



## A comparison of types of attorney representation for children in California juvenile court dependency cases<sup>☆</sup>

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### ABSTRACT

**Objective:** The present study concerns types of attorney representation for maltreated children involved in juvenile court actions in the state of California. The aims of the research were to document the different types of representation used in dependency cases in 2000 (e.g., public defender, District Attorney, private firms) and to evaluate these types of representation with respect to children's experiences in foster care.

**Methods:** Every county in California was surveyed about the predominant type of legal representation used in their dependency court system. In addition, data on children's experiences in foster care were obtained from the Child Welfare System/Child Management System (CWS/CMS).

**Results:** Findings indicate that, in the majority of counties in California, children were represented by the public defender's office or by a panel of court-appointed attorneys. Approximately equal numbers of counties employed county-affiliated (i.e., District Attorney, public defender, county counsel) and independent (i.e., private firm, panel of court-appointed attorneys) types of representation (47% and 52%, respectively). Further analyses suggested that children in counties employing independent types of representation tended to experience fewer foster-care placements than did children in counties employing county-affiliated types of representation. This relation remained significant when potentially confounding variables were statistically controlled.

**Conclusion:** Results indicated that some types of representation, specifically, private firms and court-appointed attorneys, were associated with one better outcome for children.

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### Introduction

Children involved in the juvenile courts because of abuse or neglect typically must rely on the legal system to adopt a plan for their custody and care. Over the past several decades, the number of child maltreatment cases reported to child protective services has increased dramatically (Department of Health and Human Services, 2007; but see Finkelhor & Jones, 2006). Many of these cases will be heard by juvenile courts. Despite the important involvement of the courts, little empirical research exists on factors that affect the custody and care outcomes for maltreated children who are removed from home and placed in foster care by the juvenile court (Bishop et al., 2000).

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Ideally, throughout the foster care experience, each child would have a knowledgeable and caring advocate who could represent the child in juvenile court, protect the child's legal rights, ensure that the child receives needed services, and guard the child's best interests (Davidson, 1989; Haralambie, 1999). However, there is considerable variability in the kind of representation that children receive, at least throughout the state of California, and controversy exists about which type best accommodates children's needs. Unfortunately, few studies exist on types of legal representation for maltreated children who have been removed from home (Kalemkiarian & Duke, 1994; Judicial Council of California, 2004). The goal of the present study was to document and evaluate types of legal representation for maltreated children in juvenile court actions.

### *Models of representation*

At the time of this study, four main models of attorney representation existed in California for children in juvenile court proceedings regarding abuse and neglect, with each model involving attorneys but differing in the attorneys' backgrounds, agency affiliations, and potential conflict of interests: (1) public defenders or prosecutors, (2) county counsel, (3) private for-profit or nonprofit law firms, and (4) pro bono attorneys. Additionally, children were at times represented by court-appointed special advocates, who are volunteers and who typically are not attorneys, or by guardian ad litem, who are also not necessarily attorneys. In California, prior to January 1, 2001, the juvenile court had authority to appoint an attorney for a child if it appeared to the judge that the child would benefit from legal representation. After January 1, 2001, the law changed so that today, every child must have an attorney unless the judge makes specific findings that the child would not benefit from appointment of counsel. Judges seldom make such findings, with the result that nearly all children involved in the juvenile court have appointed counsel.

Also effective January 1, 2001, the law changed to preclude, in effect, attorneys who are county counsels from representing children. The rationale for this change was that county counsel represents the child protection agency in juvenile court, and the consensus is that an attorney should not represent the agency and the child at the same time.

The type of legal representation that is employed to advocate for maltreated children in each California county seems to have developed for a combination of nonsystematic reasons (e.g., available resources, tradition), which may be based more on the practical realities of each county than on children's needs. It is possible that different models have different strengths. Although efforts are currently underway to speed permanency planning, it is unknown if different types of legal representation lead to faster resolution or not. If, for instance, children languish in foster care longer or experience a greater number of placements when one type of legal representation is employed compared to another, such findings would be of vital interest to juvenile courts, attorneys who represent children, CPS officials, foster care agencies, and others. Yet, to our knowledge, no evaluation of the different legal representation systems in relation to children's outcomes has been published.

