint			Legible	
	Petition (s)			Pre-trial	
	Motion (s)			Type of Hearings Identified	
				Status of Case	
Orders				Child's Position	
	PCH			CA Recommendations	
	Formal			Court Order Recorded in File & Monitored	
	Cont			Documents Party presence	
Reports				Documents Services requested / needed	
	Case Plan			Next Hearing Date	
	Psych Evaluation / Developmental			Next Steps for each party	
	School Records			Next steps for CAA?	
	Medicals				
	Photos / video				
	Police Report				
	Drug Screens				
Case Notes					
	Attorney Hearing Notes		Child Interview		
	Placement Information		Ch Position	Length of Contact	
	Releases for Information		Number of Contacts	Atty/ CI Rel	
	Checklist for Kenny A Compliance		Explain Court Process		
	CCFA				
	Witness Interviews		File Activity		
	Child Interviews		Score	Activity	
	Referrals to Resources OR Programs			Staffings w/ DFCS or SAAGs	
	Investigators Reports			Contact with other Attorneys	
	Relevant judicial events for child			Discovery issues	
	Appeal Considered			Telephone Contacts - id & content record	
	Reasonable Efforts			Monitoring of court order	
	Conflict Analysis				

Fulton County Court Observation Form

Date

File #	File Name	# of Children
Judge	CAA	Observed By:
Scoring of Compliance		
3 = Exceeds Expectations; 2 = Meets Expectations; 1 = Fails to Meet Expectations; 0 = Not Applicable		
1	Service to Necessary Parties	
2	Continuance Issues-When Necessary with Explanation	
3	Status of Case	
4	Child's Position Made Known to the Court	
5	Cross Examination	
6	Direct Examination	
7	Objections	
8	Motions	
9	Case Plan Considerations / Amendments	
10	Visitation Arrangements	
11	Child's School / Educational Needs	
12	Child's Medical Needs	
13	Child's Mental Health Needs	
14	Handling of Witnesses, including experts	
15	Handling of Document / Photo Evidence	
16	Reasonable Efforts Considerations	
17	Referrals to Resources, Programs	
18	Diligent Search (Relatives)	
19	Child Present at Court or Not	
20	DFCS / Parent Compliance Issues	
21	Placement Information	
22	Pleadings and Motions by CAA	
23	Appeal Issues Reserved on Record	
24	Advocated for Service Needs	
25	Knowledge of Case Facts	
26	Knowledge of Case History	
27	Juvenile Court Procedure	
28	Federal Law / State Law Timelines Met	

Third *Kenny A* Report for Fulton County

For The Period

Ending June 30, 2009

William G. Jones

Accountability Agent

Submitted October 30, 2009

Section VI COURT OBSERVATION

Court Observation Comments

For the current reporting period, CAs were observed during regularly scheduled court hearings by the Federal Accountability Agent, Judge Bill Jones. The court observations were completed from May 2009 through September 2009. Although the reporting ended on June 30, 2009, many of the court observations and CA performance assessments were conducted during the three-month period subsequent to the reporting period. In the modified Consent Decree, the parties agreed the court observation would cover 28 individual items that reflect the CA's performance in general trial skills. The Court Observation scoring form is attached in **Appendix J**.

The court observations were completed on 51 CA case files involving 119 child clients and 16 CAs. The court observations occurred prior to the file reviews so that if an item was adequately addressed during a hearing the question became "Was the element sufficiently covered during the court hearing and was the element then appropriately documented in the case file?" If an item was not adequately addressed during the court hearing and court observation, but determined by the court observer to be appropriate to the case, then the question became during the file review portion "Was the expected element or CA actions related to this element appropriately documented in the case file?"

For each performance item in the Court Observation, the CA activity was scored as follows:

- 3 – Exceeds Expectations;
- 2 – Meets Expectations;
- 1 – Fails to Meet Expectations; or
- 0 - not applicable.

