

# HOW CHILDREN ARE HEARD IN CHILD PROTECTIVE PROCEEDINGS, IN THE UNITED STATES AND AROUND THE WORLD IN 2005: SURVEY FINDINGS, INITIAL OBSERVATIONS, AND AREAS FOR FURTHER STUDY

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## I. INTRODUCTION

When the state seeks to intervene into a family on behalf of a child who may have been abused or neglected, how can a child's views be made known to the important decision makers in the child's case? This question is at once logistically complex and desperately important to the child. The logistical complications stem from many sources: the child's inability to rely on her most natural representative, her parent; the probability that the child at critical moments in the case is traumatized or under great emotional stress; the problems of a child's encountering an adult system of law and bureaucracy

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which may, due to resource constraints, function based on adult priorities; and the complexity of personal and social issues that might have led to the concerns about the child's welfare. At the same time, the question is vital. The decision makers in a child protective proceeding literally decide for the child the central questions of her daily life. Where is home? Who takes care of me? Who are my parents, my siblings, my extended family and my classmates?

The international community has nearly unanimously and repeatedly committed itself to assure the child the ability to express her views freely during this extraordinarily difficult and extraordinarily crucial juncture in her life. One hundred and ninety-four countries have signed and 192 countries have ratified the Convention on the Rights of the Child ("Convention" or "CRC") which obligates its parties to create legislation and programs for the protection of children, create procedures assuring fairness in removal of children from their homes, and assure children the right to express themselves freely in all matters affecting them, including the right to be heard in judicial and administrative proceedings such as child protective proceedings. Even the United States, one of the two non-ratifying signatories to the Convention<sup>1</sup> has independently provided children with representatives in these proceedings around the country for nearly thirty years. It is clear that there is an international consensus that children deserve a voice in these proceedings, either by means of their own direct participation or through a representative individual or agency.

To determine the status of the legal developments concerning the child's right to be heard in child protective proceedings around the world and around the United States and to lay a foundation for useful discussion at the Fordham-UNLV conference, researchers at the Yale Law School undertook two surveys of legal provisions. Taken together, the two surveys offer a comprehensive 250 jurisdiction review and a snapshot of the global state of the law concerning the child's voice in child protective proceedings in the year 2005.<sup>2</sup>

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<sup>1</sup> It might be many years before the United States ratifies the CRC; ratification of human rights treaties has typically been a long and difficult process in the United States. See Lawrence L. Stentzel, *Federal-State Implications of the Convention*, in CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW 57 (Cynthia Price Cohen & Howard A. Davidson eds., 1990). In addition; anti-ratification organizations have criticized the CRC intensely since the United States signed the CRC, arguing that ratification will result in the decline of parental authority and the usurpation of national and state sovereignty by the United Nations and other international bodies. See Alison Dundes Renteln, *Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 ILSA J. INT'L. & COMP. L. 629, 632 (1997); Susan Kilbourne, *Opposition to U.S. Ratification of the United Nations Convention on the Rights of the Child: Responses to the Parental Rights Arguments*, 4 LOY. POVERTY L.J. 55, 57 (1998); John Quigley, *U.S. Ratification of the Convention on the Rights of the Child*, 22 ST. LOUIS U. PUB. L. REV. 401 (2003), available at <http://moritzlaw.osu.edu/jfc/staff/quigleyratification.pdf>.

<sup>2</sup> The results of this worldwide survey in 2005 can be found at <http://www.law.yale.edu/rcw>. The research summary section of that website contains the most up-to-date versions of the charts printed here. I thank Bree Grossi Wilde, Will Bowen, Vanita Shimpi, and Elaine Chao for their tremendous efforts in conceiving and executing these charts.

The 250 jurisdiction research project (encompassing all 194 signatories to the Convention on the Rights of the Child, and all fifty-six U.S. jurisdictions)<sup>3</sup> was completed primarily by law student researchers at the Yale Law School between June 2004 and December 2005.<sup>4</sup> The international portion of the survey, discussed in Part II, reveals limitations; implementation of Article 12's directive that children's voices be heard in these proceedings either directly, through a representative, or through an "appropriate body"<sup>5</sup> has only just started in most of the world.

Of the jurisdictions which have child protective legislation that is in compliance with Article 12, the majority provide for children to be heard directly. About 24.4% of the children under age fifteen worldwide live in the approximately seventy-two U.N. member states<sup>6</sup> that currently have provisions for children to be heard directly in protective proceedings.<sup>7</sup> Meanwhile, an approximated thirty-eight countries, constituting about 14.4% of children worldwide, provide for children to be heard through a representative, and about fourteen countries, constituting roughly 1.3% of children, provide for children to be heard through a body.

For a substantial number of jurisdictions, representing 73.3% of children under the age of fifteen worldwide, research either revealed the country to be out of compliance with Article 12 or research findings were inconclusive. About 44.2% of children worldwide live in the approximated sixty-seven countries that have no legal provision requiring that children be heard in child protective proceedings, and 6.4% of children live in the estimated thirty-two jurisdictions that appear to have no formal child protective proceedings or bureaucracy. For an additional sixteen jurisdictions, constituting 22.7% of children, researchers found little or no information about the existence of protective proceedings or found conflicting information.<sup>8</sup>

On the domestic side, discussed in Part III below, the United States still reflects significant confusion about the role of the child's representative. The United States has fifty-six individual systems of representation in place. Of the six models of representation that we have identified, four of the six models, (comprising about thirty-nine jurisdictions total) appear to comply fully with Article 12's requirement that the child's views be expressed freely. Nevertheless, the United States jurisdictions appear to be caught between two forces pulling in opposite directions: (1) a 1974 federal funding statute, the Child Abuse Prevention and Treatment Act (CAPTA) which has created an (unfunded) mandate linking funding for state child protective systems to the

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<sup>3</sup> In addition to all fifty states and the District of Columbia, the United States research included American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands.

<sup>4</sup> The remarkable community that came together to complete this research is acknowledged at Appendix A.

<sup>5</sup> See *infra* note 27 and accompanying text.

<sup>6</sup> The numbers of jurisdictions are approximate, because in some cases researchers had enough information to make an educated guess but were unable to confirm the findings.

<sup>7</sup> Due to the fact that many jurisdictions use multiple legal models (e.g. children may have a representative and express their wishes directly) these percentages do not add up to 100%.

<sup>8</sup> Due to the fact that some jurisdictions employ more than one legal model for the communication of the children's views, the numbers of jurisdictions do not add up to 250.

provision of a guardian *ad litem* for every child subject to child protective proceedings; and (2) a strengthening consensus among the academic and professional community that child representation should be conducted by lawyers acting in accordance with legal ethical rules and performing lawyerly functions.

The collective international data portrays an indisputable worldwide consensus about the importance of the child's voice in proceedings in which the child is the subject, and offers an opportunity for the United States to renew its commitment to quality representation of children and the full expression of children's views in child protective proceedings. On a systemic level, to the extent that children in the United States are represented by professionals who are understandably confused about both the importance and the logistics of their role, the international consensus demonstrates that the ability of children to express their views freely in these cases is no longer simply a condition of funding, rather, it is now *an internationally recognized human right*. Thus the incentive for the U.S. localities to make more sense of their child representation schemes, pay their practitioners properly, and resolve inconsistencies that have plagued thoughtful practitioners has moved to the highest level of urgency and moral and ethical concern. Moreover, the Convention, although not ratified by the United States, binds the United States as a signatory to ensure that its legal system, as currently functioning, does not contravene the object and purposes of the Convention.<sup>9</sup> American lawyers for children in child protective proceedings as well as judges in those proceedings must begin now to consult the Convention in aid of the important work of representing children properly.

While this research was originally conceived as a project to investigate child representation worldwide (hence, the name of our website, Representing Children Worldwide),<sup>10</sup> we now realize that only about a sixth of children worldwide live in a country which mandates that their views be expressed through a representative. For these thirty-six countries and other nations considering moving to the representative model, the case study of the United States offers at once a laboratory of myriad previous experiments, a body of practical, academic and theoretical writing, and a cautionary tale. The American experience offers other countries an opportunity for the study of vast databases, the formulation of a clear consensus and vision of the roles of representatives, training resources and coordination prospects that American lawyers lacked during the origins of its lawyering for children and child protective proceedings in the 1970s.<sup>11</sup> The American experience also underscores the need for thoughtful use of terminology and good coordination between jurisdictions, to ensure a sophisticated child-centered and workable role for lawyers of children in abuse and neglect cases. In addition, the United States has substantial experience with the issues faced by the quarter of the world's children whose countries provide for the child to be heard directly.

In undertaking this research and creating this website, it was the deepest aspiration of the many participating members of the Yale Law School community that we might begin to create an international community of experts who

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<sup>9</sup> See Vienna Convention on the Law of Treaties, art. 18, Jan. 27, 1980, 1155 U.N.T.S. 331, 336; See *infra* note 129.

<sup>10</sup> See <http://www.law.yale.edu/rcw>.

<sup>11</sup> See *infra* note 100 and accompanying text.

are knowledgeable about global practices beyond their own country's frontiers, and who could work in concert to improve the lives of children worldwide. This paper seeks to lay a foundation for useful discussion at the Fordham-UNLV conference and promote informed discussion of the issue of children's voices in child protective proceedings generally by doing the following:

1. Reporting the results of the two surveys (in Part II: Survey Results and Part III: The 2005 United States Survey, Section B);
2. Reporting initial observations based on the international research and case study of the United States experience (in Part II: Survey Results and Part III: The 2005 United States Survey, section B(3));
3. Suggesting contributions that the American experience and its scholarly literature can offer to questions facing the international community (in Part III: The 2005 United States Survey, section C(2));
4. Suggesting new perspectives that the international experience offers to the United States, now in its fourth decade of representing children in these proceedings (in Part III: The 2005 United States Survey, section C(1)); and
5. Suggesting areas for further study now that an international overview of the legal provisions on this issue is available (in Part II: Areas for Further Study).

## II. COMPARATIVE PRACTICES IN ASSURING THE CHILD THE RIGHT TO BE HEARD IN CHILD PROTECTIVE PROCEEDINGS: HISTORY AND SURVEY RESULTS

### A. Introduction

This section first describes the UN Convention on the Rights of the Child and its provisions and history regarding the voices of children in child protective proceedings; second, discusses four regional conventions and other regional developments in this area; third, reports the results of the 194 nation survey of legal provisions regarding the child's voice in child protective proceedings around the world, with initial observations; and fourth, suggests areas for further study now that an overview of world legal provisions on this issue is available.

#### 1. *The UN Convention on the Rights of the Child ("CRC")*

The UN Convention on the Rights of the Child broke records by gaining the greatest number of signatories on the day it opened for signature, by proceeding to garner more ratifications than any other human rights treaty, and then by being implemented more quickly than any other human rights treaty.<sup>12</sup> Drafted over a period of ten years in a process involving representatives of over seventy countries, including the United States,<sup>13</sup> the convention was adopted

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<sup>12</sup> See CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW, at iii (Cynthia Price Cohen & Howard A. Davidson eds., 1990).

<sup>13</sup> See President of the Third Committee, *Adoption of a Convention on the Rights of the Child: Report of the Third Committee*, ¶ 10-12, delivered to the General Assembly, U.N. Doc. A/44/736 (Nov. 17, 1989), available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N89/292/45/img/N8929245.pdf?OpenElement>.

unanimously by the UN General Assembly on November 20, 1989.<sup>14</sup> After its ratification by twenty states, the CRC entered into force on September 2, 1990. Every United Nations member has signed the CRC and 192 countries have ratified it. To date, the only countries that have not ratified the CRC are Somalia and the United States.<sup>15</sup>

The Convention addresses a wide range of issues affecting the lives of children and offers a comprehensive framework for children's rights. The CRC explicitly describes three types of rights that children have, sometimes referred to as the "three P's": provision, protection, and participation. The provision category includes the provisions of things and services such as a name, nationality, healthcare and education.<sup>16</sup> The protection rights include protection from acts such as exploitation, arbitrary detention and unwarranted removal from parental care.<sup>17</sup> Finally, the participation category includes the child's right to participation in all decision-making processes and all community systems that affect the child's life.<sup>18</sup> The CRC consists of a preamble, forty-one substantive articles and thirteen procedure and implementation articles. The entire text of the Convention can be found at <http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>. The Convention requires countries to report to the Committee on the Rights of the Child regarding its implementation of the Convention within two years of ratification and every five years thereafter.

The sections of the CRC generally relating to representation of children and child protective proceedings include: The Preamble; Article 3, discussing the best interests of the child and parental rights; Articles 5 and 7, discussing the rights and duties of parents; Article 9, discussing abuse and neglect cases specifically; Article 12, discussing the right of the child to be heard in matters affecting her, Article 18, discussing parents' responsibilities for their children; and Article 19, discussing state parties' rules in protecting children from abuse. The CRC itself provides for implementation of its provisions to take place pursuant to Article 4:

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and where needed, within the framework of international co-operation.<sup>19</sup>

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<sup>14</sup> See OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, FACT SHEET NO. 10 (REV. 1), THE RIGHTS OF THE CHILD I, (2004), available at <http://www.ohchr.org/english/about/publications/docs/fs10.htm#iii>.

<sup>15</sup> For a listing of all countries that have signed and/or ratified it, see Office of the United Nations High Comm'r for Human Rights, 11 Convention on the Rights of the Child (Nov. 20, 1989), <http://www.ohchr.org/english/countries/ratification/11.htm>.

<sup>16</sup> See BEVERLY C. EDMONDS & WILLIAM R. FERNEKES, CHILDREN'S RIGHTS: A REFERENCE HANDBOOK 10 (1996).

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

Taken together, the provisions of the UN Convention on the Rights of the Child require nations to protect children from abuse,<sup>20</sup> to set up child welfare systems for adjudicating abuse and neglect cases,<sup>21</sup> to endow parents with rights, duties and responsibilities with respect to their children,<sup>22</sup> and to provide, through Article 3, that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>23</sup> More specifically, Article 9 states that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child,”<sup>24</sup> and Article 19 states:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.<sup>25</sup>

Article 12 addresses the child’s right to express her views, providing in subsection 1 that:

State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.<sup>26</sup>

Article 12 subsection 2 provides:

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<sup>20</sup> See *id.* at art. 19; *id.* at art. 34 (“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.”); see also *id.* at art. 9 (offering abuse as an example of a situation in which a judicial authority may determine that separating a child from his or her parents against the child’s will is justified).

<sup>21</sup> See *id.* at art. 19(2) (“Such protective measures should, as appropriate, include effective procedures for the establishment . . . for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”).

<sup>22</sup> See *id.* at art. 5 (“States Parties shall respect the responsibilities, rights and duties of parents . . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”); *id.* at art. 7(1) (“The child . . . shall have . . . as far as possible, the right to know and be cared for by his or her parents.”); *id.* at art. 9(1); *id.* at art. 14(2) (“States Parties shall respect the rights and duties of the parents . . . to provide direction to the child in the exercise of his or her right [to freedom of thought, conscience and religion] in a manner consistent with the evolving capacities of the child.”); *id.* at art. 18(1) (“Parents . . . have the primary responsibility for the upbringing and development of the child” and must be concerned primarily with the child’s best interests); *id.* at art. 27(2) (“The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development.”); see also *id.* at art. 10 (promoting the right of parents and children living in different states to reunify).

<sup>23</sup> *Id.* at art. 3(1).

<sup>24</sup> *Id.* at art. 9.

<sup>25</sup> *Id.* at art. 19.

<sup>26</sup> *Id.* at art. 12(1).

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.<sup>27</sup>

Article 12 on its face grants children the right to be heard, and potentially to be represented, in a vast number of proceedings beyond child protective proceedings. Importantly, Article 12 therefore focuses on the child or her representative's ability to express the child's subjective viewpoint and wishes and not on the child's best interests.

The CRC does not require that a child be mature enough to express a considered view in order to trigger this section. The CRC requires only that a child be "capable" of forming his or her own views. It appears from the language of the CRC that even a three-year-old child able to express a view ("I want to go home!") has the right to express that view freely in all matters affecting her. The CRC does provide that the child's views are given due weight in accordance with the age and maturity of the child but appears to require that the child's views, whether or not honored, must be reported.

Rather than requiring a representative, the CRC offers a representative as one of three possible vehicles through which a child's voice may be heard ("directly, through a representative, or an appropriate body"<sup>28</sup>). The CRC is also silent on the extent to which the child's views must be advocated for, as opposed to merely expressed. In addition, the Convention does not necessarily require that the child be a party to proceedings or that the child's representatives be a lawyer.<sup>29</sup>

## 2. Regional Agreements and Policy Statements

Four regional agreements currently buttress this international consensus that the child's voice be heard in child protective proceedings. While a bit of academic study of two of these agreements (the African Children's Charter and the European Convention on the Exercise of Children's Rights) has begun, two agreements are so new that we have had some trouble confirming their legal status. Our research into each is summarized below, along with information about other regional initiatives.

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<sup>27</sup> *Id.* at art. 12(2).

<sup>28</sup> *Id.*

<sup>29</sup> PATRICK GEARY, A CHILD'S RIGHT TO EXPRESSION UNDER INTERNATIONAL CONVENTIONS ON THE RIGHTS OF CHILDREN AND FRENCH NATIONAL LAW: WHERE DOES THIS LEAVE THE EUROPEAN CONVENTION ON THE EXERCISE OF CHILDREN'S RIGHTS? 10 (2005), available at <http://www.law.yale.edu/rcw/rcw/jurisdictions/euow/france/frontpage.htm> ("The reference to 'procedural rules of national law' is intended to stress the need for national law to include specific procedures to allow for the implementation of the right as recognized by article 12, [not at all] to be interpreted as a means of allowing possible inadequate solutions contained in the procedural law to prevent the full enjoyment of this fundamental right." (quoting Manual on Human Rights Reporting 430 (1997)); "Where national procedures provide that children be heard by way of the 'representative' or 'appropriate body' as noted in Article 12, then, the obligation remains 'to transmit the views of the child.'" *Id.* (quoting RACHEL HODGKIN & PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 166 (2002))).



a. *The African Charter on the Rights and Welfare of the Child*  
("ACRWC")<sup>30</sup>

African nations had relatively limited involvement in the long process of drafting the CRC. Only three African States sustained participation over time (Algeria, Morocco, and Senegal), though nine in total had participated by the final draft. By contrast, African states constitute thirty-seven percent of the parties to the CRC. The first iteration of the Committee on the Rights of the Child included three African members (out of ten total). This Committee noted several concerns for children in Africa: widespread discrimination against girls, the absence of education, working children and child labor, juvenile offenders, and socio-economic issues (including birth rates, health and welfare).

Commentators have suggested that the idea of a separate African charter concerning the rights of children came from the need to address "certain peculiarly African problems," as well as discontent with CRC omissions.<sup>31</sup> Problems understood to be "peculiarly African" included apartheid, problems facing female children, internal displacement arising from internal conflicts, illiteracy and low levels of sanitary conditions, the African conception of the community's responsibilities and duties, child soldiers and military service, children in prison, and the role of the family in the child's upbringing.

The African Charter, adopted by the Organisation of African Unity ("OAU")<sup>32</sup> in 1990 and entered into force on November 19, 1999, was the "first regional treaty on the human rights of the child."<sup>33</sup> As of the writing of this paper, of the fifty-three member states, thirty-nine have signed and thirty-seven have ratified the Charter. The ACRWC provided that first State party reports were due to the African committee on Experts on the Rights and Welfare of the Child in 2001 and then every three years thereafter.<sup>34</sup>

The Charter was drafted based on the CRC, but in some cases provides greater protection than is granted by the Convention. The ACRWC grants rights and responsibilities relating to child welfare, as well as basic human rights (e.g., expression, association, freedom of thought, and conscience and

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<sup>30</sup> See African Charter on the Rights and Welfare of the Child, opened for signature July 11, 1990, OAU Doc. CAB/LEG/24.9/49 [hereinafter ACRWC], available at [http://www.africaunion.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/A.%20C.%20OON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20OON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf).

<sup>31</sup> University of Pretoria Centre for Human Rights, African Human Rights System: Regional Treaties, [http://www.chr.up.ac.za/centre\\_publications/ahrs/rt.html](http://www.chr.up.ac.za/centre_publications/ahrs/rt.html) (last visited Apr. 21, 2006); Njoki S. Ndung'u, *Gender and Regional Integration: The African Union, East African Community and Women's Rights*, in FIDA, KENYA ANNUAL REPORT 57 (2002).

<sup>32</sup> The OAU became the African Union ("AU") in September of 1999.

<sup>33</sup> Amnesty Int'l, *African Children's Charter: A Welcome Step in Securing the Rights of Africa's Children*, AI INDEX IOR 63/06/99, Nov. 29, 1999, available at <http://web.amnesty.org/library/Index/ENGIOR630061999?open&of=ENG-375>. A complete and current list of signatories and ratifiers of the African Charter can be found at: [http://www.africaunion.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf](http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf) (last visited Dec. 11, 2005). The most current link from the Africa Union site reports activity as of July, 2005. A search through Google on November 23, 2005 did not reveal further developments after that date.

<sup>34</sup> As of December 2005, there are no reports yet online and we have found no evidence that reports have been submitted.

religion, privacy), provisional rights (e.g., education, leisure, recreation and cultural activities, health services), and protection rights (e.g., child labor, administration of juvenile justice, protection from sexual exploitation, and education on drug abuse). The Charter also defines the child as a person under twenty-one years of age regardless of the age of majority under domestic law.

The ACRWC provides that parties ensure protections as stipulated by international instruments including the CRC, and also, in Article 1, that Member States “shall undertake to the necessary steps . . . to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.”<sup>35</sup> Unlike the CRC, which provides in Article 4 that, with regard to economic, social and cultural rights, parties shall undertake measures “to the maximum extent of their available resources,”<sup>36</sup> the African Charter contains no provision excusing countries which lack the resources from full compliance with the convention.

The ACRWC article central to the representation of children is Article 4(2), providing:

In all judicial or administrative proceeding affecting a child who is capable of communicating his or her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.<sup>37</sup>

By its terms, the ACRWC’s Article 4(2) differs from the CRC’s Article 12 in its focus on the child who is “capable of communicating his/her own views,”<sup>38</sup> in its exclusion of participation “through an appropriate body,”<sup>39</sup> and its granting to children of party status in judicial proceedings. Article 7 reinforces children’s right to express their viewpoints in proceedings, stating, “Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.”<sup>40</sup> In Article 17 as well, the charter mandates that every child accused of violating a penal law “shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence.”<sup>41</sup>

At this point, it appears that the ACRCW is a widely adopted, broad ranging regional convention that exceeds the mandates of the CRC. Its reporting requirements, however, have not begun to be implemented, despite the mandate that reporting begin in 2001. Consequently, even a preliminary assessment of the effect of the Charter cannot be knowledgeably offered.

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<sup>35</sup> ACRWC, *supra* note 30, at art. 1.

<sup>36</sup> CRC, *supra* note 19, at art. 4.

<sup>37</sup> ACRWC, *supra* note 30, at art. 4. (“[I]n all actions concerning the child undertaken by any person or authority the best interest of the child shall be the primary consideration.”), *Id.* at art. 4(1)).

<sup>38</sup> *Id.* at art. 4(2). The CRC’s Article 12 stipulates that a child must be able to *form* her own views as opposed to being able to *communicate* them. CRC, *supra* note 19, at art. 12.

<sup>39</sup> CRC, *supra* note 19, at art. 12.

<sup>40</sup> ACRWC, *supra* note 31, at art. 7.

<sup>41</sup> *Id.* at art. 17(2)(c)(iii).

*b. The European Convention on the Exercise of Children's Rights ("ECECR")*<sup>42</sup>

The European Convention on the Exercise of Children's Rights was adopted by the Council of Europe in September 1995, opened for signature January of 1996, and entered into force on July 1, 2000. The ECECR was first conceived in 1990 when the Council of Europe Parliamentary Assembly asked the counsel of the Europe Committee of Ministers to draw up a legal instrument to supplement the CRC.<sup>43</sup> The purpose of the ECECR was to address "matters not already covered by the United Nation's convention."<sup>44</sup> The ECECR has been signed by twenty-four out of the forty-five member states of the Council of Europe and ratified by ten states: Greece in 1997, Poland in 1997, Slovenia in 2000, the Czech Republic in 2001, Latvia in 2001, Germany in 2002, Turkey in 2002, Italy in 2003, the former Yugoslav republic of Macedonia in 2003, and Cyprus in 2005.<sup>45</sup> The ECECR entered into force in 2000 following three states' expression of consent to be bound by its provisions.

The European Convention seeks, "in the best interests of children, to promote their rights, to grant them procedural rights, and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before judicial authority."<sup>46</sup> The ECECR primarily addresses "family" proceedings affecting children that take place before judicial authorities, in other words, before courts or administrative authorities having judicial powers.<sup>47</sup> The ECECR applies to all children below the age of eighteen and requires in Article 1.4 that each state signing or ratifying the convention to choose "at least three categories of family cases before a judicial authority to which this Convention is to apply."<sup>48</sup> In practice, ratifying states have used varying levels of generality in defining the categories to which the ECECR will apply. Germany, for example, specifies twenty-three categories of proceedings by statutory subsection, while other states apply the Convention generally to custody proceedings (e.g., Greece and Latvia).<sup>49</sup>

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<sup>42</sup> See European Convention on the Exercise of Children's Rights, opened for signature Jan. 25, 1996, Europ. T.S. No. 160, [hereinafter ECECR], available at <http://conventions.coe.int/treaty/en/Treaties/Html/160.htm>.

<sup>43</sup> European Convention on the Exercise of Children's Rights Explanatory Report ¶ 1, available at <http://conventions.coe.int/Treaty/en/Reports/HTML/160.htm> (last visited Jan. 11, 2006).

<sup>44</sup> *Id.*, at ¶ 3.

<sup>45</sup> See Council of Europe, Signatories and Ratifiers of ECECR, <http://conventions.coe.int/treaty/Comun/ChercheSig.asp?NT=160&CM=1&DF=&CL=ENG> (last visited Jan. 11, 2006).

<sup>46</sup> ECECR, *supra* note 42, at art. 1(2).

<sup>47</sup> European Convention on the Exercise of Children's Rights Explanatory Report, *supra* note 43, at ¶ 8.

<sup>48</sup> ECECR, *supra* note 42, at art. 1(4); European Convention on the Exercise of Children's Rights Explanatory Report, *supra* note 43, at ¶ 17. The explanatory report does not explain why the number three was chosen nor does it define "categories."

<sup>49</sup> The categories that many of the ratifying parties and the two non-ratifying signatories have specified are available at <http://conventions.coe.int/Treaty/EN/DeclareList.asp?NT=160&CM=&DF.>

Article 10 is central to the ECECR's provisions. Provided internal law deems the child to have "sufficient understanding," Article 10 requires a child's representative in a judicial proceeding to not only determine and present the child's views, but also to provide the child with "all relevant information" and explanations of the possible consequences of various courses of action.<sup>50</sup> Subsection 2 provides that parties shall consider extending the provisions of paragraph one to the holders of parental responsibilities.<sup>51</sup>

In addition, other articles in the ECECR relate to the representation of children. In reference to judicial proceedings, Article 3 grants three rights to children who are "considered by internal law as having sufficient understanding."<sup>52</sup> These rights are: to receive all relevant information; to be consulted and express his or her views; and to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.<sup>53</sup> Article 4 grants a child involved in judicial proceedings the right to apply for a special representative, as opposed to having one appointed for her automatically. Furthermore, the right to apply for a representative is subject to two possible limitations: it applies only on occasions in which internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict of interest, and states may limit this right "to children who are considered by internal law to have sufficient understanding."<sup>54</sup> Article 9 empowers judicial authorities to appoint the special representatives that the children have a right to request pursuant to Article 4. Its second paragraph instructs parties to consider granting judicial authorities "in proceedings affecting a child . . . the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child."<sup>55</sup> These rights dovetail with the duties of the child's representative as set forth in Article 10. As defined by the ECECR, a "representative" need not be a lawyer.<sup>56</sup> Article 6 obligates judicial authorities to take the best interests and views of the child into account in

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<sup>50</sup> ECECR, *supra* note 42, at art. 10(1) (lifting the requirements of Article 10(1) where such action would be "manifestly contrary to the best interest of the child").

<sup>51</sup> *Id.* The full text of Article 10 of the ECECR reads:

1. In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:
  - a. provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;
  - b. provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;
  - c. determine the views of the child and present these views to the judicial authority.
2. Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.

<sup>52</sup> *Id.* at art. 3.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at art. 4(2).

<sup>55</sup> *Id.* at art. 10(2) (appearing to apply to proceedings even where there is no conflict of interest between parent and child).

<sup>56</sup> European Convention on the Exercise of Children's Rights Explanatory Report, *supra* note 43, at ¶ 25. ECECR Article 2(c) defines a "representative" as "a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child." Note that paragraph 26 of the Explanatory Report allows parents to be considered representatives when they have been specifically appointed to act. Presumably, a special "representative,"

reaching decisions, as well as setting forth several specific procedural requirements for imparting information to and ascertaining the views of the child.<sup>57</sup>

Finally, the ECECR contains several other provisions that suggest, but do not mandate, the expansion of the rights and duties noted in the Convention;<sup>58</sup> these provisions serve at least to prevent parties from using the ECECR to limit rights and duties that other legal documents may create to promote children's rights.<sup>59</sup>

Thus, the European Convention on the Exercise of Children's Rights focuses on children "considered by internal law as having sufficient understanding" and specifically provides the right to apply for appointment of a special representative, the right to counseling and information on proceedings, the right to have their views presented to the judicial authority, and a list of at least three proceedings in which these rights will attach.<sup>60</sup>

While the academic literature on the ECECR remains sparse, the few commentators to date agree that the ECECR so far has had limited effect and appears to have a weak future. Patrick Geary, one of the Yale researchers, concluded:

It would seem . . . that the ECECR has been largely forgotten. The Convention remains unsigned by nearly half of the European states, and unratified by far more. It has received scarce attention in the literature and sparked little debate or interest in the field. Overall, it is safe to say that the ECECR has not yet attained even a fraction of the CRC's success, and promises only to gather dust in the upcoming years as priorities in the field of children's rights shift elsewhere . . . .

the term used in article 4 but not specifically defined in the Convention, may be a category of representative that excludes parents as an option.

ECECR, *supra* note 42, at art. 2(c).

<sup>57</sup> ECECR, *supra* note 42, at art. 6. Article 6 requires the judicial authority to:

1. Ensure that the child has received all relevant information;
2. Consult the child in person, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interest of the child;
3. Allow the child to express his or her own views.

*Id.* at art. 6.

<sup>58</sup> *Id.* at art. 5. Article 5 notes that:

Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular:

- a. the right to apply to be assisted by an appropriate person of their choice in order to help them express their views;
- b. the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer;
- c. the right to appoint their own representative;
- d. the right to exercise some or all of the rights of parties to such proceedings.

*Id.*

<sup>59</sup> *Id.* at art. 15 ("This convention shall not restrict the application of any other international instrument which deals with specific issues arising in the context of the protection of children and families, and to which a Party to this Convention is, or becomes, a Party.") "Nothing in this Convention shall prevent Parties from applying rules more favourable to the promotion and the exercise of children's rights." *Id.* at art. 1(6). The ECECR has nevertheless been criticized for narrowing procedural rights of article 12 of the CRC. See Caroline Sawyer, *One Step Forward, Two Steps Back: The European Convention on the Exercise of Children's Rights*, 11 CHILD & FAM. L.Q. 151, 154 (1999).

<sup>60</sup> ECECR, *supra* note 42, at art. 10.

Even were the ECECR to apply universally, however, its provisions offer little strength. The ECECR offers children effectively only three rights—to be informed, to express their views, and to apply for a special representative. Taken together, these may meet, but hardly go *beyond* those rights already granted under the CRC. Moreover, these rights are limited to children “of sufficient understanding” as determined entirely by the vagaries of internal law.<sup>61</sup> With no guidelines, “the convention opens a broad space for conflicting interpretations which may impede the effective implementation of the convention” as “most member states’ legislations do not contain precise definitions of this concept.”<sup>62</sup>

*c. SAARC (South Asian Association for Regional Cooperation)  
Convention on Regional Arrangements for the Promotion  
of Child Welfare in South Asia*

The South Asian Association for Regional Cooperation (“SAARC”) was established in 1985 as a cooperative association with the mission of fostering cooperation between its eight South Asian member nations and two observing nations.<sup>63</sup> The SAARC’s primary avenue for promoting the well-being of its member nations is the pursuit of gains from coordination. These efforts include promoting trade and economic interaction among the states, protecting the environment, and promoting close cooperation of legal communities.

SAARC’s summit declarations, including the Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, are a call for action to promote the realization of the rights of the child.<sup>64</sup> The Convention requires that state parties have appropriate institutions in place to “ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence.”<sup>65</sup> Article IV, section 4, provides:

Recognising the evolving capacities of the child, States Parties shall encourage and support administrative and judicial institutions to arrange for suitable mechanisms at appropriate levels and in accordance with local customs and traditions, to provide opportunities and access for the child to:

- a) Seek and receive information
- b) Express views, directly or through a representative, and receive due weight and consideration for them, in accordance with age and maturity, in all matters affecting them

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<sup>61</sup> Opinion on the Draft European Convention on the Exercise of Children’s Rights: Report, COE Doc. 7720, Rapporteur: Mrs. Jaani, Estonia (Mar. 30, 1995), <http://assembly.coe.int/Documents/WorkingDocs/doc95/EDOC7270.htm>; Sawyer, *supra* note 59, at 154.

<sup>62</sup> Opinion on the Draft European Convention on the Exercise of Children’s Rights, *supra* note 61; GEARY, *supra* note 29, at 23-24. Geary’s pessimism about the ECECR is shared by other commentators. See Sawyer, *supra* note 59, at 154.

<sup>63</sup> Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka were the seven original members. At the November 2005 summit in Dhaka, Afghanistan was admitted as a full member, and Japan and China as observers.

<sup>64</sup> Rebecca Rios-Kohn, *The Convention on the Rights of the Child: Progress and Challenges*, 5 GEO. J. ON FIGHTING POVERTY 139, 149 (1998).

<sup>65</sup> Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, SAARC, art. IV (3)(a) (*opened for signature* Jan. 5, 2003), available at <http://www.saarc-sec.org/old/freepubs/conv-children.pdf> (last visited Mar. 24, 2006).

c) Participate fully and without hindrance or discrimination in the school, family and community life.<sup>66</sup>

Afghanistan, China and Japan, not SAARC members at the time of the convention's genesis, are not currently parties to the convention.

SAARC entered into force on November 15, 2005, following Nepal's ratification of the convention. Article XII of the Convention provides that it will enter into force "on the fifteenth day following the date of deposit of the Seventh Instrument of Ratification with the Secretary General of [SAARC]."<sup>67</sup> Our research has relied largely on internet resources, and no scholarly materials could be identified discussing the genesis or import of the SAARC convention. Much of the discussion of the convention takes place in the context of another SAARC convention, (the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution), and it would appear that the final parties to ratify the child welfare convention (Nepal and India), did so in the context of ratifying the child trafficking convention. It remains to be seen what independent impact the child welfare convention, now ratified, will have in the ratifying states.<sup>68</sup>

*d. Second Arab Plan of Action on the Child*<sup>69</sup>

The League of Arab States' "Second Arab Plan of Action on the Child" was agreed upon in January 2004.<sup>70</sup> The Plan calls for member states<sup>71</sup> to draft National Plans of action on child rights that are to be "realistic and specific," with "definite agendas."<sup>72</sup> The Plan provides General Principles for these agendas, the guidelines being drawn from a pool of international, regional, and native Arab-League agreements and initiatives.<sup>73</sup> The Plan makes specific reference to certain such sources, including a call for member-states to deploy

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<sup>66</sup> *Id.* at art. IV(4).

<sup>67</sup> *Id.* at art. XII.

<sup>68</sup> M. Morshed Khan, Foreign Minister, Bangladesh, Press Statement after conclusion of the 26th Session of the SAARC Council of Ministers (Nov. 11, 2005), available at [http://www.mofa.gov.bd/13saarcsummit/press\\_release.htm](http://www.mofa.gov.bd/13saarcsummit/press_release.htm).

<sup>69</sup> Special thanks to researcher Zoë Klugman who first discovered this regional agreement late in our research.

<sup>70</sup> See Second Arab Plan of Action on the Child, League of Arab States, (Jan. 2004), [http://www.arableagueonline.org/arableague/picture\\_gallery/secondarabplan.pdf](http://www.arableagueonline.org/arableague/picture_gallery/secondarabplan.pdf).

<sup>71</sup> Member states of the Arab League: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

<sup>72</sup> Article VII of the Charter of the Arab League mandates that all resolutions adopted by the Arab League Council be binding upon assenting member states. States are provided the latitude to enforce the council's decision according to their respective laws. The resolution adopting The Second Arab Plan of Action for Children was assented to unanimously.

<sup>73</sup> These animating sources include the Arab Framework for the Rights of the Child; the Arab Charter on the Rights of the Child; the UN Convention on the Rights of the Child; the First Plan of Action on the Child; the Cairo Declaration on joint Arab Action Mechanisms Adopted by the Second Arab High-Level Conference; the Arab Plan on Child Culture; the Arab Declaration on Family Rights; the recommendations of the Seventh, Eighth and Ninth Sessions of the Technical Consultative Committee on the Arab Child; and the new priorities approved at the Special Session of the UN General Assembly on Children in New York 2002.

national legislation guaranteeing the rights of the child, "in keeping with the general principles of the UN Convention the Rights of the Child."<sup>74</sup>

The first General Principle calls for National Plans to align with the set of basic principles in the Convention on the Rights of the Child, including, particularly "those regarding . . . respect of the opinions of the child."<sup>75</sup> Most relevant to Article 12 of the Convention on the Rights of the Child is Guideline 4.2(c)(8), urging member states to "upgrad[e] the judicial legal system with regard to children victims of all forms of maltreatment . . . , allocating legal rooms and sections to listen to children and hear their evidence, and seeking the help of social and psychological consultants in this regard."<sup>76</sup>

The Plan calls for monitoring and evaluation of member states' progress towards the goals articulated in their respective National Plans. The states are urged to develop their own national monitoring and assessment agencies, and to participate in monitoring and assessment on the League level. The Arab Report on the Conditions of the Child is issued annually, outlining "indicators of performance and achievement, and obstacles"<sup>77</sup> with respect to the Plan's goals.

Member states of the Arab League have already begun to implement the Plan on their respective national levels, at least in part, by creating National Plans of Action ("NPAs") for Children. Jordan implemented an NPA in October 2004.<sup>78</sup> Jordan's NPA takes as its inspiration "the achievement of development goals spelled out in the UN 'World Fit for Children' document and the Arab Plan of Action for Children."<sup>79</sup> Bahrain and Palestine also have NPAs.<sup>80</sup> The strategic goals of Palestine's NPA with respect to child abuse are "protection of children victims of emotional, sexual, physical abuse," implementation of the "Child Law," and improving "family intervention programs."<sup>81</sup> The NPA identifies as one of the challenges of implementation of its plan, a "weak legal framework," and cites the need to "amend laws to be in accordance with the CRC."<sup>82</sup>

In 2005, Syria began to develop a "national youth strategy," which "will be grounded within international commitments and declarations and will draw

<sup>74</sup> Second Arab Plan of Action on the Child, *supra* note 70, at 7.

<sup>75</sup> *Id.* at 8, §1.

<sup>76</sup> *Id.* at 4th Guideline (2)(c)(8).

<sup>77</sup> *Id.* at 5th Guideline (3).

