

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

**Needs Assessment
Survey of Statewide Reports**

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**Children's Bureau, US Department of Health and
Human Services**

University of Michigan Law School



SURVEY OF STATEWIDE REPORTS

Background, Purpose and Methodology

Statewide Assessments from 49 States were reviewed to determine any child welfare agency priorities for child representation, child representation practices initiated to enhance the effectiveness of the child welfare system, and child representation challenges which impacted the achievement of safety, permanency and well-being of children.

A review of State Court Improvement Program (CIP) Annual Program Assessments and Child and Family Services Review (CFSR) Statewide Assessments was conducted to determine:

- State priorities for child representation
- Innovative practices
- Challenges with providing child representation

Limitations

This review of CIP Program Assessments and CFSR Statewide Assessments provides an overview of State priorities for improving child representation. However, there are several limitations to this overview:

- States are not required to address child representation issues in either CIP Annual Program Assessments or CFSR Statewide Assessments, therefore, child representation practice and issues may not be consistently addressed.
- Over the years, CIP grant funding has been primarily used as seed money to initiate projects and programs. Therefore, this overview does not constitute a comprehensive list of all activities and programs that are underway in each State.

CFSR Statewide Assessments

The Child and Family Services Reviews were created to provide monitoring of State conformity with Federal requirements for child welfare services.¹ The CFSR occurs in two stages. The first stage consists of a Statewide Assessment conducted by the State child welfare agency in collaboration with the agency's external partners or stakeholders and the Children's Bureau Central and Regional Office staff. The second stage consists of an on-site federal review of child and family service outcomes and program systems.

The Statewide Assessment supports the CFSR process in a variety of ways, including providing an overview of the State child welfare agency's organization, capacity and performance, to provide context for CFSR outcome ratings, to inform others about the improvements in practice made since the previous CFSR and to share with others the areas that the state child welfare agency has identified as needing improvement.²

Within the Statewide Assessment Instrument states are reminded that the assessment show an analysis of data and practice, the quality and effectiveness of the system. States are directed to compile information collected through their review of data profiles, existing state documents and reports, and stakeholder interviews to provide information about the following:

- The agency structure and programs
- Policies and practices

¹ Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Rule, Federal Register: January 25, 2000 (Volume 65, Number 16)

² Child and Family Services Reviews Statewide Instrument, December 2006, p. 3-4

- Data profile and summary of state data relevant to the outcomes of safety, permanency and well-being as well as the systemic factors under review
- Effectiveness measures demonstrating functioning for each item
- Effectiveness of the system addressing under systemic factors, including strengths, gaps, needs and usefulness

Findings

States inconsistently addressed child representation in their Statewide Assessments. As directed by the Children’s Bureau, every state provided a brief description of their policies and procedures related to each of the outcomes and systemic factors under review. Embedded in these policies and procedures most states offered a brief description of how the child welfare agency cooperated or related to the child representative. For example, some states reported the child’s advocate is routinely invited to participate in Family Team Meetings or the child’s advocate is to receive a copy of the agency report prior to each hearing. Few states described the state policy and procedure for the appointment of the child representative.

Initiatives in the State

Training offered

States are directed to report on changes in performance or practice since the previous Statewide Assessment, strengths the state has demonstrated in achieving outcomes, and promising areas of practice. Trainings offered to agency staff and key stakeholders, including child representatives, were often cited as tasks undertaken by the state to address past performance issues and to improve practice. The topics of the trainings varied widely, but some areas addressed were:

- ASFA timeframes
- How to talk with children and youth
- Case planning
- Roles and responsibilities of attorneys
- Overview of child abuse and neglect.

Monitoring and Oversight

Eight states reported on current or planned means of monitoring the qualifications or training of child representatives, including attorneys and volunteer advocates. The initiatives cited in the Statewide Assessments are largely the same initiatives described in CIP Program Assessments. Alabama and Connecticut reported having statewide systems, conducted either a state agency or contracted partner, to assure quality and consistency of attorneys. North Carolina and North Dakota reported similar systems for Guardians ad litem. Louisiana is working to implement a statewide system in an effort to improve the quality of legal representation. The Administrative Office of the Courts in Kentucky tracks the mandated training of attorneys.