The chart below provides a summary of the results of the court observations. Following the chart, each performance measure is discussed individually.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
1	Service to Necessary Parties	88 %	45	6	51
2	Continuance Issues- When Necessary with Explanation	100 %	4	/	4
3	Status of Case	94 %	48	3	51
4	Child's Position Made Known to the Court	100 %	40	/	40
5	Cross Examination	100 %	34	/	34
6	Direct Examination	91 %	11	1	12
7	Objections	100 %	5	/	5
8	Motions	100 %	15	/	15
9	Case Plan Considerations	96 %	24	1	25
10	Visitation Schedule /Issues	96 %	23	1	24
11	Child's School / Educational Needs	96 %	27	1	28
12	Child's Medical Needs	100 %	26	/	26
13	Child's Mental Health Needs	100 %	30	/	30
14	Handling of witnesses, including experts	100 %	24	/	24
15	Handling of Document / Photo Evidence	100 %	10	/	10
16	Reasonable Efforts Considerations	39 %	9	14	23
17	Referrals to Resources, Programs	95 %	18	1	19
18	Diligent Search (relatives)	74 %	17	6	23
19	Child Present at Court or Not	100 %	25	/	25
20	DFCS / Parent Compliance Issues	91 %	10	1	11
21	Placement Information	100 %	30	/	30
22	Pleadings & Motions filed by CA	100 %	10	/	10

THIRD FULTON COUNTY KENNY A. REPORT ending June 30, 2009

Submitted October 30, 2009

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23	Appeal Issues Reserved on Record	See comments below			
24	Advocated for Service Needs	97 %	37	1	38
25	Knowledge Case Facts	100 %	51	/	51
26	Knowledge Case History	100 %	51	/	51
27	Juvenile Court Procedure	88 %	7	1	8
28	Federal Law / State Law Timelines Met	40 %	2	3	5

Comments

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
1	Service to Necessary Parties	88 %	45	6	51

Of the 51 court observations, there were 6 cases where the issue of service to a legal party was inadequately addressed during the hearing. Although the CAs are not responsible for effecting service on a legal party to the action as the petitioner is generally DFCS, the CA does have a duty to the child client to confirm legal requirements have been met prior to proceeding with a hearing. If the legal requirements of service are not met then the resulting court order may be invalid thereby potentially placing the child's safety and permanency in jeopardy.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
2	Continuance Issues- When Necessary with Explanation	100 %	4	/	4

Of the 51 court observations, there were 4 cases where the CA responded to the issue of a continuance of the case. In these instances, the CA's action met or exceeded expectations. The CAs were observed stating a position to continuance requests consistent with advancing the child's position.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
3	Status of Case	94 %	48	3	51

Of the 51 court observations, there were 3 cases where the CA failed to meet expectations in addressing the status of the case. The CAs routinely introduce the action to the Court and in 48 observations, the CA articulated the current posture of the case and stated the issues before the court. In 9 cases, the CA actions exceeded expectations as the CAs used the opportunity to introduce the case to also incorporate a statement of the child's position thereby setting the frame for the subsequent hearing.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
4	Child's Position Made Known to the Court	100 %	40	/	40

Of the 51 court observations, there were 40 cases where the child's position was an issue before the court. In these 40 cases, the CA actions exceeded expectations in 19 cases and met expectations in the remaining 21 cases.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
19	Child Present at Court or Not	100 %	25	/	25

Of the 51 court observations, there were 25 cases where the CA addressed the issue of the child's presence at the hearing and in all cases the CA met or exceeded expectations.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
20	DFCS / Parent Compliance Issues	91 %	10	1	11

Of the 51 court observations, there were 11 cases where the issue of DFCS or parent compliance with the case plan or court directives was addressed during the hearing. In 10 of these cases, the CA actions exceeded expectations in 3 cases, met expectations in 10 cases and failed to met expectations in 1 case.