<sup>78</sup> Press Release, UNICEF, Jordan launches national plan of action for children (Oct. 25, 2004), [http://www.unicef.org/media/media\\_23864.html](http://www.unicef.org/media/media_23864.html).

<sup>79</sup> Rania Al-Abdullah, Queen of Jordan, Building Strong Families, <http://www.queenrania.jo/content/sectionPopup.aspx?secID=cmnt&itemID=786&ModuleID=mlst&ModuleOrigID=mlst> (last visited Mar. 24, 2006).

<sup>80</sup> Committee on the Rights of the Child, Initial report of states parties due in 1994: Bahrain, ¶ 48, U.N. Doc. CRC/C/11/Add.24 (July 23, 2001), *available at* [http://www.unhchr.ch/tbs/doc.nsf/0/44969d49c6f79b0ec1256ae2004f05e6/\\$FILE/G0143802.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/44969d49c6f79b0ec1256ae2004f05e6/$FILE/G0143802.pdf); Secretariat of the National Plan of Action for Palestinian Children, Speech at "Urban Children and Youth in the MENA Region" Conference: Marginalization of Children in Palestine (May, 2005), [http://www.araburban.org/employee/menacpi/uploadfiles/West\\_Bank\\_-\\_Gaza.pdf](http://www.araburban.org/employee/menacpi/uploadfiles/West_Bank_-_Gaza.pdf).

<sup>81</sup> Secretariat of the National Plan of Action for Palestinian Children, *supra* note 81, at 7.

<sup>82</sup> *Id.* at 11.



on the Arab Plan of Action for Children.”<sup>83</sup> The plan, which the government of Syria promises to develop “in strong partnership”<sup>84</sup> with the youth, is intended to be a comprehensive initiative including considerations such as national economic growth. Drafting of the strategy is still in the preliminary stages, according to the Syrian Commission for Family Affairs.

There is also progress towards implementation on the international and regional levels. The Arab League commissioned UNICEF to study, and draft a report on, the situation of children in the Arab world. The Arab League requested the report, titled “An Arab World Fit for Children,” to include commentary on specific areas of focus for improvement, in light of the goals of the Arab Plan of Action for Children. UNICEF’s focus was the “progress achieved and pending challenges facing the children and young people living in Arab countries.”<sup>85</sup> The report did not highlight child protective proceedings as an area requiring particular attention; however it did briefly mention the mandate of Article 12, among many others, in a review of state responsibilities. Further information about the implementation of the Arab Plan continues to become available as states, and the Arab League, make significant public progress towards meeting their responsibilities under the Plan.

### 3. *Other International Instruments Relevant to the Child’s Right to Be Heard*<sup>86</sup>

One other international instrument addresses representation of children. Council of Europe Recommendation 1286 (1996) on a European strategy for children offers a general statement of recommended principles. Section 8 of the Recommendation urges member states to:

[E]nable the views of children to be heard in all decision making that affects them, and enable them to participate actively, responsibly, and in a manner appropriate to their capacity, at all levels of society, in the family in local communities in schools and in other institutions, and judicial hearings and national government.<sup>87</sup>

### 4. *Conclusion*

In addition to the international consensus represented by the CRC, four regional conventions protecting and expanding the child’s opportunity to be heard have recently entered into force. While all of them strongly support the expression of the child’s views in child protective proceedings, there is no indication that implementation of these portions of the agreements has begun in

<sup>83</sup> United Nations Country Team in Syria, *Syrian Arab Republic: Common Country Assessment 2005*, at 45, available at [http://www.un.org.sy/html/CCA\\_Syria\\_2005.pdf](http://www.un.org.sy/html/CCA_Syria_2005.pdf).

<sup>84</sup> *Id.*

<sup>85</sup> Press Release, United Nations, Arab World Makes Much Progress in Child Welfare but Still Has Way to Go—UN (Apr. 11, 2005), <http://www.un.org/apps/news/story.asp?NewsID=13924&Cr=Arab&Cr1=development>.

<sup>86</sup> A number of other instruments discuss the administration of juvenile justice involving delinquency matters. The Beijing rules from 1985 are known as the United Nations standard and minimum rules for the administration of juvenile justice. The European Convention on Human Rights allows juvenile proceedings in camera.

<sup>87</sup> Eur. Parl. Ass., *Recommendation No. 1286 on a European strategy for children*, §8, 4th Sitting, Doc. 7436, 7473 (Jan. 24, 1996), available at <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta96/erec1286.htm#1>.

earnest. Still, the regional conventions confirm the international consensus that children have the right to express their views.

### *B. Survey Results*

Between June 2004 and December 2005, researchers at the Yale Law School undertook individual investigations of the child's opportunity to be heard in child protective proceedings in each of the 194 countries that have signed the CRC. With the ongoing help of the staff of the Lillian Goldman Law Library, the researchers, primarily Yale Law students, followed a systematic research path exploring available comparative law resources and seeking the texts of laws for each jurisdiction.<sup>88</sup> The researchers then exhausted print and Internet resources relating to the legal provisions on this topic, frequently relying upon Interlibrary Loan, contacts with foreign librarians, and contacts made through promising websites. In addition, each researcher then sought a knowledgeable contact person in each country to confirm the results of our research.

The results of this research are compiled at [www.law.yale.edu/rcw](http://www.law.yale.edu/rcw). Each nation has a front page summarizing and analyzing the legal provisions found, excerpting the relevant provisions concerning the child's opportunity to be heard in these proceedings, linking to relevant websites and, where possible, attaching copies of the laws in downloadable form. The researchers employed translators to make the texts of the laws available in unofficial translations into English and the official country language, where official translations were not available. In addition, a Microsoft Excel chart containing a précis about each country's practice appears at [www.law.yale.edu/rcw/research\\_summary](http://www.law.yale.edu/rcw/research_summary). That chart also appears in print form at the end of this article.

The many, many people who extended themselves for our project are acknowledged in Appendix A of this paper, the acknowledgements for the research website. The research took place in the context of abundance: enthusiastic talented researchers working with world-class Internet and print resources. The generous support of the Yale Law School and Yale University libraries and information technology services gave our researchers maximum exposure to available materials. The researchers and I were thus surprised to find that the comparative research remained, to the end, much more difficult than anticipated, and in some cases impossible or inconclusive despite our best efforts. For sixteen jurisdictions, we were unable to find the text of laws that applied to child protective proceedings, even for some countries for which we had reliable information that these laws existed and governed in the country. We remain puzzled by this lack of transparency despite the resources we were able to bring to bear.

Second, we were unable in over three dozen countries to successfully interview a knowledgeable contact person in the jurisdiction. In some cases, this was because child protective proceedings and provisions for the child's expression did not exist in the jurisdiction. In many of those cases, it was difficult to find someone knowledgeable enough, interested enough, or availa-

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<sup>88</sup> This research path is described, with links to internet resources, <http://www.law.yale.edu/rcw/rcw/resources.htm>.

ble enough to be able to confirm for us this apparent void. In other cases, we were able to identify possible contact people but were unable successfully to interview them. We knew from the start that the perfect contact person, by definition, would be a hard person to reach: A professional who dedicated all of his daily energies to the pursuit of the goals of our research—the expression of children’s voices in these proceedings. We did our best to connect with these extremely busy professionals, whose work we hope to support by this research, and in a large number of cases, we were able to confirm our results in a jurisdiction with a local expert. Many also reviewed our website pages for their jurisdiction to confirm that we had synthesized our understanding of their jurisdiction correctly.<sup>89</sup> However, our inability to account for the state of child representation in all the jurisdictions was, in a way, one of the surprising findings of the survey. This limitation confirmed other essential findings: progress in child expression in legal proceedings remains at its beginning; where children’s voices are heard, resources remain extremely scarce; and knowledgeable professionals in the jurisdictions must, daily and carefully, triage their time and effort in order to manage their substantial responsibilities.

Although the materials gathered for the website were just being finalized as this article was completed, some preliminary conclusions can now be drawn. The following chart divides the nations into six categories based on the provisions of their national law:

1. Countries in which the child is heard “directly” or through a mode not specified;
2. Countries in which the child is heard through a representative;
3. Countries in which the child is heard through a body;
4. Countries in which there appear to be no provisions for a child to be heard in child protective proceedings;
5. Countries in which there appear to be no child protective proceedings; and
6. Countries for which little or no legal information could be found.

We classified jurisdictions based solely on the text of legislation; the classification of a country often does not reflect the actual practice in that country due to a lack of implementation. Furthermore, countries in which informal protective proceedings take place were classified as legal model V, because the proceedings are uncodified. Jurisdictions for which we found enough information to make an educated guess at the type of model used, but not enough evidence to be certain were listed with a question mark (i.e., model I? or Azerbaijan?). For example, we found that children in protective proceedings in Portugal are appointed “special curators,” but curators are not explicitly charged with transmitting children’s views (i.e., model II?). Or, after exhaustively searching the relevant laws of Niue, we found no indication of the existence of protective proceedings but were unable to confirm the lack of proceedings in other documents or through contacts (i.e. model V?).

Jurisdictions were further classified based upon the level of obligation mandated by law. That which the law *requires* is the mandatory model, and that which the law states that authorities *may* do is the discretionary model. Moreover, in many jurisdictions, legislation either offers more than one option

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<sup>89</sup> Contact people who did give generously of their time in answering our questions and reviewing our pages are in most cases, listed on the countries’ pages, at [www.law.yale.edu/rcw](http://www.law.yale.edu/rcw).

or mandates multiple models (based on age, for example). Thus, many jurisdictions are listed under several models.<sup>90</sup>

FIGURE 1. MANDATORY AND DISCRETIONARY LEGAL MODELS OF THE INTERNATIONAL JURISDICTIONS

Legend:

**REGION:** (Number of Confirmed Countries + Number of Questioned Countries?)/Total Number of Countries in Region

**Subregion1:** (3+1?)/Total Number of Countries in Subregion1

Country  
Country  
Country  
Country?

**Subregion2:** (2/Total Number of Countries in Subregion2)

Country  
Country

Legal Model	Model Mandatory	Model Discretionary
I Direct Hearing	<p><b>AFRICA</b> (10+3?)/53  <i>Eastern Africa</i> (5+1?)/17                      Djibouti                      Kenya                      Madagascar                      Malawi                      Rwanda                      Burundi?  <i>Northern Africa</i> (1+1?)/6                      Tunisia                      Algeria?  <i>Western Africa</i> (4+1?)/16                      Cape Verde                      Cote d'Ivoire                      Ghana                      Mali                      Benin?  <b>AMERICAS</b>(18+3?)/35  <i>Caribbean</i> (3+2?)/13                      Jamaica                      Saint Vincent and the Grenadines                      Trinidad and Tobago                      Antigua and Barbuda?                      Dominican Republic?  <i>Central America</i> (7/8)                      Costa Rica                      El Salvador                      Guatemala                      Honduras                      Mexico                      Nicaragua                      Panama  <i>South America</i> (8+1?)/12                      Bolivia                      Colombia                      Ecuador                      Peru</p>	<p><b>AFRICA</b> (2/53)  <i>Eastern Africa</i> (1/17)                      Ethiopia  <i>Western Africa</i> (1/16)                      Togo  <b>AMERICAS</b>(3+1?)/35  <i>Caribbean</i> (1+1?)/13                      Dominican Republic                      Dominica?  <i>Central America</i> (1/8)                      Belize  <i>South America</i> (1/12)                      Chile  <b>ASIA</b>(3+3?)/47  <i>Eastern Asia</i> (1/5)                      Mongolia  <i>South-eastern Asia</i> (1/11)                      India  <i>Southern Asia</i> (2?/9)                      Bangladesh?                      Pakistan?  <i>Western Asia</i> (1+1?)/17                      Israel                      Georgia?  <b>EUROPE</b>(7/43)  <i>Eastern Europe</i> (1/10)                      Poland  <i>Northern Europe</i> (1/10)                      Latvia  <i>Southern Europe</i> (4/14)                      Albania                      Greece                      Portugal                      Spain  <i>Western Europe</i> (2/9)                      Monaco                      Netherlands</p>

<sup>90</sup> In the chart supplied in Appendix B, those jurisdictions in which children may choose which model to use are indicated with "or" (e.g., I or II), and those in which multiple models are mandated are indicated with "and" (e.g., I and II).

<p>I Direct Hearing</p>	<p>Paraguay Suriname Uruguay Venezuela Brazil? <b>ASIA</b> (8+3?)/47 <b>Central Asia</b> (3/5) Kazakhstan Kyrgyzstan Uzbekistan <b>South-eastern Asia</b> (1+1?)/11 Viet Nam Myanmar? <b>Southern Asia</b> (1/9) Indonesia <b>Western Asia</b> (3+2?)/17 Armenia Azerbaijan Turkey Cyprus? Georgia? <b>EUROPE</b> (23/43) <b>Eastern Europe</b> (6/10) Bulgaria Hungary Romania Russia Slovakia Ukraine <b>Northern Europe</b> (7/10) Denmark Finland Iceland Latvia Lithuania Norway Sweden <b>Southern Europe</b> (2/14) Croatia Slovenia <b>Western Europe</b> (8/9) Austria Belgium France Germany Liechtenstein Luxembourg Netherlands Switzerland <b>OCEANIA</b> (3+1?)/16 <b>Australia and New Zealand</b> (1/2) Australia <b>Melanesia</b> (1?/4) Papua New Guinea? <b>Micronesia</b> (1/5) Nauru <b>Polynesia</b> (1/5) Tonga</p>	
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<p style="text-align: center;"><b>II</b> <b>Through a Representative</b></p>	<p><b>AFRICA</b> (2+4?)/53 <i>Eastern Africa</i> (1+1?)/17 Rwanda? Uganda? <i>Middle Africa</i> (1?/9) Chad? <i>Southern Africa</i> (1?/5) South Africa? <i>Western Africa</i> (1+1?/16) Niger Senegal? <b>AMERICAS</b>(8+3?)/35 <i>Central America</i> (4/8) El Salvador Guatemala Honduras Nicaragua <i>North America</i> (2/2) Canada United States of America <i>South America</i> (2+3?)/12 Brazil Colombia Bolivia? Peru? Uruguay? <b>ASIA</b>(1+1?)/47 <i>Eastern Asia</i> (1?/5) Mongolia? <i>South-eastern Asia</i> (1/11) Myanmar <b>EUROPE</b>(12+5?)/43 <i>Eastern Europe</i> (3/10) Czech Republic Hungary Slovakia <i>Northern Europe</i> (5+1?)/10 Estonia Latvia Norway Sweden United Kingdom Denmark? <i>Southern Europe</i> (4+2?)/14 Bosnia and Herzegovina Greece Serbia and Montenegro Spain Malta? Portugal? <i>Western Europe</i> (2?/9) Belgium? Switzerland? <b>OCEANIA</b> (2/16) <i>Australia and New Zealand</i> (1/2) Australia <i>Polynesia</i> (1/5) Tonga</p>	<p><b>AFRICA</b> (3?/53) <i>Eastern Africa</i> (1?/17) Kenya? <i>Western Africa</i> (2?/16) Cote d'Ivoire? Ghana? <b>AMERICAS</b>(6+6?)/35 <i>Caribbean</i> (2+1?)/13 Jamaica Saint Vincent and the Grenadines Trinidad and Tobago? <i>Central America</i> (1/8) Panama <i>South America</i> (1+1?)/12 Venezuela Peru? <b>ASIA</b>(1+2?)/47 <i>South-eastern Asia</i> (1/11) Thailand <i>Western Asia</i> (2?/17) Israel? Turkey? <b>EUROPE</b>(7+6?)/43 <i>Eastern Europe</i> (2+1?)/10 Poland Ukraine Romania? <i>Northern Europe</i> (3+3?)/10 Latvia Lithuania Norway Finland? Ireland? Iceland? <i>Southern Europe</i> (1/14) Slovenia <i>Western Europe</i> (1+2?)/9 France Liechtenstein? Germany? <b>OCEANIA</b>(1+1?)/16 <i>Australia and New Zealand</i> (1/2) Australia <i>Micronesia</i> (1?/5) Nauru?</p>
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<p><b>III</b> Through a body</p>	<p><b>AMERICAS</b>(2+1?)/35  <i>Central America</i> (2+1?)/8                  Costa Rica                  Nicaragua                  Belize?  <b>ASIA</b> (5?)/47  <b>Central Asia</b> (3?)/5                  Kazakhstan?                  Kyrgyzstan?                  Uzbekistan?  <b>Western Asia</b> (2?)/17                  Azerbaijan?                  Cyprus?  <b>EUROPE</b>(2+4?)/43  <i>Eastern Europe</i> (1?)/10                  Republic of Moldova?  <b>Northern Europe</b> (2/10)                  Ireland                  Latvia  <b>Southern Europe</b> (1?/14)                  San Marino?  <b>Western Europe</b> (2?/9)                  Austria?                  Liechtenstein?</p>	<p><b>ASIA</b>(1?/47)  <i>Western Asia</i> (1?/17)                  Turkey?  <b>EUROPE</b>(3+1?)/43  <i>Eastern Europe</i> (1/10)                  Ukraine  <b>Northern Europe</b> (1/10)                  Latvia  <b>Southern Europe</b> (1+1?)/14                  Serbia and Montenegro                  The Former Yugoslav Republic of                  Macedonia?</p>
<p><b>IV</b> Views unrepresented</p>	<p><b>AFRICA</b> (15+6?)/53  <i>Eastern Africa</i> (5+1?)/17                  Djibouti                  Ethiopia                  Malawi                  Mauritius                  Mozambique                  Zimbabwe?  <b>Middle Africa</b> (4+1?)/9                  Angola                  Cameroon                  Central African Republic                  Congo                  Sao Tome and Principe?  <b>Northern Africa</b> (1+2?)/6                  Algeria                  Libyan Arab Jamahiriya?                  Morocco?  <b>Southern Africa</b> (1+1?)/5                  Lesotho                  Namibia?  <b>Western Africa</b> (4+1?)/16                  Cape Verde                  Liberia                  Sierra Leone                  Togo                  Guinea?</p>	

<p><b>IV Views Unrepresented</b></p>	<p><b>AMERICAS</b>(7+4?)/35  <b>Caribbean</b> (3+3?)/13  Bahamas  Dominica  Haiti  Cuba?  Saint Kitts and Nevis?  Saint Lucia?  <b>North America</b> (1+1?)/2  United State of America  Canada?  <b>South America</b> (3/12)  Argentina  Chile  Guyana  <b>ASIA</b>(16+1?)/47  <b>Central Asia</b> (1/5)  Tajikistan  <b>Eastern Asia</b> (2/5)  Japan  Republic of Korea  <b>South-eastern Asia</b> (5+1?)/11  India  Malaysia  Philippines  Singapore  Thailand  Brunei Darussalam?  <b>Southern Asia</b> (5/9)  Bangladesh  Nepal  Maldives  Pakistan  Sri Lanka  <b>Western Asia</b> (3/17)  Georgia  Israel  Jordan  <b>EUROPE</b> (12+1?)/43  <b>Eastern Europe</b> (3/10)  Belarus  Poland  Romania  <b>Northern Europe</b> (1/10)  Iceland  <b>Southern Europe</b> (4+1?)/14  Albania  Andorra  Italy  The Former Yugoslav Republic of  Macedonia  Malta?  <b>Western Europe</b> (4/9)  Germany  Monaco  Netherlands  Switzerland  <b>OCEANIA</b> (5/16)  <b>Australia and New Zealand</b> (2/2)  Australia  New Zealand  <b>Melanesia</b> (1/4)  Fiji  <b>Micronesia</b> (1/5)  Palau  <b>Polynesia</b> (1/5)  Samoa</p>	
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<p><b>V</b> <b>No Formal Protective Proceedings</b></p>	<p><b><u>AFRICA</u></b> (10+1?)/53  <i>Eastern Africa</i> (3/17)  Comoros  Seychelles  United Republic of Tanzania  <i>Middle Africa</i> (1+1?)/9  Equatorial Guinea  Gabon?  <i>Northern Africa</i> (1/6)  Egypt  <i>Southern Africa</i> (2/5)  Botswana  Swaziland  <i>Western Africa</i> (3/16)  Burkina Faso  Gambia  Mauritania  <b><u>AMERICAS</u></b> (1/35)  <i>Caribbean</i> (1/13)  Barbados  <b><u>ASIA</u></b>(10+3?)/47  <i>South-eastern Asia</i> (3/11)  Cambodia  Lao People's Democratic Republic  Timor-Leste  <i>Southern Asia</i> (4+1?)/9  Afghanistan  Bhutan  Nepal  Libyan Arab Jamahiriya  Iran (Islamic Republic of)?  <i>Western Asia</i> (3+2?)/17  Oman  United Arab Emirates  Yemen  Bahrain?  Iraq?  <b><u>EUROPE</u></b> (1/43)  <i>Southern Europe</i> (1/14)  Holy See (Vatican City)  <b><u>OCEANIA</u></b>(5+2?)/16  <i>Melanesia</i> (2/4)  Solomon Islands  Vanuatu  <i>Micronesia</i> (2+1?)/5  Marshall Islands  Micronesia (Federated States of)  Kiribati?  <i>Polynesia</i> (1+1?)/5  Tuvalu  Niue?</p>	
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* <b>Research Inconclusive</b>	<b>AFRICA</b> (6/53) <i>Eastern Africa</i> (2/17) Eritrea Somalia <i>Middle Africa</i> (1/9) Democratic Republic of Congo <i>Northern Africa</i> (1/6) Sudan <i>Western Africa</i> (2/16) Guinea-Bissau Nigeria <b>AMERICAS</b> (1/35) <i>Caribbean</i> (1/13) Grenada <b>ASIA</b> (8/47) <i>Central Asia</i> (1/5) Turkmenistan <i>Eastern Asia</i> (2/5) Democratic People's Republic of Korea China <i>Western Asia</i> (5/17) Kuwait Lebanon Qatar Saudi Arabia Syrian Arab Republic <b>OCEANIA</b> (1/16) <i>Polynesia</i> (1/5) Cook Islands	
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In summary, here are the initial findings from the international research completed as of December 2005:

1. Breakdown by country and percentage of children under the age of fifteen worldwide:
  - a. About seventy-two United Nations member nations representing about 24.4% of children worldwide fell into the category of child heard directly.
  - b. About thirty-eight countries, constituting 14.4% of the worldwide population of children under fifteen, provide for children to be heard in child protective proceedings through a representative.
  - c. An estimated fourteen member states, corresponding to roughly 1.3% of the number of children under fifteen worldwide, provide for children to be heard through a body.
  - d. Approximately sixty-seven countries, comprising about 44.2% of the population under the age of fifteen worldwide, do not provide for children's voices to be heard, even though child protective proceedings do exist.
  - e. About thirty-two countries, representing an approximate 6.4% of the children under fifteen worldwide, appear to have no child protective proceedings.
  - f. For sixteen jurisdictions, representing 22.7% of children under the age of fifteen worldwide, little or no information was available about the state of child protection.
2. Roughly 35% of the jurisdictions surveyed (in which 44.2% of the world's children under age fifteen reside) do not have provisions for children to be heard in child protective proceedings, and slightly over 59% of the countries (in which 73.3% of the worldwide population of children live) fell into the three categories of child protective proceedings with no provisions for children to be heard, no evidence of child protective proceedings, or little or no information available.

3. Additionally, some regional observations can be made:<sup>91</sup>
  - a. About eleven out of fifty-three African countries have no child protective systems.
  - b. About thirteen out of thirty-seven countries with Islamic Law influences have no child protective systems.
  - c. Many of the South American Countries have passed omnibus legislation implementing all of its duties under the CRC at once.<sup>92</sup>
  - d. Many Caribbean countries have nearly identical legislation, which often tracked the language of the CRC.
  - e. Twenty-three out of forty-three European countries have provisions to hear the child directly rather than through a representative.
  - f. About seven out of the sixteen U.N. member states in Oceania have a limited child protective system or no protective system, though many have put some provisions of the CRC into law.
  - g. Roughly six out of fourteen former USSR countries have legislation mandating the hearing of children through a body, the model most rarely employed.
  - h. The Nordic countries, with the exception of Sweden, (i.e., Denmark, Norway, Iceland, and Finland) all regard a child aged fifteen or over as a party to the proceedings. Consequently, that child's consent must be obtained for certain actions and the State is obligated to provide the child with legal aid. Also, all have legislation that provides children over the age of twelve with the right to express an opinion in the proceedings. Sweden also differentiates between children over the age of fifteen and younger children, granting children aged fifteen and above the right to speak on their own behalf.

### C. Areas for Further Study

It is the most fervent hope of those of us who participated in the 250 jurisdiction survey that the materials we compiled will aid the study of many who value and wish to improve the quality of life of children all over the world. To that end, we hope and believe that there are actually an infinite number of areas of further study along those lines that might be aided by this website information. An initial look at the materials compiled suggests three large areas for follow-up: the absence of child protective systems and proceedings in many nations of the world, the obvious regional trends, and the prevalence of the "direct participation" rather than representational model for children's voices being heard in these proceedings. Also significant are the numerous regional trends that could be identified even in a first glance at comparative legal provisions. Areas for further study flow from all these findings, to wit:

#### 1. *The Absence of Child Protective Systems in a Substantial Number of Nations of the World*

Additional research could explore the extent to which child protective proceedings may be nascent in many of these countries. For instance, our research sporadically turned up information suggesting that mandated reporting statutes or child maltreatment hotlines, exist in a number of jurisdictions that had yet to

<sup>91</sup> I thank Will Bowen, Zoë Klugman and Vanita Shimpi for their invaluable observations about regional trends.

<sup>92</sup> See Costa Rica (2005), <http://www.law.yale.edu/rcw/rcw/jurisdictions/amc/costarica/frontpage.htm>.

create full-fledged child protective proceedings. We located official announcements that Ministries related to child protection were to be formed but were unable to confirm that they currently exist.

Conversely, while we included in Categories I, II, and III all countries whose prevailing laws provided for child protective proceedings, in a number of cases we were unable to verify independently whether or not those laws were implemented. Despite these gaps in the current information, it appears uncontested that much of the world remains at the beginning of the process of complying with the CRC and regional agreements requirements that the state protect the child from maltreatment and provide proceedings in which the child can express her views freely.

*2. Regional Variations in the Implementation of the Duty to Protect Children and the Child's Right to Be Heard in Child Protective Proceedings*<sup>93</sup>

Each of the regional observations provokes fascinating questions for follow-up:

1. Is the disproportionate appearance of African States lacking provisions for the child's voice or child protective systems due to resources alone? How does it square with the strong commitment made by member states in the African Children's Charter? Is there a role for international assistance in these areas? How can the nations triage child protection against other extremely compelling needs faced by their children?
2. Many of the same questions can be asked about the high proportion of countries with Islamic traditions in which few child protection developments can be documented. In addition, the role of Shari'a law must be explored. Our preliminary investigation suggests that no inherent contradiction exists between the provisions of Shari'a law and the concept of child protection appearing in the CRC, and the Arab League's recent Second Plan of Action also suggests an ongoing regional commitment to child protection and the child's right to be heard specifically. Are child protective systems few because of resource constraints, because informal religious resolution of child protection largely obviates their need, or for some other reason?
3. In the absence of regional conventions, countries in Central and South America, and the Caribbean have, with great uniformity, passed omnibus legislation incorporating duties under the CRC into domestic law. These omnibus statutes, of which Costa Rica's is a prominent example, provide a fertile area of study. One of our researchers, Michael Umpierre, for instance, compares the Belize and Costa Rica implementation of the CRC in a paper which appears on the research website.<sup>94</sup>
4. Many European countries have provisions to hear the child directly rather than through a representative. Does this have something to do with a less restrictive evidentiary law in the inquisitorial civil law tradition that permits children to be heard without having to be cross-examined by parental or agency counsel?
5. Many of Oceania's countries have little or no child protective system, though many have inserted some provisions of the CRC into law. Are systems lacking due to resource constraints or some other factor?

<sup>93</sup> I thank Vanita Shimpi, Will Bowen, and Zoë Klugman for their helpful observations, many included here, on the global survey data.

<sup>94</sup> Costa Rica, *supra* note 92.

6. Many of the countries in the former USSR provide for children to be heard through a body, the model most rarely employed internationally. Is this due to a fusion of governmental powers – judicial and administrative – that inheres in countries in transition from Communism? Were these countries a major factor in pursuing this as one option in Article 12(2), especially given that the African Charter omits this mode of representation?
7. What explains the uniformity among Nordic countries?

3. *Are there regional trends to be discerned in other regions: subregions of Europe and Asia?*

Though an initial examination of the data does not reveal significant similarities among other subregional jurisdictions in Europe or Asia, it is possible that our system of classification clouds resemblances. A closer analysis and comparison of the legal texts and procedures may reveal previously unseen similarities.

4. *Prevalence of the Direct Participation Model in addition to the Representational Model for children's voices being heard in judicial proceedings.*

While this project was originally conceived as an investigation into child representation worldwide, we quickly realized that less than half of children worldwide involved in these proceedings currently have, or are slated to have, their views expressed through a representative. It appears that scholars around the world interested in this subject could contribute greatly to understanding the question of children being heard *directly* in these proceedings, addressing important questions such as:

1. How are children to be made aware of their right to be heard freely, in the absence of representatives and, as they often are, separated from their parents?
2. What procedures are required to create an environment in which a child can participate freely, without trauma or undue stress?
3. What training do adjudicators, judges and other judicial personnel need to be able to interact with the children before them in developmentally appropriate ways?
4. What special considerations should court personnel consider when child are to testify in proceedings?
5. Should proceedings involving children be open to the public?
6. Are children speaking for themselves afforded interpretation and translation services?

The American scholarly literature provides ample starting material for these inquiries.<sup>95</sup>

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<sup>95</sup> See, e.g., SHERRIE BOURG CARTER, CHILDREN IN THE COURTROOM: CHALLENGES FOR LAWYERS AND JUDGES (2005) (for materials on the child in court); JOHN E.B. MYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT CASES 7.50 (1997 & 2003 supp.) (adult has right to confront child in open court); Edward F. Waite, *How Far Can Court Procedure Be Socialized Without Impairing Individual Rights*, 12 J. CRIM. L. & CRIMINOLOGY 339, 340 (1922) (open v. closed courtrooms in juvenile matters); Deborah Clark-Weintraub, *The Use of Videotaped Testimony of Victims in Cases Involving Child Sexual Abuse: A Constitutional Dilemma*, 14 HOFSTRA L. REV., 261, 261-96 (1985) (child testimony); Leigh Goodmark,

### 5. *The unexpected difficulty of the comparative research.*

Another area for further study was raised not about the findings of the surveys as much as the process of them. On the international side, my researchers and I experienced extreme difficulty simply finding the text of the laws despite the abundant resources of our outstanding law school library and excellent, imaginative researchers. It was clear to us by the end that we had embarked upon this research before this global system of comparative law research was readily available even to researchers with substantial facility with internet and interlibrary research. Additionally, as discussed above, we had unexpected difficulty in finding contact people throughout the world, and even in the United States. As a result of our difficulty in finding contacts, it was nearly impossible for us to discover to what extent laws were implemented in many jurisdictions. If this research is continued, one logical starting place would be to resume the search for contact people in those jurisdictions in which we were unable, despite our best efforts, to find them in time for the December 2005 launch of the website.

### D. *Conclusion*

In sum, a nearly unanimous consensus unites nations of the world in their legal obligation to assure the child the right to be heard in child protective proceedings. Four regional agreements also have entered into force, reaffirming and in some cases strengthening the regional parties' commitment to the right of the child to be heard in these proceedings. As of 2005, almost 58% of the world's countries do not have provisions for the child's voice to be heard in child protective proceedings on their books (or the lack of resources led to inconclusive findings), and almost half (about thirty-one jurisdictions) of that group appears to have no child protective systems in place as yet. Of the remaining 42% of the countries, the majority either does not specify how the child's voice is to be heard or specifies that the child's voice will be heard directly. The jurisdictions that provide for a child to be heard through a representative or a body are in the substantial minority. Regional trends can be identified in the survey, and bear significant further study.<sup>96</sup> The combination of a growing number of regional agreements and the existence of clearly identifiable regional trends, even in the absence of agreements, suggests that legal developments may continue to evolve through regional and cultural trends.

## III. THE UNITED STATES SURVEY ON LEGAL REQUIREMENTS CONCERNING REPRESENTATION OF CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: HISTORY AND SURVEY RESULTS

### A. *Introduction*

This section provides an extended case study of one of the two signatories that has not ratified the Convention on the Rights of the Child: the United States. This section begins with a brief history of representation of children in

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*From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 323-30 (1999) (child friendly courtrooms).

<sup>96</sup> See *supra* Section II.D., *Survey Results*; *supra* Section II.D., *Areas for Further Study*.

child protective proceedings in the United States from 1974 to the present, and then compiles the results of the survey of American jurisdictions undertaken at the Yale Law School in 2004 and 2005, building off a similar survey conducted in 1996. The survey reveals a significant ongoing tension between CAPTA, the funding statute that inspired the beginning of the field, and its focus on best interests representation, and an academic and practice consensus about the need for lawyers doing lawyerly work in a lawyerly way in these representations. The crosscurrents of tension result in a significantly confused national snapshot as we look at child representation in neglect and abuse proceedings in the United States in 2005.

Nevertheless, a number of observations can be made. Although lawyers are increasingly employed as child representatives, lawyers are still asked to play non-lawyer functions in many states, and lay advocates play quasi-legal roles. In only a fraction of states are lawyers, seeking lawyerly goals in a lawyerly fashion consistent with the prevailing ethical rules, the exclusive providers of representation to children in these cases. In a significant number of states, representatives are not required to express the children's views to the court, and thus, these state laws are currently not in accord with the dictates of Article 12. Many areas for further study can be identified based on this research.

#### *B. A Brief History of Representing Children in Child Protective Proceedings in the United States*

Prior to 1974, the vast majority of attention in the field of child representation focused on delinquency proceedings, culminating with the Supreme Court case *In re Gault* decided in 1966.<sup>97</sup> At the same time, widespread popular attention to and outrage about the "discovery" of the phenomenon of "battered child syndrome" sparked the passage of mandated child abuse reporting laws in every state and the District of Columbia in the years between 1963 and 1966, which in turn led to the growth and shift in focus of child welfare bureaucracies around the country. After CAPTA, all states began providing some form of representation to children in child protective proceedings. The following section will look briefly at the origins of the CAPTA requirement and the bewildering diversity of systems for representing children that sprang up as a result, such that no two states in the country had the same system in paper or in reality; and then comments on lessons to be drawn from the United States experience.

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<sup>97</sup> *In re Gault*, 387 U.S. 1 (1967) (In this case, fifteen year old Gerald Gault was committed to a state industrial school for juvenile delinquents without the provision of counsel or other due process procedures. The ruling was appealed with the argument that Gault was denied the due process promised by the Fourteenth Amendment. The Supreme Court decided in Gault's favor, finding that juveniles in delinquency proceedings had the right to due process, which had previously only been acknowledged for adult defendants.). See, e.g., B. James George Jr., *Gault and the Juvenile Court Revolution* (1968); Ellen Ryerson, *The BEST-LAID PLANS: AMERICA'S JUVENILE COURT EXPERIMENT* (1978); Norman Dorsen & Daniel A. Reznick, *Gault and the Future of Juvenile Law*, 1 FAM. L. Q. 1 (1967); Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970); Orman W. Ketcham, *Guidelines from Gault: Revolutionary Requirements and Reappraisal*, 53 VA.L.REV. 1700 (1967); Robert E. Shepherd, Jr., *Still Seeking the Promise of Gault: Juveniles and the Right to Counsel*, 18 CRIM. JUST. 23 (2003).

1. *The Origins of Representing Children in American Child Protective Proceedings: CAPTA*

In 1974, Congress passed the first comprehensive legislation dealing with prevention and treatment of child abuse. CAPTA created the National Center on Child Abuse and Neglect (NCCAN), a clearinghouse for information on child abuse and neglect, and also authorized money for demonstration projects designed to prevent, identify, and treat child abuse and neglect.<sup>98</sup> CAPTA included a number of criteria that the states had to meet in order to receive funds for state demonstration programs and also for child abuse and neglect related programs funded under the Social Security Act.<sup>99</sup> One of the ten criteria for CAPTA included the requirement that states provide guardians *ad litem* for all child abuse and neglect proceedings. CAPTA also therefore represented the birth of the field of representation of children in child protective proceedings.<sup>100</sup>

CAPTA has been re-authorized repeatedly since 1974, most recently in 1996. During the Reagan years, CAPTA barely survived re-authorization on a number of occasions.<sup>101</sup> In 1996, CAPTA's re-authorization did not, as it had

<sup>98</sup> For fascinating legislative history of CAPTA, see BARBARA J. NELSON, *MAKING AN ISSUE OF CHILD ABUSE: POLITICAL AGENDA SETTING FOR SOCIAL PROBLEMS* 92-116 (1984). Significantly, the key sponsors of the bill included Walter Mondale and Patricia Schroder of Colorado, Dr. Kempe's home state.

<sup>99</sup> Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, § 4(B)(3), 88 Stat. 4 (1974) (codified at 42 U.S.C. §§ 5101-5119c (2005)).

<sup>100</sup> CAPTA's GAL requirement was not given much consideration: It was not included in the original version of the bill passed by the Senate. The issue was only addressed in later committee hearings owing to the testimony of Brian Fraser, then a staff attorney at the University of Colorado's National Center for Prevention of Child Abuse and Neglect. In his testimony (which he later published in a law review article, Fraser, *infra* note 112), Fraser argued that a guardian *ad litem* act as counsel, advocate, investigator, and guardian. He presented the idea that the guardian *ad litem's* role includes the legal obligation to do everything in her power to guarantee a just judgment in the child's best interests.

There was also a notable lack of clarification of GAL duties in the original regulations which continues today. See, e.g., Rebecca Heartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 *FAM. L.Q.* 327, 331 (1993); Randi Mandelbaum, *Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers*, 32 *LOY. U. CHI. L.J.* 1 (2000); 45 C.F.R. 1340.14(g) promulgated pursuant to 32 U.S.C. §5106(a), current regulation on GAL requirement:

(g) Guardian ad litem. In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted, accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian ad litem shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect.

