

*Quality Improvement Center on the Representation of  
Children in the Child Welfare System*

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**Needs Assessment  
Review of State Laws**

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## REVIEW OF STATE LAWS

From primary authorities we researched the state laws governing child representation and presented information in a common template to facilitate cross-state assessment of current laws. The organizing template is the same as that for the QIC Best Practice Model of Child Representation. Our website now includes legal authority governing child representation in our ten sample states with links to the authoritative electronic compilation of each state's laws. (<http://www.improvechildrep.org/ChildRep2010/StateLaws.aspx>) Research is complete on about 24 more state laws. By the end of 2010 we intend to have all 50 state laws posted on the website. From the current compilation we distill the following summary:

### Ten States Law Summary

**1. General Duties:** *Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.*

Three of the ten states sampled provide for a client-directed attorney for certain children (CT, GA, NY). However these states, including Georgia and Connecticut, also provided for the appointment of a best interests representative, either a lawyer or a layperson CASA volunteer, to advocate for the best interests of the child. In Connecticut, the court must appoint another person as Guardian ad litem for the child when a conflict arises between the child's wishes and the child's best interest.

The other sampled states adopted variants on best interests or dual role models of representation (CA, DE, WA, IA, TX, IL), appointing either an attorney or layperson or both. In these states, appointment of attorneys for children was either at the court's discretion, the attorneys were required to advocate for the child's best interests, or the attorney adopted a dual role, representing both the child's best interest and expressed wishes. In Washington, a child aged twelve or older or the child's best interests representative may call for the court to appoint a client-directed lawyer for the child. In California, barring a showing that it would be contrary to the child's welfare, the court must appoint a lawyer to advocate for the child's best interests, though that lawyer must also convey the child's wishes to the court. Similarly, in Delaware, the court must appoint a CASA or an "attorney guardian ad litem" and that best interests representative must notify the court of child's wishes. The court may alternatively appoint an attorney to represent the child's wishes. In Illinois, the appointed best interests representative (GAL) need not be an attorney, but if he or she is not one, then he or she must be represented by counsel, and often an attorney is appointed who acts in a dual role. In Texas, an attorney and best interests representative are mandatory when the government is seeking conservatorship of the child or termination of parental rights, and the attorney may serve in a dual role as both attorney ad litem and GAL. The attorney may also adopt a dual role in Iowa where counsel and a best interests representative for the child are required and one attorney may fill both roles.

**2. Out of Court - Actions to be Taken:** *Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements.*

The ten states demonstrated similar variation with respect to the duties of child representatives out-of-court and the description of these duties. A minority of states enumerated very few out-of-court responsibilities of the representatives. (CA, CT, GA). The rest provided a wider range of

out-of-court attorney responsibilities, which included conducting independent investigations of the child's case (CA, CO, DE, IL, TX, WA), obtaining the child's records (TX), reviewing all relevant records and reports (DE, NY, GA), meeting regularly with the child, advising the child, explaining proceedings to the child (DE), observing the child (CO, WA), "conducting in-person interviews" of the child (IL), contacting the child's caregivers (IL), maintaining a relationship with the child (CA), contacting social workers or other professionals (CA), interviewing any person providing medical, mental health, social, educational, or other services to the child (IL), participating in depositions, negotiations, discovery, and pretrial conferences, monitoring compliance with court orders (DE), and reporting to the court on the child's situation (IA, DE, GA, WA).

**3. In Court - Active Participation in Hearings:** *Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.*

The ten states sampled provided fewer details on the responsibilities of the representatives in court than out of court. Some statutes did not address in-court responsibilities (GA, CT, NY). The majority enumerated at least a few specific responsibilities, including representing children in hearings (CA, CO, DE, WA, IL), examining and cross-examining witnesses at hearings (WA, DE, CO), introducing and examining the representative's own witnesses (WA), making recommendations to the court (IA, CO), participating in case staffings (TX), presenting evidence (TX), deposing witnesses (CO), requesting relief (CO), seeking to ensure that reasonable efforts are being made (CO), expediting proceedings (TX), and conferencing with attorneys for other parties (DE).

**4. Post-Hearing:** *Review courts order, communicate order to child, and monitor implementation of orders.*

Colorado, Illinois, Washington, and Iowa enumerated post-hearing duties of the child's representative. The Colorado and Illinois statutes emphasize the child representative's role as advocate for the child's interest in permanent placement and proper service delivery, respectively. Illinois and Washington provided for the attorney to act as a monitor of court orders for compliance. The Iowa statute required the children's representative to assist post-hearing with any transition plan developed for the child.

**5. Appellate Advocacy:** *Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.*

California, Colorado, Connecticut, Delaware, and New York provided for appellate advocacy from the child representative. Of these states, California outlined the most complete set of factors the representative should consider in making an appeal, while Colorado, Connecticut, and Delaware had only brief provisions regarding appellate counsel for children.

**6. Cessation of Representation:** When and how does the formal relationship end? Contacts post representation, if any.

Only Iowa and Washington briefly addressed the issue of cessation of representation. Iowa's statute allowed for representation beyond the child's eighteenth birthday, while Washington's described discharge of the representative.

**7. General Representation Rules:** *Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court.*

Most states did not have in place uniform legally binding rules regarding child representative's duties and relevant procedures. California, Colorado, Connecticut did provide these, but the majority of states (GA, IL, IW, TX, WA) did not have clear statutorily established rules and procedures, and New York's statutes were limited in this area.

Statutory provisions on administrative structure also differed among the states sampled, with three states defining the child's representative as independent from the court (CT, DE, NY), three states not clearly defining the administrative structure or independence of the child representative from the court (GA, IL, WA), and two states not speaking to the issue in legal authority (TX, IL).

**8. Lawyer Training:** *Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.*

On training for child representatives, only California, Colorado, and Texas offered a specific legal education provision, while Connecticut, Delaware, Georgia, New York, and Washington delegated responsibility for setting training requirements to the state bar associations, office of the child advocate, or administrative office of the courts. Iowa statutes did not address training.

**9. Lawyer Compensation:** *Adequate and timely compensation, reimbursement provided expenses.*

Most of the ten states sampled provided a flexible statutory standard of reasonable compensation for child representatives and named the source of funding, but did not specify a rate.

**10. Caseload Levels:** *Caseloads are of a manageable size.*

Only three states (CA, CT, NY) addressed attorney caseloads in legally binding authority . These three states delegated responsibility for caseload determination to either the judicial council, administrator of courts, or chief child protection agency. California required that the attorney for a child must not carry a caseload that would not allow them to adequately counsel and represent the child. Connecticut allowed the chief child protection attorney to set a limit, while New York set a specific caseload limit at 150 children per attorney.