Court Observation		% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in Category
21	Placement Information	100 %	30	/	30

Of the 51 court observations, there were 30 cases where the child's placement was an issue during the hearing. In all 30 cases, the CA actions exceeded expectations in 7 cases and met expectations in 23 cases.

Section VII FILE REVIEW

Fulton CA Case File Organization

The Fulton County CA Office has established a policy and procedure for file organization with the goal of uniformity of content and document ordering within the file. The Fulton CA Office has converted the CA case files to a "4 prong" system. The Fulton CA policy for file organization is included below so that the file reviewer may reasonably anticipate the inclusion of a particular document and the document location within the file.

File Organization – 4 Prong Version – Green File

Left side of front file cover first set of prongs

- Case Activity Log
- Closed Case Form
- Opening Case Form
- Checklist and Timeline Form (optional)
- CA Hearing Notes – chronological order
- Case Summary
- Case Information Sheet – should be last page in back

Right side of front file second set of prongs

- Placement Information Request Form
- Release of Information of Child
- Investigation Request Form/Reports
- CASA Request Forms/Reports
- Correspondences/Emails
- Child Interview Forms
- Witness Interview Forms

Left side of middle divider third set of prongs

- Court Reports

Right side of front file second set of prongs

- Court Orders and Pleadings

- CAs should place his or her initials on the upper right hand corner of all Court Orders which have been reviewed for accuracy (includes Draft Orders)

File Review Comments

The File Review consisted of seven broad categories with several elements within each Category that provided the structure for scoring the category. The seven broad categories were:

- Complaints & Pleadings;
- Orders;
- Reports;
- Case Notes;
- Attorney Hearing Notes;
- Child Interview; and
- File Activity.

The CA activity in each category is rated as follows:

- 3 – Exceeds Expectations;
- 2 – Meets Expectations;
- 1 – Fails to Meet Expectations; or
- 0 - not applicable.

A total of 51 CA case files were reviewed and there were 119 children included in these case files.

The following narrative provides the scoring rationale for each broad category and the scored elements within the category. Some categories and the corresponding elements were scored by the presence or absence of the item in the CA case file based upon a factual evaluation of the case and whether the item's presence or absence "met or exceeded the expectation" given the individual case facts. For example, if the allegation of deprivation involved drug use or mental health issues of the parent then the case facts lead to the expectation the case file would contain appropriate documentation of the parental drug use or mental health issues. This documentation could be notes of

testimony during the hearing, reports from DFCS or other providers, drug screens, evaluations or other competent forms of evidence supporting the allegation. The file reviews were completed after the court observation so that if an element was covered during a hearing the question became "Was the element sufficiently covered during the court hearing and was the element then appropriately documented in the case file?" If an element was not covered during the court hearing and court observation, but determined by the court observer to be appropriate to the case, then the question became "Were the expected element or CA actions related to this element appropriately documented in the case file?". For example, if during the court observation, "service to necessary parties" or "reasonable efforts" was determined by the court observer to have "failed to meet expectations" then the item was looked for in the file documentation. If the item was appropriately documented in the CA case file, then the item would be scored during the file review as "meets or exceeds expectation". Conversely, if the item was not appropriately documented in the CA case file and was not sufficiently addressed during the court hearing and court observation, then the item would be scored during the file review as failing to meet expectations. The "exceeds expectations" score was used for instances where the documentation of the element was enhanced through organization, indications of CA thoroughness of review, efforts to document the item and qualitatively how the item promoted the child's position.

Although the reporting ended on June 30, 2009, many of the file reviews were conducted during the three-month period subsequent to the reporting period.

The following are details for each category. Where applicable, examples are provided of "exceeds or meets expectations" and examples of "fails to meet expectations" or areas needing improvement.