45 C.F.R. § 1340.14(g) (2005).

<sup>101</sup> NELSON, *supra* note 98, at 119-21. The history of CAPTA §4 (later §103) can be summarized as follows:



been earlier predicted, yield to child protective services' being funded by the federal government through the block grants that had transformed welfare.<sup>102</sup> Nevertheless, CAPTA underwent significant changes in 1996, including the defunding of NCCAN, the original clearinghouse created by the 1974 bill. In 1996, CAPTA was amended to specify that the guardian *ad litem* may "be an attorney or a court appointed special advocate (or both)" with a mind "to obtain first-hand, a clear understanding of the situation and needs of the child; and to make recommendations to the court concerning the best interests of the child."<sup>103</sup>

In 2003, the Keeping Children and Families Safe Act, Pub. L. 108-36, amended CAPTA and reauthorized programs under the act, adding a require-

1. Started in 1974 with Pub. L. 93-247, §4(B)(2)(G), 88 Stat. 4 (codified as 42 U.S.C. §5103).
2. Amended in 1975 by Pub. L. 93-644 §8(d)(2) (see §577(b)(2)(e)) to expand the definition of "State" to include D.C., Puerto Rico, American Samoa, Virgin Islands, Guam and territories of the Pacific.
3. Amended in 1978 by Pub L. 95-266, Title I, §103. Liberalized Secretary's ability to make grants. Also inserts a provision requiring that state's obligate the money allocated to them within 18 months or face reduction of future awards.
4. Amended in 1984 by Pub. L. 98-457, Title I, §§103, 122-23. 103 mostly just gave the Secretary the ability to excuse unqualified states for up to 2 years. Section 122 inserted a new clause dealing with medical neglect. Section 123 gave the Secretary discretion in funding programs for treatment and information on infants with life threatening conditions.
5. Amended in 1986 by Pub. L. 99-401, Title I, §102(a). Re-lettered the subsections. Give the attorney general power to make grants for establishing programs against child abuse. Establishes a task force on child abuse.
6. Amended in 1987 by Pub. L. 100-117, §1. Expands the grace period from Pub. L. 98-457 to three years.
7. Amended in 1988 by Pub. L. 100-294, Title I, §101. Major overhaul of CAPTA. Makes 42 U.S.C. into a provision about the Inter-Agency Task Force on Child Abuse and Neglect. Not clear whether this supplants the earlier provisions or just adds to it.
8. Amended in 1989 by Pub. L. 101-126, §3(a)(1), (2). Amended sections 2-15 by renumbering as 101- 114. Also inserted "Title I: General Program."
9. Section regarding appointment of GAL repealed in 1996 by Pub. L. 104-235 §105.
10. Reauthorized a guardian ad litem requirement under the eligibility requirements of Section 107 "Grants to States for Child Abuse and Neglect Prevention and Treatment Programs" as codified at 42 U.S.C. § 5106a(b)(2)(A)(ix), reading:
  - (ix) provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings—
    - (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
    - (II) to make recommendations to the court concerning the best interests of the child.
11. In 2003, the Keeping Children and Families Safe Act, Pub. L. 108-36, amended CAPTA and reauthorized programs under the act. This Act re-designated former clause (ix) as (xiii) and amended the language of that clause to provide for a guardian ad litem training requirement.

<sup>102</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

<sup>103</sup> Child Abuse Prevention and Treatment Act Amendments of 1996 Pub. L. No. 104-235, § 107, 107(b)(2)(A)(ix)(1)-(11), 110 Stat. 3063, 3073-74 (1996) (codified as amended at 42 U.S.C.A. 5105a(b)(2)(A)(ix)(1)(11)).

ment of training for guardians *ad litem*.<sup>104</sup> Following the changes in 2003, the current requirement of representation for funding eligibility can now be found at 42 U.S.C. § 5106a(b)(2)(A)(xiii):

- (xiii) provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—
  - (I) to obtain first-hand, a clear understanding of the situation and needs of the child; and
  - (II) to make recommendations to the court concerning the best interests of the child;<sup>105</sup>

## 2. Implementation of the CAPTA GAL requirement

The combined effect of the *In re Gault* decision and CAPTA's guardian *ad litem* requirement created an immediate need for states to assign guardians *ad litem* in ongoing child abuse and neglect cases to qualify for federal funding of their growing child welfare bureaucracies. Because data has only recently begun to be collected systematically in the area of representation of children,<sup>106</sup> our research revealed only two benchmarks for charting the nationwide effects of CAPTA and the *Gault* decision on representation of children in child protective proceedings over time. Indeed, the lack of documentation mirrors the precise problem described above; the same states and localities who assigned lawyers to represent children without preparation, study or coherent statement of role did so without methodical record-keeping and complete databases. At the time of CAPTA, long before courthouse computerization, the typically under-funded juvenile courts had no natural systems for data collection and analysis.

Nevertheless, two systematic studies, one undertaken in 1980 and one in 1996, suggest the effects of the CAPTA and *Gault* reforms. In 1980, the ABA Center for Children and the Law sponsored the National Guardian Ad Litem Policy Conference, gathering over thirty judges, practitioners, policy makers

<sup>104</sup> As part of *ADOPTION 2002: The President's Initiative on Adoption and Foster Care*, the Department of Health and Human Services issued *Guidelines for Public Policy and State Legislation Governing Permanence for Children*. In these guidelines, the Department noted that "the States may appoint the attorney for the child as described in 15A in fulfillment of the CAPTA requirement." DEP'T OF HEALTH & HUMAN SERVS., *ADOPTION 2002: THE PRESIDENT'S INITIATIVE ON ADOPTION AND FOSTER CARE: GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE OF CHILDREN*, ch. VII (2002) available at <http://web.archive.org/web/20030224035115/www.acf.dhhs.gov/programs/cb/publications/adopt02/>. Although this suggests that the federal government sanctions the use of attorneys as guardians *ad litem*, it does not mean that the federal government is endorsing (and certainly not requiring) attorneys. In fact, the guidelines also state that "states are free to appoint a guardian ad litem, perhaps a volunteer CASA, in addition to an attorney for the child as described in Guideline 15A. This is the preferred approach." *Id.*

<sup>105</sup> 42 U.S.C. § 5106a(b)(2)(A)(xiii) (2000 & Supp. 2005).

<sup>106</sup> Since the mid 1990s, thanks to federal grants for court improvement projects in individual states, some data has begun to be collected. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993) (authorizing thirty-five million dollars over four years in grants for improvements in judicial administration in foster care cases).

and the like to discuss the guardian *ad litem* as a volume under the CAPTA statute.<sup>107</sup> Howard Davidson, the Center's then and current head, reported that seven states had still not come into compliance with CAPTA.<sup>108</sup> Other states had brought themselves into compliance through legislative reform, rules of court or simply by practice without any implementing legislation. The report also noted with concern inadequate funding for guardians *ad litem*: the CAPTA funding which required guardians *ad litem*, by operation of law, could not be used to fund that work, but instead financed service agencies concerned with the prevention of child abuse and neglect. Some states found funding for guardians *ad litem* through grants and donations, and many guardians *ad litem* were volunteers or received minimal pay. The conference stressed that appropriate treatment of abused children is cost effective, important to later social development and should not be done without proper compensation. The conference also identified a need for standards for guardians *ad litem* but suggested that these standards should not be developed through a federal act, calling instead for new standards through local reform. Among the more than thirty statements of consensus developed at the conference were the recommendations that guardians *ad litem* should not be appointed before their roles and responsibilities were defined and that lawyers should advocate for the viewpoints of children who could voice an opinion.<sup>109</sup>

The 1980 concern surrounding proper compensation for guardians *ad litem* was again noted in 1994 in a study of legal representation of children and indigent parents in child protective proceedings by the office of community services at the Louisiana Department of Social Services. Citing another 1990 Department of Health and Human Services study, the 1994 survey noted that only 65.8% of the county compensated guardians *ad litem* for representing children. The survey found that maximum caps on attorneys fees in various jurisdictions average about \$500 per case. The average hourly rate among various jurisdictions was \$50 per hour for in court work and \$40 per hour for out of court work—though many jurisdictions paid substantially less. Non-attorney guardians *ad litem* received substantially lower hourly rates, or were volunteers. While many jurisdictions provided that permission to exceed maximum caps could be sought, the survey could not identify any predictable trends in the ways local judges exercised their discretion in the granting or denying of this permission.<sup>110</sup>

In 1996, in connection with my book on representing children, Ann Haralambie, Dennis Ichikawa, my research assistant, Martha Pollock, and I undertook a fifty plus state survey of the practice of representing children in the United States, reviewing the published legal materials and conducting phone interviews with an experienced practitioner in each state.<sup>111</sup> In the end, the

<sup>107</sup> NATIONAL GUARDIAN AD LITEM POLICY CONFERENCE MANUAL (ABA Young Lawyers Div., 1981).

<sup>108</sup> Alaska, Arizona, Idaho, Indiana, Maryland, Nevada, and Oregon.

<sup>109</sup> NATIONAL GUARDIAN AD LITEM POLICY CONFERENCE MANUAL, *supra* note 107.

<sup>110</sup> OFFICE OF COMMUNITY SERVICES, LOUISIANA DEP'T OF SOC. SERV., SURVEY SUMMARY: LEGAL REPRESENTATION OF CHILDREN AND INDIGENT PARENTS IN CHILD PROTECTION PROCEEDINGS (1994) (on file with the author).

<sup>111</sup> See JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS app. B (1997).

fifty U.S. states and six U.S. jurisdictions (Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the District of Columbia) were reviewed. The results of this survey were startling and defied the original research hypothesis.

I had expected to find a discrete number of prevailing models on representing children and thought that I might be able to present sets of minority and majority views on how the role had spontaneously evolved in the different states as a result of the sudden requirement of guardians *ad litem* in CAPTA. In the end we could find no trends; not even two states matched in theory and practice. The inconsistency in the terminology was a major factor, because even states that used identical terminology (for instance guardian *ad litem* or law guardian) were revealed on a deeper examination to implement this language differently in practice. What the child's representative actually did from state to state was completely varied. Moreover, in many jurisdictions, if not all, it was reported that the practice of guardians *ad litem* and attorneys for children varied wildly *within* the state, from locality to locality, from county to county, even from courthouse to courthouse and lawyer to lawyer. Therefore, what started as our attempt to rationalize the trends of prevailing practice resulted instead in our discovering at least fifty-six (if not many times that number) distinctly different representation systems that had evolved in the petri dishes of different localities after CAPTA.

Therefore, the summary of the American experience prior to 2005 seems to be the following: After CAPTA hinged federal funding on the provision of guardians *ad litem*, states hastily provided guardians *ad litem*, with forty-three states reporting universal provision of guardians *ad litem* by 1980. In each state, a unique interpretation of the role emerged, probably as local lawyers in local courthouses simply flew by the seat of the pants in an unclear and undefined role, without the benefit of study, preparation, training or any uniform guidelines even within their own home states. By the time of the 1996 survey, the first twenty years of this experience suggested that absent such training and coordination, no natural trends had emerged in this type of representation. Currently, a substantial number of states continue to have no consistent answers to the basic questions of how much lawyers representing children should be paid, for what services, and by whom.

### 3. *Scholarly Debate and Practice Standards in the Representation of Children*

The utter lack of uniformity in the role of both guardians *ad litem* and attorneys for children discovered in 1996 is all the more remarkable because that same year marked the crystallization of a consensus in the academic and practice community about guidelines for the representation of children.

Scholarly investigation of the role of the guardian *ad litem* and the lawyer for children was slow to begin. In the immediate era after the passage of CAPTA, literature focused on the role of the lawyer for children; the seminal article was written by Brian Fraser<sup>112</sup> whose testimony inspired the CAPTA

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<sup>112</sup> Brian G. Fraser, *Independent Representation for the Abused and Neglected Child: The Guardian ad Litem*, 13 CAL. W. L. REV. 16 (1976).

guardian *ad litem* requirement. In 1984, a critical article by Martin Guggenheim, *The Right to Be Represented But Not Heard, Reflections on Legal Representation of Children*,<sup>113</sup> argued that the function of an attorney, based on ethical mandates, was to pursue legal objectives chosen by the child. Guggenheim proposed a chronological cutoff arguing that children over seven should be responsible for directing attorneys under all circumstances and that those children under seven should be deemed incapable of guiding their representation.<sup>114</sup> Expressing concerns about the representation of children under seven, Guggenheim, in the end, wondered whether these children should be assigned counsel at all, noting his fears that attorneys' values, as opposed to children's, would ultimately be heard by the court.<sup>115</sup>

Guggenheim's article created a trend of advocating for traditional lawyering for children above a certain age, which the vast majority of writers have embraced. Very few authors currently suggest that a teenage child should be represented in the guardian *ad litem* fashion. Most of the controversy since the Guggenheim article has focused on how to determine when the child has reached the cutoff age, how to represent the impaired child, and the relationship between the role of guardians *ad litem* and the role of lawyers for children.

In 1979, Seattle Superior Court Judge David W. Soukup conceived of the concept of a CASA, a Court Appointed Special Advocate, a lay volunteer who could fulfill the role of guardian *ad litem*. What began as a local experiment quickly spread into the 1982 creation of a national CASA organization, and in 2005 over 950 CASA programs operate in forty-nine states<sup>116</sup> and Washington, D.C.<sup>117</sup> Soukup and the CASA movement believe that the CAPTA role of the guardian *ad litem* can be adequately fulfilled by well-trained lay volunteers. CASA became a significant force within the child advocate community. In 1996, the National CASA Association successfully lobbied for the inclusion of court appointed special advocates by name in the amendment to CAPTA.<sup>118</sup> Still, critics of CASA maintain that while many CASA volunteers provide excellent service, the lack of ethical rules and professional oversight make the quality of CASA service uncertain.<sup>119</sup>

In December 1995, seventy lawyers, judges, and legal scholars, among others, were brought together by the ABA Section of Family law, ABA Litigation Task Force on Children, and Fordham School of Law's Stein Center for Ethics and Public Interest Law. Against a background of crisis—an increasing number of children in poverty and in foster care, and an increase in child violence—participants gathered on the basis of two beliefs: 1) where there is con-

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<sup>113</sup> Martin Guggenheim, *The Right to Be Represented But Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76 (1984).

<sup>114</sup> *Id.* at 82-93.

<sup>115</sup> *Id.* at 102-07.

<sup>116</sup> North Dakota currently does not have a CASA program operating.

<sup>117</sup> NAT'L CASA ASS'N, PORTRAITS OF HOPE: 2004 ANNUAL REPORT (2005).

<sup>118</sup> Child Abuse Prevention and Treatment Act Amendments of 1996, Pub. L. No. 104-235, 110 Stat. 3063 (1996).

<sup>119</sup> See, e.g., Press Release, Richard Wexler, Executive Dir. of Nat'l Coal. for Child Prot. Reform, NCCPR Responds to Statements from National CASA Association and Caliber Associates (June 23, 2004), [http://www.law.capital.edu/adoption/news\\_cases/documents/NATIONAL\\_COALITION\\_response.pdf](http://www.law.capital.edu/adoption/news_cases/documents/NATIONAL_COALITION_response.pdf).

sensus, for the benefit of inexperienced lawyers, the legal community must make explicit the standards on the nature and scope of representation; and 2) where there is not consensus, lawyers should identify areas of disagreement and engage in dialogue aimed at narrowing these areas.

The attendees of the *Fordham Conference* realized that legal representation was happening in many different forms and with different levels of expertise. They sought some consistency in the ethical guidelines for the representation, believing that the ABA Model Rules did not adequately address the challenges of dealing with children. The major themes to come out of the conference included the following: 1) children need lawyers; 2) lawyers serve best when they act as attorneys, not as guardians *ad litem*; 3) a lawyer's responsibilities with respect to the child will vary depending on the child's capacity to direct representation; 4) lawyers ought to take care to communicate with the child; 5) lawyers must serve with undivided loyalty; 6) lawyers should exercise judgment within an analytic framework that is appropriate and principled; 7) lawyers should be sensitive to cross-cultural differences; 8) lawyers have much to learn about the representation of children; 9) the legal community must support an appropriate framework of laws, legal structures, and judicial decision making; and 10) much work remains to be done in the field of child representation.<sup>120</sup> These themes have become a major part of the paradigm of children's advocacy, cited in cases and law review articles.<sup>121</sup>

Since the 1995 *Fordham Conference* on representation of children, there has been a rebirth in the law reviews of literature on representing children.<sup>122</sup> In addition, the ABA in 1996 published *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Proceedings* which the National Association for Counsel for Children commented on in an official revised version in 2003.<sup>123</sup> These standards were published in response to criticism of the currently existing *Juvenile Justice Standards Relating to Counsel for Private Parties* as failing to provide sufficient guidance to attorneys in abuse and neglect cases.<sup>124</sup> The ABA wanted to correct for the ambiguity of the role of the attorney and the inadequate representation children in abuse and neglect cases were receiving. David Katner has discussed these standards in great detail—believing that while they are imperfect (e.g., they do not provide a clear answer

<sup>120</sup> Bruce A Green & Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 *FORDHAM L. REV.* 1281 (1996).

<sup>121</sup> See *L.A. County Dep't of Children and Family Services v. Superior Court*, 59 Cal. Rptr. 2d 613, 622 (Cal. Ct. App. 1996); *In re Georgette*, 785 N.E.2d 356, 366 (Mass. 2003); see, e.g., Howard A. Davidson, *Child Protection Policy and Practice at Century's End*, 33 *FAM. L.Q.* 765 (1999); David R. Katner, *Coming to Praise, Not to Bury, the New ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 14 *GEO. J. LEGAL ETHICS* 103 (2000); Robert E. Shephard, Jr. & Sharon S. England, "I Know the Child is My Client, But Who Am I?", 64 *FORDHAM L. REV.* 1917 (1996); Katherine A. Piper, *Ethical Issues in the Legal Representation of Children: Client Autonomy or Child Protection?*, 24 *VT. B.J. & L. DIG.* 25 (1998); Marvin Ventrell, *The Practice of Law for Children*, 66 *MONT. L. REV.* 1 (2005); PETERS, *infra* note 122, at app. D.2.

<sup>122</sup> See JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* app. D.2 (2d ed. 2001).

<sup>123</sup> See *infra* note 166.

<sup>124</sup> Institute for Judicial Administration & American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979).

on the question of the dual role of the attorney versus the single role and they do not clarify the role of the attorney in the pre-adjudication stage), if adopted with the modifications of the Fordham Conference, “attorneys will once and for all be able to end this quest to define their roles as advocates or guardians.”<sup>125</sup>

In 2006, the William S. Boyd School of Law at the University of Nevada, Las Vegas (“UNLV”) hosted a follow-up conference, entitled *Representing Children in Families: Children’s Advocacy and Justice Ten Years After Fordham* convening an interdisciplinary group of scholars and practitioners who represent children in delinquency and child welfare cases. The opening papers and working group discussions reflected an ongoing deep concern for the welfare of children generally, which did not seem to have measurably improved since the Fordham Conference; a pervasive concern about how to represent children in the context of families; and a pervasive concern about issues of diversity and sexual identity. For example, Martin Guggenheim detailed his concern that child representatives had inadvertently contributed to the worsening of the plight of children and families by failing to embrace a client directed role.<sup>126</sup> Barbara Fedders argued:

[Z]ealous advocacy for children and adolescents mandates an acknowledgement of . . . and explicit engagement with the realities of the lives of young people who publicly identify as LGBTQ [lesbian, gay, bisexual, transgender, queer, or questioning], as well as those whose sexual behaviors and attractions, and/or feelings about their gender identity, place them outside the heterosexual and gender-conforming norm, no matter how they publicly identify.<sup>127</sup>

#### 4. *The National Conference of Commissioners on Uniform State Law (“NCCUSL”)*

Recently the National Conference of Commissioners on Uniform State Law (“NCCUSL”) proposed a draft uniform act for the representation of children in child protective proceedings.<sup>128</sup> The draft act, prepared for the Drafting Committee’s February 2006 meeting, defines three possible roles for a child’s representative: 1) a child’s attorney who is client-directed; 2) a best interests attorney who assists the court in determining the best interests of the child; and 3) a volunteer court-appointed advisor who has the same duty to report the best interests of the child but may not perform acts restricted to a licensed attorney (even if the advisor has a license to practice law). According to the draft act, a court must appoint either a child’s attorney or a best interests attorney in all abuse and neglect proceedings. The act proposes two models for appointing a court advisory: 1) the court may appoint a court advisor to advise the court of

<sup>125</sup> Katner, *supra* note 122, at 127. In addition, Katner calls for these rules to have more strict enforcement mechanisms and for courts to hold lawyers accountable for failure to comply with the standards. *Id.*

<sup>126</sup> Martin Guggenheim, *How Children’s Lawyers Serve State Interests*, 6 Nev. L.J. 805 (2006).

<sup>127</sup> Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 Nev. L.J. 774 (2006).

<sup>128</sup> UNIFORM REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT AND CUSTODY PROCEEDINGS ACT (draft version, 2005). For additional information on NCCUSL, see Uniform Law Commissioners, Drafting Committees, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=59> (last visited Mar. 23, 2006).

the child's best interests when a child's attorney is appointed; or 2) the court may appoint a court advisor at its discretion. The act also proposes several factors—age and maturity seem to be the most significant—a court should consider in choosing between a child's attorney or a best interests attorney.

In conclusion, twenty years after children had begun to be represented in child protective proceedings—at the moment when practice on the ground in the United States showed an utter lack of uniformity or even describable trends in the actual day to day practice of representing children—consensus was emerging among academics and practitioners alike for child representatives to play a lawyerly, rather than guardian *ad litem*, role.

### C. U.S. Duties under the CRC

Although the United States has not yet ratified the Convention on the Rights of the Child, the Convention nevertheless creates duties for the United States in two ways. First, as a signatory to the convention, the United States is bound not to contravene the object and purpose of the convention.<sup>129</sup> In addition, American courts have just begun to examine whether or not the Convention on the Rights of the Child constitutes customary international law, binding the United States despite its failure to ratify the convention.<sup>130</sup> The broad con-

<sup>129</sup> Vienna Convention on the Law of Treaties, art. 18, 1155 U.N.T.S. 331 (1980). Although the United States is again a signatory but not a ratifier of the Vienna Convention, Article 18 of the Vienna Convention is considered by American jurists and scholars of international law to be customary international law and thus binding on the United States. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 312 (1987); IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 610-11 (5th ed. 1998) (stating that signature of a treaty does not establish a nation's consent to be bound but does create "an obligation of good faith to refrain from acts calculated to frustrate the objects of the treaty") (citing, among other sources, Vienna Convention and LORD McNAIR, LAW OF TREATIES 199-205 (1961)); *Mayaguezanos Por La Salud Y El Ambiente v. United States*, 198 F.3d 297, 305 n.14 (1st Cir. 1999). Moreover, U.S. Courts, the U.S. State Department, and international law scholars widely consider the entire Vienna Convention as binding customary international law. *See, e.g.*, *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.3d 301, 308 (2d Cir. 2000) (referring to the Vienna Convention as "an authoritative codification of customary international law") (internal citations omitted); *Aquamar, S.A. v. Del Monte Fresh Produce N.A., Inc.*, 179 F.3d 1279, 1296 n.40 (11th Cir. 1999) ("Although the United States is not a party to the Vienna Convention, it regards the substantive provisions of the Vienna Convention as codifying the international law of treaties.") (quoting *Kreimerman v. Casa Veerkamp S.A. de C.V.*, 22 F.3d 634, 638 n.9 (5th Cir. 1994) ); ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 10-11 (2000) ("For most practical purposes treaty questions are resolved by applying the rules of the [Vienna] Convention . . . the modern law of treaties is now authoritatively set out in the Convention."); Maria Frankowska, *The Vienna Convention on the Law of Treaties Before United States Courts*, 28 VA. J. INT'L L. 281, 286 (1988) (holding that "the Vienna Convention represents a treaty which to a large degree is a restatement of customary rules binding [s]tates regardless of whether they are parties to the Convention"); TREATIES AND OTHER INTERNATIONAL AGREEMENTS: THE ROLE OF THE UNITED STATES SENATE, 106TH CONG, A STUDY PREPARED FOR THE COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE, 43 (Comm. Print 2001), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi? dbname=106\\_cong\\_senate\\_print&docid=f:66922.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_senate_print&docid=f:66922.pdf).

<sup>130</sup> *See* *Sadeghi v. Immigration & Naturalization Serv.*, 40 F.3d 1139, 1147 (10th Cir. 1994) (Kane, J., dissenting) (arguing that the entire CRC is customary); *Nicholson v. Williams*, 203 F. Supp. 2d 153, 234 (E.D.N.Y. 2002) (noting that CRC provisions dealing with family integrity have the force of customary international law); *Beharry v. Reno*, 183 F. Supp. 2d



sensus concerning the rights of the child codified in the CRC, evidenced by the universality of its signatures and the near universality of its ratifications, suggests to many observers that these rights are quintessential customary international law.<sup>131</sup>

It can be argued, moreover, that certain parts of the Convention on the Rights of the Child are customary international law by virtue of a long standing, deeply held consensus of opinion on these issues.<sup>132</sup> Children's representation and the rights for children's voices to be heard in judicial proceedings, on the other hand, was one of the more innovative pieces of the Convention and one that may require substantial juridical change on the part of a number of its parties.<sup>133</sup> The question of whether Article 12 is or is not customary international law has never been litigated in the United States and remains an open question.

Thus at this moment, Article 12 of the CRC does not technically bind the United States, both because the United States has not ratified the convention and because Article 12 does not currently appear to be recognized as customary international law. Though the Inter-American Commission on Human Rights has several times held that provisions of the CRC qualify as customary international law,<sup>134</sup> only twenty-six American cases from federal and state jurisdic-

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584, 600-01 (E.D.N.Y. 2002) ("Given its widespread acceptance, to the extent that it acts to codify longstanding, widely-accepted principles of law, the CRC should be read as customary international law."), *rev'd on other grounds*; Beharry v. Ashcroft, 329 F.3d 51, 63 (2d Cir. 2003).

<sup>131</sup> See, e.g., Beharry, 183 F. Supp. 2d at 600-01; Connie de la Vega, *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?*, 11 HARV. BLACKLETTER L.J. 37, 45-46 (1994); see also Gary B. Melton, *Children, Families, and the Courts in the Twenty-First Century*, 66 S. CAL. L. REV. 1993, 2039-40 (1993) (observing, at a time at which the United States was one of twenty-nine nations who had signed but not yet ratified the CRC, that "the ratification of the Convention is so nearly universal that its strictures are likely to be soon recognized as customary international law").

<sup>132</sup> See, e.g., Beharry, 183 F. Supp. 2d. at 600-01 (suggesting that the CRC's requirements that "the family . . . should be afforded the necessary protection and assistance," and that "in all actions concerning children . . . the best interests for the child shall be a primary consideration," are codifications of "longstanding legal norms" in the United States and Europe) (internal citations omitted).

<sup>133</sup> See Country Category Chart, *supra* fig. 1.

<sup>134</sup> See Villareal v. United States, Case 11.753, Inter-Am. C.H.R., Report No. 52/02, OEA/Ser.L/V/II.117, doc. 5 rev. 1 at 821, ¶ 17-22 (2002) (H. Bicudo, concurring) (arguing that the CRC's prohibition of the death penalty applies not only to minors but to all and that it constitutes customary international law and is therefore binding on the United States); Domingues v. United States, Case 12.285, Inter-Am. C.H.R., Report No. 62/02, OEA/Ser.L/V/II.117, doc. 5 rev. 1 at 913, ¶ 19, 23-25, 56-58, 73, 85 (2002) (holding that the CRC and other treaties' prohibition of the juvenile death penalty constitutes *ius cogens*); Graham v. United States, Case, Inter-Am. C.H.R., Report No. 97/03, OEA/Ser.L/V/II.114, doc. 70 rev. 1 at 705, ¶ 52-54 (2003) (holding that the CRC and other treaties' prohibitions of the juvenile death penalty constitute customary international law) (citing *Domingues*, Report No. 62/02); Beazley v. United States, Case 12.412, Inter-Am. C.H.R., Report No. 101/03, OEA/Ser.L/V/II.114, doc. 70 rev. 1 at 804, ¶ 47-49 (2003) (holding that the juvenile execution carried out despite the Commission's request for a stay was illegal because it violates the CRC and other international treaties which are binding as customary international law) (citing *Domingues*, Report No. 62/02); Thomas v. United States, Case 12.240, Inter-Am. C.H.R., Report No. 100/03, OEA/Ser.L/V/II.114, doc. 70 rev. 1 at 790, ¶ 18, 39-41 (2003) (holding that the juvenile execution, carried out despite the Commission's request for a stay,

tions have mentioned the CRC,<sup>135</sup> and the courts' first glimpses at the CRC

violated provisions of the CRC and other international treaties which are binding as customary international law) (citing *Domingues*, Report No. 25/05); *Patterson v. United States*, Case 12.439, Inter-Am. C.H.R., Report No. 25/05, ¶ 45-46 (2005), available at <http://www.cidh.org/annualrep/2005eng/usa.12439eng.htm> (holding that the juvenile execution carried out despite the Commission's request for a stay was illegal because it violates the CRC and other international treaties which are binding as customary international law) (citing *Domingues*, Report No. 62/02; *Beazley*, Report No. 62/02; *Thomas*, Report No. 100/03; *Graham*, Report 97/03).

<sup>135</sup> In a review of all U.S. cases as of January 2006 which cite the CRC, eleven apply a provision of the CRC; five hold that a provision of the Convention is customary international law and six cite the CRC without claiming that it constitutes customary international law. Seventeen cases do not apply the provision of the CRC in question; three hold that a provision of the CRC cannot be applied as customary international law, four refrain from applying the CRC because the United States has not ratified it, four others deny that a provision of the CRC can be enforced, and six avoid addressing the issue of the CRC as customary international law.

Cases holding that a provision of the CRC is customary international law:

1. *Guaylupo-Moya v. Gonzales*, 423 F.3d 121, 133 (2d Cir. 2005) (noting another case which cited the CRC as an international source of law which supports an alien's right to submit reasons against his expulsion);
2. *Jane Doe I. v. Reddy*, No. C 02-05570 WHA, 2003 WL 23893010 at 8 (N.D. Cal. Aug. 4, 2003) (in supporting argument that other ratified treaty may be binding: For instance, the Convention on the Rights of the Child, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights have not been ratified by the United States. Nonetheless, "[t]he Universal Declaration of Human Rights is a resolution of the General Assembly of the United Nations. As such, it is a powerful and authoritative statement of the customary international law of human rights.") (citing *Siderman de Blake v. Republic of Arg.*, 965 F. 2d 699, 719 (9th Cir. 1992)).
3. *Nicholson v. Williams*, 203 F. Supp. 2d 153, 234 (E.D.N.Y. 2002) (applying the *Beharry* rule to note that CRC provisions dealing with family integrity have the force of customary international law);
4. *Beharry v. Reno*, 183 F. Supp. 2d 584, 600-01 (E.D.N.Y. 2002) (holding that provisions of the CRC, as customary international law, required the INS to afford petitioner a hearing to determine the impact of petitioner's potential deportation on the petitioner's child), *rev'd sub nom on other grounds*; *Beharry v. Ashcroft*, 329 F.3d 51, 63 (2d Cir. 2003);
5. *Sadeghi v. INS*, 40 F.3d 1139, 1147 (10th Cir. 1994) (Kane, J., dissenting) (arguing that the entire CRC is customary international law);

Cases citing the CRC, but not claiming that it is customary international law:

1. *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 1199 (2005) (noting that the CRC, Article 37 contains an express prohibition on capital punishment for crimes committed by juveniles under eighteen);
2. *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 453 (D.D.C. 2005) (citing the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict);
3. *Mansour v. Ashcroft*, 390 F.3d 667, 681 (9th Cir. 2004) (noting that the CRC "articulates a wide range of children's rights and substantive obligations imposed on states to protect children");
4. *Abebe v. Ashcroft*, 379 F.3d 755, 764 (9th Cir. 2004) (noting that CRC "requires states to 'ensure that a child shall not be separated from his or her parents against their will, except when . . . such separation is necessary for the best interests of the child.'");
5. *In re Julie Anne*, 121 Ohio Misc. 2d 20, 41 (Ohio C.P. 2002) (stating in error that the United States has ratified the CRC, "the most universally accepted human rights document in the history of the world," and holding that "[b]ecause the Convention creates obligations for signatory governments to ensure children's right to the highest attainable standard of health, the involuntary harmful exposure of children to secondhand smoke can be seen as a human rights violation.");

6. *Batista v. Batista*, 1992 Conn. Super. LEXIS 1808, 18-20 (Conn. Super. Ct. 1992) (granting temporary custody to a child's father in a situation in which the child expressed an overwhelming desire not to returning to her mother's custody, and using CRC Article 12 as an equitable consideration in reaching this decision).

Cases holding that the CRC cannot be applied as customary international law:

1. *Oliva v. United States Dep't of Justice*, 433 F.3d 229, 234 (2d Cir. 2005) (rejecting *Beharry*) (citing *Guaylupo-Moya*).
2. *Ex parte Pressley*, 770 So. 2d 143, 148-49 (Ala. 2000) (refusing to enforce the CRC's prohibition of the juvenile death penalty)(citing *Stanford v. Kentucky*, 492 U.S. 361 (1989));
3. *Wynn v. State*, 804 So. 2d 1122, 1146 (Ala. Crim. App. 2000) (refusing to enforce prohibitions on the juvenile death penalty contained in the CRC and other international instrument) (quoting *Ex parte Pressley*, 770 So. 2d 143 (Ala. 2000) (citing *Stanford v. Kentucky*, 492 U.S. 361 (1989)));

Cases not applying the CRC because the U.S. has not ratified it:

1. *Ficken v. Rice*, No. Civ.A. 04-1132(RMU), 2006 WL 123931, at 6 (D.D.C. Jan. 17, 2006) (holding that the CRC is not binding on the District of Columbia because the United States has not ratified it) (citing *Flores v. Southern Peru Copper Corp.*, 343 F.2d 140, 165 & n.36 (2d Cir. 2003)).
2. *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005) (noting that the United States has not yet ratified the CRC);
3. *United States v. Martinelli*, 62 M.J. 52, 72 (U.S. Armed Forces 2005) (noting that the CRC provides basic international guidelines for the protection of children from sexual exploitation via child pornography, but the U.S. has not ratified it);
4. *In re Adoption of Peggy*, 767 N.E.2d 29, 37-38 (Mass. 2002) (holding that the CRC is not binding on Massachusetts because it has not been ratified by the United States but that the decision being reviewed in this case nevertheless was consistent with the CRC);
5. *People v. Barnes*, 2002 Cal. App. Unpub. LEXIS 4873, 25-26 (Cal. Ct. App. 2002) (denying appeal of a death sentence for individual who was 16 at the time of his crime and denying argument based on CRC's prohibition against juvenile executions because the United States has not ratified the Convention, and the defendant did not "demonstrate the proper application of *jus cogens* in this case");

Cases otherwise denying that the CRC can be enforced:

1. *Naoum v. Attorney General of United States*, 300 F. Supp. 2d 521, 526 (N.D. Ohio 2004) (holding that as a general rule the CRC as an international treaty does not create rights that are privately enforceable in federal courts);
2. *Fernandez v. INS*, 2004 WL 951491 at 2 (E.D.N.Y. 2004) (holding that the CRC as an international treaty does not generally create privately enforceable rights in federal courts);
3. *Setharatsomphou v. Ashcroft*, 2003 U.S. Dist. LEXIS 10211, 6-7 (N.D.Ill. 2003) (rejecting *Beharry's* use of the CRC and other non-ratified treaties as aids in statutory construction, where Congress "has unambiguously expressed its intent to apply the new definition of aggravated felony and the new restrictions on Section 1212(h) retrospectively");
4. *Munoz v. Ashcroft*, 339 F.3d 950, 957-58 (9th Cir. 2003) (holding that a United States statute may be enforced in a manner that might violate the CRC or other international treaties, so long as the statute cannot be interpreted in a manner consistent with the treaties).

Cases avoiding addressing the issue of the CRC as customary international law:

1. *Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1007 (9th Cir. 2005) (holding that the "agency's interpretation of the hardship standard, and its application of the standard in this case, are consistent with the 'best interests of the child' principle articulated in the CRC, even assuming that the Convention is 'customary international law' and that its dictates are relevant to a proceeding involving deportation of a parent");
2. *Flores v. Southern Peru Copper Corp.*, 406 F.3d 65, 91 (2d Cir. 2003) (holding that Article 24 of the CRC does not address the issue of intranational pollution);
3. *Bankhole v. INS*, 2003 U.S. Dist. LEXIS 24782, 12-14 (2003) (Among other things, the petitioner claimed, pursuant to *Beharry*, that the CRC gave her the right to receive a "compassionate" hearing from the INS prior to deportation as a former lawful permanent resident convicted of aggravated felonies to determine the impact of her deportation on her disabled

have yielded no particular consensus about its importance in American decision making. Nevertheless, a consensus of 189 nations to accept Article 12<sup>136</sup> as written suggests that in the foreseeable future, Article 12 could well be recognized as customary international law. It is also foreseeable, as the United States jurisprudence moves closer and closer to the CRC's provisions, that the United States will ratify the convention. Meanwhile, as noted above, the U.S. continues to be obligated as a non-ratifying signatory not to contravene the object and purpose of the convention.

Even in this unsettled form, the CRC offers one large paradigm shift that deeply affects the United States. The child's right to be heard in child protective proceedings, initially protected by a funding requirement of an obscure federal statute has now become an international human right by international consensus; whereas American lawyering for children in child protective proceedings sprang from the sudden federal funding requirement in 1974, Article 12 of the CRC and the growing international developments show that it's not just about money anymore. Article 12 does not require lawyers. However, when lawyers for children already exist in many proceedings, the momentum of international human rights movement suggest that these lawyers should focus

citizen son. The Court denied this claim and refused to reach the question of whether the CRC created enforceable rights by finding that the petitioner's crimes were aggravated felonies at the time she committed them, whereas *Beharry* applies to crimes that were categorized as aggravated felonies after a person committed them);

4. *Ayala-Caballero v. Coleman*, 58 Fed. App'x. 669, 672 (9th Cir. 2002) (denying plaintiff's claim under *Beharry* that the Board of Immigration Appeals violated CRC Article 3 by failing to sufficiently consider the best interests of his citizen children in reaching its decision to deport him, because the Court found that the facts did not show a violation of Article 3, and avoiding the issue of whether the CRC is enforceable as federal law);
5. *Alvarez-Garcia v. INS*, 234 F. Supp. 2d 283, 289 (S.D.N.Y. 2002) (holding that petitioner, in claiming the right to a "compassionate" hearing under *Beharry*, did not satisfy his burden of proof because he did "not specify the date on which he committed the crime of which he stands convicted").
6. *People v. Brazile*, 2001 Cal. App. Unpub. 2001 WL 1423739 at 21 (Cal. Ct. App. 2001) (affirming sentence of life without parole for youthful offender who argued, among other things, that such sentence contravened the CRC);

<sup>136</sup> Three countries (Kiribati, Poland and Singapore) have made "declarations" with regard to Article 12. No reservations have been made. See Office of the High Comm'r of Human Rights, Convention on the Rights of the Child, Declarations and Reservations as of Oct. 9, 2001, available at [http://www.unhcr.ch/html/menu3/b/treaty15\\_asp.htm](http://www.unhcr.ch/html/menu3/b/treaty15_asp.htm) ("The Republic of Kiribati considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12-16 shall be exercised with respect for parental authority, in accordance with the Kiribati customs and traditions regarding the place of the child within and outside the family." "The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family." "The Republic of Singapore considers that a child's rights as defined in the Convention, in particular the rights defined in article 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multi-racial and multi-religious society regarding the place of the child within and outside the family.") Two countries (Somalia and the United States) have not ratified the CRC.

on protecting the Article 12 right of the child who is capable of forming views to express these views.

#### D. *The 2005 United States Survey*

##### 1. *Introduction*

The 1996 survey of American jurisdictions conducted under my supervision by Martha Pollack, with the help of Ann Haralambie and Dennis Ichikawa, suggested tremendous chaos in the child protection field in the fifty-six American jurisdictions. I decided to update the 1996 survey in conjunction with the international survey to see if my researchers and I could detect any developments and to analyze the resulting information in light of the CRC requirements, particularly the CRC's focus on the child's right to express her views freely.

Between June 2004 and December 2005, researchers at the Yale Law School undertook individual investigations of the child's opportunity to be heard in child protective proceedings in each of fifty-six American jurisdictions—the individual states, the District of Columbia and the U.S. territories. The researchers, primarily Yale Law students, updated our 1996 materials with fresh searches for information for each jurisdiction individually. In addition, each researcher, for each state, then sought a knowledgeable contact person to seek to confirm the results of our research. A chart containing a summary of each state's practice appears at the end of this article in Appendix C.<sup>137</sup>

Although this research was substantially easier in many ways than the international research, building upon an earlier survey with ample domestic materials, we still encountered unexpected problems in completing the research, despite the abundance of resources we were able to bring to bear. As detailed below, while an abundance of research was often available for these jurisdictions, many of the states' structures of law did not yield a clear vision of the duties and responsibilities of the lawyer or best interests representative, even within a single jurisdiction. As a result, as discussed below, we examined the legal provisions the best we could, with the help of many contact people; yet we must still acknowledge the inevitable judgment calls were made in our interpretation of the current state of the law in many jurisdictions. Second, while we were able to achieve a much higher percentage of confirmation by contact people in our state jurisdictions, we were still unable to achieve 100% confirmation by local practitioners. As mentioned in the context of our international research, we know in many cases that this is because the people who would be most knowledgeable and helpful to us were extraordinarily busy doing the work that we hope to support in our research. We were therefore extremely grateful to those who were able to find time with pressed schedules to accommodate our research needs and to contribute to the quality control of this research.