Specialized Representation

New Mexico and Florida implemented specialized representation for older youth in care. In New Mexico a Youth Attorney model of representation was created to help facilitate youth involvement in the foster care process. One judicial district in Florida created Independent Living Team consisting of two attorneys who are assigned to all children age seventeen and older to ensure that each child is aware of his rights and services available as they approach adulthood.

Challenges

States were directed to address barriers the state faces to the successful implementation of each outcome and systemic factor. States reported a wide variety of barriers, including court-related challenges, such as excessive continuances and lack of available docket times, and agency-related challenges, for example, case workers turnover and late reports. Fewer States addressed issues with representation; those that did primarily addressed issues with agency representation. States identifying barriers associated with child representation most frequently cited the lack of sufficient numbers of child representatives, and the lack of training and preparation of child representatives.

Availability of Representation

Ten states identified the lack of attorneys or lay advocates as a challenge. The lack of qualified attorneys available to represent children was cited as a barrier to timely court events in five States. Stakeholders in one state noted the shortage of attorneys was linked to inadequate compensation and the cost of liability insurance.

Support for Attorneys Representing Children

Insufficient numbers of CASA volunteers was cited as a challenge in five states. This concern was reported more frequently in states where attorneys must be appointed for children in dependency cases because CASAs are used to facilitate visitation, visit clients and to support additional advocacy. Stakeholders in one state felt that insufficient support staff for attorneys representing children contributed to periodic reviews not being held in a timely manner.

Quality of Representation

Inadequate child representative preparation and training was cited by stakeholders in ten states to have an impact on child welfare outcomes, particularly the timeliness and type of permanency. Areas where additional training was needed included: understanding of adoption, purpose of permanency hearings, different permanency options and parent/ child relationship issues.

Contact with Clients and Collaterals

Stakeholder interviews are routinely conducted as part of the Statewide Assessment process. Interviews with youth in three states found that some youth reported infrequent contact with their attorney or GAL. Foster parents in one state reported that they did not know the name of their foster child's attorney.

Court Improvement Program Reports

State Court Improvement Programs are eligible to receive three types of CIP Grants: Basic, Data and Training. The Basic CIP Grant, which has been available to states since 1994, is a source of flexible funding to be used for broad-based, comprehensive systemic reform of courts and legal processes for abuse/neglect and dependency cases.³ The Data and Training Grants which were instituted in 2005 are to be used for focused activities: the Data grant to improve data collection and analysis for cases involving child abuse and neglect, foster care, adoption, and legal guardianship⁴ and the Training Grant is to be utilized to train judges, attorneys, and other legal personnel involved in dependency cases, as well as to conduct cross-training with child welfare agency staff and its contractors.⁵

³ James Bell Associates, Inc. (2003) Feasibility of Evaluating the State Court Improvement Program., v.1, p.1

⁴ ACYF-CB-PI-06-05, p. 9

⁵ ACYF-CB-PI-06-05, p. 11

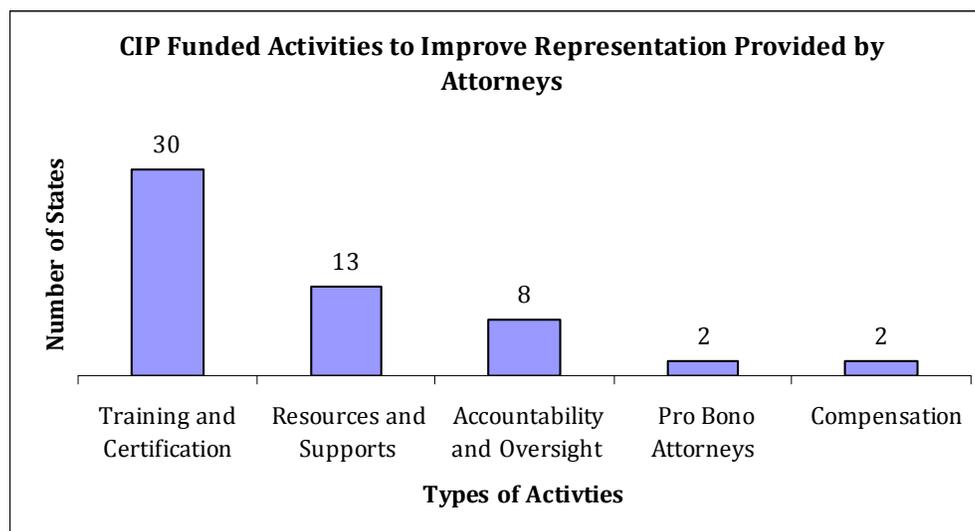
For the National Evaluation of the Court Improvement Program, syntheses of 2005 and 2007 CIP Program Assessments were conducted. An examination of the most common activities described by states over time indicates that improving representation of children remains an issue. In 2005, activities to improve the representation of parties were undertaken in 35 states. These activities included attorney training, legislation, new attorney payment systems and expansion of CASA programs. By 2007, approximately the same number of states (34 States) undertook similar activities, primarily through training attorneys and volunteer child advocates and expanding or developing Court Appointed Special Advocates (CASA) programs.