### *Children's experiences in foster care*

Research indicates that, too often, children languish in foster care. A longitudinal follow-up of 206 cases of serious maltreatment in Massachusetts indicated that children were in the system an average of 6.25 years from the filing of the first CPS report to the resolution of the case. Even 7.5 years after arraignment, more than 20% of the children were still in "temporary" foster care and awaiting permanent placement (Jellinek et al., 1995, 1992). Such delays are not specific to Massachusetts. These delays to a permanent placement constitute a serious risk to children's mental health and attachment (Bowlby, 1969; Goldstein, Solnit, Goldstein, & Freud, 1986). Moreover, many children experience multiple foster-care placements, which also likely contributes to poor mental-health outcomes in children (Garnezy, 1983). In the present study, we considered length of stay in foster care and number of placements as indicators of children's foster-care experiences.

### *Current study*

As just mentioned, although data exist on the types of representation given to juveniles within dependency court proceedings, and data also exist indicating that longer stays in foster care lead to more adverse consequences for children, no known research has linked the types of representation that children receive with their outcomes in foster care. The current study aims to remedy this gap by addressing directly the link between legal representation and outcomes for children.

## **Method**

The protocol for this study was approved by the Institutional Review Board of the University of California, Davis.

### *Data collection*

*Types of legal representation.* In California, there are 58 counties, each of which administers juvenile courts. Data on the type(s) of legal representation implemented in each county in California for the year 2000 were obtained by contacting county-level juvenile court administrators. If a particular county did not have such an individual or if this individual could not be contacted, an alternative court official was interviewed (e.g., court clerk, juvenile judge). Respondents were asked, via telephone, first, to verify that they had appropriate expertise to indicate the types of legal representation for children

in their juvenile dependency court, and if so, second, to state the predominant type (i.e., county counsel, District Attorney, public defender, private for-profit firm, private nonprofit firm, panel of court-appointed attorneys, other). Respondents also were asked to identify the other types of representation used, and to indicate the approximate percentage of time that each type (the predominant and other types) was implemented. Based on this information, the primary type of representation was identified for each county. Because some types of legal representation were adopted by only a small number of counties, each county was classified according to whether its primary type of legal representation was county-affiliated (i.e., public defender, District Attorney, or county counsel) or independent (i.e., private firm, panel of court-appointed attorneys).

*Children's experiences in foster care.* Data on children's experiences in foster care were obtained from the Child Welfare System/Child Management System (CWS/CMS), <http://cssr.berkeley.edu/childwelfare/> (Needell et al., 2003). The CWS/CMS dataset, housed at the University of California, Berkeley, includes data from Child Protective Service agencies throughout California. For the present study, we obtained county-level information on children who entered the system during the year 2000. The following variables were used: number of children entering the foster-care system for the first time, mean number of placements per child, and median length of stay in foster care.

*Demographic information.* County-level demographic information was obtained from the US Census Bureau, <http://www.census.gov>. The following variables, corresponding to the year 2000, were used: Total county population, percentage of minorities per county, and county median household income.

### Data analysis

As a first step in evaluating the influence of types of representation on child outcomes, we conducted independent samples *t* tests, with the type of legal representation as the independent variable; median length of stay and mean number of placements served as separate dependent variables. Next, to control for potentially confounding factors, two separate one-way analyses of covariance (ANCOVAs) were conducted with median length of stay and mean number of placements at 12 months as dependent measures. Type of representation (county-affiliated vs. independent) served as the independent variable, and number of first entries, median family income, and percentage of nonminorities were entered as covariates.

## Results

### Descriptive information

*Types of legal representation.* As shown in Table 1, children were represented by the public defender's office or a panel of court-appointed attorneys in the largest number of counties. In 2000, of the 58 counties in California, 27 (47%) employed a form of independent representation for children and 30 (52%) used a form of county-affiliated representation (one county, 2%, changed their primary type of legal representation in the year 2000, and thus could not be included).