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<sup>137</sup> Each jurisdiction's practice is explored in greater detail on our website, [www.law.yale.edu/rcw](http://www.law.yale.edu/rcw). For more information on the format and content of the website, see *supra* Part II.B.

## 2. *Survey Results*

### a. *Framework / Summary Chart*

To supplement our state-by-state review of the American jurisdictions practices, we attempted to create a framework to summarize the fifty-six jurisdictions with the focus on the legal provisions detailing the responsibilities of the duties of the child representative. This summary chart was designed specifically to organize the American jurisdictions with respect to central questions raised by Article 12 of the Convention on the Rights of the Child. Central to the analysis was whether the legal representatives in the jurisdictions were required to advocate for the child's views? Or were they required to express the child's views at all? In looking at the very disparate jurisdictions through this lens, we were able to some degree to organize the jurisdictions into the following six categories, detailed below. These six categories represent six different structures of the legal responsibilities given by the state law in describing the duties of the child representative.

#### i. *Child's Attorney Required; Best Interests Representative<sup>138</sup> Optional*

Jurisdictions in which a child's attorney, who advocates for the child's views, is required. A best interests representative, either an attorney or a volunteer, may be appointed at the court's discretion. Some of these jurisdictions want the representative to fill both roles. If this is not possible due to a conflict between the child's views and the child's best interests, the role of child's attorney is primary.

#### ii. *Both Child's Attorney and Best Interests Representative Required*

Jurisdictions in which both a child's attorney, who advocates for the child's views, and a best interests representative, who advocates for the child's best interests, are required. In some jurisdictions the two roles may be filled by one representative. In other jurisdictions, two separate representatives are required to fill the two roles.

#### iii. *Best Interests Representative Required and Required to Express Child's Views; Child's Attorney Optional*

Jurisdictions in which a best interests representative, who advocates for the best interests of the child, is required. The best interests representative can be either an attorney or a trained volunteer, i.e., CASA. The best interests representative is required to express (but not advocate for) the child's views. If the child's views differ from the best interests representative's assessment of the child's best interests, the court may appoint a child's attorney to advocate for the child's views.

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<sup>138</sup> We have chosen to analyze the materials using the term "best interests representative" because the term *guardian ad litem* is used too inconsistently among the states.

*iv. Best Interests Representative Required and Required to Express Child's Views; No Child's Attorney*

Jurisdictions in which a best interests representative, who advocates for the best interests of the child, is required. The best interests representative can be either an attorney or a trained volunteer, i.e., CASA. In these jurisdictions, the best interests representative is required to express (but not advocate for) the child's views. There is *no* provision for the appointment of a child's attorney to advocate for the child's views in these jurisdictions.

*v. Best Interests Representative Required, No Provision to Express Views; Child's Attorney Optional*

Jurisdictions in which a best interests representative, who advocates for the best interests of the child, is required. The best interests representative can be either an attorney or a trained volunteer, i.e., CASA. In these jurisdictions, there is *no* statutory requirement for the best interests representative to express the child's views. The court may appoint a child's attorney to advocate for the child's views.

*vi. Best Interests Representative Required, No Provision to Express Views, No Child's Attorney*

Jurisdictions in which a best interests representative, who advocates for the best interests of the child, is required. The best interests representative can be either an attorney or a trained volunteer, i.e., CASA. In these jurisdictions, there is *no* statutory requirement for the best interests representative to inform the court of the child's views. There is *no* provision for the appointment of a child's attorney.

FIGURE 2. REPRESENTATIONAL MODELS OF THE U.S. JURISDICTIONS

Legal Requirement re: Duties of Child Representative		Child's Atty	Best Interests Representative		Categorization
		Required to Advocate Child's Views	Required to Express Child's Views	Not Required to Express Child's Views	
A	Child's Atty required; Best Interests Representative optional	X		X (optional)	LA, MD (child w/ "considered judgment"), MA, NJ, NM (age 14+), OK, PA (TPR), WV, WI (age 12+)
B	Child's Atty and Best Interests Representative required	X		X	AS, AZ, CT, GA, MN (age 10+), MS, MT, ND (TPR), OH, NY, PR, SC (Abuse/Neglect), TN, TX, VI
C	Best Interests Representative required to express views; Child's Atty optional	X (optional)	X		DE, FL, GU, HI, IA, KS, KY, ME, MD (child w/out "considered judgment"), MI, NV, NM (age <14), PA (Abuse/Neglect), SC (TPR), VT, VA, WI (age < 12)
D	Best Interests Representative required to express views		X		AR, CA, MO, NC, UT
E	Best Interests Rep. required, no provision to express views; Child's Atty optional	X (optional)		X	AK, DC, ID, MN (age <10), NE, NH, OR, WA, WY
F	Best Interests Rep. required, no provision to express views			X	AL, CO, IL, IN, ND (Abuse/Neglect), MP, RI, SD

↑ In compliance with CRC, Art. 12

↓ Not in compliance with CRC, Art. 12

Before trying to examine the findings of this chart, a number of caveats are in order. At one point my researchers and I began in my office to liken the process of organizing the state jurisdictions, now undertaken by a series of different organizations,<sup>139</sup> to the task of cleaning a messy room, as accomplished by a number of different cleaners. While one cleaner might create one set of piles and make discretionary calls placing jurisdictions in one pile or another, a second person trying equally to do a good job could, in a principled way, place that jurisdiction in a different pile, and organize different piles in the first place.

As even a cursory glance at our chart shows, a number of states needed to be placed in multiple categories; in some cases we even had questions about our own categorizations. Even among jurisdictions placed within the same model, there was substantial variation; as noted below, there remain fifty-six different models for representation of children in the fifty-six American jurisdictions. In addition, we relied upon statutory mandates, court rules, or state-

<sup>139</sup> Gerard F. Glynn, *The Child Abuse Prevention and Treatment Act—Promoting the Authorized Practice of Law*, J. L. & FAM. STUD. (forthcoming 2006) (manuscript at app.); First Star, *State Court Survey Results*, available at <http://www.firststar.org/research/scs.asp>; National Council for Juvenile and Family Court Judges, *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice* (1998), available at <http://www.ncjfcj.org/>; ASTRA OUTLEY, PEW COMM'N ON CHILDREN IN FOSTER CARE, REPRESENTATION FOR CHILDREN AND PARENTS IN DEPENDENCY PROCEEDINGS (2003), <http://pewfostercare.org/research/docs/Representation.pdf>. We are grateful to the ABA Center for Children and the Law, particularly, Howard Davidson and Jennifer Renne, for their very useful advice throughout our survey.



wide official policies and, in general, did not consider the practice in the jurisdiction, even when widespread, in placing states on this chart, focused as we were on legal provisions enforcing the mandates of the Article 12 of the CRC. As a result there may well be many jurisdictions where there is no legal provision requiring that the child's views are expressed, but where widespread practice makes that true in reality. By the same token, there may be jurisdictions where provisions are clear that the child's views should be expressed, but those provisions are not honored. We therefore acknowledge that many discretionary calls were made in the placement of states on this chart, and that informed readers might do so differently. We also note that for states where one lawyer or representative plays multiple roles, the chart does not clearly reflect that a single representative is tasked with all the duties; the chart merely reflects what duties are being performed, not how many people are performing them.

*b. Findings*

In many ways, the 2005 survey revealed substantial continuity with the 1996 survey. We were surprised that a preliminary comparison suggests that there have not been any major shifts or trends since 1996. Now, and in 1996, no two of the fifty-six American jurisdictions have identical systems of representation. Although we were able to create six sets of legal requirements for the legal duties of the child representative, among the states grouped together within each of those categories remains substantial diversity on important questions such as the definitions of neglect and abuse in jurisdictions, the precise description of the legal role of the child's representative, governing ethical rules, and the adequacy of compensation to these representatives.

First, as measured by the requirements of Article 12 of the Convention on the Rights of the Child, four (A-D) of the six U.S. models, comprising thirty-nine jurisdictions,<sup>140</sup> appear to be in compliance with the CRC's mandate that the child shall be assured the opportunity for his wishes to be heard; two (E-F) of the models, consisting of seventeen jurisdictions,<sup>141</sup> however, provide no legal requirement that each child's viewpoint be expressed or advocated. Second, a super-majority of states rely either partially or exclusively on a model in which the representative represents the child's best interests. Five (B-F) of the six models require a best interest representative for some or all children; for only five states<sup>142</sup> is the best interests representative always optional rather than mandatory.

Essentially, American practice remains extremely varied, unclear and lacking uniformity, within and among jurisdictions. Based on the governing

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<sup>140</sup> American Samoa, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Guam, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin.

<sup>141</sup> Alabama, Alaska, Colorado, District of Columbia, Idaho, Illinois, Indiana, Minnesota, Nebraska, New Hampshire, North Dakota, Northern Mariana Islands, Oregon, Rhode Island, South Dakota, Washington, and Wyoming.

<sup>142</sup> Louisiana, Massachusetts, New Jersey, Oklahoma, and West Virginia.

legal provisions in the states, it appears that more than half of the jurisdictions do require the child's representative to express or advocate the child's views before the court. However, a substantial minority, seventeen jurisdictions, do not have that requirement and therefore are not in compliance with the mandates of Article 12. Although lawyers, lawyer's ethical mandates, or lawyerly procedures appear to play a role in many of the jurisdictions, five of the six models contain inherent confusion for any lawyer playing the role of representative, and thus for any child represented in the jurisdiction.

Our survey also investigated compensation schemes in each of the fifty-six US jurisdictions, finding information for fifty of the fifty-six jurisdictions. Compensation for the work of child representatives in the US appears also to vary from state to state, with no two state compensation systems the same. One commentator has suggested that there are six compensation models among the states: contract, contract combined with salary, salary, contract combined with per hour or per case, per hour and per case.<sup>143</sup> The legal provisions on compensation discovered in this research are compiled in the charts found in Appendix E. The relatively few (twelve) jurisdictions which listed an hourly rate per case are compiled in a second chart found in Appendix D. While few generalizations can be made, three observations seem warranted: 1) CASAs, or unpaid lay volunteer advocates, along with unpaid attorney volunteers still play a major role in child representation in the US; 2) where hourly rates of pay are available, they are remarkably low compared to others in the legal profession, ranging for out-of-court work from \$40 per hour to \$65 per hour and for in-court work ranged from \$40 per hour to \$75 per hour; 3) compensation is an increasingly volatile issue, with lawsuits concerning attorney compensation found in at least four states. Extremely basic questions regarding compensation remain unresolved in many jurisdictions, including the amount of pay, the court's jurisdiction to augment statutory rates, which legal services qualify for compensation, and who, if anybody, will pay attorneys/guardians *ad litem*; a number of jurisdictions' statutes provide for assigned counsel without articulating a mechanism for payment.

### c. *Analysis of Findings*

In some way, the United States research reveals that the commitment of all the U.S. jurisdictions to provide representatives in these proceedings stems from a federal funding statute which made funding of the states' child protective bureaucracies contingent upon the provision of guardians *ad litem* to "represent the best interests of the child"<sup>144</sup> in all proceedings. This requirement has remained a primary substantive force in the design of state systems providing for child representation and remains influential today. At the same time, a strong and growing consensus among practitioners and scholars has created a strong impetus for this representative role to be played by lawyers, and the increase in lawyers playing the role has led to substantial concerns in

<sup>143</sup> Althea Izawa-Hayden, *Money Matters: Child Attorney Compensation Models*, CHILD LAW PRACTICE, Sept. 2005, at 102-06 available at <http://www.abanet.org/child/clp/archives/vol24/sept05.pdf>.

<sup>144</sup> Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, § 4(B)(3), 88 Stat. 4 (1974) (codified at 42 U.S.C. §§ 5101-5119c (2005)).

many jurisdictions about low levels of compensation available to the representatives.

As American practice currently stands, the confusion between the CAPTA focus on best interests representation and the growing concern and agreement that lawyers should be representatives in many jurisdictions, has left American jurisprudence in a state of confusion. While a small minority of states now ask lawyers to represent children according to the ethical rules prevailing in the jurisdiction using lawyerly methods,<sup>145</sup> many other jurisdictions create a hybrid in which lawyers either play the role of best interests representative without access to lawyerly procedures such as court advocacy and the like.<sup>146</sup> Still others require non-lawyers to perform lawyer functions based on the provisions of the state law.<sup>147</sup>

These commonalities suggest that CAPTA, with its long-term focus on a “guardian ad litem” who “represents the best interests of the child,” remains a primary substantive influence on states.<sup>148</sup> On the other hand, the findings also reveal substantial substantive influence of the consensus in the scholarly and practice communities since 1996 focusing on the importance of contextual representation in which the child is known and the facts of each case are deeply explored in their uniqueness.<sup>149</sup> And, if we look at the number of states which require lawyers to be the ones chosen to be the child’s representative, whether the legal description appoints them as child’s attorney or best interests representative, we find that in thirty-seven American jurisdictions<sup>150</sup> lawyers are

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<sup>145</sup> These are the jurisdictions that have been categorized as either A or B on the summary chart.

<sup>146</sup> See, e.g., IOWA CODE § 232.126 (2005) (requiring guardians *ad litem* to submit reports to the court); IOWA CODE § 232.89(4) (allowing an attorney appointed to represent a child in a child protection proceeding to also serve as the GAL); S.S. v. D.M., 597 A.2d 870 (D.C. 1991) (“As neutral fact-finder, the attorney’s duties are to investigate the details of the case and to prepare a report summarizing the relevant facts for the presiding judge; as fact finder, the attorney does not recommend a particular disposition.”); Uniform R. for the Dist. Ct. for the State of Wyoming, R. 106 (2005) (Section 4 lists the “general responsibilities of the guardian ad litem” which does not include any attorney-specific requirements); see also the list of jurisdictions requiring attorneys, *infra* note 150.

<sup>147</sup> Glynn, *supra* note 139; WASH. SUP. CT. GUARDIAN AD LITEM R., R. 4(h) (2005) (listing a number of responsibilities unique to lawyers, e.g., filing motions, examining witnesses, making oral arguments); DEL. CODE ANN. tit. 31 § 3606(5) (2005) (permitting CASAs to “[p]articipate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals”); ME. REV. STAT. ANN. TIT. 22, § 4005(1)(C) (2005) (permitting the guardian *ad litem*, which may be a CASA, to “subpoena, examine and cross-examine witnesses. . .”); OR. REV. STAT. § 419A.170(1) (2005) (permitting CASAs to “file pleadings and request hearings and may subpoena, examine and cross-examine witnesses”).

<sup>148</sup> As noted in *supra* note 104, although the federal government sanctions the use of attorneys as guardians *ad litem*, the government also allows the use of lay volunteers or court appointed special advocates as guardians *ad litem*. DEP’T OF HEALTH & HUMAN SERV., *supra* note 104. This allowance makes clear that states in our Category A fulfill the requirement; UNIFORM REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT AND CUSTODY PROCEEDINGS ACT §5 cmt. at 18 (draft version, 2005).

<sup>149</sup> A number of jurisdictions require the child representative to meet with the child by a certain point of time and mandate a minimum number of visits. See, e.g., ME. REV. STAT. ANN. TIT. 22, § 4005(1)(B) (2005); NEB. REV. STAT. § 43-272.01(d) (2005).

<sup>150</sup> Alabama, American Samoa, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Georgia, Guam, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massa-

doing the representational work. One model in a significant minority of states no longer requires a best interests representative, requiring only a child's attorney representing the child according to the ethical rules extant in that jurisdiction.

It therefore appears that the American jurisdictions are currently in a clash of paradigms, and the confusing picture offered by the findings of the 2005 survey suggest that the paradigms, pulling in opposite directions, are creating confusion on the ground. The continued primacy of CAPTA, given its funding consequences to each of the American jurisdictions, continues to pull the jurisdictions towards retaining best interests representation, through lay advocates if necessary, and seeing this as a necessary concomitant to the receipt of federal money. On the other hand, the post 1996 consensus pulls the same jurisdictions towards utilizing lawyers to play any representational roles assigned in the state, towards demanding an individualized and deeply contextual representation of children. As we have seen, the increased use of lawyers in these cases, regardless of the definition of the duties of the representative, has led to significant battles around the country on the question of representative compensation. Lawyers have struggled with the problem of maintaining the high standards set by the scholarly and practicing community as well as their own deep commitment to their clients, in light of the extremely low levels of compensation that appear to be available around the country.

One way to understand the confusion that the states are currently undergoing is to consider more closely the implications of requiring an attorney as a child's representative. In fact, this requirement breaks down into three components, each posing a distinct substantive question:

1. **LAWYER:** What is the professional identity of the person playing the representative role?
2. **PURSUING LAWYERLY GOALS:** What are the legal duties of the representative; are they duties that match a traditional attorney's role either for a competent client or for a client with diminished capacity, or are they duties to this child's best interests?
3. **IN A LAWYERLY WAY:** How does the representative do the work that is assigned? Is the representative allowed to do work as a lawyer would: filing motions, calling witnesses, arguing before the court, or is the representative meant to act as a witness, an arm of the court, an additional best interests adjudicator? And is the relationship between representative and child client confidential?

Returning to the six models in our summary chart, we can make the following conclusions about the three components of the lawyer's role as defined above. First, a lawyer *could* play the representative role in each of the six models; and at least one jurisdiction in each of the six models requires a lawyer to play the role of the representative of the child.<sup>151</sup> As for the legal duties of

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chusetts, Michigan, Mississippi, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Virginia, West Virginia, Wisconsin, and Wyoming.

<sup>151</sup> The following jurisdictions require attorneys, organized by model: A: Louisiana, Massachusetts, New Jersey, Oklahoma, West Virginia, Wisconsin, New Mexico, Maryland, and Pennsylvania; B: American Samoa, Arizona, Connecticut, Georgia, Mississippi, Montana, New York, Ohio, Puerto Rico, Texas, Virgin Islands, North Dakota, and Tennessee; C:

the representative, only the first two models A and B necessarily fulfill the second component of lawyerly goals. In other words, although lawyers can and do fill the role of the representative in all six models, they are only necessary in models A and B. With respect to the third component, whether the representative works in a lawyerly fashion (e.g., using trial techniques), our review of the jurisdictions show that lawyerly tasks are assigned to representatives in numerous jurisdictions regardless of whether these representatives are lawyers or not.<sup>152</sup>

The initial findings of the 2005 research suggest that the picture of the jurisdictions as a whole, and any given jurisdiction when viewed closely, does not answer all of these questions with the focus on a lawyer pursuing lawyers' goals (the wishes of the goals determined by the client) in a lawyerly fashion (practicing in their daily life as attorneys do). The results of the substantial agreement in many jurisdictions since 1996 about the primacy of lawyers in these roles seems to have created a shift in the first of these components, increasing the number of lawyers doing the work, whether it is lawyers' work or not, around the country. With respect to the second component, pursuing lawyerly goals, however, our summary chart demonstrates that the legal duties of the representative for at least four (C-F) of the six models, or thirty-two jurisdictions,<sup>153</sup> do not simply consist of the traditional lawyer's job of client-directed advocacy. A review of our state-by-state chart shows a substantial diversity of answers to questions about how a representative does their work. In some jurisdictions, the guardian *ad litem* serves as a witness;<sup>154</sup> in others, the guardian *ad litem* is prohibited from filing motions and examining witnesses;<sup>155</sup> in still others, the guardian *ad litem* does participate in trials and examine witnesses.<sup>156</sup>

Since the first *Fordham Conference* and the publication of the ABA Standards, academics and policy makers have agreed that children should be represented by lawyers. We should now discipline ourselves to think about this question in terms of all three components, to make sure that we are talking about the same questions and concerns. The fact that the second component, traditional lawyers goals, is only required in the first two representational models explains a great deal of the confusion that we have found in the fifty-six jurisdictions. Lawyers regularly may be doing non-traditional lawyer work in these cases; non lawyers may be doing traditional lawyers work in these cases. In any case, the child clients of these representatives are certainly hard-pressed

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Guam, Iowa, Kansas, Kentucky, Maryland, Michigan, New Mexico, Pennsylvania, Virginia, and Wisconsin; D: Arkansas, California, North Carolina, and Utah; E: District of Columbia and Wyoming; F: Alabama, Colorado, North Dakota, and South Dakota.

<sup>152</sup> See *supra* note 147.

<sup>153</sup> Alabama, Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Northern Mariana Islands, Oregon, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wyoming.

<sup>154</sup> See, e.g., Illinois (705 ILL. COMP. STAT. 405/2-17.1(2) (2005)); Vermont (VT. R. OF FAM. PROC. R. 6(e)(4) (2004)).

<sup>155</sup> See, e.g., Vermont (VT. R. OF FAM. PROC. 6 (e)(3) (2004)); Idaho (ID. CODE ANN. § 16-1634 (2005)).

<sup>156</sup> See, e.g., *supra* note 147; see also Delaware, Missouri, and South Carolina.

to understand who the representative is and what they are doing when we are having trouble doing so ourselves. This is further compounded by the lack of clarity and uniformity among the jurisdictions about the confidentiality of the representative-client relationship. If the American bar, legislators, and scholars wish representation of children to continue to move in a lawyerly direction, we should make sure that we specify how important each of the three components is and make sure each is developing accordingly within the jurisdiction.

Thus, at this moment in the evolution of representation of children around the country, only one of the six models (Model A) suggests that all three components of lawyering have been adopted: a lawyer, pursuing lawyerly goals (according to the ethical rules of the jurisdiction), in a lawyerly way, (using lawyerly techniques).<sup>157</sup> The majority of states do not incorporate all three components of lawyering into their requirements for representatives for children in their jurisdiction. Fifteen U.S. jurisdictions require that lawyers are generally assigned to be best interests representatives,<sup>158</sup> and five more states have attorneys occasionally assigned as best interests representatives.<sup>159</sup> One commentator has expressed concerns that other jurisdictions have non-lawyers advocating best interests, using lawyerly techniques for which they have not been trained: appearing in court, calling witnesses, filing motions, etc.<sup>160</sup>

### 3. *Areas of Further Study*

These findings suggest a number of important areas of further study for American policymakers, individual jurisdictions, and individual practitioners, as well as for international audiences.

#### a. *For American Audiences*

On a national level, the cross currents between the CAPTA requirements and the consensus among scholars and practitioners must be resolved. Perhaps close attention to the international consensus that the child's right to express her views is an international human right can aid the resolution of that conflict. Within jurisdictions, lawmakers should look carefully at the contradictions created by provisions that mix lawyers, lawyerly functions, and lawyerly methods with non-lawyer personnel, methods, and functions. As long as the three components of lawyering are unevenly required (that is, only one or two of the components are required), the jurisdiction's legal requirements will create substantial confusion for the representative in the execution of his role and, ultimately confuse the children represented by these confused advocates as well.

Finally, the individual practitioner should seriously consider the notion that the international consensus surrounding the child's right to be heard might permit the practitioner to decide as a matter of personal policy to express the child's views in all proceedings in which he appears; practitioners in jurisdic-

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<sup>157</sup> Model B could also be seen as adoption of all three components if the attorney is not required to fill a dual role, but rather the role of the GAL and the role of the child's attorney are filled by two separate representatives.

<sup>158</sup> Alabama, Arkansas, California, Colorado, District of Columbia, Guam, Iowa, Kansas, Kentucky, Michigan, North Carolina, South Dakota, Utah, Virginia, and Wyoming.

<sup>159</sup> Maryland, New Mexico, North Dakota, Pennsylvania, and Wisconsin.

<sup>160</sup> See *supra* note 147.

tions in which the expression of the child's views is not mandatory should consider this proposition very seriously.

*i. Concerns about the guardian ad litem role.*

Given the focus on the right of the child to express her views, the original CAPTA focus on the guardian *ad litem* now becomes even more problematic. While the CRC certainly does take as a central principle the best interests of the child, the Convention focuses on the expression of the child's views and thus reserves for the representative a role distinct from determining and expressing the representative's view of the child's best interests. Perhaps because the Convention so broadly delegates that job to all other institutions concerning children, the Convention could possibly be construed to reserve for the child's individual representatives the job of expressing the child's views.

If further legal developments make Article 12 binding international law and therefore spell the demise of the guardian *ad litem* role in the United States, it is not clear that much will be lost. If guardians *ad litem* are replaced by children's lawyers empowered to express and advocate for the child's wishes against the ongoing backdrop of a system where every official involved is either partially or totally entrusted with serving the best interests of the child, United States practice would begin to represent what appears to be the CRC's vision: a best interests-oriented *system*, which includes a child representative who will guarantee to the child that her views will be heard.

Lawyers for children, perhaps in contradistinction to other lawyers, have healthy experience and attitudes about losing. It is sometimes the fate of a lawyer for children to advocate vigorously for a result and then be a tiny bit relieved when the result is not achieved. This fate goes hand in hand with the obligation to represent the client whose considered judgment may be a bit impaired. While this is normal for a lawyer for children, the lawyer is required to protect his client from the misgivings and to keep them wholly to herself. I have long argued that lawyers for children, if properly playing an appropriate role, would and should be given a great deal less power and deference than that currently afforded by many jurisdictions to guardians *ad litem* who are cloaked with a halo of a best interests duty. The CRC comports with growing consensus in the United States that the role of the lawyer for a child, when undertaken, should be undertaken in a lawyerly way.

Perhaps it is time to acknowledge that the guardian *ad litem* experiment is over and to accept the emerged international consensus favoring the role of representatives for children who express their wishes in judicial proceedings. As noted in Chapter 2 and in Appendix A of my book,<sup>161</sup> the guardian *ad litem* role has preserved aspects of its origin in English common law, which has disturbing implications for fulfilling a child's rights under Article 12 of the CRC. The original guardian *ad litem*, appointed to help English courts resolve property disputes involving minors, had first loyalty to the court that appointed them, used the representation of the child as a fiction to achieve the joint purpose of preservation of property, and paid little or no attention to a child's subjective viewpoint or expressed wishes. To the extent that the guardian *ad*

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<sup>161</sup> PETERS, *supra* note 122, at ch. 2, App. A.

*litem* experiment in the United States has replicated those central characteristics of its ancient form (duty to the court, not the child; no relationship with the child client; no expression of the child's view), it has proven problematic for empowering children in proceedings in which their welfare is at stake. Through the CRC and the regional conventions, a world consensus suggests that lawyers for children should express their client's wishes in the court and appears to prescribe an end to the guardian *ad litem* experiment.

ii. *Concrete implications of the coming ascendancy of the CRC in child welfare representation.*

The CRC would require the child's voice to be heard in *all* judicial and *all* administrative proceedings in which the child is concerned. The CRC's focus on the best interests of the child as a primary consideration in all legal cases and its simultaneous focus on issues of family integrity and parental rights create an international human rights basis for the ongoing debate in the United States about the child's rights, parental sovereignty, and family integrity.

It is important to note, however, that one very substantial change from American practice would result from the implementation of Article 9 (1), which specifically suggests that the standard for an emergency removal of a child is the best interests of the child. In many jurisdictions currently, the standard is imminent danger to the child or a similar heightened standard with a high burden of proof on the state. Article 9 would represent the substantial change from the American norm.

The coming of the CRC would also resolve issues that have previously been treated as logistical or financial as issues of right and human dignity. Section 3(3), which requires that state parties ensure that institutional services and facilities responsible for the care and protection of children conform to standards established by competent authorities,<sup>162</sup> would clarify the need for standards for representation of children and perhaps begin to resolve the question of whether adequate compensation for lawyers for children can remain purely optional. Article 9(2) would provide "all interested parties"<sup>163</sup> the right to be heard in child protective and other proceedings, probably resulting in enlarged rights of children as parties to proceedings as well as rights of intervention for relatives in these cases. Article 30 suggests that interpreters, again in many jurisdictions considered a luxury for attorneys and courtrooms, would now be recognized as the necessity that they are. American lawyers and scholars should begin studying the CRC in earnest, especially in contexts where American law is inconsistent or confused, both to enforce rights that may already exist as customary international law, and to conform US practice to the strong international consensus on the rights of children.

iii. *Questions remaining about the implementation of Article 12*

This paradigm shift leaves at least two questions unanswered. Article 12(1) stipulates that the child who is "capable of forming his or her own

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<sup>162</sup> CRC, *supra* note 19, at art. 3(3).

<sup>163</sup> *Id.* at art. 9(2).



views”<sup>164</sup> then has the right to express those views in matters affecting him or her, such as child protective proceedings. The questions remain:

1. When specifically is a child considered capable of forming views? Are they capable when they can subjectively express them, or when they have reached a certain age of decision?
2. What of the child who cannot express her views because of infancy, disability and the like?

*b. Implications of the United States Experience for Countries with Systems of Representation for Children*

The United States experience, in which the role of lawyer for children was spontaneously discovered in a multitude of jurisdictions, at once suggests four central lessons for any system undertaking the representation of children. A warm up period of 1) study, 2) clear vision, and consensus-building about the role, 3) training, and 4) coordination among jurisdictions could avert the confusion and chaos of the American experience. The recommendations of study, vision, training and coordination will be addressed in turn.

*i. Study*

Nations undertaking the representation of children pursuant to their international and regional obligations have available a database for study that was not available to the United States and other early systems of representing children. Apart from the United States experience, a number of other nations have substantial experience in representing children, including Australia and the United Kingdom.<sup>165</sup>

In the American context, there are a number of obvious starting points for the study of the role of representing children. The 1995 Fordham Conference, the ABA Standards, the NACC (National Association of Counsel for Children) revised version of those standards,<sup>166</sup> and my book on representing children,<sup>167</sup> along with its appendices, provide ample materials for foreign study. The January 2006 ten-year follow up to the Fordham conference at the University of Nevada at Las Vegas was a critical venue, as are the ongoing NCCUSL deliberations. This law review volume, containing the opening papers and recommendations of the *UNLV Conference*, is an extremely up to date source of study material for any jurisdiction considering the question of both the philosophical and logistical questions of representation in dependency proceedings. The

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<sup>164</sup> *Id.* at art. 12(2).

<sup>165</sup> Katie Pollock, *Child Representation in Australia: Shedding Light on Article 12 of the Convention on the Rights of the Child*, January 2005, (unpublished manuscript on file with the author), available at <http://www.law.yale.edu/rcw/rcw/jurisdictions/oceania/australiaandnewzealand/australia/frontpage.htm> and also <http://www.law.yale.edu/rcw/rcw/jurisdictions/euron/unitedkingdom/frontpage.htm>.

<sup>166</sup> See *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 *FORDHAM L. REV.* No. 4. 1301-23 (1996); *STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES* (1996) available at <http://www.abanet.org/child/repstandwhole.pdf>; *STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES* (NACC revised version, 1999), available at <http://naccchildlaw.org/documents/abastandardsnaccrevised.doc>.

<sup>167</sup> PETERS, *supra* note 111.

2005 snapshot of American jurisdictions offers many(!) different models offered by different states, a myriad of starting places for a foreign nation considering how lawyers should represent children. Undertaking a study of a particular state over time and over its localities may be of particular use. Visitors from those jurisdictions could be invited to discuss their experience on the ground of watching their system develop. The contact person for each state, who usually has been a longtime participant in the system with longitudinal ideas about the development of the system and its future direction, could act as a useful first contact person.

*ii. A clear consensus and vision of the roles.*

The American experience suggests that nations seeking to institute lawyering for children in their jurisdictions require lead time in order to resolve the central problems thwarting quality lawyering for children: clear definition of the role and clear funding for that role to be played properly. During this time of planning and vision, nations should resolve the following questions:

1. What terminology should be used?
2. What does the job of representing the child entail concretely day-to-day?
3. How can we define the role to prevent conflicts or the need for change of personnel once the job is undertaken?
4. Can a set of standards be written to guide lawyers newly entering the field?
5. What are the local ethical rules that dovetail with the job of representing children?
6. How will lawyers be properly compensated for this exacting work?

This section addresses each of these questions in turn to suggest areas of deliberation for the nations.

*1. Choice of terminology.*

Deciding what these representatives will be called is a critical first step in creating a clear vision and consensus about the role. In retrospect, the CAPTA mandate of the guardian *ad litem* greatly shaped and greatly complicated the evolution of the role of representing children in the United States. Looking at Article 12 of the CRC as well as the language of other regional agreements, there is no reason to adopt the guardian *ad litem* terminology and substantial reason not to. The CRC and the regional conventions clearly contemplate that the child's voice and expressed wishes be heard in the proceedings in which she is subject. In fact, more than mandating the existence of lawyers per se, the international provisions focus more on making sure that the child's actual views are heard one way or another. Nothing in the guardian *ad litem* role as conceived in common law requires any kind of faithfulness or focus on the child's wishes.<sup>168</sup> The role of guardians *ad litem*, in common law and as played out in many jurisdictions in the United States in 2005, remains a job whose loyalty is first to the court to assist in determining the best interests of

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<sup>168</sup> The model in this book does require the wishes of the child be stated to the court and be known to the guardian *ad litem* from the beginning, but this requirement was not in any way uniform from the practice of the states as observed in 1996.

the child.<sup>169</sup> Because the question of the first loyalty of the appointed counsel has been an ongoing question in the United States, nations seeking to create a concept of counsel for children would do well to avoid the guardian *ad litem* language altogether.

Similarly, other compromise formulations observed in the United States including law guardian, attorney *ad litem*, attorney guardian *ad litem*, and the like, should all be avoided if the nation seeks to implement the CRC's primary goal of making sure that the child's wishes be known.

## 2. *Concrete thinking about the day to day role of the lawyer.*

For nations that are interested in some version of a guardian *ad litem*, the need for thinking about the job concretely becomes even more important. Because the guardian *ad litem* role tends to be defined extremely broadly (i.e. act in the child's best interests) it would behoove the nations to lay out, in the absence of prevailing ethical rules, a clear roadmap of what guardian *ad litem* representation looks like.<sup>170</sup> Again, the specific questions for the guardian *ad litem*: What if any duty of confidentiality does the guardian *ad litem* have? Does the guardian *ad litem* have a duty to report all matters of interest to the court? If the guardian *ad litem* is a lawyer, what role does the guardian *ad litem* play in court—witness, counsel? Can the guardian *ad litem* bring legal motions and begin or participate in legal proceedings beyond the role of witness? If the guardian *ad litem* is a witness, how is his testimony cross-examined? Discussion of these questions in the early stages of formulating a system will allow the nation states to set their priorities for the role and also problem-solve some of the contradictions that the role entails. In any event, any systems that attempt to implement international obligations through a guardian *ad litem* or a modification of the role of counsel for children must ensure that the role meets the fundamental requirement of the CRC: to ensure that any child who is capable of forming a view has a voice actually heard in the proceeding.

## 3. *Caution about multiple roles.*

American jurisdictions have often required children's representatives to play multiple roles. Two of the most common multiple roles are:

1. Asking a single representative to be both lawyer and guardian *ad litem* for the child;
2. Asking one lawyer to represent a sibling group.

Both raise special concerns for a clear vision of the child representative role. The combined lawyer-guardian *ad litem* raises some inherent contradictions in the job. For instance, a guardian *ad litem* is in many jurisdictions a witness who investigates the child's best interests and reports to the court. That

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<sup>169</sup> PETERS, *supra* note 122, app. A at 535-55; see, e.g., *In re Tayquon H.*, 821 A.2d 796 (Conn. App. 2003), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/am\\_n/usa/connecticut/conn\\_in\\_re\\_tayquon\\_h.pdf](http://www.law.yale.edu/rcw/rcw/jurisdictions/am_n/usa/connecticut/conn_in_re_tayquon_h.pdf).

<sup>170</sup> A number of American examples can offer beginning templates for this kind of codification. See, e.g., New Mexico *infra* note 175; NAT'L CASA ASS'N STANDARDS FOR NAT'L CASA MEMBER PROGRAMS (2002), available at <http://www.casenet.org/Old%20logo/ncasaa-standards-for-member-programs-10-02.pdf>.

would lead in some cases to the guardian *ad litem* being a witness cross-examined by other parties. In American jurisdictions there are prohibitions on lawyers being witnesses in a number of circumstances.<sup>171</sup> In addition, the rules of confidentiality, extremely strict for lawyers in the United States, are often unclear for guardians *ad litem*. Many guardians *ad litem* have no duty of confidentiality to their clients. In contrast, the lawyer confidentiality is extremely strict. For example, Model Rule 1.6 extends the duty of confidentiality to all information related to the representation except a handful of narrow exceptions, including “to prevent reasonably certain death or substantial bodily harm” and “prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services.”<sup>172</sup> Therefore, a guardian *ad litem* may feel torn between his duty to assess a child’s best interests and provide all relevant information to the court and his duty to keep confidential information learned in the course of his representation. Finally, joint lawyer-guardians *ad litem* have a hard time introducing themselves to even high capacity children. Do they introduce themselves as someone who will try to help the child get what she wants or who will do what’s in her best interests or both? The intricacies of a dual role are hard for the adult lawyer (much less the child client!) to understand.

There are natural pressures on a system to entertain a dual role. Assigning the role of lawyer and guardian *ad litem* if a system decides that both should be played appears to save half the amount of money that could be spent otherwise. Assigning one lawyer to represent a group of five siblings rather than assigning five lawyers, one to each child, has obvious, but deceptive, economies. In some cases, it is true, the siblings will have converging interests which a single lawyer can represent. But, where even one sibling’s views and wishes diverge from the others, the lawyer will have begun at least one, and perhaps five, confidential relationships which may all have to be terminated. The cost of sending a single lawyer out to do multiple jobs almost as a scouting party and then having that lawyer withdraw in favor of the proper number of lawyers takes a toll on the child client. Most children have never had a lawyer before and are understandably reluctant to trust a new unfamiliar adult with their secrets. Once a child has done that, it is quite jarring for that client to be told that because of the nature of what they told the lawyer a different person must come in to do the job. Systems should think very carefully about whether using lawyers in multiple roles as scouting parties in this way is a false economy, saving on the bottom line for the system, but at the expense of a fragile client’s understanding of their professional service options.

#### 4. *Memorialize a clear set of standards for the child’s representative.*

In jurisdictions in which the guardian *ad litem* role is not assigned, the next logical default starting place would be the local rules of professional con-

<sup>171</sup> MODEL RULES OF PROF’L CONDUCT R. 3.7 (2002), available at [http://www.abanet.org/cpr/mrpc/rule\\_3\\_7.html](http://www.abanet.org/cpr/mrpc/rule_3_7.html); MODEL CODE OF PROF’L RESPONSIBILITY DR 5-102 (1980), available at <http://www.abanet.org/cpr/ethics/mcpr.pdf>.

<sup>172</sup> MODEL RULES OF PROF’L CONDUCT, *supra* note 171, at R. 1.6; see also MODEL CODE OF PROF’L RESPONSIBILITY, *supra* note 171, at DR 4-101.

duct for lawyers in all settings. The American jurisdictions have two sets of rules, the Model Code of Professional Responsibility and the Model Rules of Professional Conduct, each of which has a particular rule to guide lawyers representing clients under any disability or with any diminished capacity, including minority (i.e., being underage).<sup>173</sup> It might be useful to consult members of the bar who have practiced under this rule in other contexts, for instance, in representing clients with psychiatric or intellectual disabilities. The central functional questions are: How can the role be articulated to relieve the lawyer of contradictory imperatives, loyalty, and ethical duties in their representation? How specifically will the issue of advocating for wishes that might in some way appear to jeopardize the client be resolved?