2008 CIP Program Assessments

The Court Improvement Program Basic, Data and Training Grant Program Assessments from FY 2008 were reviewed to determine the how CIP offices were using grant funds to address the representation of children. Nearly every state (94 percent) reported undertaking one or more activities directed at improving representation of children in dependency cases. Thirty state CIP offices provided funding to improve attorney representation of children and twenty-one State CIPs undertook activities to improve volunteer advocacy for children; some states offered activities for attorneys and volunteer advocates.

CIP Activities to Improve Representation Provided by Attorneys

Thirty states undertook activities to improve attorney representation of children. All the states provided training opportunities to attorneys; additional supports, monitoring the qualifications of attorneys, appointment practices and compensation were less frequently addressed.



Training and Qualifications of Attorneys

CAPTA, which required the appointment of a GAL for children in dependency cases, was amended in 2003 to require that states receiving federal funds to certify that each court-appointed children’s lawyer or GAL is a person “who has received training appropriate to the role.” However, in 2009 only 28 jurisdictions required attorneys to have training prior to appointment and/or continuing legal education.⁶

⁶ Taylor, L and Sankaran, V. (2009). The Unfulfilled Promise: The Right to Counsel for Parents and Children in Child Welfare Proceedings. Presented at the ABA National Conference on Children and the Law. Accessed July 17, 2010 from <http://www.abanet.org/child/parentrepresentation/PDFs/060.pdf>

Partly due to turnover in court and child welfare staff, the provision of training has been from the beginning of CIP a primary activity for State CIP offices from the inception of the CIP. In 2008, thirty states used CIP grants for training attorneys. Training topics varied considerably by state, but there were eight broad categories of trainings offered:

- General training for attorneys (overview, basic and advanced training)
- Laws and statutes (state statutes, ICWA, ICPC, ASFA, Fostering Connections)
- Roles and responsibilities (role of attorney, responsibilities of different types of attorneys)
- Out-of-court activities (investigation/interviewing, advocacy, collateral contacts)
- Court skills (trial skills, handling appeals, trying TPR cases)
- Child development (basic child development, mental health needs of young children, effects of trauma, adolescent brain development, making advocacy decisions based on developmental differences)
- Services for clients (education, residential placements, family drug treatment)
- Special Issues (substance abuse, pharmacology, minor parents, sexual abuse, failure to thrive, etc.)

Few states described a needs assessment process guiding their decision to offer specific trainings, but five States indicated that the training offered was in response to state-mandated training for attorneys representing children. Delaware based their training offerings on results from surveys, CFSR findings and courtroom challenges. Although South Carolina does not have State mandates for training for attorneys representing children, the CIP is working on ways to encourage participation in training by conducting the trainings closer to the compliance time for CLE credits for all attorneys and by adding a provision to the program attorney contract requiring them to attend trainings sponsored by CIP.

Several states reported using comprehensive curricula for training attorneys representing children.