Case Notes Category

	Case Notes Includes the presence of the following documents when applicable to the case:	% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in category
14	Attorney Hearing Notes	100 %	51	/	51
15	Placement Information	100 %	51	/	51
16	Releases for Information	See comments below			
17	Checklist for <i>Kenny A</i> Compliance	100 %	51	/	51
18	CCFA	100 %	51	/	51
19	Witness Interviews	100 %	51	/	51
20	Child Interviews	100 %	51	/	51
21	Referrals to Resources OR Programs	100 %	10	/	10
22	Investigators Reports	95 %	18	1	19
23	Relevant Extra-Judicial Events for the Child	100 %	26	/	26
24	Appeal Considered	See comments below			51
25	Reasonable Efforts	See comments below			51
26	Conflict Analysis	See comments below			51

Attorney Hearing Notes

All files reviewed contained attorney hearing notes and all files scored as meeting or exceeding expectations.

Placement Information

All files reviewed contained placement information for the child and all files scored as meeting or exceeding expectations. Appendix I contains the "Placement Notification" form used by DFCS to notify the CA of the child's current placement. Even though many of the CA case files reviewed contained more than

Witness Interviews

The files reviewed contained witness interviews when appropriate as determined by a review of the case facts, other documentation in the case file and CA actions as observed during the Court Observation. Several files contained interviews completed by the CA investigators. All CA files reviewed scored as meeting or exceeding expectations in this category.

Child Interviews

All files reviewed contained extensive documentation of child client contact by the assigned CA. Many of the files contained documentation of subsequent contact with the child by the CA investigator. The contacts with the child were well-documented on the "Child Interview Form" and the interview forms were easily located in the CA case file in accordance with the CA file organization policy and in chronological order. All CA files reviewed scored as meeting or exceeding expectations in this category.

Referrals to Resources or Programs

Of the 51 CA case files reviewed, referral to a resource or program by the CA was deemed appropriate in 10 cases. In these cases, the referral by the CA was sufficiently documented in the case file and scored as meeting or exceeding expectations.

Investigators Reports

Of the 51 CA case files reviewed, either the CA's referral to the investigator or the investigator's report was deemed appropriate in 19 cases. In these cases, 18 of the referrals or the investigator reports were sufficiently documented by the CA in the case file and scored as meeting or exceeding expectations. One case failed to meet expectations based upon the lack of information in the CA file of the ongoing criminal investigation of the parents and the absence of a police report or other information about the pending charges against the parents. This information was determined to be relevant to the stated case plan goals and the

Child Interview Category

	<i>Child Interview</i> Includes the following documentation when applicable to the case:	% Meets or Exceeds Expectations Score of 2 or 3	Number of Cases with Score of 2 or 3	Number of Cases with Score of 1	Total Number of Cases with a Score in category
39	Ch Position	100 %	51	/	51
40	Number of Contacts	100 %	51	/	51
41	Explain Court Process	100 %	51	/	51
42	Length of Contact	100 %	51	/	51
43	Atty/ CI Rel	100 %	51	/	51

All 51 CA case files reviewed contained thorough documentation of numerous contacts with each child client, therefore all files scored as meeting or exceeding expectations. In all 51 cases reviewed, the assigned CA conducted at least one face to face contact with the child client and all files documented the child client was interviewed within 30 days of the child's court hearings. The CA case files documented the number of child contacts, where the contact occurred, completed child interview forms, whether the child articulated a position and if applicable whether the child was non-verbal due to age or disability. The majority of the CA case files indicated the length of the child contact or it was determinable by the thoroughness of the child interview notes. There were several documented instances of the child not wanting to attend court but sending a message to the judge through the CA either verbally or by a letter to the judge. From the documentation of the child client contact, the CAs appear to be establishing an attorney – client relationship with the child clients and informing the children of the nature of the hearing and the child's right to attend upcoming court hearings. Children were contacted at the foster placements, panel reviews, counseling sessions, doctor appointments, at the DFCS offices and at the court hearings. 13 of the CA case files exceeded expectations in the child interview category as a result of more frequent child client contact and increased documentation of the contacts.