Whatever decisions are finally made about the proper role of the child's representative, clear guidelines available to all who undertake the role can avoid innumerable problems of role definition and interpretation later on. Models like the ABA standards or the NACC revised version of those standards, the recommendations of the Fordham conference from 1995<sup>174</sup> or various state statutes which lay out the specifics of the role<sup>175</sup> can be of enormous use to practitioners and judges in remote areas who are not able to be part of the debate that gave rise to the representative role that a nation designs. Such codification can also encourage scholarship among the practitioners and academicians in the field about the interpretation of individual provisions and frame the ongoing debates about proper implementation of the role as defined. Finally, codification can resolve some of the troublesome issues on terminology which create problems in interpreting and discussing issues of the child representation across national and other jurisdictional lines.

##### 5. *Related local ethical rules.*

If lawyers are called upon to do this work, designers of the child's attorney's role must carefully examine the local ethical rules for lawyers. The American experience suggests that lawyers asked to diverge from the lawyer's codes encounter significant confusion in the performance of their duties.

##### 6. *Ensuring adequate compensation.*

In the preparation, enunciation, and execution of the vision of the proper role for the child's representative, available state resources are a significant factor. Funding issues directly impact what parts of the role will be played. For instance, many lawyers for children have found that proper advocacy for a child involves not only advocacy in court appearances but in administrative

<sup>173</sup> JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (3d ed., forthcoming 2006) (manuscript of chap. 2(a), on file with author).

<sup>174</sup> For the ABA and NACC revised standards and the recommendations of the *Fordham Conference*, see *supra* note 166.

<sup>175</sup> See, e.g., Guardian ad litem (GAL) for the Child, New Mexico, CHILD WELFARE HANDBOOK ch. 6 (2003) (Corinne Wolfe Child. Law Ctr. & the N.M. Jud. Educ. Ctr. at the Inst. of Pub. Law, U.N.M. Sch. of Law), available at [http://jec.unm.edu/resources/benchbooks/child\\_law/ch\\_6.htm#top](http://jec.unm.edu/resources/benchbooks/child_law/ch_6.htm#top); VIRGINIA, STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN (2003)), available at [http://www.courts.state.va.us/gal/gal\\_standards\\_children\\_080403.html](http://www.courts.state.va.us/gal/gal_standards_children_080403.html)).

proceedings at the local child welfare bureaucracy.<sup>176</sup> Lawyers representing children over a long period of time, whether they are in long term foster care or some other extended status, find that attending these six month reviews are extremely helpful and efficient ways to keep in touch with a client and a client's major service providers, and get a snapshot of the child in context over time. However, some restrictive compensation systems do not compensate lawyers for out of court time. Similarly, many lawyers representing children in a wide range of proceedings have found that advocacy for these children in related educational and special educational proceedings would be extraordinarily useful for resolving the children's overall challenges. Nevertheless, systems that do not compensate court appointed attorneys for attendance at these important educational planning meetings create a disincentive for lawyers to do a part of their job that would be constructive.

The question of funding has dogged American lawyers for children from the beginning and promises to be a substantial issue for any nation seeking to create lawyers for children. Adequate compensation for lawyers is a must if the roles carefully envisioned are to be properly played. Of course, there is no desire to disproportionately compensate lawyers; all child welfare professionals must be adequately compensated for their work. A look at compensation during the vision part of this process is critical to make sure that the role designated is consistent with the compensation allotted to the lawyer.

The Yale researchers compiled the result of our fifty-six American jurisdiction survey research as it revealed information on compensation in 2005 (See Appendices C and D). In general, it appears that: 1.) compensation for attorneys representing children remains low (between \$40 and \$70/hour); 2) many states continue to rely on attorney and lay volunteers, including CASA; and, 3) compensation is a volatile issue in a number of states. Extremely basic questions regarding compensation remain unresolved in many jurisdictions thirty years after CAPTA, including the amount of pay, the court's jurisdiction to augment statutory rates, which legal services qualify for compensation, and who, if anybody, will pay attorneys/guardians *ad litem*; many jurisdictions' statutes provide for assigned counsel without articulating a mechanism for payment. In three states, cases have been brought challenging the statutory compensation scheme on constitutional grounds; while the New York case was successful on that score, the Arizona court upheld the constitutionality of a relatively low system of compensation and the Connecticut case was dismissed on the grounds that the plaintiff did not have standing to bring the claim.<sup>177</sup>

The outline of troubles raised by inadequate funding in various jurisdictions in the United States offers a cautionary tale for new jurisdictions allocating funds for the purpose of fulfilling article 12 of the CRC. Our experience suggests that, at minimum, the following issues must be resolved:

1. Legal provisions must clearly allocate funds for compensation of advocates and clearly designate an agency responsible for compensating assigned counsel.

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<sup>176</sup> For instance, in the United States, regular six month meetings for children in foster care called administrative case reviews are required.

<sup>177</sup> *N.Y. County Lawyers' Ass'n v. State*, 763 N.Y.S.2d 397 (N.Y. Sup. Ct. 2003); *Juvenile Matters Trial Lawyers Ass'n v. Judicial Dept.*, 2005 U.S. Dist. LEXIS 5067, 4-5 (D. Conn. 2005); *Haralambie v. Pima County*, 669 P.2d 984 (Ariz. Ct. App. 1983).

These same statutes should either include or clearly reference the provisions that set pay rates and designate who will pay. Maximum per case compensation limits should not be set. These disadvantage indigents because government attorneys do not operate under the same resource constraints. Also, this gives the appointed attorney financial incentives to limit or shortcut their representations.

2. Attorneys' costs should be generously reimbursed, including expert witness fees and fees for essential services, including interpreters, consulting mental health professional, and the like.
3. Compensation rates should, to some extent, reflect the rates earned by private attorneys and should take into account the cost of overhead.)

### *iii. Training*

Once the role is clearly envisioned, appropriate methods of training children's representatives should be investigated. In the United States, training programs run by organizations devoted to representing children, continuing legal education programs sponsored by state bar associations, and clinical legal education at law schools have provided some of the necessary training for people undertaking the role of representing children. Nevertheless, there is even more training as needed, and as underscored by recent CAPTA amendments which require proper training for lawyers serving in the guardian *ad litem* role.

What are the elements of training to be a lawyer for children? First, the lawyer for children should be an excellent lawyer. The lawyer for children should be trained in good lawyering, including basic interviewing, counseling, negotiation, and trial practice skills since most child protection work in the United States model will take place in a litigation context. Training in alternative dispute resolution is critical given the ongoing attempts in many jurisdictions to seek mediation as an alternative to contested litigation. The child's lawyer also needs excellent training in professional responsibility even apart from special rules relating to the representation of clients with disabilities.

In addition to excellent basic training, the child's lawyer requires certain additional skills. Interviewing children is a critical realm of training, especially for adults whose most recent encounters with young children have been in the parental role only. Child interviewing begins with thinking about how to explain the lawyer's role in a way that is understandable to the child. Explaining the players in the case, the role of the child's lawyer, and the confidentiality of the relationship is critical at this phase. It is often critical for the lawyer to distinguish herself from the local child welfare system. In many cases, the child's lawyer may look very much like the representatives of the child welfare system and is an adult stranger coming and asking similar questions. Training in the many dimensions of introducing the lawyer's role, asking children questions to put them at ease, listening for useful and reliable information, explaining the confidential nature of the relationship, and counseling children through the difficult legal proceedings is critical for any lawyer for children.

Training can also offer education in the substance of child welfare law and case developments in the jurisdiction. Training could also include issues of child development, helping lawyers learn about the unique needs, both in terms of the child's psychological capacity and in terms of the ramifications of actions in the case, of infants, school age children, latency age children, and

adolescents as distinguished from each other. It is important of course that these developmental milestones not become set in stone in the lawyers mind, but serve as guideposts for preparing to meet each child at the outset.

While training is certainly critical at the beginning of undertaking the role of representing children, it is perhaps most useful as the role continues. Training opportunities within law firms and organizations provide an arena for debriefing, problem solving, and discussion of the nuances of the role. Continuing legal education also offers lawyers an opportunity to keep abreast of changes in the field and new developments in both the legal and related interdisciplinary literature. Training also allows busy practitioners a chance to step back, meet other colleagues, and reflect on the endless nature of their work. As such, training and group discussion is a critical hedge against vicarious traumatization and burnout, both occupational hazards for lawyers for children.<sup>178</sup>

#### *iv. Coordination*

If the proper study, vision, and training are complete, the problems of coordination should be much less difficult for international communities than in the American experience. The lack of common terminology, the lack of vision about the lawyer's role, and the lack of forums to properly prepare lawyers for the unique work of representing children have all made coordination extremely challenging in the United States as detailed in Part III.B.2 above. With a consensus about terminology and role and some time for study and training, coordination can be kept up more easily, through continuing legal education forums, conferences, and a vigorous and healthy academic and practical debate among those in the field.

International conferences on representing children may face issues of coordination that have plagued the American states. These coordination efforts can be aided by the creation of glossaries, indexes, or useful written materials and charts to explain the different terminology and jurisdictions and to give an outline of the practice in the various jurisdictions as people try to speak across national lines. As seen from the American experience, without coordination within jurisdictions, the practice of child representation can quickly spiral downwards into chaos. Without common terminology, a clear vision of the role, and an ability to train lawyers to do the role as envisioned, the descent into the chaos of the American experience is complete. While in any given jurisdiction or locality the role might be somewhat coherent, the ability to speak across local or state lines is extremely impaired. On the other hand, the coordination would be greatly increased and becomes much less of a problem if the study, vision, and training requirements are met.

#### IV. CONCLUSION

The worldwide survey of whether and how children's voices are heard in child protective proceedings has yielded fascinating data that is just beginning to be studied. On the international side, it appears that nearly three quarters of the world's children live in jurisdictions which either have no child protective

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<sup>178</sup> PETERS, *supra* note 122, at ch. 9.



proceedings or which have such proceedings with no provisions for the child's voice to be heard. Over one quarter of the world's children may live in jurisdictions with no child protective proceedings at all. Roughly fifteen of the world's children live in jurisdictions which provide for representatives for children in these proceedings. In the United States, while the laws provide for representatives for all children, many of those representatives do not focus on expressing the child's wishes to the court, and no two American jurisdictions have identical laws concerning child representation in these proceedings.

American practitioners, operating in relative isolation within their localities, have much to learn from the international consensus on the right of the child to be heard in proceedings which concern her, as well as from the practical implications of the rest of the CRC. It is time for American jurisdictions to focus on full expression of the child's voice, to treat lawyers for children as instruments of their clients' international human rights, to define the representative's role thoughtfully, and enable her to fulfill that role by compensating her properly. Meanwhile, international governments and practitioners can use the data collected from the dozens or even hundreds of U.S. experiments in representing children in child protective proceedings to conduct the study, role clarification, training and coordination absent to American practitioners in their early years representing their young clients. Although the United States experience has focused on child representation, it is also rich in observations and study about the method chosen by a majority of countries who do currently provide for the child's voice to be heard: the direct participation of the child in child protective proceedings.

The worldwide consensus that children be able to express themselves freely in proceedings that intervene into their family lives is loud and clear, from one international convention, to four regional conventions, and three decades of American representation of children. The survey reveals, however, domestically and internationally, a good deal of confusion to be resolved and progress to be made. While international audiences can redeem the American experience by avoiding some of our early mistakes, they can also inspire our current practice with a recommitment to the critical human rights implicated in our daily work. As other nations embark on a path we have recently traveled, may our international colleagues benefit from our successes and mistakes, as we use the thoughtful human rights lens to sort through the chaos of our early practice. It is imperative that we resolve professional confusions, resource limitations, and procedural provisions carefully and soon, on behalf of each child needing state protection and wishing to be heard, wherever she is on the planet.

## APPENDIX A: ACKNOWLEDGMENTS TO WEBSITE

The jurisdiction research reported in this website was compiled by thirty-seven Yale Law Students and affiliates between July 2004 and December 2005 under the supervision of Professor Jean Koh Peters. These researchers were: Rebecca Borné, Will Bowen, Elaine Chao, Melissa Cox, Julian Darwall, Medha Devanagondi, Jamie Dycus, Nicole Estey, Eli Ewing, Patrick Geary, Ezra Goldschlager, Heloisa Griggs, Richard Herbst, Raquiba Huq, Elaine Kim, Zoë Klugman, Irina Manta, Geneva McDaniel, Mercedes McFarland, Samuel Merritt, Eugene Nardelli, Katie Pollock Ariella Puterman, Rahael Seifu, Nikhil Seshan, Theresa Sgobba, Vanita Kalra Shimpi, Christine Shin, Boris Sokurov, Sara Sternberg, Elinor Sutton, Samantha Tweedy, Michael Umpierre, Peter Vassilev, Kathryn Vogel, Rebecca Webber, and Bree Grossi Wilde. Each of these researchers spent dozens of hours per jurisdiction seeking to find everything that could be found within our internet, library, and personal resources pertaining to the law, and in some cases also the practice, relating to how children's are heard in child protective proceedings. Their work is the heart and soul of this website. I am particularly grateful to Zoë Klugman who researched 34 countries; Ariella Puterman who researched 14 countries; and Jamie Dycus who researched 11 jurisdictions; and to Ezra Goldschlager, Eugene Nardelli, Samantha Tweedy, and Raquiba Huq, who shouldered extra work in the eleventh hour to help us meet our deadline. I thank Elaine Chao for her work on the two state compensation charts. I also thank Martha Pollack, upon whose 1996 research we built our U.S. survey results for 2005.

Their research was supported by the inexhaustibly generous and resourceful staff of the Lillian Goldman Law Library at the Yale Law School, who supported us collectively and individually with an internal research website, individual meetings, attendance at our seminars, and imaginative use of all available resources, including their own personal contacts. I am particularly grateful to Mark Engsborg, Teresa Miguel, Dan Wade, Stephanie Davidson, Scott Matheson, Lauren King and Gene Coakley for their day-to-day professional support of the student researchers. In addition, we thank Dorothy Woodson, curator of the Africana collection at the Sterling Memorial library at Yale University for her individual help, student by student, as we struggled with the African research. Without the depth of resources offered by these generous people, the extraordinary law library collection, and its collaboration with other libraries, this project could never have gotten off the ground.

Four students provided heroic integrative and oversight support to the project and served as my closest colleagues throughout the project. David Bartels was the first to suggest considering updating our 1996 American research, and from the moment the website was planned until he finished taking the bar in August of 2005, devoted sixteen months of substantive and technical planning to the website. He and Bill Fray believed in the website from the start and are surely as responsible as anyone for its creation. Will Bowen also lent his many enthusiastic resources from the inception of the project, creating the massive Excel spreadsheet that organized our work from day one, doing an initial review of all 194 jurisdictions reports to the Committee on the Rights of the Child taking over from David as the substantive and technical overseer of the

project in August of 2005, and doing daily technical work and management alongside his substantive work in the last months. Will and Vanita Kalra Shimpi oversaw the work of taking the students's international research, creating a uniform presentation on the website, and compiling the massive amounts of data into the summary charts that appear under Research Summary. Bree Grossi Wilde single-handedly managed the coordination, finalization and charting of the fifty-six American jurisdictions and designed the U.S. charts which appear under Research Summary. Each one of the four was a treasured interlocutor to me on the deepest dreams and largest conclusions of the project. Had these four students not cared for the project as if it were their own, no website would be here before you. I wonder if I will ever again work again with a team with such innate talent, selfless devotion to a project and the children behind it, thoughtful ideas and endless good cheer.

Keith Tsang, Luis Angulo, Tara Singh, Debbie Tropiano, Eugene Nardelli, Raquiba Huq and Maria Chvirko labored mightily in the final days of November 2005 to scan, clean and link documents and complete the technical jobs so that the website could be up and running by its launch date of December 1st. Erica Ross, Francine Bourgeois, and Shan Tao also spent many hours scanning and preparing the documents linked to the website.

We are immeasurably indebted to contact people from around the world who took time from their important work on behalf of children in many different states and countries to speak to us and offer quality control on our research. For many of the jurisdictions these contact people identified on the jurisdiction's front page. We are particularly indebted to Jennifer Renne and Howard Davidson of the ABA Center for Children and the Law; Funke Ekundayo; Shirley Schroder of the University of Pretoria Academic Information Service, Oliver R. Tambo Law Library; Nabil Seyidov; Adem Arkadas; Jeanie Ollivierre; and Monica Eppinger. Marv Ventrell of the National Association of Counsel for Children was the first to see the data and give us helpful insight and encouragement in a trip to New Haven in mid-November 2005. In addition to these people, our work on 250 jurisdictions has left us in the debt of hundreds of people we have consulted in the course of finding the text of the laws, and knowledgeable people in other jurisdictions. These people included friends of family of the researchers and librarians, personnel at NGO's around the world, personnel at consulates and embassies for the country jurisdictions, and many others identified by the ingenuity of our research staff. We are grateful to all who put aside time in their important work to help us develop this snapshot of worldwide provisions for children's voices being heard in these proceedings.

All research is made possible by the generosity of the Yale Law School. Deans Anthony Kronman and Harold Hongju Koh supported the project from its inception, and Associate Dean Ian Solomon and Mark Templeton arranged the financial support for the project. Dean Mike Thompson was instrumental in arranging for the logistical needs. Deputy Deans Ann Alstott and Dan Kahan generously made available the research assistants needed for the project. Susan Sawyer, Associate General Counsel at Yale University, offered invaluable legal counsel as the website was finalized. Law school administrative staff Judith Calvert, Beth Barnes, Cindy Breault, Pat Gunnoud, Jan Conroy, Jonathan Weisberg all helped with critical needs in the website's development.

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All of this work would have been for naught, had it not been for an extraordinary team of IT professionals and talented students who turned the raw research into a website usable globally. Yale Law School's IT department surpasses its extraordinary ability only with its extraordinary patience and kindness. Will Bowen, David Bartels, Uyen Lee, and Keith Tsang masterminded the design of the website you are now using. Uyenii, who worked on the project for over a year, also created a logo that captured both the global nature of the project and the beauty of the children we hope it may ultimately serve. Donna Lee, Kevin Bailey, Bill Fray, Dan Griffin, Brian Pauze, John Davie, Abigail Grow and Susan Monsen provided tremendous backup support to the web design team that put the website together.

I am personally indebted to Steve Wizner, Martha Pollack, Sue Bryant, Mark Weisberg, Alice Dueker, Gerry Hess, Marjorie Silver, Jackie Shapiro, Laurie Pearlman and Ron and Doreen Cooke for their personal and professional encouragement throughout the project. Annette Appell and Susan Brooks organized the conference that gave this project its forum and its deadline; Dennis Leski, my editor at LexisNexis, supported this research with his customary enthusiasm and resourcefulness. I also thank my mother and parents-in-law, Hesung Chun Koh, Ellen Ash Peters, Phillip Blumberg, Robert Peters and Cyvia Peters, for their endless support and love. My children, Liz Peters and Chris Peters, helped me think through the idea of the website when it was first conceived and lived with it cheerfully and patiently every day for a year and a half. Jim Peters has believed in my work on representing children since my first days as an attorney at the Legal Aid Society-Juvenile Rights Division in Manhattan in 1983 and sustained me every day of this project with his humor, his faith, and his excellent company.

## APPENDIX B. Country-by-Country

Country	Article 12 Reservations and Declarations	Regional Agreements	Required Model(s)	Discretionary Model(s)	Current Description of Model
<i>Afghanistan</i>	Declaration reserving the right to express reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect.		V		Afghanistan has a new constitution but very few laws were enacted since the state is still in transition. There is no legislation on child proceedings. Muslim councils have community responsibilities in family related issues.
<i>Albania</i>			IV	I	In Albania, a parent may be subject to proceedings that may temporarily or permanently strip him or her of parental authority by reason of family abandonment or should he or she commit a criminal offense (e.g., battery) against his or her child. Children whose parents have lost parental authority may be placed under guardianship while in state custody. During the course of abuse, neglect, or removal proceedings, the opinions of children aged ten and older may be sought by the court under the Civil Procedure Code, though notably no avenues for expression are available for children under ten.
<i>Algeria</i>		ACRWC	IV and I?		Children must be appointed legal guardians, but there is no law requiring the guardians to present the views of the child. Children over thirteen must be able to express themselves in specific proceedings, particularly they must make the decision of whether to remain in foster care or return to their parents if the parents request to have the children back.
<i>Andorra</i>			IV		No provision in Andorran law grants children a right or opportunity to be heard in child protective proceedings, as noted by the United Nations Committee on the Rights of the Child.

<i>Angola</i>		ACRWC	IV		The Angolan legal system does not provide for the right of the child to be heard in protective proceedings. A special court section handles matters involving minors, formed by a specialized judge and two experts charged with ensuring the protection, assistance, and education of the child. The prosecutors acting in this separate court are responsible for defending the rights and advocating on behalf of the child. Parents, guardians, anyone with a minor in their care, and a minor over the age of sixteen can select a lawyer to represent their interests in the proceedings.
<i>Antigua and Barbuda</i>			I?		The laws dealing with child protection specify that the child's wishes in protective proceedings are to be taken into account and given due weight in accordance with his/her age and maturity. There is no explicit provision detailing how these views are to be expressed and there is no provision for the appointment of a representative.
<i>Argentina</i>			IV		In the federal legislation, a child has standing to bring a case by making a denunciation to the attorney general. In court proceedings, the child is represented by a minor's counselor who also represents the state and is not under any obligation to express the child's views to the court. Argentina has a federal system, however, and some provinces (including the city of Buenos Aires) have laws that require children's voices to be heard.
<i>Armenia</i>			I		A child has the right to be heard during deliberative proceedings, and to express his opinion in court. The opinion will be considered according to age and maturity, except that a court is obliged to consider the opinion of a child aged 10 and over.
<i>Australia</i>			I and II and IV	II	Children have the right to express their views in child protective proceedings, however the mechanism through which that is accomplished varies by state. Some states heard the child's wishes directly while others hear it through a representative and not all representatives are required to express the child's views.

<i>Austria</i>		ECECR (signed but not ratified)	I and III?	<p>Children over 10 years are usually heard by the guardianship court, the youth welfare authority, a court expert or existing institutions of the Juvenile Court assistance. Those under 10 years are heard by the child psychologists of the Youth Welfare Office or in some other suitable way. A hearing will not be held if it endangers the well-being of the child or if, in view of the age and capability of the child to understand the matter on hand, a well-founded opinion cannot be expected. The law does not specify in what form psychologists or other agents should communicate a child's statements to the court or what criteria should be used to determine that no well-founded opinion can be expected from a child. Further, children above the age of 14 have independent capability to act in family courts in proceedings concerning their care, upbringing, or the right to personal contact.</p>
<i>Azerbaijan</i>			I and III?	<p>Every child with capacity to form his own views has a right to express his opinion in court or administrative proceedings but only from the age of 10 years old is the court obliged to consider this opinion. The Commissions on Minors' Affairs and the Protection of the Rights take place as the child's representative when his rights are infringed or when his interests contradict those of his parents, and every child can apply to them. Children of 14 and older can independently apply to courts. Some proceedings are decided by the Commissions. The commissions have a dual part of representing the child and protecting his interests.</p>
<i>Bahamas</i>			IV	<p>The Juvenile Court is directed to consider the welfare of the child in child protection proceedings, but the governing statutes do not specifically mention the child's participation or representation.</p>
<i>Bahrain</i>			V?	<p>The majority of Bahrain's population is subject to the Sharia courts which rule based on Islamic Law. Islamic law is not codified and does not speak directly to giving the child the opportunity to be heard, thus there is no guarantee that children have the right to express their opinions in protective proceedings. There are secular civil courts which rule on the cases of non-Muslims but we have been unable to find any laws giving children the opportunity to be heard in protective proceedings. Indeed we have been unable to confirm the existence of protective proceedings.</p>

<i>Bangladesh</i>		CORAP CWSA	IV	I?	The law implies that children are meant to attend proceedings in which they are involved unless the court deems their presence nonessential. However, there is no further provision describing if and how children's wishes are voiced or heard during the proceedings.
<i>Barbados</i>			V		Barbados has a Child Care Board that receives reports and is authorized to remove and place children in cases of abuse and neglect, but there is no evidence of proceedings dealing with child protection other than criminal abuse prosecutions.
<i>Belarus</i>			IV		The issue of child protection will typically be solved either through semi-formal measures taken by social agencies or through parental rights termination proceedings in civil courts. Children do not have the right to a court-appointed lawyer, but may apply for help from a local NGO (which are scarce). The child has the right to appeal to courts when his interests are violated (such as when his parents misuse their parental authority) after the age of 14, or to local social agencies (whose participation in such proceedings is mandatory) dealing with child protection before that age. No mechanism is in place to ensure the child's views are heard.
<i>Belgium</i>			I and II?		Every child involved in a protective proceeding has a lawyer appointed for her. However, the law does not explicitly state that the lawyer must convey the child's opinion. The Youth Court is required to hear the views of children aged twelve and over. The Committee on the Protection of Youth is the local organization charged with intervening when the welfare of a child may be endangered.
<i>Belize</i>			III?	I	The law states that courts may place children and youth involved in protective proceedings in the custody of the Belize Ministry of Human Development (MHD), the national child welfare agency. The law mandates the MHD to interview children and consider the wishes of the child, given the child's age and understanding, in its decisions. The law also requires the court to hear the wishes of the child, given the child's age and understanding. Advocates report that in practice all children older than seven are permitted to speak in court.
<i>Benin</i>		ACRWC	I?		Tribunals conduct child protection sessions, and children are provided the opportunity to be heard, as a result of the primacy of the Convention in national law.



<i>Bhutan</i>		CORAP CWSA	v		The government has been working with UNICEF to provide needy children with medical care, food, clean water, and shelter, but there is no child protection system, formal or otherwise and no child protection legislation.
<i>Bolivia</i>			I and II?		According to legislation, free legal assistance must be offered to any child who needs it and every child must be heard as a function of their age and maturity. Legal aid is obtained through the Office of the Defense of Children and Adolescents or an ex officio lawyer. Legislation does not specify if the legal aid must represent the child's viewpoint. In practice, all adolescents are heard in proceedings, but children are only heard in complex cases. Also, while many children do receive legal aid, the more rural areas do not yet have legal services available.
<i>Bosnia</i>			II		In Bosnia, the child has a right to express its opinion, to ask for the protection of his or her rights in front of public bodies. In child protection cases, the child has a right to a special guardian in cases mentioned in this law, and that this guardian is named by the guardianship authority or the court. The guardian should consult the child in his/her care regarding any matter that the child is capable of understanding.
<i>Botswana</i>	"[R]eservation with regard to the provisions of article 1 of the Convention [definition of child] and does not consider itself bound by the same in so far as such may conflict with the Laws and Statutes of Botswana."		v		There seems to be no formal child protective system in Botswana. Although there is an NGO that investigates alleged/potential child abuse; we have not never heard of children being involved in legal proceedings, nor being removed from their parents' homes.
<i>Brazil</i>			I? and II		In Brazil, a representative of unspecified type is mandated in juvenile court proceedings for children under 16, while those 16 to 21 will be assisted by their parent or guardian. A separate provision states that a child may have a lawyer and that having one is suggested (and free to those in need). When a court is contemplating placing a child in foster care the court "will", "whenever possible", hear the child or adolescent and consider his opinion. Finally, for any hearing regarding change of custody "it is obligatory" that the court hear the child "provided that it is possible and reasonable."

<i>Brunei Darussalam</i>			IV?	Though the relevant legislation in Brunei Darussalam does not explicitly state that the child has a right to express an opinion, it does mandate the appearance of the child before the court. In making a decision, the Magistrate must regard the welfare and best interests of the child as the paramount consideration. The Action Team on Child Abuse is in charge of offering services and protection to families and children, and appointed "protectors" act as case-workers.
<i>Bulgaria</i>			I	A child has the right to freely express his/her opinion in administrative or court proceedings. He/she may choose to be accompanied by a parent, guardian, or other person. A social worker from the Social Assistance Directorate is also assigned to accompany the child.
<i>Burkina Faso</i>		ACRWC	V	There are no child protection proceedings defined as such in the law, however courts do sometimes modify parental authority. This is most common in the context of a criminal trial of a parent. There is a strong tradition that children must not speak in court regarding parental authority.
<i>Burundi</i>		ACRWC (ratified, not signed)	I?	According to the law, tribunals hear child protection cases. Tribunals rarely function in this capacity and the procedure is undefined by law. Despite the Convention's primary status in national law, thus theoretically giving children an opportunity to be heard in child protective proceedings, in practice children are generally not given the right to be heard.
<i>Cambodia</i>			V	There are no laws affording the opportunity for the child to express his views in child protective proceedings nor have we found evidence of formal child protective proceedings.
<i>Cameroon</i>		ACRWC	IV	There are no statutory provisions requiring that a child be given the opportunity to be heard in child protective proceedings. Cameroon has stated that in practice the views of children are often taken into account, either directly or by representation (parent, guardian, legal representative), in legal and administrative proceedings, as in the case of the award by the court of custody of the child in divorce or separation proceedings, in marriage and in hearings in the Council Chamber. No mention is made of whether the child's views are taken into account in practice in child protective proceedings.

Canada			II and IV?		In Canada, child abuse and exploitation are prohibited by the Criminal Code. However, all child protection legislation that permits intervention to ensure children's safety and welfare is done at the provincial/territorial level. In Alberta, the province we surveyed for this study, where an application is made for a supervision order or a temporary or permanent guardianship order, the Court may direct that the child be represented by a guardian if the child or the guardian of the child requests that the court do so and the Court believes that the interests or views of the child would not otherwise be adequately represented.
Cape Verde		ACRWC	I and IV		Decisions regarding matters affecting children are made by legal representatives or the appropriate legal institutions taking into account the best interest of the child. When a conflict of interest between a child and parent is to be resolved by a public authority, the minor is to be represented by guardian <i>ad litem</i> appointed by a competent tribunal and there is no requirement that the child's view be expressed. However, where there is disagreement between parents concerning issues relating to security, health, education, and change in residency location, a court should hear children over twelve years old.
Central African Republic		ACRWC (signed not ratified)	IV		There are child protective proceedings, but children are not permitted to express their views. Children are considered to not have their own views, beyond what their parents believe is in their best interests.
Chad		ACRWC	II?		Children are entitled to be represented by an ad hoc court-appointed administrator in cases where their interests conflict with those of their parents. It is unclear whether the representative represents the views of the child. The law allows for the child to be removed from the home if his health, morality and education find themselves gravely compromised. There are no courts or judges that specialize in child protective proceedings though, which has raised concern on the part of at least one NGO.
Chile			IV	I	Chile's statutes state that the children's court judges should hear from the adolescent or child "when it is deemed convenient." In such cases it is likely that the child would speak directly to the judge because the same provision states that legal representatives are not necessary. The judge plays the role of investigator and adjudicator. A recently formed state agency describes its role as the "legal representation" of abused children, representing their best interests to the courts.

<i>China</i>			*	<p>According to their report to the Committee on the Rights of the Child, when a child is involved in a legal proceeding, he or she may explicitly express his or her views directly to the judicial authorities. Furthermore, the child's legal representative, whether it is his or her relative or agent ad litem, is required to attend proceedings to ensure that child has available assistance for exercising his or her legal rights and that his or her views are expressed in their entirety. If the minor is involved in an adoption or divorce proceeding, the court will hear the views of the minor if he or she is over the age of ten, and must take them into account. We have been unable to independently confirm the existence of these rights or the existence of child protective proceedings.</p>
<i>Colombia</i>			I or II	<p>In Colombia, legislation provides for all children to have the right to express their views in judicial proceedings that affect them, either directly or through a representative called a Family Defender.</p>
<i>Comoros</i>		ACRWC	V	<p>Comoros does not guarantee the child's right to express his opinions, neither in the family nor in court, because of traditional perceptions on the role of child in society. There also does not seem to be a formal child protective system.</p>
<i>Congo</i>		IV		<p>The Republic of Congo's 1992 Constitution both explicitly calls for the realization of commitments to international treaties, specifically including rights thereby granted to women and children. The Constitution also calls for putative ratified-treaties to be reviewed for constitutionality before their passage. Congo ratified the CRC in 1993. Since the Convention's requirements are now integral parts of the Constitution, Congo's laws are highly compatible with Article 12. In practice, traditional values are still widespread and in part cause many children to not have the opportunity to express their views.</p>
<i>Cook Islands</i>			*	<p>We were unable to locate much of the law on the Cook Islands and therefore were unable to confirm whether children have the right to be heard in child protective proceedings. It is unclear if child protective proceedings exist or if the only remedy for child abuse is criminal sanctions.</p>

<i>Costa Rica</i>			I and III		The law guarantees children the right to express their views in any judicial and administrative proceedings that affect their lives. In addition, children have the right to representation in all matters where their rights are implicated. In child protective proceedings, the Costa Rican national child welfare agency, the Patronato Nacional de la Infancia, is the primary provider of such representation. The law also gives youth aged older than 15 the discretion to act as parties in these proceedings without representation.
<i>Cote d'Ivoire</i>		ACRWC (Signed but not ratified)	I	II?	In protective proceedings, the Judge of Guardianship must hear the child directly. Children involved in these proceedings can also be assisted by a defense attorney, though the role of the attorney is not defined.
<i>Croatia</i>		ECECR (signed but not ratified)	I		In Croatia, legislation requires that a child must be given a chance to express her view in any procedure involving the protection of her rights and well-being. The child's voice is heeded depending on his/her age, maturity and best interests. The law does not specify that the child must be heard directly, but does not provide for any other way to hear the child.
<i>Cuba</i>			IV?		While there seems to be some form of child protective legal process in Cuba, the Family Code does not appear to give children the opportunity to be heard directly, or through a representative or appropriate body. The Family Code does state that parents are responsible for representing their children in "all legal proceedings and transactions in which they may have an interest."
<i>Cyprus</i>		ECECR	I? or III?		Children must be given the opportunity to express their views in matters that concern their welfare. The Director of the Department of Social Welfare Services has responsibilities to take care of children in need of protection but it is not clear if the responsibilities include representation in protective proceedings.
<i>Czech Republic</i>		ECECR	II		The CRC is superior to domestic law under the Czech legal system. Furthermore, the socio-legal child protection laws here provide children with the right to be heard. Depending on the issue of law and the child's age, and the intellectual capacity of the child, the court determines whether the child has a right to be heard directly or must be heard through a representative. (Eugene - what is your source for this? I can't find it on the front page.)

<i>Democratic People's Republic of Korea (North Korea)</i>			*		There are no provisions in the Family Law or Children's Law that directly address the question of the child's right to be heard in child protective proceedings. However, the Family Law does have space for the child's views in some proceedings like adoption decisions. All civil litigating done by a minor should be done through their parent or guardian; however, a minor need not go through a parent or guardian to lodge complaints or seek redress through the court.
<i>Democratic Republic of the Congo</i>			*		We were unable to obtain copies of the DRC's laws and thus there is insufficient information as to whether child protective proceedings exist in the country. According to the concluding observations of the Committee on the Rights of the Child and the Alternative Report of the NGO Working Group on the Rights of Children, children's participatory rights are not adequately protected under the law and extend only to adoption and divorce proceedings.
<i>Denmark</i>			I and II?		Children must always be consulted by the Social Welfare Board in child protective proceedings, who make decisions in child protective cases. A child who is 15 or over is treated as a formal party to the case and, in certain cases, is offered free legal counsel. Legislation does not specify that the legal counsel must represent the views of the child.
<i>Djibouti</i>	Djibouti shall not consider itself bound by any provisions or articles that are incompatible with its religion and its traditional values.	ACRWC (signed not ratified), Second Arab Plan of Action	I and IV		There are child protective proceedings, and not only are the Convention and the Second Arab Plan of Action high authority and binding in Djiboutian law, but the law also provides that children may express their views in the child protective proceedings. However children under the age of 13 are considered deprived of understanding and thus all their actions are null.
<i>Dominica</i>			IV	I?	Dominica's child protection legislation does not require that the child have an opportunity to be heard, however it does state that children subject to protective proceedings who are too young to take an oath may still be deposed if the Magistrate believes that the child is able to understand that he/she must speak the truth. Also, if the Magistrate believes that it would be harmful to the child to speak in front of the court, the child's testimony may be taken and submitted in writing. It is not clear if the child is questioned about his/her views or only given an opportunity to speak about past events.

<i>Dominican Republic</i>			I?	I	According to legislation, in all proceedings that can affect the guardianship of children in some way, the child has a right to be heard in accordance with their maturity.
<i>Ecuador</i>			I		Ecuadorian child protective proceedings take place before Judges of Children and Adolescents. The Judges ask the child his/her opinion directly, and take the child's opinion into account in proportion to his age and maturity. In practice, an exception occurs in some proceedings involving foster children: foster children are sometimes provided with legal representation by their foster agency.
<i>Egypt</i>	Reservations to the extent that any portion of the CRC is incompatible with Islam	ACRWC	V		Child protective proceedings do not exist as such. Rather, children who are neglected or abused (and are living on the streets/begging/prostituting) go through the criminal system, and are placed in state-run institutions. As there is no adoption (since it is inconsistent with Islam), there is no way to place children outside of their homes. There are no laws in place requiring the opportunity for children's views to be heard.
<i>El Salvador</i>			I and II		The law affords children the right to be heard in all matters affecting them, and guarantees minors the right to free legal assistance in all administrative and judicial proceedings. The Office of the Procurator-General provides such legal representation to children in child protective proceedings. In addition, the law mandates family court judges to listen to the wishes of minors older than 12 and encourages them to hear the voices of those aged 12 and younger.
<i>Equatorial Guinea</i>		ACRWC	V		There is no child protective legislation in Equatorial Guinea and no child protective system, formal or otherwise. NGO activity is limited by the government, so UNICEF may be the only organization working with children in the country.
<i>Eritrea</i>		ACRWC	*		We were unable to find any information on whether Eritrea has a child protective system.

Estonia			II	Estonian children are represented in protective proceedings by an <i>eeskoteasutus</i> , or guardianship authority, who also serves other protective roles, including dealing with removal and arranging care upon removal. According to the law, when settling a dispute regarding a child, the guardianship authority or the court proceeds from the interests of the child, considering the wishes of a child who is at least ten years of age. The wishes of a child younger than ten years of age shall also be considered if the development level of the child so permits. (Conventions Note: Estonia is also signee of the 1996 Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, which desired to establish common provisions to this effect, taking into account the United Nations Convention on the Rights of the Child of 20 November 1989. However, there appear to no provisions for representation in the convention.)
Ethiopia		ACRWC	IV	I In proceedings to remove a person as guardian or tutor of a minor the court may hear the minor himself where the court sees fit.
Fiji			IV	The Juvenile Court in Fiji has authority to make orders related to the care, protection, and control of juveniles. Law directs Juvenile Courts to have regard to the welfare of the child, but there are no explicit provisions relating to the child's ability to participate or be legally represented in court.
Finland			I	II? The CRC has domestic legal authority equivalent to that of Finnish statutes. All children have the right to express their wishes directly to the Social Welfare Boards in protective proceedings. In determining the best interests of the child, welfare officials must consider the wishes of the child. Children over the age of 15 are treated as parties to the cases and their consent must be obtained for certain actions. Children over 12 have considerable influence in the deciding of cases. Social welfare officials may apply to the Guardianship Services Board for the appointment of a guardian (similar to a guardian ad litem) when the interests of a child and his parents are contradictory. If a guardian is appointed, that guardian must ascertain the wishes of the child, but legislation does not specify that the guardian must convey those wishes. It is also unclear if all children in protective proceedings have guardians appointed for them; the Guardianship Services Board has the power to reject an application for the appointment of a guardian, but the Board may have informal rules requiring that appointment in protective proceedings.