*Demographic information.* Counties varied considerably in terms of median household income ( $M = \$42,894$ ; range, \$27,522–\$74,335), total population ( $M = 586,215$ ; range, 1,209–9,546,597), and percentage of nonminorities ( $M = 73\%$ ; range, 49–94%).

*Children's experiences in foster care.* For each county (as available), we obtained data on the number of children entering foster care for the first time in 2000 (for California as a whole, the number was 27,807), and, for these children, the average length of stay (in days) and the mean number of placements during a 12-month period. The average length of stay in foster care for a child entering the system in 2000 was approximately 390 days (range, 5–856 days;  $n = 54$  counties). The average number of placements for those children at 12 months was 2.36 (range, 1.87–3.00;  $n = 44$  counties). To maintain confidentiality, the CWS/CMS dataset does not include information on counties with fewer than five children in any particular category; thus, three counties did not have data for the median length of stay variable (Alpine, Inyo, and Mono), and 13 counties did not have data for the mean number of placements variable (Alpine, Amador, Colusa, Glenn, Inyo, Mariposa, Modoc, Mono, Napa, Nevada, Sierra, Tehama, and Trinity).

Correlations between children's outcomes and demographic variables are presented in Table 2. In examining the correlations of interest, the median length of stay was significantly associated with county population size. Counties with the largest total populations had children who stayed longer in the foster care system. It should be noted that total county pop-

**Table 1**  
Frequency of forms of legal representation in 58 counties

Form of representation	%
Public defender's office	40
Panel of court-appointed attorneys	31
District Attorney	10
Private nonprofit firm	5
Private for-profit firm	10
County counsel	2
Multiple/changed during 2000	2

**Table 2**  
Correlations among variables for the year of 2000

	1	2	3	4	5
1. County population (total)					
2. Percentage of nonminorities	-.42**				
3. Median income	.20	-.25			
4. Number of first entries	.97**	-.46**	.11		
5. Median length of stay	.34*	-.29*	.12	.32*	
6. Mean number of placements	-.03	-.14	.07	.03	-.11

Note: All demographic data are for the year 2000; all foster-care data are for children entering the system in the year 2000. \* $p < .05$ , \*\* $p < .01$ .

ulation size and number of first entries were highly correlated. Additionally, those counties with the highest percentage of nonminorities reported significantly shorter durations of placement.

### Predicting children's outcomes

To examine whether outcomes for children in foster care differed according to the type of legal representation implemented, *t* tests were conducted. A dichotomous (independent vs. county-affiliated) representation variable was used for these analyses. In addition, analyses were conducted to examine differences in demographic variables according to type of legal representation.

As shown in Table 3, the type of legal representation differed across several variables, including median household income, mean number of placements, and median length of stay. Counties employing independent versus county-affiliated types of representation had significantly higher median incomes and significantly lower mean placements per child. The relation between type of representation and median length of stay approached significance, indicating that children in counties where independent representation was used tended to remain in the foster-care system approximately three months longer than children in counties employing county-affiliated types of representation.

To control for potentially confounding factors, separate ANCOVAs were conducted, with median length of stay and mean number of placements at 12 months as dependent variables. Type of representation (county-affiliated vs. independent) served as the independent variable, and number of first entries, median family income, and percentage of nonminorities were entered as covariates. Because total county population size and number of first entries were highly correlated, only the latter was included in the ANCOVAs. For median length of stay, type of representation was not significant,  $F(1, 49) = 2.42$ ,  $p = .13$ , and neither were the three covariates. For mean number of placements, however, type of representation was significant,  $F(1, 49) = 5.09$ ,  $p < .05$ . The mean number of placements for children was higher when the children were represented by county-affiliated attorneys than by independent attorneys. Results were unchanged when number of first entries was replaced with total county population size.