- The Corinne Wolfe Children’s Law Center in New Mexico and a CIP curriculum workgroup developed a core curriculum, “Child Abuse and Neglect: Essential Information for Practicing and Presiding in Child Welfare Cases”. The curriculum addressed key principles of representation, including relevant legislation and statutes, procedures and timelines, and roles and responsibilities at each stage of the cases. The training will be offered on DVD along with materials.
- The GAL Training Program developed in conjunction with NCJFCJ, the Kentucky Cabinet for Health and Family Services, and the Fayette County Assistant County Attorney, the AOC is designed to give the GAL an overview of Kentucky statutory and case law, as well as federal law. Ethics, interviewing children, adolescent development and working with special issues are also covered in the curriculum.
- The Ohio Judicial College is using a GAL training curriculum originally offered by the Ohio Network of Child Advocacy Centers. Courts have anecdotally reported that more comprehensive reports and more thorough investigations are conducted by participants following the training⁷.
- Tennessee hired a training consultant to develop a new curriculum, “Practicing in Child Welfare Cases” which is designed to provide an intermediate level of training for attorneys. The training emphasizes advocacy beyond the courtroom and includes topics

⁷ According to amendments to Ohio court rules, an attorney or lay person can be appointed as a GAL in Ohio. Accessed on July 28, 2010 from

<http://www.supremecourt.ohio.gov/RuleAmendments/documents/Amend.%20to%20Sup.%20R.%2048%20Guardian%20ad%20item%20standards%20%28FINAL%29%20J.%20Cline.doc>

such as, “Advocating Outside of the Courtroom”, “From a Youth’s Perspective” and “How to Develop a Good Permanency Plan”. Basic training is also offered in an on-line format which provides an overview of dependency law and policy.

- Louisiana developed a core curriculum to provide basic information about the dynamics of child abuse, child development, the requirements of the child welfare legal system and roles and ethics.

Eight states reported evaluating the trainings offered to child attorneys. Ohio used pre and post tests for evaluating their curriculum; ninety-one percent of the participants demonstrated an improvement in their post-test score. New Mexico distributes a six month evaluation to those attending the core curriculum trainings. To date, evaluations in New Mexico indicate that participants consistently use the handbook distributed at the training and report they have changed their practice as a result of attending the training.

Certification of attorneys as child welfare law specialists or specialized training provided by National Association of Counsel for Children (NACC) was cited by nine states. Four states reported partnering with NACC to either provide training or to support a number of attorneys in their state to obtain Child Welfare Law Certification. The District of Columbia, Connecticut, Tennessee, and Utah had attorneys submit applications and sit for the certification examination. Massachusetts, Maryland and Texas contracted with NACC to provide specialized training. New Hampshire formed a multidisciplinary Advisory Committee as a first step in initiating a child welfare law specialty program and Arizona has endorsed the model proffered by NACC and will be working on next steps.

Nearly every state uses CIP Training Grant funding to implement and present multidisciplinary trainings aimed at improving the dependency court process. Although many states did not describe in detail the target audience of these multidisciplinary trainings, attendance of child attorneys at these trainings was cited by fourteen States.

Additional Resources and Supports for Attorneys

To support representation of children, CIP funding has been allocated to support specialized law practices, to provide written materials and on-line resources and on-line training for attorneys.

- In Texas, CIP funding supported the Texas Foster Youth Justice Project, which provides legal advice, assistance, guidance and representation of foster care youth. The funds supported representation of youth, legal resources, training, out-reach activities and a statewide hotline for foster youth and alumni. Texas CIP also provided funding for the Travis County Office of Child Representation which provides early, consistent representation by attorneys with subject matter expertise and experience in child welfare cases.
- California CIP grant funds are being provided to support a Tort Funds Liaison in the Juvenile Court Tort Recovery Project. This project ensures that dependent children have competent legal representation to pursue potential tort claims while under juvenile court jurisdiction. In another jurisdiction, California state drug court funds are being used to support a coordinator for a new dependency drug court. CIP staff provide analysis of the data collected by the drug court coordinator in order to determine the efficacy of the drug court model being implemented.
- The New Mexico Quality of Advocacy Committee (QUAC) in 2005 created a Youth Attorney position to provide representation of foster care youth 14 years and older. A participatory evaluation of the implementation Youth Attorney model of representation was conducted in 2008 to identify effective practices, challenges, and to identify

opportunities for improvement. The QUAC was assessing current judicial practice and preference regarding Youth Attorney appointment.