<i>France</i>			I	II	Judges must hear all children "capable of discernment." To be considered capable of discernment, a minor must "truly understand what he or she will do and what will happen" in the proceedings. Children may be heard alone or with the assistance of either counsel or a person of their own choosing. Where the interests of the chosen representative appear to conflict with those of the child, the judge may appoint an additional guardian or representative. Expenses of judge-appointed representatives or child-selected counsel are paid by the government-run legal aid agency.
<i>Gabon</i>		ACRWC (signed but not ratified)	V?		We have not found specific legislation regarding the right of the child to express his or her views, nor have we found specific legislation regarding protective proceedings.
<i>Gambia</i>		ACRWC	V There is no formal body of laws pertaining to child protection or the rights of the child to express views in child protective proceedings.		
<i>Georgia</i>			I? and IV	I?	In certain protective instances, when the child is at least ten years old, the court must take into account his views, though it's not clear the mechanism through which these views are conveyed. In other instances, the child's views should be taken into account when possible.

<i>Germany</i>			I and IV	II?	German law provides that in a proceeding concerning the personal care of a child at least 14 years old, the court should always grant the child a personal hearing. 14 year olds are also empowered to act legally on their own behalf. Statutes also indicate that in general, when the object of the proceeding is to take measures to protect the child's well-being, including separation of the child from her family, a representative may be appointed. In practice, this may seldom occur and the role of the representative is ill-defined.
<i>Ghana</i>		ACRWC	I	II?	If a the Department of Social Welfare determines that a child is not in immediate danger, the child appears before a Child Panel and has the right to express an opinion, which is given weight in accordance with his/her age and maturity. If the child is determined to be in immediate danger, a Family Tribunal is held, in which the child has the right to express an opinion and to have legal representation. The legal representation must be paid for by the child, but legislation does not specify if the representative has an obligation to convey the wishes of the child or only the best interest.
<i>Greece</i>		ECECR	II	I	The Convention forms part of national law and takes precedence over domestic legislation. Domestic law mandates that the court seek and consider the child's views before making any custody decisions with respect to the child. Children have a legal right to have an attorney represent his or her views. However, the law of civil procedure provides that, depending on the maturity of the child, the judge may ascertain the child's wishes through direct, private communication with the child.
<i>Grenada</i>		*			As of 1997, protection proceedings took place in the newly established Family Courts, but there were no provisions for children to present their views. The Department of Social Security provided a number of services for abused and abandoned children. However, we were unable to obtain the recent legislation on child protection.

<i>Guatemala</i>			I and II	Guatemala's constitution recognizes international human rights treaties, including the CRC, as superior to domestic law. The law provides that children are appointed an attorney in every child protection case, which is usually provided by the government's children's services agency. However, it could also be a private attorney or an attorney from an NGO, depending on the judge. The law provides that the child has the right to be listened to and his or her opinions taken into account through every stage of the process. Often in practice this is considered to have occurred through a mother or grandmother speaking on behalf of the child. Despite what the law provides, however, in practice the child may or may not be heard, depending on the judge and the situation.
<i>Guinea</i>		ACRWC	IV?	There is no provision in legislation allowing the right of the child to express his opinions. It seems there is a structure supporting social services and likely protective proceedings do exist, but we have been unable to find any laws about protective proceedings or establish how the welfare system works.
<i>Guinea-Bissau</i>		ACRWC (signed but not yet rati- fied)	*	We were unable to determine the specific nature of representation of children in protective proceedings in Guinea-Bissau. Though there appears to be legislation relating to child protective proceedings, we were unable to locate copies of this legislation. In its 2000 CRC report, the government noted that little has been done to implement the CRC in judicial terms, but that administrative agencies have been established to facilitate the implementation of the CRC.
<i>Guyana</i>			IV	Guyana currently has no child protective legislation, though there is legislation regarding children's rights pending in the Parliament. Guyana has been working with UNICEF to set up a child protective system consisting of both community based services and a national body, the Child Protection Monitoring System.
<i>Haiti</i>			IV	Haiti has no provision requiring children to be heard in protective proceedings. In practice, however, both the Social Welfare and Research Institute and the juvenile courts consult the child in protection matters.

<i>Holy See (Vatican City)**</i>			V		There are no children living in the Vatican city.
<i>Honduras</i>			I and II		The law provides that children are appointed an attorney in every child protection case to advocate for the best interests of the child. This attorney is usually provided by a government children's services agency. Children also have the right to express their ideas and points of view freely. Advocates promote full participation and expression of the children and adolescents.
<i>Hungary</i>			I or II		According to a 1995 amendment, the court shall hear the child, either directly or through an expert. Once the child is 14, any ruling on his or her placement must have the child's consent, except when placement chosen by the child can jeopardize the child's own development.
<i>Iceland</i>			I and IV	II?	A child aged 15 or over is a formal party to the proceedings, which take place before the Child Protection Committee. A child aged 12 or over must be allowed to express an opinion, and younger children shall be allowed to express a view in accordance with his/her age and maturity. In certain cases, a spokesperson is appointed by the Government Agency for Child Protection. However, the legislation does not explicitly state that the spokesperson must convey the child's wishes.
<i>India</i>		CORAP CWSA	IV	I	No uniform civil code exists in India and there are different personal laws that apply to a person depending on if they are Hindu or Muslim. The main secular act governing child protection does provide for the child's views to be heard at the magistrate's discretion. Hindu personal law also gives discretionary power to consider the wishes of the child. Muslim personal law does not prescribe any particular behavior with respect to the child's wishes.
<i>Indonesia</i>			I		Legislation in Indonesia mandates that a child in a protective proceeding has the right to state his/her views in accordance with his/her age and level of intelligence. The Child Protection Agencies and Department of Social Welfare in Indonesia are responsible for protecting children, and they often utilize the help of NGOs.

<p><i>Iran</i></p>	<p>Reserved the right not to apply articles that are incompatible with Islamic Laws and the international legislation in effect</p>		<p>V?</p>	<p>According to Iran's first report on their compliance with the CRC, children have the right to express their views in judicial proceedings provided their views are not contrary to their best interests; this right is exercised by the guardian. We have been unable to find any basis in the law for this statement other than an article in the Civil Code saying that children are represented by their guardian in all legal affairs. We have also been unable to find any laws that speak directly about child protective proceedings other than two articles in the Civil Code which contemplate the court making decisions about the child's custody when he has been neglected; it is unclear if formal child protective proceedings exist or if the only remedy for child abuse is criminal sanctions.</p>
<p><i>Iraq</i></p>			<p>V?</p>	<p>The recent (and dramatic) changes in Iraqi legal structure, in combination with the generally difficult conditions there, have made it virtually impossible to learn about the country's system for dealing with abused and neglected children. However, our research revealed nothing to suggest that either the former Iraqi regime or the Iraqi Transitional Government had enacted child protective proceedings</p>
<p><i>Ireland</i></p>			<p>III</p>	<p>II? Health Boards are required to initiate protective proceedings, and are required to give due consideration, having regard to his age and understanding, to wishes of the child. The court may join a child as a party in any proceedings where necessary for the child's interests, and may appoint a solicitor for a child when the child is a party to a proceeding. In cases where the child is not a party, the court may appoint a guardian ad litem.</p>
<p><i>Israel</i></p>			<p>IV</p>	<p>I or II? In certain protective matters, such as before removing a child from the custody of his parents, the judge must hear the views of the child unless the judge believes the child cannot understand the matter or summoning the child will be endanger him. The judge may also appoint a legal guardian if he believes it is necessary to protect the best interests of the minor. It is unclear if this guardian would present the child's views. In other family court proceedings, however, no requirement is made for the views of the child to be heard.</p>

<i>Italy</i>			IV		The Italian Civil Code specifies that the courts have the power to terminate parental rights or alter placement when parents neglect or abuse children. While the Civil Code specifies that parents must be heard if any action is taken against them in these proceedings, there is no such provision requiring that the child's opinion be heard. Children have some rights to participation in civil proceedings more broadly speaking, but "[c]ivil proceedings are not regulated by a coherent discipline and the different age limits (12, 14 and 16 years) governing the right to be heard, apply in different contexts, without any logical basis."
<i>Jamaica</i>			I	II	Children's views are to be taken into account when the child is of sufficient age and maturity to form his or her own views. The child may be represented by an advocate if the court feels the child is in need of representation and if the child consents. The role of the representative is not specified, but given that a representative is only appointed at the discretion of the child, her views are likely to have some impact on advocacy before the court.
<i>Japan</i>			IV		Although we have been unable to find any laws giving such rights, our contact has informed us that children are generally guaranteed the opportunity to be heard in judicial proceedings or administrative decisions affecting them, and specifically that children's views in child protective proceedings must be expressed through a representative.
<i>Jordan</i>			IV		Jordan has a child protective system composed of the Child Protection Unit, the Child Abuse Unit within the Family Protection Division, and non-governmental organizations. The outcomes of cases are decided informally, outside of courts, and legislation does not explicitly provide children with the right to express an opinion.
<i>Kazakhstan</i>			I and III?		The child of the age of 14 or over has the right to appeal to courts when his rights are violated, or to the Body of Guardianship and Trusteeship before that age. Children have the right to be heard in judicial or administrative proceedings, and their opinion must be weighted from the age of 10, except when this would contradict their own interests. The Bodies of Guardianship are obliged to appoint a representative for the defense of children's rights when they contradict those of their parents. It is unclear if these Bodies represent the child's views.

<i>Kenya</i>		ACRWC	I	II?	In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity. When the child is brought before the court, a legal representative may be appointed for him, though the exact role of the representative is unclear.
<i>Kiribati</i>			V?		It is not clear whether there are any child protective proceedings in Kiribati - the High Court and Court of Appeals have no cases of children being taken into state custody or of termination of parental rights. If children appear in any legal proceedings in Kiribati, it must be through a guardian ad litem or special guardian.
<i>Kuwait</i>			*		We were unable to find the laws of Kuwait but response reports from the Committee on the Rights of the Child suggest that there are currently no laws in place requiring the opportunity for the child's views to be heard in legal proceedings affecting the child. It is also unclear to what extent a formal child protection system exists and the Committee does express concern at the "insufficient legal protection measures" to combat child abuse.
<i>Kyrgyzstan</i>			I or III?		The child has the right to be heard in court proceedings including, presumably, protective proceedings, either directly or through a representative. In cases where the child has opposite interests to those of his parents, the bodies of tutorship and guardianship are obliged to appoint a representative for the child. It is unclear if this representative also conveys the views of the child. The opinion of a child of age 10 and older must be taken into consideration by the court. There is concern that in practice these rights are not actually realized.
<i>Lao PDR</i>			V		No child protective proceedings exist in Lao.
<i>Latvia</i>		ECECR	I or II or III	I or II or III	According to legislation, all children have the right to express their opinion directly, through a "lawful representative", or through a "relevant institution". There is no legislative guidance as to which form of expression shall be granted in any particular case.
<i>Lebanon</i>		ACHR	*		We were unable to find any laws in Lebanon about the opportunity for the child's views to be heard in child protective proceedings, or even the existence of child protective proceedings, although we believe that they exist but are inaccessible to us.

<i>Lesotho</i>		ACRWC	IV		Currently, no law in Lesotho explicitly affords children an opportunity to be heard in child protection proceedings. The only legal protection instrument for abused and neglected children provides for the best interests of the child. However, there is no clear government policy or practice in place to determine when it is in the best interest of the child to be removed from her/his family environment; rather, decisions are made on an ad hoc, case by case basis. Children are not adequately represented in such situations and there are no mechanisms for them to make their feelings and opinions known.
<i>Liberia</i>		ACRWC	IV		Liberian courts may issue protective orders when the interests of children are at stake. However, we have found no laws that afford children the opportunity to express their views.
<i>Libya</i>	Reserved the right not to apply articles that are incompatible with Islam.	ACHR	V and IV?		The child protective system is mostly informal although there are provisions for the termination of parental rights where the guardian fails in his obligations to the child. However, we were unable to find any laws that gave the child the opportunity to be heard in the limited formal system that does exist.
<i>Liechtenstein</i>			I and III?	II?	Before issuing orders that affect the care or upbringing of a child, the court must hear the child in person. The Court can decline to hear the child only when a hearing, or the delay a hearing might require, would endanger the child's well-being, or when, in view of the child's age or level of development, an expression of opinion is not to be expected from the child. Instead of appearing in court, children under 10 years of age may be interviewed by the Office of Social Services. When there is no one entitled to represent a child in court, a legal guardian, or <i>vormund</i> , must be appointed for her. It is not necessary that the <i>vormund</i> be a lawyer. If no other suitable <i>vormund</i> can be found for a child, the Office of Social Services acts as <i>vormund</i> .
<i>Lithuania</i>			I	II	In considering any legal question related to a child, the child, if capable of formulating his/her views, must be heard directly. Where that is impossible, the child must be heard through a representative. A child who considers his/her rights abused by parents has a right to apply to a state institution for the protection of the child's rights or, on attaining the age of 14, to bring the matter before the court.
<i>Luxembourg</i>			I		Courts must hear from the children involved in matters before them in Luxembourg, unless it is contrary to the interests of the child.



<i>Madagascar</i>			ACRWC	I	Child protection proceedings take place in Juvenile Courts, in which the Juvenile Judge consults the minor directly. It is unclear how the opinion of the child is weighted in the decision-making.
<i>Malawi</i>			ACRWC	I or IV	Laws governing professional magistrate courts provide that children have an opportunity to be heard in matters concerning them; no child is placed in foster care, for example, unless his or her views are heard. However, customary law – the dominant law of lay magistrate courts – does not provide for the principle of hearing the views of the child, even in matters that concern her or him. Most custody cases are handled in these courts, where the granting of custody is based on culture, not procedure, and may not be in the best interests of the child.
<i>Malaysia</i>				IV	Children are not afforded the opportunity to express their views in child protective proceedings. The Court for Children must make all decisions based on the best interests of the child, including considering a report of the Protector (normally a social welfare officer). This report includes family background, general conduct, home surrounding, school record and medical history of the child.
<i>Maldives</i>			CORAP CWSA	IV	The child protection system in Maldives consists of the Juvenile Court, the Child Protection Unit in the police, the Unit for the Rights of the Child, and the National Council for the Protection of the Rights of Children.
<i>Mali</i>			ACRWC	I	Mali's child protection proceedings are conducted by special judges. The law states that the judge must hear from the child in the proceedings.
<i>Malta</i>			ECECR (signed but not ratified)	II? and IV?	Malta has a formal child protective system that includes a Commissioner for Children, who is required to ensure that children's opinions are heard and considered in proceedings affecting them. There is no separate statute that directly provides for children's voices to be heard. An exception occurs when a child's parents have died or forfeited parental authority, and the child is assigned a tutor (guardian) to care for him/her. In this situation, the tutor represents the child in all civil proceedings; it is unclear whether the tutor must represent the child's views. All proceedings relating to children are heard in the Juvenile Court by a Magistrate Judge.

<i>Marshall Islands</i>			V		No formal system exists in the Marshall Islands. While no laws are enacted, practice traditionally has been for the Attorney General's office to represent the child in court and the child's view may not be expressed directly in court. The informal system does encourage members from the Attorney General's office to take into consideration the views of the child.
<i>Mauritania</i>			V		Although child abuse is illegal in Mauritania, there is no child protection system nor is there a procedure for removing children from abusive homes. Thus the only remedy for child abuse is criminal sanctions.
<i>Mauritius</i>		ACRWC	IV		The child protective system has been improving in recent years, and doctors/teachers are required to report suspected abuse. There are no requirements that children have representation, however, nor that their voices be heard in proceedings affecting them.
<i>Mexico</i>			I		Mexican federal law grants children the right to express their opinions in all matters affecting them. While it appears that federal law does not give children the right to representation in child protective proceedings, it is worth noting that Mexico is composed of 31 states and a federal district, each of which has its own Constitution, laws, decrees, and regulations. It is possible that the right to be heard in child protective proceedings varies by jurisdiction.
<i>Micronesia (Federated States of)</i>			V		Micronesia set up the Child Abuse and Neglect Programme, which seeks to provide culturally sensitive services and tries to provide education to families where abuse or neglect has occurred. CAN operates outside of the court system and since its implementation, no child has been removed from his or her home owing to physical abuse, neglect or sexual abuse. Abused or neglected children do not have any form of representation when working with CAN. The issue of child representation in child protection cases has not been dealt with in Micronesia since children are not removed from their homes and child abuse cases are dealt with outside of the judicial system.
<i>Monaco</i>			IV	I	In Monaco's child protective proceedings, the guardianship judge may hear the child directly, but the judge is not required to do so. Proceedings take place in Guardianship Court presided over by a specially appointed judge.

<i>Mongolia</i>			II?	I	If a child's interests and his/her parents' or guardians' wishes are contradictory, the Governor of Soum (county) and district appoints a representative. Legislation does not expressly state that representatives must convey the wishes of the child. A child also has the right to take any legal complaints to court if he/she feels that his/her rights have been violated.
<i>Morocco</i>			IV?		Children are represented by their legal guardians in court, but the law does not specify that the guardians must express the children's views. Abandoned children over 10 years of age cannot be placed in a family without their consent. Boys over the age of 12 and girls over the age of 15 can choose whether to live with their mother, father, or certain other relatives.
<i>Mozambique</i>		ACRWC	IV		Mozambique's Constitution generally recognizes the right of the child to be heard in matters affecting the child's rights and interests. However, the child's right of participation has not been included in Mozambique's legislation on matters relating to children and there is no requirement that the views of the child be heard in protective proceedings. Children are represented in administrative and judicial proceedings by guardians ad litem, social assistance services, medical-psychological services, parents, guardians, or their legal representatives.
<i>Myanmar</i>			I? or II?		Children in Myanmar have the right to be heard either personally or through a representative in court. However, it is not clear if this right extends to protective proceedings that give a Local Social Welfare Officer (SWO) discretion to remove children from their homes if, after an investigation, which may not necessarily entail consulting the child in question, he determines that the family environment is "wicked" or unsafe.
<i>Namibia</i>			IV?		Children who are alleged to be in need of care may be brought before the court for an enquiry to determine if the child is in need of care. The current law does not mention the opportunity for the children's views to be heard, though draft legislation is in place to consider the child's expressed wishes.

<p><i>Nauru</i></p>			<p>I</p>	<p>II?</p>	<p>Proceedings take place in the Family Court or the Supreme Court. In either case, the wishes of the child must be ascertained and weighed in accordance with the child's age and maturity. The Supreme Court may appoint a guardian ad litem, and either court may appoint a lawyer, but it is unclear if either representative must convey the wishes of the child.</p>
<p><i>Nepal</i></p>			<p>CORAP CWSA</p>	<p>V and IV</p>	<p>In Nepal, severe child abuse is a crime and child neglect is recognized as a problem although it is not a crime. There is a formal child protection system made up of local Child Welfare Offices but there are no formal protective proceedings for neglected children. In cases of child abuse, the child may be represented by a child welfare officer but the child's representative is not required to express the child's views or wishes to the court.</p>
<p><i>Netherlands</i></p>			<p>I and IV</p>	<p>I</p>	<p>Children over twelve years old are automatically afforded the right to be heard in protective proceedings. Children under twelve years old may be heard at the discretion of the court. Children over twelve and children permitted by the court to express their views will be allowed to speak directly to the court.</p>
<p><i>New Zealand</i></p>	<p>Nothing in this Convention shall affect the right of the Government of New Zealand to continue to distinguish as it considers appropriate in its law and practice between persons according to the nature of their authority to be in New Zealand including but not limited to their entitlement to benefits and other protections described in the Convention, and the Government of New Zealand reserves the right to interpret and apply the Convention accordingly.</p>		<p>IV</p>		<p>Children are represented in child protective proceedings in court and while their consent is required before an agreement can be made. There do not see to be any express provisions requiring that the child's views be heard. Some case law provides explicitly that counsel are not bound by the wishes of the child. Other case law indicates the role of relationship between counsel and child is closely analogous to that of solicitor and client, but not exactly equal.</p>
<p><i>Nicaragua</i></p>			<p>I or II or III</p>		<p>The CRC has constitutional authority in Nicaragua. Furthermore, by statute, all children have the right to express their opinion directly, through a legal representative, or through the "competent authority" according to the case and as a function of their age and maturity.</p>

<i>Niger</i>			ARCWC	II	In Niger, representatives are appointed to protect the civil interests of minors. These representatives advocate for the child's views.
<i>Nigeria</i>			ACRWC	*	Though a recently passed act has substantially developed the child protective system, creating a guardian ad litem position and allowing for the opportunity for children to participate in matters concerning their rights and welfare, we have been unable to find this law and thus are unable to determine if the opportunity to be heard is mandatory or discretionary and whether the child's views are heard directly or through a representative.
<i>Niue</i>			V?		To the best of our knowledge, Niue has no formal child protective system. Niue law does allow the Supreme Court discretion to appoint a guardian ad litem to a child in any court proceeding; it is unclear whether the guardian ad litem expresses the child's views. Also, it is quite possible that New Zealand's child protective laws have force in Niue, in which case Niue would have a more robust child protective system than we currently believe.
<i>Norway</i>			I and II	II	Children aged 7 or older and children younger than 7 who are able to form their own opinions have the right to express their views in protective proceedings. A child who is 15 or older is considered to be a party in the case. The Social Welfare Board may deem a child younger than 15 to be a party to the case in special cases or when the child has behavioral problems. Children who are parties to the case receive free legal counsel. Also, the Social Welfare Board may appoint a spokesperson to any child. A spokesperson is required to present the case from the point of view of the child and also to present his/her own point of view.
<i>Oman</i>			V		Oman has no codified family laws. The Oman Women's Association chapters, a voluntary organization found throughout the country, work in the child welfare arena, but it is unclear if there are child protective proceedings, per se.
<i>Pakistan</i>		CORAP CWSA	IV	I?	Though each province has its own legislation relating to family law, there is federal legislation saying that the judge may consider the opinion of a child old enough to form an intelligent preference. However no provision specifically requires that children be given the opportunity to be heard.

<i>Palau</i>			IV		Child maltreatment and neglect is reported to the Director of the Bureau of Public Safety, which investigates and submits a report on the situation of the child to the Office of the Attorney General and to the Division of Social Services. The Victim of Crime Assistance Programme also offers support services to children. There is no provision requiring the child to be heard in these proceedings. In practice, however, few child abuse or neglect cases are handled by the courts. Instead, cases are handled in traditional settings by clan elders. Decisions by elders in family matters are given legal recognition by Palauan law.
<i>Panama</i>			I	II	The law provides that children have the right to be heard directly by the judge. In practice, children are often heard accompanied by, or through, a child psychologist. Children do not have the right to a legal representative through the current law, although in some cases they may be provided an attorney by the government.
<i>Papua New Guinea</i>			I?		Though Papua New Guinea's legislation does not explicitly provide for a child's right to be heard, a child taken into custody for protection must be brought before a Children's Court.
<i>Paraguay</i>			I		The judge is to hear the opinions of the child or adolescent before making a decision, and weigh it according to the child's age and maturity. There is no mention of individually acquired attorneys or representatives for the child, though a "Public Defender" as well as the attorney general and the child herself have standing to bring an action in court.
<i>Peru</i>			I and II?	II?	In Peru, judges must listen to the opinion of the child and take into account that of the adolescent in child protective proceedings. Free legal counsel is offered through the Ministry of Justice and in cases of sexual violence, such counsel is mandatory. Legislation does not specify whether the legal counsel must convey the wishes of the child.
<i>Philippines</i>			IV		Guardians ad litem are appointed to protect the best interests of the child in protective proceedings. There is no statutory requirement for the opportunity for the child's views to be heard.

<i>Poland</i>	The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family;	ECECR	IV	I,II	The child "should" be directly heard, but the court can limit participation if otherwise would be harmful to the child's upbringing. In practice judges frequently hear the child directly, and if not, at least hear a child's representative explain the child's views.
<i>Portugal</i>			II?	I	The Convention has the full force and effect of law and may be invoked before Courts and applied against national bodies. For children under 14-years old, statutes provide that the court must seek the child's views before removal. Wherever there is a conflict between the child and the allegedly abusive parent, the court must appoint a "special curator" to represent the child. It is unclear at this stage whether the curator has a duty to express the child's views. The court also has discretion to question children directly in abuse and neglect proceedings.
<i>Qatar</i>	Reserved the right not to apply articles that are incompatible with Islamic Law		*		We have been unable to find much law on Qatar and thus have been unable to answer the question of the child's right to be heard in child protective proceedings or even the existence of child protective proceedings. Qatar does mention the customary practice of religious courts to seek the view of children in custody determinations. Qatar's constitution also makes direct references to preventing child abuse and neglect.

<i>Republic of Korea (South Korea)</i>			IV		There is no particular provision allowing for the expression of the child's views. Several statutes provide for the child to obtain legal representation or advice, through a lawyer, a counselor from a specialized child protection agency, or family members. A "special representative" may be appointed for a minor if requested by a relative, interested party, or the public prosecutor; or by application of the parents if the parents' interests conflict with the minor's. Family members in the form of a "family counsel" may also exert a great deal of influence in child protective proceedings.
<i>Republic of Moldova</i>			III?		Moldova relies on child protective agencies to represent children in court proceedings. Child protective agencies are governed by an informal system that is shifting toward a system where children are more directly involved in court proceedings. A child has a right to express his/her opinion in resolution of family issues, which are concerned with his interests, and also can be heard at court hearings and other administrative investigations; however, the right to be heard is not guaranteed. An opinion of a child who is at least 10 years old must be taken into account if this does not conflict with his/her best interests as decided by his representation, which will be provided in almost all situations by child protective agencies.
<i>Romania</i>			I and IV	II?	Romania's child protective laws reference the language of Article 12 in numerous places. The hearing of children over the age of 10 is mandatory, while children under 10 may be heard if the competent authority deems it necessary to solve the case. A special guardian will be appointed in certain cases, but the law does not specify that he must relay the views of the child.
<i>Russia</i>			I		The child has the right to express his opinion in any matter concerning his interests, and the right to be directly heard in any court or administrative proceeding. The opinion of the child over the age of 10 has to be taken into account, except when such an opinion contradicts his interests. Participation of the representatives in such proceedings is mandatory. Children do not have the right for a court-appointed lawyer, but may apply for help to a local NGO, though these are scarce.
<i>Rwanda</i>			ACRWC	I or II	The child has the right to express his or her opinion on any matter regarding him or her. It is necessary to hear from the child prior to making any decision concerning him or her regarding administrative and judiciary matters, whether directly or indirectly through a representative.



<i>Saint Kitts &amp; Nevis</i>			IV?		Children are generally appointed a social worker by the court. St. Kitts & Nevis is working with the Organization of Eastern Caribbean States (OECS) to consolidate and improve all the laws related to children into one legislation that will apply to all of the Eastern Caribbean States.
<i>Saint Lucia</i>			IV?		Saint Lucia's legislation does not explicitly state that a child's views must be heard, however a child who is believed to have been mistreated must be brought before the juvenile court by the police.
<i>Saint Vincent &amp; the Grenadines</i>			I	II	The law provides children the right to speak and be heard by the judge. In practice, little support for the child in court limits the effectiveness of this right. Representatives are not provided for by law. Social workers may be appointed by the court in some cases, but there are not enough qualified social workers to represent all children who need them. In 2001, SVG began forming legislation within the framework of the Organization of Eastern Caribbean States (OECS), which is meant to consolidate and improve all the laws related to children into one legislation that will apply to all of the Eastern Caribbean States.
<i>Samoa</i>			IV		While there are provisions in Samoa's law for child protective proceedings, which take place in district courts, there is no explicit statement regarding the child's opportunity to express his/her view.
<i>San Marino</i>			III?		San Marino's Minor Service is empowered to take children into emergency custody and to petition the court for termination of parental rights in severe cases of abuse and neglect. Judges (Commissioners of Law) are authorized to place children in foster care upon parental consent or without parental consent if they decide it is in the best interests of the child. During child protective proceedings, the judge must hear from the Minor Service who San Marino entrusts with representing the views of the child. In practice, the views of the child are often dispositive in determining case outcomes.
<i>São Tomé e Príncipe</i>			IV?		If there is a conflict of interest between parents and children, the child will be represented by a court-appointed guardian ad litem. As we were not able to obtain a copy of the legislation relating to the representation of children, we are uncertain whether it specifies that the representative must convey the child's views. However, the country's 2003 CRC report suggests there is currently no specific requirement that a child's view be expressed.

<p><i>Saudi Arabia</i></p>	<p>Reserved the right not to apply articles that are incompatible with Islamic Law</p>		<p>*</p>		<p>In Saudi Arabia's report to the Committee on the Rights of the Child, Saudi Arabia states that children have the right to be heard in any judicial proceedings affecting them, either directly or through a representative, with their views given due weight in accordance with their age and maturity. We have been unable to locate much law on Saudi Arabia and thus are unable to confirm the existence of such provisions in Saudi Arabian law. There are also questions of whether a child protection system exists or if child abuse is even a recognized problem.</p>
<p><i>Senegal</i></p>			<p>II?</p>		<p>Senegal's Family Code provides that minors will be provided legal representation. There is no specific requirement that the appointed guardian will report or advocate for the child's views, although the guardian is to act in the child's interests.</p>
<p><i>Serbia</i></p>			<p>II</p>	<p>III</p>	<p>Serbia-Montenegro employs <i>privremeni zastupnik</i> or temporary representatives in child protective proceedings. When the court determines that the child as a party is not adequately represented, it has the duty to award the child a temporary representative. According to the developmental stage of the child (when they are capable of forming their own opinions), the court has the duty to allow the child to directly express his or her opinion to the court. The court then has the duty to understand this opinion and give it weight according to the child's age and maturity, unless this would be clearly against the best interests of the child.</p>
<p><i>Seychelles</i></p>			<p>V</p>		<p>Seychelles has no laws regarding the right of children to be heard in child protective proceedings. Instead, Seychelles operates with an informal system where children often are allowed to voice their views directly to the court. Representation for children in the court system is given by social agencies, who often will screen the children as to whether the child is capable of determining and voicing his or her best interests. Also, when tribunals are the governing court system, children will often represent themselves in court. The main criterion for being allowed to voice views directly to the court is whether the court feels the child is capable of recognizing his or her own best interests.</p>

<i>Sierra Leone</i>		ACRWC	IV	No law in Sierra Leone addresses the child's right to be heard. However, though not required by statute, customary law gives children the opportunity to air their views in legal proceedings in which, though not parties in the action, they will be directly affected by the judgment or order. In cases where their rights are affected and they become parties in an action (where they have property at stake), children are represented by a guardian ad litem appointed by the court.
<i>Singapore (Republic of)</i>	Declaration: a child's rights defined in articles 12 to 17, shall in accordance with articles 3 and 5 be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child and in the best interests of the child and in accordance with the customs, values and religions of Singapore's multiracial and multi-religious society regarding the place of the child within and outside the family; Reservation:(3) The Constitution and the laws of the Republic of Singapore provide adequate protection and fundamental rights and liberties in the best interests of the child. The accession to the Convention by the Republic of Singapore does not imply the acceptance of obligations going beyond the limits prescribed by the Constitution of the Republic of Singapore nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.		IV	There is no provision in the legislation regarding the right of a child to express opinions in court, except for custody proceedings, although protective proceedings and a social services agency do exist and represent the best interests of the child.

<i>Slovakia</i>		ECECR	I and II		A "collision custodian" is an individual chosen by the court who represents the minor in legal proceedings where the minor does not have legal representation. We were unable to find whether courts are required to hear children directly in cases of child protection, though in analogous proceedings. Minors have the legal capacity to express their views on foster placement, assuming they are able to assess the implications of the action. The Court has traditionally viewed the age of 12 as the necessary age to achieve such an understanding.
<i>Slovenia</i>			I	II	In Slovene child protective proceedings, the child who is capable of understanding the meaning of the proceedings and the consequences of the decision is given an opportunity to attend an "informal discussion" with the court. Where a child's interests conflict with that of her parent or legal guardian, Slovene law further specifies that a collision guardian be appointed to act in that child's best interests. In practice, however, children in Slovenia may not be receiving the fullest protection of these laws.
<i>Solomon Islands</i>			V		The child protection system in the Solomon Islands is largely informal. Cases of abuse are dealt with through the community, churches or extended family if they are dealt with it all. There are no formal abuse or neglect proceedings in the Solomon Islands in which the child could express her view and wishes.
<i>Somalia</i>	Has not ratified the CRC	ACRWC	*		We have not been able to find any law on Somalia and thus have been unable to answer the question of the child's right to be heard in child protective proceedings or even the existence of child protective proceedings.
<i>South Africa</i>		ACRWC	II?		A child appearing before the Children's Court has the right to free legal representation appointed by the Legal Aid Board. After the proceedings, the court may order the parents, guardians, or another party in the case to pay for the representation. If the child wishes to choose a legal representative, he/she must pay for the representation. In either case, the legislation does not specify that the representative must convey the child's views.

<i>Spain</i>			II	I	The <i>defensor judicial</i> (GAL) is required to convey the child's view, but the child may be able to exercise the right to be heard directly. e.g. "It is guaranteed that the minor may exercise this [right to be heard for himself or through the person that he chooses to represent himself, when he has enough judgment." Law regulates the role of legal counsel (sometimes translated as Guardian Ad Litem), the Defensor Judicial, who represents and supports the interests of minors and when there is a conflict with their legal representatives, or their guardian ( <i>tutela</i> ) does not fulfill his or her responsibilities for any reason.
<i>Sri Lanka</i>		CORAP CWSA	IV		Although there is a somewhat functioning child protection system in Sri Lanka, children in abuse and neglect proceedings are not required to be represented and Sri Lankan law does not require the court in an abuse and neglect proceedings to hear or take into account the wishes and views of the child.
<i>Sudan</i>			*		Though the CRC is part of the domestic law, there is concern that the view of the child is not always respected, especially when the child is female or when honoring the child's view would violate other traditional concepts of the role of the family, clan and tribe. Many of the practices within Sudan regarding children are based on Muslim tradition. Most of Sudan's resources have recently been focused on aiding children affected by the tragic armed conflicts within the country.
<i>Suriname</i>			I		Suriname ratified the Convention on the Rights of the Child [CRC] in March of 1993, effectively giving it legal authority inferior only to the Constitution. Child protection proceedings take place in courts. The Youth Police investigates complaints of child maltreatment and neglect. There are currently no legislative provisions for children to express their opinions in protective proceedings.

<p><i>Swaziland</i></p>	<p>ACRWC (signed only)</p>	<p>V</p>		<p>Swaziland's only formal means of dealing with child abuse occurs in the criminal system. Recently the High Court, where child abuse cases are heard, has assigned an "intermediary"—either a government or NGO official—to inform the child of the court proceedings and to relay the child's testimony to the court. Outside of the criminal system, the chiefdoms are responsible for the well-being of children who have been abused or neglected. Each chiefdom has a child protection committee which is responsible for decisions concerning these children. It appears that there are no specific statutes or case laws governing child protective proceedings, although Swaziland's draft constitution (which has been in draft form since 1996) instructs Parliament to adopt legislation which would provide that "children receive special protection against exposure to physical and moral hazards within and outside the family."</p>
<p><i>Sweden</i></p>	<p>ECECR (signed but not ratified)</p>	<p>I and II</p>		<p>Public counsel is to be appointed by the court to represent children in judicial and other proceedings concerning the provision and termination of care. If a young person is aged 15 or over, he is entitled to speak on his or her own behalf in judicial and other proceedings. Appointed public counsel represents children under age 15. Account shall be taken of the will of the young person, with due consideration of her age and maturity.</p>
<p><i>Switzerland</i></p>			<p>I and II? and IV</p>	<p>The right for children to be heard in Switzerland is governed by procedural cantonal rules subject to Swiss federal law. The Swiss Civil Code – which applies country-wide and guides cantonal law – provides a barebones foundation for the representation of children in proceedings concerning them. In the chapter covering parental authority, the Code calls for the appointment of a guardian to represent children whenever their interests lie in conflict with those of their parents. The details of this representation and the means by which children may be heard, however, are left to the vagaries of cantonal law.</p>
<p><i>Syrian Arab Republic</i></p>			<p>*</p>	<p>We have been unable to find much law on the Syrian Arab Republic and thus have been unable to answer the question of the child's right to be heard in child protective proceedings or even the existence of child protective proceedings. The Syrian Civil Code did not seem to address issues dealing with child protection.</p>

<i>Tajikistan</i>			IV		Social agencies represent the children in child protection proceedings. Social agencies are also charged with caring directly for the child during the length of the proceedings. No rule is in place ensuring the social agencies represent the views of the child. Also, no rule exists ensuring the child will be heard directly by the court.
<i>Thailand</i>			IV	II	In civil proceedings the judge is not required to ascertain the child's views. Statute prohibits the child from directly participating in such proceedings, but views may be expressed through a representative. This representative may be the attorney for the party who has petitioned for removal, a social worker, or a psychologist. In civil proceedings, there is no requirement that an attorney be appointed to the child.
<i>The Former Yugoslav Republic of Macedonia</i>		ECECR (but does not apply to protective proceedings)	IV	III?	Children in Macedonia have the general right to be represented by their parents, but there is no specific legal provision for children in protective proceedings to be heard either directly or through a representative. The body responsible for bringing such cases before the courts is the Social Work Center. While the Social Work Center has the responsibility to provide legal support in abuse cases, the law does not mention if and how this body is to consider the wishes of the child.
<i>Timor-Leste</i>			V		Timor-Leste does not yet have legislation addressing the right of the child to be heard in protective proceedings or the existence formal child protective systems. Timor-Leste became an independent country in May 2002 and is currently in the process of establishing a functioning judicial system and drafting its own legislation. Legislation on the rights of the child is currently in draft form.
<i>Togo</i>		ARCWC	IV	I	Togo law requires that the child be heard directly by the judge when "convenient." In practice judges do often inquire of the child in child protection cases.

<i>Tonga</i>			I or II		As a general matter, law requires the Court to ascertain the wishes of the child when making determinations in child protective proceedings. While no laws set forth the process by which a child expresses his or her opinions, judges often ask a child to express his or her wishes directly to the court during informal bench hearings which take place privately in the judge's chambers. Statute provides that a court may appoint an attorney for the child in such cases, but this rarely happens in practice. Courts also have a statutory discretion to appoint a guardian ad litem for the child. In practice, this is typical. However, the GAL will often—at its discretion—interview the child, there is no duty for the GAL to represent the child's view to the Court.
<i>Trinidad and Tobago</i>			I	II?	Currently, Magistrates in the Family Court are required to ascertain the wishes of children in protective proceedings. The Children's Authority must consider a child's preference when determining the child's best interest. Also, "where the circumstances so require," a child must be given legal aid. It is unclear as to what circumstances qualify a child for legal aid and whether lawyers are required to represent the views of the child
<i>Tunisia</i>	[D]eclares that it shall not, in implementation of this Convention, adopt any legislative or statutory decision that conflicts with the Tunisian Constitution.	ACRWC (signed but not ratified)	I		Children must be able to freely express their views in any judicial, social, or educational proceedings concerning them in accordance with their age and degree of maturity, which seeming includes child protective proceedings.
<i>Turkey</i>		ECECR	I	II? or III?	The child can apply to the Social Services and Child Protection Agency when in need of protection. The agency handles all aspects related to children in need of protection, including representation in court (it is not clear if the agency represents the best interests of the child or the child's opinions). A judge may decide independently on protective measures, but before rendering a decision the opinion of the juvenile having adequate perception capacity shall be taken into consideration. Bar associations, as NGOs, provide legal assistance to children who need representation in court.
<i>Turkmenistan</i>			*		Although legislation has supposedly been enacted to implement the provisions of the convention, we were unable to find it. Other legislation indicates an existence of protective proceedings, possibly through Organs of Guardianship and Tutorship or chaykhims (local governmental councils).