### Discussion

The goals of the present study were to (1) document the various types of legal representation used in the state of California and (2) examine relations between different types of representation and children's experiences in the foster-care system. For the year 2000, approximately equal numbers of counties utilized county-affiliated (i.e., public defender, District Attorney, or county counsel) versus independent (i.e., private for-profit firm, private nonprofit firm, or panel of court-appointed attorneys) types of representation. A closer inspection of the data indicated that, in the majority of counties, children involved in dependency cases were represented by either the public defender's office (40%), that is, by county-affiliated attorneys or by a panel of court-appointed attorneys (31%), that is, by independent types of representation. These frequencies are consistent with those reported by Kalemkarian and Duke (1994); specifically, a 1994 survey indicated that county-affiliated types of representation were more likely to be used than were independent types. However, the present findings suggest an increase in utilization of independent types of representation.

**Table 3**  
Means of demographic and outcome variables by form of legal representation

Variable	Type of representation		<i>p</i>
	County-affiliated, <i>N</i> = 30	Independent, <i>N</i> = 27	
Total population	402,581.60 (679,783.26)	783,922.26 (1,852,879.73)	<i>ns</i>
Percentage of nonminorities	75% (14)	70% (14)	<i>ns</i>
Median income	\$39,795 (\$11,569)	\$45,717 (\$10,463)	<.05
Number of first entries	461.3 (768.5)	682.1 (1569.9)	<i>ns</i>
Median length of stay, in days ( <i>N</i> = 54)	341 (178.8)	437.27 (205.1)	<.08
Mean number of placements at 12 months ( <i>N</i> = 44)	2.4 (.23)	2.3 (.30)	<.05

Note: *N* = 57 counties unless otherwise indicated. Standard deviations in parentheses.

Further analyses were focused on whether the primary type of representation influenced outcomes. Results of these analyses indicated that foster children in counties employing county-affiliated types of representation experienced a greater number of placements in the 12-month period compared to children in counties that used independent types of representation. This effect remained significant when potentially confounding variables (i.e., median household income, number of first entries, and percentage of nonminorities) were statistically controlled. In contrast, there was also a marginal effect of type of representation on median length of stay in foster care, such that children in counties that used independent types of representation tended to stay in foster care approximately 100 days longer than children in counties that used county-affiliated types of representation. This effect did not remain significant in analyses including the covariates. Thus, to the extent that a smaller number of foster-care placements is more desirable, our analyses suggest that independent representation may have some beneficial effects for children.

Several important limitations should be noted. First, we did not have a measure of the *quality* of any individual attorney or type of representation. If some types of representation are, in fact, better for children than others, it is important to understand the factors that account for these differences. For instance, do certain types of attorneys have more time or resources to devote to their child clients? Are some attorneys more knowledgeable or experienced in handling dependency cases? These are important questions that deserve further study. Second, because our data were collected at the county level, the experience of any *individual* child was not ascertained. There is likely considerable variability in children's experiences, and it is possible that some children fare better with one kind of representation compared to another. Moreover, variability in children or their cases could influence the kind of representation that children receive, which could in turn affect their outcomes in the foster-care system. For instance, perhaps some children or some types of cases (e.g., particularly severe cases) are more likely to be referred to independent versus county-affiliated counsel. Further research is, therefore, necessary to understand how characteristics of the child and the legal system may interact to shape children's experiences.

Third, our analyses were conducted using the *primary* type of representation implemented in each county. Insofar as some counties implement more than one form and given that we cannot distinguish which children received one type versus another, it may be difficult to draw conclusions about the independent effects of one particular type of representation. In addition, given the small number of counties that used some types of representation, we could not determine whether particular types within the independent or county-affiliated categories were more effective than others. Further research at the individual-child level may help to address such issues.

Fourth, in the present study, we surveyed court administrators to determine the type(s) of representation implemented across counties. Although these administrators are knowledgeable about the ways in which children are represented, it will be important in future research to validate these data with those from other sources. Finally, we do not know if our findings generalize to other parts of the country. A national study on the relations between types of legal representation and child outcomes is needed.

In summary, the findings raise the possibility that certain types of representation result in at least one better outcome for children.

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