- Support for Children's Law Clinic with the Mississippi College of Law has been a focus of the Mississippi CIP. Currently students from the Children's Legal Clinic are working with the Mississippi Department of Human Services on finalization of adoptions.
- On-line resources, such as case law summaries, linkages to statutes, linkages to publications and discussion boards for attorneys are available in California, Louisiana and Texas. Pennsylvania is planning to offer web-based distance learning for attorneys.
- Six States reported offering printed manuals or newsletters on various aspects of advocacy to attorneys representing children.

Accountability and Oversight of Attorneys Representing Children

Three states have instituted statewide programs to monitor the appointment and qualifications of attorneys

- Arkansas has instituted the AAL Program consisting of 32 full-time employees and 41 part-time contractors providing representation to all children in dependency-neglect cases with a coordinator providing ongoing monitoring to determine participating attorneys' compliance with the Standards of Practice and contract provisions. The coordinator conducts monthly review of reports, performance evaluations, surveys, conferences with judges, and onsite review of case records, interviews, and court observation. The AAL coordinator is developing an additional monitoring component for youth to evaluate their representation. The AAL Program also has an Advisory Board consisting of 12 attorneys to provide guidance and support to implement best practice standards.
- Louisiana is implementing a uniform approach to the representation of children and indigent parents by utilizing existing community based legal services providers. The Mental Health Advocacy Service and Child Advocacy Program currently employs, contracts, and oversees all attorneys representing children in some jurisdictions. Louisiana Legal Services will represent all children in all other jurisdictions. It is envisioned that the movement toward a statewide system will result in more uniform representation, provide greater specialization, and improve quality control and administrative oversight.
- The Dependency Representation: Administration, Funding and Training (DRAFT) Program in California involves a direct contractual relationship between the AOC and court-appointed attorneys in 22 participating court systems. In other jurisdictions in the State, attorneys or agencies contract with the, and are paid by the court. A pilot program analysis was undertaken which identified significant qualitative and quantitative benefits deriving from DRAFT implementation, including, improved attorney performance, long-term fiscal stability, improved dependency system outcomes, as reflected in child welfare permanency data, and enhanced negotiating power as a result of the centralization of the bidding and contracting functions.

Michigan also began work on a statewide program to improve the quality of representation. As a result of a statewide assessment of the legal representation of children in the foster care system the CIP Quality Representation Committee recommended that a statewide model for the provision of consistent legal representation of children by Lawyer-Guardians ad Litem which would include:

- Adoption of a Model Contract
- Uniform and adequate compensation for all time spent on efforts to represent child clients

- Requirements for training prior to obtaining a contract and training on an on-going basis thereafter
- The committee began to implement the recommendations by undertaking the creation of a best practice model contract.

Two states reported efforts to evaluate attorney performance

- The Georgia Office of Child Advocate in partnership with a judge sitting on a CIP committee implemented a quality assurance program to evaluate child attorney performance. The evaluation was conducted in the court of the committee member. Two additional Georgia judges requested that their child attorneys be reviewed.
- New Mexico Quality of Advocacy Committee developed performance standards for court-appointed attorneys. Data is also being collected to document the need for additional attorneys.

Three states were addressing standards of practice for dependency attorneys.

- Nevada CIP, in conjunction with the National Child Welfare Resource Center on Legal and Judicial Issues, will be conducting a survey on appointment practices which will be used to review standards of practice and different models of representation.
- The Chief Child Protection Attorney Office in Connecticut disseminated Standards of Practice for Attorneys representing children and parents and GALs.
- Although Georgia developed standards of practice, the standards were not adopted by legislature or court rule due in part to lack of consensus from the judiciary regarding the standards.

Pro Bono Attorneys

Two states addressed the recruitment of attorneys using pro bono attorneys. Louisiana has used CIP funds to recruit and train pro bono attorneys in one parish. Nevada reported that Clark County Legal Services in Nevada will expand the Pro Bono attorney project to recruit, train and volunteer attorneys.