<i>Tuvalu</i>			V		We were unable to find any laws in our research that spoke to the right of the child to be heard in child protective proceedings, or even the existence of such proceedings.
<i>Uganda</i>		ACRWC (signed and ratified)	II?		Local Councils are responsible for child protection. If these local government councils cannot resolve a child protection case, it is brought before the family and children court. Children have a right to legal representation in all matters before the family and children court. No additional information is provided about the responsibilities or duties of the legal representative for the child, nor has the family and children court been funded by the government.
<i>Ukraine</i>			I	II and III	International treaties that have been passed by the Verkhovna Rada of Ukraine are part of the national legislation of the Ukraine, so the CRC forms part of the Ukrainian law. A child who is 14 years old can apply directly to the court to protect her interests. All Ukrainian children capable of expressing their views must be heard by the court in any proceeding relating to the child's care, place of residence or termination or restoration of parental authority. The child's wishes may also be represented by a third party such as a representative of the Guardian and Care department.
<i>United Arab Emirates</i>	Reservations to the extent that any portion of the CRC is incompatible with Islam		V		No child protection system exists in the United Arab Emirates. Laws are geared primarily toward preserving the integrity of the family, and preventing the sale and trafficking in children. Family law generally is governed by Shari'a.

<p><i>United Kingdom: England &amp; Wales</i></p>			<p>II</p>	<p>In England and Wales, a child has access to two representatives in care and supervision orders. In England, the children's guardian is appointed from the Children and Family Court Advisory Social Service (CAFCASS) and represents the best interests of the child. In Wales, the children's guardian equivalent is called a Welsh Family Proceedings Officer. The children's guardian is tasked with investigating the child's situation, relying on other professionals, e.g., psychiatrists, when needed, and filing a written report with the court. A children's guardian is to be appointed by the court as soon as possible in all specified proceedings unless the court is satisfied that an appointment is not necessary to safeguard the interests of the child. Once appointed, the children's guardian is to appoint a solicitor for the child unless the court has already done so. The child's solicitor is appointed from the Law Society's Children Panel. If the child wishes to directly instruct the solicitor, and the solicitor believes the child is of "sufficient maturity" to do so, the court may appoint a separate solicitor to represent the children's guardian. If the child is not of sufficient maturity to instruct the solicitor, the solicitor should follow the children's guardian's direction. If there is no children's guardian, the solicitor must act in furtherance of the best interests of the child.</p>
<p><i>United Republic of Tanzania</i></p>		<p>ACRWC</p>	<p>V</p>	<p>Under Tanzanian law, there is an almost total absence of legal representation for children in matters affecting them. With regard to abuse and neglect, parental duties under the law are subject to a theory of punishment that punishes the parent/guardian without regard to the welfare of the child. There appear to be no formal child protection proceedings defined or provided for under Tanzanian law.</p>

<i>United States of America</i>	none—US has not ratified CRC		II and IV	I (in some states)  The US has 56 states and territories, each with a distinct representational scheme for children in child protective proceedings. (For a state by state description, see Appendix C.) While no two states are the same, they can be divided into six distinct categories, four of which (which includes 38 states) are in compliance with Article 12. (For these six categories and the breakdown of states within them, see US Summary Chart also available at <a href="http://www.law.yale.edu/rcw/research_summary">www.law.yale.edu/rcw/research_summary</a> .) In general, the model of a "best interests" representative dominates the American jurisdictions, as it has since 1974 due to a requirement in a federal funding statute. Though increasingly lawyers do the representations, only five states have a model in which lawyers represent children according to the ethical rules; the remaining states which require lawyers require a hybrid of legal representation and best interest representation at least some of the time. 18 states still require best interest representatives (usually called guardians ad litem) only and do not require these representatives to express the child's views to the court.
<i>Uruguay</i>			I and II?	Except where impossible, the Juvenile court judge is to hear the opinions of the child in the presence of their parents and the defender. The role of the "defender" is not clear from the statute, however there is a separate role for a Public Attorney, implying that the defender does not represent the state, and may be there to advocate for the best interest of the child.
<i>Uzbekistan</i>			I and III?	The child has the right to appeal to courts when his interests are violated after the age of 14, or to the Care and Guardianship Authorities before that age. Children have the right to be heard in judicial or administrative proceedings. In cases of disagreement between parents and children, the Care and Guardianship Authorities are obliged to appoint a representative for the protection of the rights of the children.
<i>Vanuatu</i>			V	We have been unable to find evidence of the existence of child protective proceedings in Vanuatu. There are several NGOs working in the child protection arena, including Save the Children and UNICEF.

Venezuela			I	II	In Venezuela, all children have the right to express an opinion in child protective proceedings in whatever manner is conducive to their best interests. Children with special needs may express their opinions through a representative provided free of charge by the state. If it is not in the child's best interests to speak to the court, he/she may speak through a parent, guardian, or other representative, provided that the two do not have contradictory interests. In this case, no mention is made of the state providing representation.
Vietnam			I		The law mandates that the State "has the responsibility to listen to and resolve the legitimate wishes of the child," but the law does not specify that children must be consulted in protective proceedings or clarify which wishes qualify as legitimate. Still, the provision presumably applies to protection proceedings, because the specified law is one of the laws governing child protection. Vietnamese law only requires the appointment of a representative for children involved in delinquency proceedings, adoption cases, and criminal cases regarding abused or exploited children. Therefore, it is likely that children are consulted directly in protection proceedings, which take place before local Committees on the Protection, Care, and Education of Children.
Yemen			V		While Yemeni children have a right of expression in matters affecting them, the jurisdiction does not purport to have child protective proceedings.
Zambia			IV		Although child protective laws provide for the child to be brought before the court, no law specifically gives the opportunity for the child to be heard.
Zimbabwe		ACRWC	IV?		Although Zimbabwe's principle law designed to protect abused and neglected children provides that a child may have a legal representative in court, the Act is explicit neither about the scope of this representation nor the mandate of the representative. There are no provisions requiring the juvenile courts to take the child's views into account and the courts may, in fact, hold care inquiries in the child's absence.

## APPENDIX C. U.S State-by-State Chart

State	Abbreviation	2005 Category	Description
Alabama	AL	F	An attorney is required in all cases of an abused or neglected child that results in a judicial proceeding. The attorney is charged with representing the "rights, interests, welfare, and well-being of the child," as well as serving as the "guardian ad litem." There is no statutory provision requiring the attorney-GAL to advocate for or even express the child's views. A CASA may be appointed in addition to an attorney-GAL at the discretion of the court. CASAs are only available in a few counties.
Alaska	AK	E	A "guardian ad litem" is required in all abuse or neglect and termination of parental rights proceedings. The GAL does not have to be an attorney. The GAL must represent the "best interests" of the child. There is no statutory provision or court rule requiring the GAL to inform the court of the child's views. The court may appoint an attorney to represent the child's "expressed interests" when the court determines that the interests of justice require the appointment. The court may also appoint an attorney for the child when there is a conflict between the guardian ad litem's position and the child's preference.
American Samoa	AS	B	A "guardian ad litem" is required where an abuse or neglect petition has been filed. The GAL "is charged in general with the representation of the child's interests." In addition to a GAL, any child who appears in court must be advised of his or her right to counsel. Counsel must be appointed to represent a child who is without financial resources. American Samoan law also authorizes a court to appoint counsel <i>sua sponte</i> where doing so is necessary to protect the parties' interests.
Arizona	AZ	B	Appointment of counsel is required for all children involved in child protective proceedings. In all juvenile court proceedings in which the dependency petition includes an allegation that the child is abused or neglected, the court is required to appoint a "guardian ad litem" to "protect the child's best interests." This GAL may be an attorney or a court appointed special advocate. Courts are permitted to appoint both an attorney and a GAL, but it is much more common for the attorney to act both as an attorney and a GAL. However, if there is a conflict between the child's wishes and best interests, the attorney must represent the child's wishes and request the appointment of a separate GAL.
Arkansas	AR	D	An "attorney ad litem" for the child is required when a dependency-neglect petition is filed. The attorney ad litem represents the best interests of the child. If there is a conflict between the child's views and the best interests assessment, the attorney ad litem is required to communicate the child's views to the court. The court may also appoint a volunteer court-appointed special advocate (CASA).
California	CA	D	Counsel is required in all dependency proceedings except if the court finds that the child would not benefit from an appointment. If an attorney is not appointed, a CASA is required to fill the role of a guardian ad litem. Counsel for the child is "charged in general with the representation of the child's interests." This representation does not require the attorney to advocate for the return of the child if that return would be harmful to the child's interests. In any case in which the child is four years of age or older, counsel is required to advise the court of the child's wishes.

Colorado	CO	F	A "guardian ad litem" is required in all dependency and neglect cases. The GAL must be an attorney. The GAL is statutorily required to act in the best interests of the child. The GAL is not statutorily required to express the child's wishes. The GAL is a party to the proceeding but the child is not. The court has the option to also appoint a CASA who may be a party to the proceeding if the court orders.
Connecticut	CT	B	An attorney is required for all abuse and neglect proceedings. The attorney represents the child and acts as a guardian ad litem for the child. If a conflict arises between the child's views and the best interest assessment, the attorney advocates for the child in accordance with the <i>Rules of Professional Conduct</i> , and the court appoints another person to serve as the GAL. A separate GAL does not have to be an attorney.
Delaware	DE	C	A "guardian ad litem" is required for any child who is the subject of a custody, visitation, guardianship, termination of parental rights, adoption or other related proceeding in which the Division of Family Services is a party. The GAL must be either an attorney or a CASA. The GAL represents the best interests of the child. The court may also appoint an attorney to represent the child's views. The GAL is required to make the views of the child known to the court.
District of Columbia	DC	E	A "guardian ad litem" is required in all abuse and neglect proceedings. The GAL must be an attorney. The GAL is charged with the representation of the child's best interests. For older children, when a conflict arises between the child's views and the best interest of the child, separate counsel for the child may be appointed. There is no statutory provision requiring the GAL to express the wishes of the child.
Florida	FL	C	A "guardian ad litem" is required in all child protective proceedings. Although the GAL may be an attorney, most GALs are CASAs provided through the Statewide Office of the Guardian ad Litem. Florida's courts also have the authority to appoint "attorneys ad litem," in addition to GALs, to provide legal representation to the child, but this rarely happens. A GAL is required to provide a statement of the child's wishes in her report.
Georgia	GA	B	A "guardian ad litem" and counsel for the child are required in all child protective proceedings. The counsel for the child advocates for the child's views. The child is entitled to legal counsel at every stage of a deprivation proceeding. The GAL is tasked with protecting the "interests of the child." The GAL can be either an attorney or a CASA.
Guam	GU	C	A "guardian ad litem" is required in all child protective proceedings. The GAL's duty is to advocate for the best interest of the child. The GAL is required to inform the court of the child's "perceived interests" if they differ from those being advocated by the GAL. If conflict arises between the child's wishes and the child's best interests as determined by the GAL, the GAL must inform the court, and the court must assess whether to appoint special counsel to represent the child.
Hawaii	HI	C	A "guardian ad litem" is required in all child protective proceedings. The GAL does not have to be an attorney. If a conflict arises between the child's views and the best interests of the child, the court may appoint separate counsel, but this rarely happens in practice. A GAL has a duty to inform the court of the "child's perceived interests" if they differ from those the GAL is advocating. As a matter of practice, many GALs routinely include the child's wishes in their reports, regardless of whether they conflict with the GAL's recommendations.

Idaho	ID	E	A "guardian ad litem" is required in all child protective proceedings. The GAL does not need to be an attorney. The GAL advocates for the best interests of the child. The court may appoint counsel to represent the GAL or the child. If a GAL is not available for appointment, the court shall appoint separate counsel for the child. For a child under the age of 12, this appointed attorney operates as a GAL; for a child 12 years of age or older, the attorney functions either as a GAL or as a traditional attorney at the discretion of the court. There is no statutory provision requiring the GAL to notify the court of the child's wishes; however, there is a provision requiring the GAL to "act as an advocate for the child."
Illinois	IL	F	A "guardian ad litem" is required in all child protective proceedings. The GAL does not need to be an attorney. If the GAL is not an attorney, then an attorney must be appointed to represent the GAL (not the child). In practice, most GALs are attorneys. In some counties, CASAs fill the role of a GAL. There is no statutory provision requiring the GAL to express the views of the child.
Indiana	IN	F	A "guardian ad litem, court appointed special advocate, or both" are required in all abuse and neglect proceedings. The GAL or CASA does not have to be an attorney. The GAL and CASA are responsible for representing the "child's interests." If necessary to protect the child's interests, the court may appoint an attorney to represent the guardian ad litem or CASA.
Iowa	IA	C	Counsel and a "guardian ad litem" for the child are required in all Child in Need of Assistance proceedings. One attorney is usually appointed to fill both roles. If a conflict arises between the child's views and the best interests of the child, the attorney is required to represent the child's best interests but notify the court of the child's wishes. The court may appoint separate counsel for the child. The court may also appoint a separate GAL, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as guardian ad litem. CASAs may fill the role of the separate GAL.
Kansas	KS	C	A "guardian ad litem" is required in all child protective proceedings. The GAL must be an attorney. The GAL has a duty to present all relevant facts to the court, including the "child's position." If the child's position is not consistent with the GAL's best interests determination, the GAL must inform the court of this. The court may then appoint a "second attorney" to serve as attorney for the child. The court may also appoint a volunteer special advocate to represent the best interests of child.
Kentucky	KY	C	"Counsel for the child" is required in all abuse and neglect and termination of parental rights proceedings. The attorney is required to represent the best interests of the child. (The terms "counsel for the child" and "guardian ad litem" (GAL) are used interchangeably.) When the best interests are in conflict with the child's views, the lawyer must inform the court of this conflict. The court may also appoint a CASA volunteer.
Louisiana	LA	A	The appointment of "independent counsel" for the child is required in all Child in Need of Care proceedings. The attorney is required to "advocate for the desires and expressed preferences of the child and follow the child's direction throughout the case in a developmentally appropriate manner." CASAs may be appointed at the discretion of the court to advocate for the best interests of the child.
Maine	ME	C	A "guardian ad litem" is required in all child protection proceedings. The GAL can be either an attorney or a CASA. Although the GAL is charged with representing the child's "best interests," the GAL is required to make the "wishes of the child" known to the court if the child has expressed wishes. The GAL or the child may request the court to appoint legal counsel for the child; if appointed, the district court must pay all reasonable costs and expenses of the child's counsel.

Maryland	MD	A (child w/ considered judg.); C (child w/ out considered judg.)	Counsel for the child is required in all Child in Need of Aid proceedings. If the child has "considered judgment," the attorney should advocate for the child's wishes. If the attorney determines that the child lacks considered judgment, the attorney should inform the court and then advocate a position consistent with the best interests of the child. If the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made known to the court. The court may also appoint a CASA.
Massachusetts	MA	A	Counsel for the child is required for all abuse and neglect proceedings. If counsel reasonably determines that the child is able to make an "adequately considered decision," counsel shall represent the child's expressed preferences regarding that matter. The court may appoint a GAL on its own volition or at the request of the child's counsel. The GAL represents the best interests of the child and does not need to be an attorney. The role of the GAL differs across courts, and in making an appointment, the court must define the role.
Michigan	MI	C	A "lawyer-guardian ad litem" is required in all child protective proceedings. The lawyer-guardian ad litem is responsible for advocating for the best interests of the child, regardless of whether that assessment reflects the child's wishes. However, consistent with the attorney-client privilege, the lawyer-guardian ad litem must also inform the court of the child's wishes. Additionally, if the child's determination of his/her own interests differs from the lawyer-guardian ad litem's, the lawyer-guardian ad litem must present the child's position to the court. The court may then choose, based on the age and maturity of the child, and the nature of the disagreement, to appoint a separate attorney for the child to serve in addition to the lawyer-guardian ad litem.
Minnesota	MN	B (child age 10+); E (child age <10)	A "guardian ad litem" is required in all child protection proceedings. The GAL may be an attorney or a CASA. For children age 10 and older, separate counsel must be appointed to advocate for the child's views; for children under 10, separate counsel is appointed at the discretion of the court. There is no statutory provision requiring the GAL to express the wishes of the child.
Mississippi	MS	B	Counsel for the child is required in all abuse and neglect and termination of parental rights proceedings. The attorney is required to advocate for the child's views. A "guardian ad litem" is also required in all abuse and neglect proceedings. The GAL, who may be an attorney, is required to represent the best interests of the child. One attorney can serve as both the counsel for the child and GAL. If there is a conflict between the child's views and the best interests of the child, a separate GAL is appointed.
Missouri	MO	D	A "guardian ad litem" is required in all abuse and neglect and termination of parental rights proceedings. Although a GAL is described as the "legal representative of the child" in the relevant TPR statute, in practice, the GAL represents the best interests of the child. The GAL may be an attorney or a CASA. In some courts, CASAs are appointed as GALs, whereas in other courts, they are appointed to assist the GAL. The CASA may or may not have legal representation in the courtroom. If there is a conflict between the child's views and the best interests assessment, the GAL is required to inform the court of the conflict.
Montana	MT	B	Counsel for the child and a "guardian ad litem" are both required for all child protection proceedings. The GAL must be an attorney and is required to advocate for the child's best interests. The role of the counsel is not articulated.
Nebraska	NE	E	A "guardian ad litem" is required in all child protection proceedings. The GAL is either an attorney or a CASA. If the GAL is a CASA, an attorney is appointed to represent the CASA (not the child). The GAL has the duty to protect the "interests of the juvenile." There is no statutory provision requiring the GAL to inform the court of the child's wishes. In rare cases, the child may be appointed separate counsel.



Nevada	NV	C	A "guardian ad litem" for the child is required in all abuse and neglect proceedings. The GAL does not have to be an attorney. The GAL is to "represent and protect the best interests of the child." As part of her responsibilities, the GAL must inform the court of the "child's desires." The court may appoint an attorney to represent the child. If the child is represented by an attorney, the attorney has the same authority and rights as an attorney representing a party to the proceedings. The relevant statute requires that a GAL not be compensated for her service. If an attorney is appointed as counsel for the child, the attorney can also serve as a GAL, though she may not be compensated for this part of her service.
New Hampshire	NH	E	A "guardian ad litem or court appointed special advocate" must be appointed where there is a reasonable finding of abuse and neglect at a preliminary hearing. (The CASA also functions as a GAL; the only difference between a GAL and a CASA GAL is that a CASA GAL is an unpaid volunteer.) The GAL advocates for the best interests of the child. There is no statutory requirement for the GAL to inform the court of the child's wishes; however the CASA program requires its GALs to inform the court of the child's wishes and CASAs represent children in 75% of all cases. The court may appoint an attorney for the child "where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem."
New Jersey	NJ	A	A "law guardian" is required in all abuse and neglect and termination of parental rights proceedings. The law guardian advocates for the child's views. However, in practice, most law guardians play a dual role, guided both by the child's views and by the child's best interests. Law guardians work with investigators who are appointed to fill a fact-finding role. A "guardian ad litem" may be appointed by the court. In some counties, CASAs are appointed as GALs.
New Mexico	NM	A (child age 14+); C (child age <14)	A "guardian ad litem" is required in all child protective proceedings for children under the age of 14. The GAL must be an attorney. The GAL is responsible for advocating for the best interests of the child. The GAL has a duty to "convey the child's declared position to the court at every hearing." For children 14 years of age and older, an attorney is appointed to "provide the same manner of legal representation and be bound by the same duties to the child as is due an adult client."
New York	NY	B	A "law guardian" for the child is required in all proceedings alleging abuse and neglect. The law guardian must be an attorney. A law guardian fills a dual role and is required to "help protect their [the children] interests and to help them express their wishes to the court."
North Carolina	NC	D	A "guardian ad litem" is required in all child protective proceedings to represent the best interests of the child. If the GAL is a non-attorney (which is the case in the vast majority of cases), an attorney is also appointed to protect the child's "legal interests." Although the attorney's client is the child, the attorney advocates for the GAL's best interest recommendation. However, GALs are required to express the views of the child to the court as part of a statewide court-sponsored GAL policy.
North Dakota	ND	B (TPR); F (Abuse/ Neglect)	A "guardian ad litem" is required in all proceedings involving abuse and neglect allegations. The GAL must be an attorney. The GAL is charged with representing the best interests of the child and to consider, but not be bound by, the child's wishes. In termination of parental rights cases, children who are not represented by a parent, guardian, or custodian have the right to counsel (and appointed counsel if found needy). Such children, as well as those children whose parent's/guardian's/custodian's interests conflict with their own, must also be appointed a GAL.
Northern Mariana Islands	MP	F	A "guardian ad litem" is required to be appointed by statute in all abuse and neglect proceedings. The statute provides little guidance as to the role and responsibilities of the GAL. As of 1996, it was not usual practice for a child who was the subject of a child protective proceeding to be assigned a GAL.

Ohio	OH	B	A "guardian ad litem" and independent counsel are both required in all abuse or neglect proceedings. The GAL is responsible for protecting the best interests of the child. The GAL does not have to be an attorney. If an attorney is appointed as GAL, that attorney can serve in a dual capacity as both the GAL and as the child's counsel. If a conflict arises between these two roles, the court appoints a separate GAL.
Oklahoma	OK	A	An attorney for the child is required for all children alleged to be deprived (abused, neglected or abandoned). The attorney is required to represent "the child and any expressed interests of the child." A "guardian ad litem" may also be appointed at the discretion of the court if requested by the child's attorney. There is a preference that CASAs serve as GALs.
Oregon	OR	E	A CASA is required for every child who is the subject of a child abuse or neglect hearing. The CASA is considered a party to the proceeding and may be represented by counsel. There is no statutory provision requiring the CASA to express the child's wishes. In addition, if a request for counsel for the child is made to the court, the court is required to appoint counsel. A request for counsel, however, is not always made. The Oregon State Bar's Principles and Standards of Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases provides guidance for attorneys representing young children on whether to represent the child's best interests or the child's wishes.
Pennsylvania	PA	A (TPR); C (Abuse/ Neglect)	A "guardian ad litem" is required to be appointed to all children deemed to be "dependent," which includes children who have been abused or neglected. The GAL, who must be an attorney, is "charged with representation of the legal interests and the best interests of the child." The GAL must inform the court of the child's views. On rare occasions, when there is a significant conflict between the wishes of the child and what the GAL considers to be in the child's best interests, the child can be appointed counsel in addition to the GAL. This is done under common law; there is no statutory authority for appointing both a GAL and a traditional attorney for children in protective proceedings. The court may also appoint a CASA. For termination of parental rights proceedings, counsel for the child is required.
Puerto Rico	PR	B	Children in Puerto Rico are represented by <i>Procurador Especial de Protección a Menores</i> , or Special Attorneys for Protection of Minors, or by a <i>Procurador</i> of Family Relations. The role of the <i>Procurador Especial</i> is to ensure that the minor is informed about decisions that affect him or her. The <i>Procurador Especial</i> plays a dual role in representing the child's wishes, while taking into account the child's best interests. The judge may also interview the minor or may obtain the testimony of a minor through the use of a closed circuit television system when the tribunal sees it as appropriate.
Rhode Island	RI	F	A "GAL and/or CASA" must be appointed in all child protective proceedings. Only an attorney can function as a GAL, whereas lay volunteers are CASAs. CASAs are typically paired with an attorney-GAL to determine as a team the best interests of the child. There is no statutory provision requiring the GAL to inform the court of the child's views.
South Carolina	SC	B (Abuse/ Neglect); C (TPR)	"Legal counsel" representing the child's wishes and a "guardian ad litem" representing best interests are both required in all abuse and neglect proceedings. (Despite these statutory and discretionary mandates, in practice, children are rarely appointed attorneys in abuse and neglect cases.) Only a "guardian ad litem" is required in termination of parental rights proceedings. A GAL has access to an attorney in abuse and neglect proceedings; the court may appoint counsel for the GAL in TPR proceedings. A GAL has a duty to express the views of the child to the court.

South Dakota	SD	F	An attorney for the child is required in all abuse and neglect proceedings. The attorney represents the child's best interests. A volunteer GAL/CASA may be appointed to assist the attorney. There is no statutory provision requiring the attorney or GAL/CASA to express the wishes of the child.
Tennessee	TN	B*	A "guardian ad litem" is required in all abuse proceedings. The GAL must be an attorney. The GAL is required to fill a dual role: "advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated." If there is a conflict between the child's best interests and the child's views, the GAL may request that another attorney be appointed to either represent the best interests of the child or the child's views. The court may also appoint a CASA; however, the CASA does not fill the role of a GAL.
Texas	TX	B	An "attorney ad litem" and a "guardian ad litem" are mandatory in cases in which the government is seeking conservatorship of the child in response to child abuse or neglect allegations or is seeking termination of parental rights. The guardian ad litem acts upon the child's best interests, and the attorney ad litem acts upon the child's expressed objectives. An attorney may serve in a dual role as both attorney ad litem and GAL. If an attorney is appointed to a dual role, she may subsequently request, or the court may choose to appoint, a separate guardian ad litem.
Utah	UT	D	A "guardian ad litem" is required in all abuse, neglect, and dependency proceedings. The GAL is required to represent the child's best interests through all subsequent court proceedings after appointment. A GAL must be an attorney, and has non-delegable duties to represent the child's best interests in court, file all motions, and attend all appeals, though the GAL may delegate investigatory work to lay volunteers. The GAL is required to advocate only the best interests of the child, though if the child's wishes are contrary to their best interests, the GAL is legally obligated to express the child's wishes to the court.
Vermont	VT	C	A "guardian ad litem or counsel for a child" is required by statute in all child protection proceedings. In practice, both are appointed. The GAL is a volunteer, often a CASA. The attorney must inform the court of any conflict between the GAL's best interests assessment and the child's views. The court may appoint separate counsel for the GAL. There is a rebuttable presumption that for children under the age of thirteen, the attorney follows the direction of the GAL.
Virgin Islands	VI	B	The court is required to appoint counsel as "guardian ad litem" for the child in any abuse or neglect proceedings. The GAL serves in a dual capacity, charged with the "representation of the child's rights, welfare, interest, and well-being and to advocate the child's viewpoint." The court may also appoint a CASA to "represent the interest of abused and neglected children in court proceedings."
Virginia	VA	C	The court is required to appoint "a discreet and competent attorney-at-law as guardian ad litem" in all abuse and neglect and termination of parental rights proceedings. The attorney-GAL is to represent the best interests of the child. If appropriate, the GAL can ask for separate counsel for the child. The GAL must express the wishes of the child. CASAs can be appointed as aides to GALs.
Washington	WA	E	A "guardian ad litem" is required in all abuse and neglect proceedings. The GAL does not need to be an attorney. The court may appoint legal counsel if the child is twelve years of age or older and requests one or if the GAL or court determines that the child needs to be independently represented. The GAL requirement is fulfilled with the appointment of independent counsel. There is no statutory provision requiring the GAL to express the child's views to the court.

West Virginia	WV	A	Counsel for the child is required in all abuse and neglect proceedings. Although the attorney is called a "guardian ad litem," the attorney-GAL has a dual role: a duty to maintain a normal lawyer-client relationship with the child client and a duty to achieve a result which will serve the best interests of the child. The attorney-GAL is required to "apprise the court of the child's wishes." The court also has the option to appoint a CASA in addition to the attorney-GAL.
Wisconsin	WI	A (child age 12+); C (child age <12)	An attorney is required in all child protection proceedings. If the child is twelve years or older, the attorney advocates for the child's views; for children less than twelve years of age, the attorney advocates for the best interests of the child. If there is a conflict between the GAL's best interests assessment and the child's views, separate counsel may be appointed for a child who is less than twelve years of age. A GAL is required to express the wishes of the child.
Wyoming	WY	E	Counsel for the child is required in all abuse and neglect proceedings. The attorney serves as the child's "guardian ad litem" unless a separate GAL has been appointed. Both the attorney-GAL and the separate GAL is charged with the representation of the child's best interest. Wyoming statutes provide little guidance as to the distinction between these two roles, though a 1998 Wyoming Supreme Court decision endorsed the notion that the attorney-GAL could advocate for the child's views and represent the best interests, the court also encouraged the legislature to make appropriate statutory changes.

\* Tennessee: If there is a conflict and the GAL advocates for the child's wishes, then A; if there is a conflict and the GAL advocates for best interests, then C.

## APPENDIX D. Compensation rates for counsel appointed to children

Unsurprisingly, this preliminary look into compensation rates reveals that attorneys or guardians ad litem (GAL) who represent children in protective proceedings are frequently under-compensated. Although our research is not exhaustive, we have found nine jurisdictions that explicitly mentioned hourly rates in their statutes, rules, or regulations. Hourly rates for out-of-court work ranged from \$40 per hour to \$65 per hour. Hourly rates for in-court work ranged from \$40 per hour to \$75 per hour.<sup>179</sup> Hourly rates depend on other factors—such as whether an appointed attorney or GAL is being paid or whether the county has a contract with the attorney or GAL.

State	Compensation Rates	Caps
1. Alabama	Out-of-court work for attorneys: \$40/hour  In-court work for attorneys: \$60/hour	No limit if the original charge is a capital offense or carries a possible sentence of life without parole.  \$3500 for Class A felonies  \$2500 for Class B felonies  \$1500 for Class C felonies  \$2000 for juvenile cases  \$1000 for all other cases
2. Alaska	Attorney rate: \$40/hour  Person other than an appointed attorney: \$25/hour	\$500 for attorneys  \$300 for people other than attorneys  The assigned trial judge may recommend extraordinary expenses up to \$1000, and the presiding judge may recommend up to an additional \$1500. Extraordinary expenses exceeding \$2500 may be authorized only in extremely complex cases by the administrative director upon the recommendation of the presiding judge.
3. Connecticut	Attorney rate: flat fee of \$350 for the first 30 hours of representation, \$40/hour beyond the first 30 hours	
4. Colorado	Attorneys are paid either on a flat fee basis or per-hour.  Out-of-court work for attorneys: \$45/hour  In-court work for attorneys: \$55/hour  The flat fee for a dependency and neglect proceeding is \$1040.	An additional \$2000 in fees may be billed by the GAL for appeals. Fees in excess of \$2000 and all expenses must be approved by the Colorado Office of the Children's Representative.

<sup>179</sup> Technically, the lowest rate was in Connecticut, where attorneys received a flat fee of \$350 for the first 30 hours of representation (approximately \$11.67 per hour) and then \$40 per hour beyond the first 30 hours. We omitted this outlier from the aforementioned ranges.

5. District of Columbia	Attorney rate: \$65/hour	\$1600 for attorneys for all proceedings from initial hearing through disposition  \$1600/year for all subsequent proceedings other than terminating parental rights  \$2200 for proceedings to terminate parental rights  \$1100/case for appeal of trial courts
6. Hawaii	Out-of-court work for attorneys and GALs: \$40/hour  In-court work for attorneys and GALs: \$60/hour	\$1500 for predisposition work  \$500 for work associated with post-disposition reviews
7. Iowa	\$60/hour for Class A felonies  \$55/hour for Class B felonies  \$50/hour for all other cases	
8. Kentucky		\$500 for appointed counsel  \$250 if the action has final disposition in the District Court  \$500 for GALs
9. Louisiana	Out-of-court work for attorneys: \$50/hour  In-court work for attorneys: \$75/hour	\$100 total plus a maximum of \$200 in reimbursable expenses for curatorship
10. South Carolina		\$100 for attorneys  \$50 for GALs
11. West Virginia	Out-of-court work for attorneys: \$45/hour  In-court work for attorneys: \$65/hour	For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, <i>the maximum amount is as the court may approve</i>  For all other eligible proceedings, the maximum amount is \$3000  Actual and necessary expenses incurred in providing legal representation shall be reimbursed to a maximum of \$1500
12. Wisconsin	A Supreme Court Order deemed that "reasonable" compensation for GALs was \$70/hour. However, counties typically contract with GAL on an annual basis. The average rate is approximately \$35-40/hour.	

## APPENDIX E. State Compensation Schemes

\*\*\* Note: The relevant sources of law governing compensation have been paraphrased at times to capture the general meaning of the laws.

State	Sources of Law Governing Compensation	Comments
1. Alabama	<p>Alabama Code § 12-15-9</p> <ul style="list-style-type: none"> <li>• Whenever legal custody of a child is vested in someone other than his parents, the court may order that the parent or other legally obligated person pay a reasonable sum that will cover in whole or in part the support and treatment of the child – including support, treatment, costs, and legal fees.</li> </ul> <p>Alabama Code § 12-15-11</p> <ul style="list-style-type: none"> <li>• If the court finds that the parents or other legally obligated persons are financially able to pay all or part of the court costs, attorney fees and expenses, the court shall order them to pay and may prescribe the manner of payment.</li> </ul> <p>Alabama Code § 12-19-252</p> <ul style="list-style-type: none"> <li>• (d) Counsel appointed to these cases shall be entitled to receive for their services a fee to be approved by the trial court. The amount of the fee shall be based on the number of hours spent by the attorney in working on the case and shall be computed at the rate of \$50/hour for time expended in court and \$30/hour for time reasonably expended out of court in the preparation of the case. (Effective October 1, 2000 – the rate will be \$60/hour for in-court work and \$40/hour for reasonably expended out-of-court work). The total fees paid to any one attorney in any one case shall not exceed: 1) No limit if the original charge is a capital offense or carries a possible sentence of life without parole; 2) \$3,500 for Class A felonies; 3) \$2,500 for Class B felonies; 4) \$1,500 for Class C felonies; 5) \$2,000 for juvenile cases; and 6) \$1,000 for all other cases. The court for good cause shown may approve an attorney's fee in excess of the maximum amount allowed. Counsel shall also be reimbursed for any expenses reasonably incurred in the defense of the client, to be approved in advance by the trial court.</li> </ul>	
2. Alaska	<p>Alaska Statutes § 25.24.310</p> <ul style="list-style-type: none"> <li>• (a) If the court has appointed an attorney to represent the minor and the parties are indigent, the court shall enter an order for costs, fees, and disbursements in favor of the state.</li> <li>• (c) If the court has appointed a GAL to represent the minor and the parties are indigent, the court shall enter an order for costs, fees, and disbursements in favor of the state.</li> </ul> <p>Alaska Statutes § 18.85.100</p> <ul style="list-style-type: none"> <li>• (b) Subject to the provisions of AS 18.85.155, the attorney services and facilities and the court costs shall be provided at public expense to the extent that the person, at the time the court determines indigency, is unable to provide for payment without undue hardship.</li> </ul>	

	<p>Alaska Rules of Civil Procedure 90.7</p> <ul style="list-style-type: none"> <li>• (m) The GAL, an attorney for a GAL, and expert witnesses used by the GAL will be compensated at a rate that the court determines is reasonable. Fees and costs for a private GAL will be divided equally between the parties unless the court finds good cause to change this allocation. The GAL must seek court approval before incurring extraordinary expenses.</li> </ul> <p>Rule 12</p> <ul style="list-style-type: none"> <li>• (c)(3) In an appointment for representation of a minor, the court shall enter an order for costs, fees and disbursements in favor of the state. If the appointment is made in custody/support/visitation proceeding, the court shall, if possible, avoid assigning costs to only one party by ordering that costs of the minor's legal representative or guardian services be paid from property belong to both parents before a division of property is made.</li> <li>• (c)(5) Attorneys will be compensated at the rate of \$40/hour, provided that total compensation for any case will not exceed \$500 without prior approval of the administrative director. A person other than an attorney appointed to provide services will receive compensation if the court deems it appropriate not to exceed \$25/hour, provided that total compensation for any case will not exceed \$300 without prior approval of the administrative director. Extraordinary expenses will be reimbursed only if prior authority has been obtained from the administrative director, upon recommendation by the assigned trial judge or the presiding judge. The assigned trial judge may recommend extraordinary expenses up to \$1,000, and the presiding judge may recommend up to an additional \$1,500. Extraordinary expenses exceeding \$2,500 may be authorized only in extremely complex cases by the administrative director upon the recommendation of the presiding judge.</li> </ul>	
<p>3. American Samoa</p>	<p>Am. Samoa Code Ann. § 45.2017</p> <ul style="list-style-type: none"> <li>• (d) If the prayer of the petition is granted, the costs of court proceedings, including GAL and expert witness fees, may be charged by the court against the respondent. If the prayer of the petition is not granted, the costs may be charged against the territory of American Samoa.</li> </ul>	
<p>4. Arizona</p>	<p>Arizona Statutes § 8-221</p> <ul style="list-style-type: none"> <li>• (B) If a juvenile is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person (unless counsel is waived).</li> <li>• (F) The county board of supervisors may fix a reasonable sum to be paid by the county for the services of an appointed attorney.</li> <li>• (G) When the court appoints an attorney to represent a juvenile, the court shall order the juvenile or parent or guardian, if he can afford it, to pay the attorney or the county an amount the parent or guardian is able to pay without incurring substantial hardship to the family.</li> </ul>	<p>Arizona is one of only four states (the other three being Connecticut, Florida, and New York) to question the constitutional basis of the CAPTA compensation system. The Arizona case actually upheld the constitutionality of a relatively low system of compensation. See <i>Haralambie v. Pima County</i>, 669 P.2d 984 (Arizona Court of Appeals 1983).</p>



	<p>Arizona Statutes § 8-522</p> <ul style="list-style-type: none"> <li>• (D) A special advocate serves without compensation but is entitled to reimbursement of expenses pursuant to guidelines prescribed by the supreme court by rule.</li> </ul>	<p><i>In the Matter of the Appeal in Pima County Juvenile Severance Action No. S-113432, 872 P.2d 1240 (Arizona Court of Appeals 1993): A.R.S. § 8-225 [now 8-221] requires the court to appoint counsel for indigent children in proceedings, such as severance, that fall under Title 8. The attorney should have been appointed and compensated under this provision.</i></p>
<p>5. Arkansas</p>	<p>Arkansas Code § 9-27-310</p> <ul style="list-style-type: none"> <li>• (e) No fees shall be charged or collected by the clerk or sheriffs' offices in cases brought in the circuit court under this subchapter by a governmental entity or non-profit corporation, including the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services.</li> </ul> <p>Arkansas Code § 9-27-316</p> <ul style="list-style-type: none"> <li>• (2) The court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile.</li> <li>• (3) All moneys collected by the clerk of the court under this subsection shall be retained by the clerk and deposited into a special fund (the "juvenile representation fund").</li> <li>• (4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family in need of services cases and indigent parents or guardians in dependency-neglect cases. . .</li> <li>• (5) Any money remaining in the fund at the end of the fiscal year shall carry over into the next fiscal year in the juvenile representation fund.</li> </ul> <p>Ark. Code Ann. § 9-27-401</p> <ul style="list-style-type: none"> <li>• (b)(1) The Director of the Administrative Office of the Courts is authorized to employ or entire into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.</li> <li>• (3)(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Division Judges Committee of the Arkansas Judicial Council.</li> <li>• (d)(4) When attorneys are appointed, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the office.</li> <li>• (d)(6) The court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.</li> <li>• (d)(7) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid under this section.</li> <li>• (d)(8) The funds appropriated shall be apportioned to judicial districts based upon a formula developed by the office and approved by the committee.</li> </ul>	

<p>6. California</p>	<p>California Rules of Court, Rule 1412</p> <ul style="list-style-type: none"> <li>(g) At each hearing the court must advise as unrepresented child, parent, or guardian of the right to be represented by counsel and, if applicable, of the right to have counsel appointed, subject to a claim by the court or the county for reimbursement as provided by law.</li> </ul> <p>California Rules of Court, Rule 1424</p> <ul style="list-style-type: none"> <li>(a) A CASA program must comply with this rule to be eligible to receive Judicial Council funding. The Judicial Council may consider compliance with the guidelines delineated in the <i>CASA Program Policies and Procedures Manual</i> when determining eligibility for and amount of program funding.</li> <li>(k) CASA programs may receive funds from probation departments, local child welfare agencies, and the California Department of Social Services (pursuant to the conditions of this rule).</li> </ul>	
<p>7. Colorado</p>	<p>C.R.S. 13-91-102</p> <ul style="list-style-type: none"> <li>This statute establishes the Office of the Child's Representative (OCR) and funding resources to improve the quality of representation and advocacy provided to children in the Colorado court system.</li> </ul> <p>C.R.S. 13-91-106</p> <ul style="list-style-type: none"> <li>This statute establishes a GAL fund and a CASA fund.</li> </ul> <p>Supreme Court of Colorado Chief Justice Directive 04-06</p> <ul style="list-style-type: none"> <li>IV (B) the appointee shall submit claims for payment of legal fees and expenses directly to the OCR. The OCR will set forth maximum total fees per appointment and procedures for approval of excess fees.</li> </ul>	<p>A GAL's fees are paid and expenses are reimbursed through the Colorado Office of the Children's Representative (OCR). Attorneys are paid either on a flat fee basis or per hour. Currently, per-hour attorney receive \$45/hour for out-of-court work and \$55/hour for in-court work. The flat fee for a dependency and neglect proceeding is \$1040. An additional \$2000 in fees may be billed by the GAL for appeals. Fees in excess of \$2000 and all expenses must be approved by the OCR in advance.</p>

8. Connecticut	<p>Connecticut Statutes § 46b-136</p> <ul style="list-style-type: none"> <li>When a judge appoints an attorney to represent the child, it can order whoever has legal custody of the child to pay for these legal fees.</li> </ul> <p>Connecticut Statutes §46b-129a</p> <ul style="list-style-type: none"> <li>The counsel and GAL's fees, if any, shall be paid by the parents or guardian, or the estate of the child, or, if such persons are unable to pay, by the court.</li> </ul> <p>Cases</p> <ul style="list-style-type: none"> <li><i>Juvenile Matters Trial Lawyers Ass'n v. Judicial Dept.</i>, 2005 U.S. Dist. LEXIS 5067, *4-5 (D. Conn. 2005): The Juvenile Matters Trial Lawyers Association filed suit in federal district court against the Judicial Department in 2004, claiming that the compensation rates were substantially lower than those paid to public defenders. The District Court dismissed the case in 2005, holding that the Association did not have standing nor the associational standing to bring the case.</li> </ul>	
9. Delaware	[Research did not reveal results on compensation]	The Office of the Child Advocate was charged with implementing and coordinating a program to provide <i>pro bono</i> or contractual attorneys to represent the best interests of children.
10. District of Columbia	<p>D.C. Statutes § 16-2326.01. [See subsections (a) through (h)]</p> <ul style="list-style-type: none"> <li>(a)(1) An attorney or GAL representing a person who is financially unable to obtain legal counsel shall be compensated at the end of the representation at a rate not less than the hourly rates established in D.C. Official Code, sec. 11-2604.</li> <li>(a)(2) The attorney may make a claim for expenses reasonably incurred.</li> <li>(b) Compensation is subject to the following limitations: (1) for all proceedings from initial hearing through disposition, the maximum compensation shall be \$1,600; (2) for all subsequent proceedings other than terminating parental rights, the maximum compensation shall be \$1,600 per year; (3) for proceeding to terminate parental rights, the maximum compensation shall be \$2,200; and for appeal of trial courts, the maximum compensation shall be \$1,100 per case.</li> <li>(f)(1) Claims for compensation in excess of the maximum amounts provided in subsection (b) may be approved for extended or complex representation when the payment is necessary to provide fair compensation.</li> </ul> <p>D.C. Statutes § 11-2604</p> <ul style="list-style-type: none"> <li>(a) These attorneys shall be compensated at a fixed rate of \$65/hour. They shall be reimbursed for expenses reasonably incurred.</li> </ul>	
11. Florida	<p>Florida Statutes § 27.5304</p> <ul style="list-style-type: none"> <li>Compensation may not exceed 80% of the fees earned, or costs and related expenses incurred, to date, or an amount proportionate to the maximum fees permitted under this section based on legal services provided to date, whichever is less. The court may grant the motion if counsel shows that failure to grant the motion would work a particular hardship upon counsel.</li> </ul>	Florida is one of only four states (the other three being Arizona, Connecticut, and New York) to question the constitutional basis of the CAPTA compensation system.