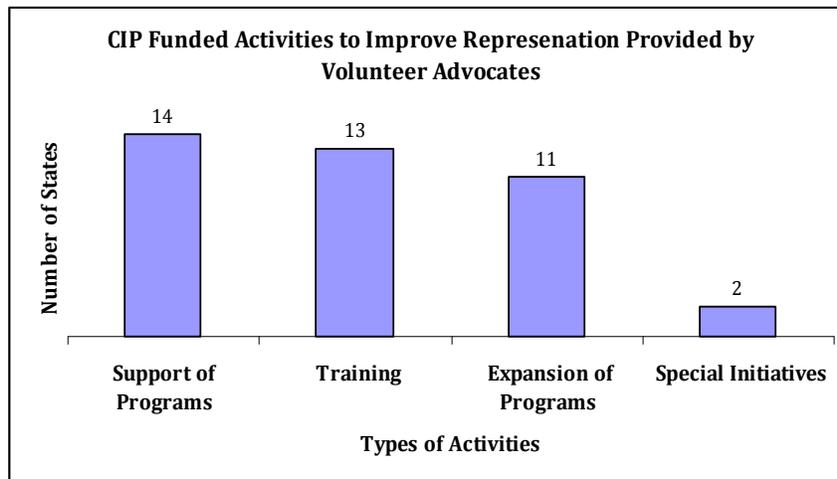
Compensation

Two states addressed compensation of attorneys.

- The New Mexico CIP and AOC initiated a pilot project in 2007 to explore the possibilities of contracting with court-appointed attorneys on an hourly basis, using different hourly rates for different tasks, with no per case cap. Data collected from this pilot indicated that more time was spent with clients and in preparation for court under this model. An attorney was hired by the AOC to gather data from each district on contracting and billing processes, attorney performance and evaluation measures, and the need for additional contract attorneys. An on-line log for attorneys to track hours for in and out of court time, mileage, client contact and review board contact.
- A bill to amend the indigent defense statutes in Alabama to create an independent agency to ensure adequate representation of children and parents and ensure adequate compensation of appointed and contract attorneys was defeated in Alabama's 2009 Legislative Session.

CIP Activities to Improve Representation Provided by Volunteer Advocates

Twenty-one state Court Improvement Program offices undertook activities to improve volunteer advocacy for children. Training and support of volunteer advocacy programs were the most frequently cited activity; efforts to expand the availability of volunteer advocates were also cited. Three states undertook special initiatives using CASA volunteers.



Resources and Support of Volunteer Advocacy Programs

Fourteen state CIPs provided financial support or other services to volunteer advocacy programs. The types of support varied greatly, but included such things as funding a director position, providing attorney consultation, software or computer upgrades. The following are some examples:

- In New York, a state data advisory committee, local CASA programs and the state CASA Association developed draft performance measures to standardize and quantify the work of the CASAs. These measures were distributed to CASAs and several counties began piloting the measures which included, for example, information about whether the CASA advocated for individualized services, the CASA voiced concerns, the continuity of the volunteer.
- Indiana CIP funded an educational advocacy project which will develop and distribute an education checklist for CASAs and GALs to assess the educational needs of children involved in dependency proceedings.

Training of Volunteer Advocates

The training of volunteer advocates was offered in thirteen States. Three States offered training specifically for lay Guardians ad Litem (GAL) and ten States offered training for Court Appointed Special Advocates (CASA).

Vermont, South Carolina, and Ohio provided training for GALs. In Ohio, a GAL may be either an attorney or a lay person; the training is offered through the Judicial College using a standardized curriculum. Pre and post-tests are given to training participants. South Carolina track training attendance at the multiple trainings offered to local the GAL Programs.

Ten State CIPs funded CASA training. Most of the States provided minimal information about the topics covered in the trainings; the most frequently funded trainings were local or National CASA conferences.

Expansion of Volunteer Advocacy Programs

Eleven state CIPs provided funding to expand the availability of GAL or CASA volunteers. Eight States funded CASA expansion to jurisdictions without volunteer advocates, frequently rural areas. California provided funding to the Karuk Tribe to assist in the development of a Tribal

CASA program. Three state CIPs funded efforts to recruit more volunteer advocates for existing State programs.

Volunteer Advocate Special Initiatives

Two states utilized CASA volunteers to work on special initiatives:

- California CIP is working with CASA to recruit former foster youth to present at CIP collaborative training programs.
- Superior courts in the District of Columbia appointed specially trained CASAs to work with foster care youth transitioning to independence. The CASAs work to ensure accessibility of services and that services are provided in timely manner. The CASAs provide reports to the court on the appropriateness of services, compliance with plans, and the youth's progress toward independence.