	<ul style="list-style-type: none"> <li>• 7) Private court-appointed counsel representing a parent in a dependency case that is open may submit a request for payment to the Justice Administrative Commission at the following intervals:       <ul style="list-style-type: none"> <li>(a) Upon entry of an order of disposition as to the parent being represented.</li> <li>(b) Upon conclusion of a 12-month permanency review.</li> <li>(c) Following a judicial review hearing.</li> </ul> <p>In no case, however, may counsel submit requests under this subsection more than once per quarter, unless the court finds extraordinary circumstances justifying more frequent submission of payment requests.</p> <p>Florida Statutes § 39.0134</p> <ul style="list-style-type: none"> <li>• If counsel is entitled to receive compensation for representation pursuant to a court appointment in a dependency proceeding or a termination of parental rights proceeding pursuant to this chapter, compensation shall be paid in accordance with s. 27.5304. The state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs in accordance with s. 984.08.</li> </ul> <p>Florida Statutes § 39.822</p> <ul style="list-style-type: none"> <li>• (2) In those cases in which the parents are financially able, the parents of the child shall reimburse the court, in part or in whole, for the cost of GAL services. Reimbursement to the GAL shall not be contingent upon successful collection by the court from the parents.</li> </ul> <p>Florida Statutes § 984.08</p> <ul style="list-style-type: none"> <li>• (2) If, after the appointment of counsel for an indigent parent or legal guardian, it is determined that the parent or legal guardian is not indigent, the court has continuing jurisdiction to assess attorney's fees and costs against the parent or legal guardian, and order the payment thereof. When payment of attorney's fees or costs has been assessed and ordered by the court, there is hereby created a lien in the name of the county in which the legal assistance was rendered, enforceable as provided in subsection (3), upon all the property, both real and personal, of the parent or legal guardian who received the court-ordered appointed counsel under this chapter. The lien constitutes a claim against the parent or legal guardian and the parent's or legal guardian's estate in an amount to be determined by the court in which the legal assistance was rendered.</li> </ul> <p>Cases</p> <ul style="list-style-type: none"> <li>• Department of Health and Rehabilitative Services v. Coskey, 599 So. 2d 153 (Fla. App. Dist. 1992): Holding that the Department of Health and Rehabilitative Services was not responsible for attorney's fees for the counsel appointed for a child in a dependency case because it was the GAL who had requested appointment, not the Department.</li> <li>• Brevard County v. Department of Health and Rehabilitative Services, 589 So. 2d 398 (Fla. App. Dist. 1991): Holding that although the county was not responsible for paying attorney's fees to the child's counsel, the Department of Health and Rehabilitative Services was responsible for paying the fees because they had requested that counsel be appointed.</li> </ul> </li></ul>	<p>The Florida Legislature provided funding for the establishment of GAL programs in every circuit to represent the best interests of abused and neglected children through a volunteer model. By 1990, all of Florida's twenty judicial circuits had programs of GAL services that were administratively managed by the trial courts.</p>
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	<ul style="list-style-type: none"> <li>• <i>Marion County v. Johnson</i>, 586 So. 2d 1163 (Fla. App. 5 Dist. 1991): Holding that the Department of Health and Rehabilitative Services rather than the county was required to pay attorney's fees for an attorney ad litem appointed to a child in a dependency hearing because the attorney was performing legislatively mandated duties of the Department.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>Guardian Ad Litem Program v. Fernando M. Palacios</i>, 621 So.2d 565 (Fla. 5th DCA 1993): An attorney who represented children in a dependency proceeding was not entitled to fees from the state, notwithstanding an order by the appointing court requiring that the state do so. For fees to be paid, there must be a contractual, statutory, or quantum meruit basis.</li> <li>• <i>Board of County Commissioners of Hillsborough County v. Scruggs</i>, 545 So.2d 910 (Fla. 2nd DCA 1989): This is a ruling on a petition for certiorari by the county. Attorney was awarded \$2,000 by the lower court for his work on behalf of a mother in a dependency, and later, termination case. The question is whether <i>Makemson v. Martin County</i>, 491 So.2d 1109 (Fla. 1986), cert. denied, 479 U.S. 1043, 107 S.Ct. 908 (1987), in which the statutory limitation on fees for appointed criminal counsel was held facially valid by unconstitutional in extraordinary and unusual cases, applies to civil dependency cases. This court believes that it does and notes that it would probably also apply to termination cases. To allow Scruggs only the maximum would result in a \$20 per hour fee, which is so low that it would impair the court's ability to ensure effective counsel.</li> </ul>	
12. Georgia	<p>Georgia Code § 15-11-8</p> <ul style="list-style-type: none"> <li>• (a) The following expenses shall be a charge upon the funds of the county upon certification thereof by the court. . . (3) reasonable compensation for services and related expenses of counsel appointed by the court, (4) reasonable compensation for a GAL, and (5) the expense of service of summons, notices, and subpoenas, travel expenses of witnesses, transportation, subsistence, and detention of the child, and other like expenses. . .</li> <li>(b) If the court finds that the parents are financially able to pay all or part of the costs and expenses stated in subsection (a), the court may order them to pay the same and prescribe the manner of payment.</li> </ul>	
13. Guam	<p>19 Guam Code Ann. § 13308</p> <ul style="list-style-type: none"> <li>• (d) A GAL or counsel appointed for the child or other party shall be paid for by the court unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. The court may order the appropriate parties to pay reimbursement to the court for the costs and fees of the GAL and other counsel appointed for the child.</li> </ul>	
14. Hawaii	<p>Haw. Rev. Stat. Ann. § 587-34</p> <ul style="list-style-type: none"> <li>• (e) A GAL or counsel appointed for the child or other party may be paid for by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs. The court may order the appropriate parties to pay or reimburse the costs and fees of the GAL and other counsel appointed for the child.</li> </ul>	

	<p>§ 571-87</p> <ul style="list-style-type: none"> <li>(a) Appointed counsel and GALs shall receive reasonable compensation for necessary expenses.</li> <li>(b) The court shall determine the amount of reasonable compensation to appointed counsel and GALs, based on the rate of \$40/hour for out-of-court services and \$60/hour for in-court services with a maximum fee of \$1500 for predisposition work and \$500 for work associated with post-disposition reviews. Payments in excess of these maximums can be made whenever the court certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of such court.</li> </ul>	
<p>15. Idaho</p>	<p>Idaho Code § 16-1614(3)</p> <ul style="list-style-type: none"> <li>Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.</li> </ul> <p>Idaho Code § 16-1638</p> <ul style="list-style-type: none"> <li>There is created an account in the agency asset fund in the state treasury to be designated the GAL account. The account consists of moneys appropriated to the account, donations, gifts and grants, etc. Disbursements of moneys from the account shall be by appropriation from the legislature to the supreme court, which shall in turn make payment of available moneys, upon request, to the grant administrator for the payment of grants to qualified recipients and for expenses incurred for carrying out the provisions of this chapter.</li> </ul> <p>Idaho Code § 16-1639</p> <ul style="list-style-type: none"> <li>The grant administrator is authorized to award and administer grants from the GAL account.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li><i>Sager v. Maynard</i>, 620 P.2d 794 (Supreme Court of Idaho 1980): The attorney here worked for Legal Aid and was appointed to represent a mother in a termination proceeding. He submitted evidence of his work and petitioned for \$580. The fees were denied and the attorney appealed. In the midst of the appeal, this court decide <i>James v. Dunlap</i>, which held that status as a legal aid employee does not bar compensation, and so this case is remanded for consideration under that precedent.</li> </ul>	
<p>16. Illinois</p>	<p>Illinois Statutes Ch. 705 § 405/2-17</p> <ul style="list-style-type: none"> <li>(5) The reasonable fees of a GAL shall be fixed by the court and charged to the parents of the minor, to the extent they are able to pay. If the parents are unable to pay, the fees shall be paid from the general fund of the county.</li> </ul> <p>Illinois Statutes Ch.705 § 405/2-17.1</p> <ul style="list-style-type: none"> <li>(5) All costs associated with the appointment and duties of the court appointed special advocate shall be paid by the court appointed special advocate or an organization of court appointed special advocates. In no event shall the court appointed special advocate be liable for any costs of services provided to the child.</li> </ul>	<p>The rates in each county vary. Compensation for attorneys who represent children in Cook County is \$30/hour for out-of-court work and \$40/hour for in-court work.</p>

	<p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>Pasley v. Kerans</i>, 479 N.E.2d 417 (Illinois 5th Dist Appellate Court 1985): An attorney who was appointed to represent a mother in termination proceedings requested fees equivalent to \$30 per hour out-of-court and \$40 per hour in-court. Instead, he was awarded fees that did not even cover his overhead. Apparently, the fees at the time were not established by statute but were awarded by the court as "reasonable compensation." This court discusses a standard for reasonable compensation drawn from criminal law, but says that there is no reason it should not apply to civil cases.</li> </ul>	
17. Indiana	<p>[Research did not reveal results on compensation. Payments are made pursuant to IC 31-40, which has not been included in this chart.]</p> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>In re J.C.</i>, 735 N.E.2d 848 (Ind. Ct. App. 2000): Purpose of appointing a guardian ad litem (GAL) is to represent and protect the best interests of the child and to provide the child with services requested by the court such as researching, examining, advocating, facilitating, and monitoring the child's situation. Order requiring county office of family and children to pay attorney fees incurred by court-appointed guardian ad litem (GAL) in child in need of services (CHINS) proceeding was not clearly erroneous; no appearance was created that county office was controlling guardian ad litem, or that they were not distinct entities, and statutory basis existed for requiring county office to pay fees.</li> </ul>	
18. Iowa	<p>Iowa Statutes § 232.71C</p> <ul style="list-style-type: none"> <li>• (3) When the court appoints a GAL, the court shall order the child's parent/guardian to bear the costs. If the child's parent/guardian is unable to bear the costs, the expense shall be paid out of the county treasury.</li> </ul> <p>Iowa Statutes § 232.89</p> <ul style="list-style-type: none"> <li>• (3) The court shall determine whether the child's parent/guardian has the ability to pay in whole or in part for counsel appointed to the child and if payment will result in impairment of the relationship between the child and the parent/guardian. If impairment is deemed unlikely, the court shall order that person to pay. If the person is unable to pay, counsel shall be reimbursed pursuant to § 232.141, subsection 2, paragraph "b."</li> </ul> <p>Iowa Statutes § 232.141</p> <ul style="list-style-type: none"> <li>• (1) The court may order parents/guardians to pay expenses.</li> <li>• (2) What expenses are covered.</li> <li>• (3) Costs incurred for compensation of an attorney or GAL shall be paid in accordance with § 13B.4 and § 815.7.</li> </ul> <p>Iowa Statutes § 13B.4</p> <ul style="list-style-type: none"> <li>• See subsections 4, 5, 6, and 7 for state public defender fees and payment procedures.</li> </ul> <p>Iowa Statutes § 815.7</p> <ul style="list-style-type: none"> <li>• Attorneys are entitled to reasonable compensation and expenses. For appointments made on or after July 1, 1999, this amount is \$60/hour for class A felonies, \$55/hour for class B felonies, and \$50/hour for all other cases.</li> </ul>	

	<p>Cases</p> <ul style="list-style-type: none"> <li>• Mathison v. Young, 333 N.W.2d 477 (Iowa 1983): The Supreme Court of Iowa considered the legal standard for determining reasonable compensation. The court should consider the following factors for "reasonableness": "the time necessarily spent, the nature and extent of the services, the penal consequences involved, the difficulty of handling and importance of issue, the responsibilities assumed and results obtained, the standing and experience of the attorney, the customary charge for similar services in the community, and the certainty of payment." <i>Id.</i> at 480.</li> <li>• <i>State Public Defender v. Iowa District Court for Polk County</i>, 620 N.W.2d 268 (Iowa 2000): This is a petition for certiorari, which is the correct means of challenging a court order awarding attorney's fees. Even though the district court appears to be the defendant here, the real party is an attorney who contracted with the public defender to accept appointments. The contract pay rate seems to have been \$45 per hour. On request of the attorney, the district court granted him extra hours of pay for helping his client, a mother whose children had been removed, find housing. The public defender challenged the extra pay, arguing that these hours were spent providing social services and not legal services. This court believes that finding housing was part of a legal strategy to avoid termination of the mother's rights and that the lower court did not err as a matter of law in awarding the additional hours. The most interesting element of this case is that the compensation rate was contractual and not statutory.</li> </ul>	
19. Kansas	<p>Kan. Stat. Ann. § 38-1505</p> <ul style="list-style-type: none"> <li>• (e) A GAL, second attorney appointed pursuant to subsection (a) or attorney appointed for parties to proceedings under this section shall be allowed a reasonable fee for their services, which may be assessed as an expense in the proceedings as provided in K.S.A. 38-1511 and amendments thereto.</li> </ul> <p>Kan. Stat. Ann. § 38-38-1511</p> <ul style="list-style-type: none"> <li>• The expenses for proceedings under this code shall be paid by the board of county commissioners from the general fund of the county.</li> </ul>	
20. Kentucky	<ul style="list-style-type: none"> <li>• Ky. Rev. Stat. Ann. § 620.100</li> <li>• (1)(a) When the court appoints counsel for the child, the fee to be fixed by the court shall not exceed \$500. However, if the action has final disposition in the District Court, the fee shall not exceed \$250.</li> </ul> <p>Ky. Rev. Stat. Ann. § 625.041</p> <ul style="list-style-type: none"> <li>• When the court appoints a GAL for the child, the GAL shall be paid a fee to be fixed by the court, not to exceed \$500. This fee shall be paid by the petitioner, except if the Cabinet for Health and Family Services receives custody of the child, in which case the GAL shall be paid by the Finance and Administration Cabinet.</li> </ul>	
21. Louisiana	<p>Louisiana Children's Code, Tit. VI, Art. 607</p> <ul style="list-style-type: none"> <li>• (B) If the court appoints counsel for the child, it may order the parents to some or all of the costs.</li> </ul> <p>Louisiana Children's Code, Tit. IV, Art. 424.1</p> <ul style="list-style-type: none"> <li>• (D) CASA volunteers serve without compensation.</li> </ul>	



	<p>Louisiana Revised Statutes, Tit. 46, Ch. 3, Part 10 §460.21</p> <ul style="list-style-type: none"> <li>• (A)(1) The state, through the Department of Social Services, shall pay legal fees and approved expenses for representing children of indigent parents.</li> </ul> <p>Supreme Court Administrative Rules. Part G. General Administrative Rules. Section 9. Schedule of fees for Child in Need of Care and termination of Parental Rights Proceedings.</p> <ul style="list-style-type: none"> <li>• How the state of Louisiana compensates attorneys who represent children: \$75/hour for in-court work, \$50/hour for out-of-court work, \$100 total plus a maximum of \$100 in reimbursable expenses for curatorship, and courts may also order higher rates of compensation in extraordinary cases.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>State in the Interest of a Minor Male Child</i>, 461 So.2d 1278 (Louisiana 1st Cir. Court of Appeal 1984): This court awards the attorney additional fees for the appeal. However, this case was decided under old law.</li> <li>• <i>State in the Interest of C.P.</i>, 463 So.2d 899 (Louisiana 2nd Cir. Court of Appeal 1985): This appeal deals mainly with the termination of parental rights. The small section dealing with fees holds that they should be included in the costs of the proceedings. However, this case was decided under old law.</li> <li>• <i>State in the Interest of TK</i>, 568 So.2d 636 (Louisiana 3rd Cir. Court of Appeal 1990): This case is virtually identical in its facts and legal conclusion to <i>State in the Interest of HLD</i>, discussed below.</li> <li>• <i>State in the Interest of HLD, a Minor v. CDM</i>, 563 So.2d 360 (Louisiana 3rd Cir. Court of Appeal 1990): This appeal deals both with the validity of the termination of parental rights and the award of attorney's fees. Two attorneys ad hoc were appointed: one for the mother and one for the child. The trial court ordered the state (here treated as synonymous with DSS) to give each \$700 for the trial. The statute says that DSS may not be charged for attorney's fees and that the judicial district indigent defender board is responsible for compensating the attorney for the child. While Article 95 of the Code of Juvenile Procedure used to allow for the compensation of parents' attorneys through the DSS predecessor, the amendment of the article through Acts 1987, No. 627 has left no statutory provision for compensating them. Courts have the inherent authority to appoint attorneys for the indigent, with or without compensation. The trial court's order requiring the state to compensate the mother's attorney is without statutory authority.</li> </ul>	
22. Maine	<p>Maine Statutes, Tit. 22 § 4005</p> <ul style="list-style-type: none"> <li>• (1)(A) The GAL's reasonable costs and expenses must be paid by the District Court.</li> <li>• (1)(F) The GAL or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel.</li> </ul>	

	<p>Maine Laws 1995, c. 405, § 25</p> <ul style="list-style-type: none"> <li>• The Legislature requested that the Supreme Judicial Court develop a GAL program. The program must also address appointment of and funding for GALs when one or more parties are indigent.</li> </ul>	
23. Maryland	<p>Maryland Statutes § 3-813</p> <ul style="list-style-type: none"> <li>• (b) Except for the local department and the child who is the subject of the petition, a party is not entitled to the assistance of counsel at State expense unless the party is indigent or otherwise not represented and under 18, or incompetent by reason of mental disability.</li> <li>• (f) The court may assess against any party reasonable compensation for the services of an attorney appointed to represent a child.</li> </ul> <p>Maryland Statutes § 3-830</p> <ul style="list-style-type: none"> <li>• (c) The Governor may include funds in the budget to carry out the provisions of the Court-Appointed Special Advocate Program.</li> </ul>	
24. Massachusetts	<p>General Laws of Massachusetts, Ch. 119, § 29A</p> <ul style="list-style-type: none"> <li>• Parents are liable for reasonable legal fees and expenses, unless they are deemed indigent.</li> </ul> <p>General Laws of Massachusetts, Ch. 211D, § 12</p> <ul style="list-style-type: none"> <li>• The Committee for Public Counsel Services shall prescribe policies and procedures for payment of private attorneys appointed.</li> </ul> <p>Massachusetts Trial Court Probate and Family Court Department, Standards for Category F Guardian Ad Litem Investigators</p> <ul style="list-style-type: none"> <li>• (2) The Administrative Office of the trial court sets the GAL's fees. If the court order lacks clarity about who will pay for GAL services, the GAL shall file a motion for clarification by the appointing judge. If the order specifies that compensation will be paid by the state, the GAL cannot charge additional fees to the parties.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>Lewis v. Committee for Public Counsel Services</i>, 50 Mass.App.Ct. 319, 739 N.E.2d 706 (2000): Procedurally, this is an appeal from the Committee for Public Counsel Service decision to fine the two attorneys. The attorneys apparently derived most of their income from representing children and were over-billing to augment their incomes. The court barely discusses their arguments, but they only seem to challenge the ruling that their billing was unreasonable under the law rather than the terms of the law itself.</li> </ul>	

25. Michigan	[Research did not reveal results on compensation]	Every county in Michigan has its own procedure for compensating lawyer-guardians ad litem. Some counties have contracts with one or more attorneys to represent each child in a child protection case. Other counties appoint attorneys from a roster on a rotating basis, and others have a child advocacy center or group of attorneys (such as Genesee County or the University of Michigan's Children's Law Center) with which they contract. There is no state-wide compensation scheme; each county pays a different amount to child representatives. Some counties pay by the hour, some pay per case (disregarding whether or not it goes to trial), and others use a hybrid compensation scheme. Some counties pay attorneys to visit and meet their clients, but most do not.
26. Minnesota	<p>Minnesota Statutes § 260C.163</p> <ul style="list-style-type: none"> <li>• (3) Before any out-of-home placement can be ordered, the court must appoint some form of counsel at public expense.</li> </ul> <p>Minnesota Statutes § 260C.331</p> <ul style="list-style-type: none"> <li>• (5) When the court has appointed counsel pursuant to § 260C.163, subdivision 3, the court may order parents to pay attorneys fees.</li> <li>• (6)(a) When the court has appointed a GAL, the court may order the parents to pay guardian fees. (b) The commissioner of finance deposits GAL reimbursements in the general fund and credits them to a separate account with the trial courts.</li> </ul>	Minnesota's GAL system is a partnership between the Office of the State Court Administrator and the state's 10 judicial districts. In 2001, the state took over the GAL program from the counties. In each fiscal year, the commissioner of finance deposits GAL reimbursements in a general fund and credits them to a separate account with the trial courts.
27. Mississippi	<p>Mississippi Statutes § 43-21-201</p> <ul style="list-style-type: none"> <li>• (1) If indigent, the child shall have the right to have counsel appointed for him by the youth court.</li> </ul> <p>Mississippi Statutes § 43-21-121</p> <ul style="list-style-type: none"> <li>• (6) Upon order of the youth court, the GAL shall be paid a reasonable fee as determined by the youth court judge or referee out of the county general fund as provided under Section 43-21-123.</li> </ul>	

	<p>Mississippi Statutes § 93-15-107</p> <ul style="list-style-type: none"> <li>• (2) The Department of Human Services may provide necessary funds to defray the costs and attorney fees for any adoption proceedings brought by the relative of such child in cases where the relative is unable to pay such costs and fees based on criteria established by the department in compliance with federal law and the availability of funds to the department to pay such costs and fees.</li> </ul>	
<p>28. Missouri</p>	<p>Missouri Statutes § 210.160</p> <ul style="list-style-type: none"> <li>• (4) The GAL may be awarded a reasonable fee to be set by the court. The court can decide to have these fees paid by the parties or from public funds.</li> <li>• (5) Designated volunteer advocates shall receive no compensation from public funds. This does not preclude reimbursement for reasonable expenses.</li> </ul> <p>Missouri Statutes § 211.462</p> <ul style="list-style-type: none"> <li>• (4) Court costs shall be paid by the county in which the proceeding is instituted, except that the court may require the agency or person having or receiving legal or actual custody to pay the costs.</li> </ul> <p>Missouri Statutes § 476.777</p> <ul style="list-style-type: none"> <li>• (1) Establishes the Missouri CASA Fund to support court-appointed special advocate programs throughout the state.</li> <li>• (2) Discusses how the state treasurer shall invest money in the Missouri CASA fund.</li> <li>• (3)(1) The office of state courts administrator shall set aside funding for new CASA programs throughout the state. (2) Every recognized CASA program will receive a base rate allocation. (3) All CASA programs being considered for funding shall be recognized by and affiliated with the state and national CASA associations.</li> <li>• (4) The CASA fund shall not revert to the credit of the general revenue.</li> </ul> <p>Missouri Rules of the Circuit Court, 13th Judicial Circuit Court Rule 68.3</p> <ul style="list-style-type: none"> <li>• (A)(3). The GAL shall be allowed a reasonable fee for his or her services.</li> </ul> <p>Missouri Rules of the Circuit Court, 16th Judicial Circuit Court Rule 21.6.1</p> <ul style="list-style-type: none"> <li>• (1) When the Court appoints counsel and the parents are not indigent, the court may assess costs against the parents for attorney's fees.</li> </ul> <p>Missouri Rules of the Circuit Court, 19th Judicial Circuit Court Rule 68.15</p> <ul style="list-style-type: none"> <li>• When the Court appoints a GAL, it may require a bond to be posted by either party or both parties for the GAL fee.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>In re M.V. v. N.V. and C.V.</i>, 775 S.W.2d 262 (Mo. Ct. App. 1989):The lower court in the termination case awarded attorney fees, payable by the county, to the parents' attorneys. The statutory basis for this rests on weak ground, but it has become part of the case law and must be followed. Section 211.462, RSMo 1986 provides in one section for the appointment of attorneys for indigent parents and in another for the payment of court costs by the county. The result has been the expensing of attorneys' fees as court costs to the county. On a clean slate, this court would hold that there is no statutory authority for payment of attorney's fees by the county; however, it must follow precedent.</li> </ul>	

29. Montana	<p>Montana Statutes § 41-3-112</p> <ul style="list-style-type: none"> <li>• (1) The court shall appoint a GAL for any child alleged to be abused or neglected. When necessary, the GAL may serve at public expense.</li> </ul> <p>Montana Statutes § 41-5-111 (temporary)</p> <ul style="list-style-type: none"> <li>• The following expenses must be a charge upon the funds of the court or other appropriate agency when applicable. . . (3) reasonable compensation of a GAL appointed by the court. . .</li> </ul> <p>Montana Statutes § 41-5-111 (effective July 1, 2006)</p> <ul style="list-style-type: none"> <li>• (3) Reasonable compensation of a GAL appointed by the court must be paid as provided for in 3-5-901.</li> </ul> <p>Montana Statutes § 3-5-901 (temporary)</p> <ul style="list-style-type: none"> <li>• (1) There is a state-funded district court program. Under this program, the state shall fund all district court costs. These costs include but are not limited to. . . (e)(iv) expenses associated with appointment of a GAL or child advocate for the youth.</li> <li>• (3) To the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties within 30 days of a receipt of a claim, for the following. . . (b)(i) expenses for appointed counsel for the youth.</li> </ul> <p>Montana Statutes § 3-5-901 (effective July 1, 2006)</p> <ul style="list-style-type: none"> <li>• There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs. These costs include but are not limited to. . . (e)(iv) expenses associated with appointment of a GAL or child advocate for the youth.</li> </ul>	
30. Nebraska	<p>Neb. Rev. Stat. § 43-272.01</p> <ul style="list-style-type: none"> <li>• (4) The court may order the expense of the GAL consultation to be paid by the county in which the juvenile court action is brought or the court may assess the cost of such consultation in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.</li> </ul>	
31. Nevada	<p>Nevada Revised Statutes Ch. 7.125</p> <ul style="list-style-type: none"> <li>• (1) An attorney, other than a public defender, appointed to represent a defendant at any stage of the criminal proceedings from the defendant's initial appearance through the appeal, if any, is entitled to receive a fee for court appearances and other time reasonably spent on the matter to which the appointment is made of \$125/hour in cases in which the death penalty is sought and \$100/hour in all other cases. This subsection does not preclude a governmental entity from contracting with a private attorney who agrees to provide such services for a lesser rate of compensation.</li> <li>• (2) Total fees for any attorney must not exceed: <ul style="list-style-type: none"> <li>• (a) If the most serious crime is a felony punishable by death or by imprisonment for life with or without possibility of parole, \$20,000;</li> <li>• (b) If the most serious crime is a felony other than a felony included in paragraph (a) or is a gross misdemeanor, \$2,500;</li> <li>• (c) If the most serious crime is a misdemeanor, \$750;</li> <li>• (d) For an appeal of one or more misdemeanor convictions, \$750; or</li> <li>• (e) For an appeal of one or more gross misdemeanor or felony convictions, \$2,500.</li> </ul> </li> </ul>	

	<ul style="list-style-type: none"> <li>• (3) An attorney appointed to represent an indigent petitioner for a writ of habeas corpus or other post-conviction relief, if the petitioner is imprisoned pursuant to a judgment of conviction of a gross misdemeanor or felony, is entitled to be paid a fee not exceeding \$750.</li> </ul> <p>Nevada Revised Statutes Ch. 7.135</p> <ul style="list-style-type: none"> <li>• An appointed attorney is entitled to be reimbursed for expenses reasonably incurred by him in representing the defendant. Compensation to any person furnishing investigative, expert, or other services must not exceed \$500, exclusive of reimbursement for expenses reasonably incurred (unless there is certification by the trial judge or approval by the presiding judge of the judicial district in which the attorney was appointed).</li> </ul> <p>Nevada Revised Statutes Ch. 128.140</p> <ul style="list-style-type: none"> <li>• All expenses incurred in complying with the provisions of this chapter shall be a county charge if so ordered by the court.</li> </ul> <p>Nevada Revised Statutes Ch. 423B.420</p> <ul style="list-style-type: none"> <li>• (3) Each attorney, other than a public defender, is entitled to the same compensation and payment for expenses from the county as provided in NRS 7.125 and 7.135 for an attorney appointed to represent a person charged with a crime. An attorney appointed to represent a child may also be appointed as GAL for the child. He may not receive any compensation for his services as GAL.</li> </ul>	
<p>32. New Hampshire</p>	<p>New Hampshire Revised Statutes § 603-A:1-a</p> <ul style="list-style-type: none"> <li>• In cases involving a neglected or abused child, when a GAL is appointed for the child as provided in RSA 169-C:10, the cost of such appointment shall be paid by the indigent defense fund.</li> </ul> <p>Rule 2.4.4</p> <ul style="list-style-type: none"> <li>• (a) A GAL appointed by the court and to be paid by public funds shall be paid in accordance with law or rule and shall not seek or receive any additional payment from any party.</li> <li>• (b) The parties may agree upon a certified GAL to be appointed by the court and may agree to a private fee different from that provided by court rule or law.</li> </ul>	
<p>33. New Jersey</p>	<p>N.J. Court Rules, 1969 R. 5:8A</p> <ul style="list-style-type: none"> <li>• When the court appoints counsel on behalf of the child, counsel may apply for an award of fees and costs with an appropriate affidavit of services, and the trial court shall award fees and costs, assessing these against either or both of the parties.</li> </ul> <p>N.J. Court Rules, 1969 R. 5:8B</p> <ul style="list-style-type: none"> <li>• (d) The hourly rate to be charged by the GAL shall be fixed in the initial appointing order and the GAL shall submit informational monthly statements to the parties. The court shall have the power to fix a retainer in the appointing order and to allocate final payment of the GAL fee between the parties.</li> </ul>	

<p>34. New Mexico</p>	<p>32A-1-7</p> <ul style="list-style-type: none"> <li>(F) A GAL may retain separate counsel to represent the child in a tort action on a contingency fee basis or any other cause of action in proceedings that are outside the jurisdiction of the children's court.</li> </ul> <p>32A-1-7.1</p> <ul style="list-style-type: none"> <li>An attorney representing a child in a proceeding pursuant to the Abuse and Neglect Act may retain separate counsel to represent the child in a tort action on a contingency fee basis or any other cause of action in proceedings that are outside the jurisdiction of the children's court.</li> </ul> <p>32A-1-19</p> <ul style="list-style-type: none"> <li>(A) The following expenses shall be a charge upon the funds of the court. . . (2) reasonable compensation for services and related expenses of a GAL or a child's attorney appointed by the court</li> </ul> <p>32A-4-30</p> <ul style="list-style-type: none"> <li>The court may order the department to pay attorney fees for the child's GAL or attorney if:             <ul style="list-style-type: none"> <li>(A) The child is in the legal custody of the department</li> <li>(B) the child's GAL or the child, through the child's attorney: (1) requests in writing that the department move for the termination of parental rights; (2) gives the department written notice that if the department does not move for termination of parental rights, the GAL or child's attorney intends to move for the termination of parental rights and seek an award of attorney fees; (3) successfully moves for the termination of parental rights; and (4) applies to the court for an award of attorney fees; and</li> <li>(C) The department refuses to litigate the motion for the termination of parental rights or fails to act in a timely manner.</li> </ul> </li> </ul>	<p>Most judicial districts have contracts with GALs that are developed through a competitive bid process that varies from district to district. Some districts issue contracts to attorneys to handle all cases to which they are appointed during the year, rather than on a per-case basis, while other districts issue contracts on an hourly basis with a cap.</p> <p>The fee schedule in districts without contracts is:</p> <ul style="list-style-type: none"> <li>Abuse/neglect/TPR and family in need of services: \$30/hour with a cap of \$600</li> <li>Periodic reviews in all cases have a cap of \$60/ review and permanency plan hearings have a cap of \$90/hearing</li> <li>TPR cases are treated as new cases with a rate of \$30/hour and cap of \$600</li> </ul> <p>The attorney may apply to the court for additional compensation when the compensation provided under the guidelines or contract is clearly inadequate and results in an unfair burden on the appointed attorney.</p>
<p>35. New York</p>	<p>NY Family Ct Act § 1016</p> <ul style="list-style-type: none"> <li>A law guardian shall be entitled to compensation pursuant to applicable provisions of law for services rendered up to and including disposition of the petition. The law guardian shall, by separate application, be entitled to compensation for services rendered subsequent to the disposition of the petition.</li> </ul>	

## Cases:

- *Department of Social Services v. Mitchell*, 710 N.Y.S.2d 509 (New York Family Court 2000): The attorney for the mother was appointed when neglect charges were brought against the mother. Through settlement efforts, the attorney convinced DSS to not pursue the charges and to drop them completely if the mother was compliant. Rate for compensation are set by County Law 722-b. The law reserves for the judge the right to increase compensation based on the circumstances of the case, and in this case, the judge decided to augment the attorney's award. This court says: The court further cannot discern any logic to a differentiation in compensation between in-court time and out-of-court time. The preparation of a case through review of court pleadings, documents in the possession of the Dutchess County Department of Social Services and the like is as important, if not more so, than the actual time spent in court. *Id.* at 512. The additional fees awarded by the trial court are affirmed.
- *In re Joshua AA*, 722 N.Y.S.2d 361 (New York Family Court 2001): This case includes a broad discussion of the problem of compensating appointed attorneys in termination proceedings; much of the discussion is based on an article by judges Lippman and Bing-Newman called *Assigned Counsel Compensation: A Growing Crisis*. The mother's rights in this case were terminated because she was medically unable to care for her child. At the statutory rates, the average lawyer loses \$10 per hour for out-of-court time and only makes \$6 per hour in-court because of overhead costs. This court cites *Matter of Sweat v. Skinner*, N.Y.L.J., January 24, 2001 at 31, because the judge in that case ordered that the per hour rate for appointed family court attorneys be increased to \$75. This court ordered the county to pay \$75 to the attorney in this case for both in-court and out-of-court time.
- *Nicholson v. Williams*, 203 F. Supp. 2d 153, 255-259 (E.D.N.Y. 2002): (Note that this is a federal case dealing with New York state law. As background, this is a class action generally challenging the practice of removing children from homes for the sole reason that the mother has been abused by a significant other.) The question presented is whether the counsel provided is necessarily ineffective, in which case, the constitutional rights of the mothers has been violated as if no counsel at all had been appointed. This court found that the evidence overwhelmingly proves that counsel appointed under 18-B is necessarily inadequate because of the low compensation rates and because the practice does not allow for supplemental legal practice. While counsel can be appointed without any compensation at all, they cannot also be forced to always work for no compensation. The right to compensation is a necessary consequence of the mothers to have effective assistance of counsel and does not belong to the attorneys. This court held that, for mothers with 18-B attorneys, the compensation system violates the Fourteenth and Sixth Amendments of the U.S. Constitution. This court issued a preliminary injunction raising compensation rates in New York City to \$90 per hour/



	<ul style="list-style-type: none"> <li>• <i>New York County Lawyers' Association v. State</i>, 294 A.D.2d 69, 742 N.Y.S.2d 16 (N.Y. App. Div. 2002): The NYCLA brought a declaratory judgment action against the state. The state moved to dismiss and lost. This is an appeal by the state of the denial of the motion to dismiss. This is mostly a procedural opinion about standing and not useful to the immediate research project but would be useful to other similar lawsuits.</li> <li>• <i>Nicholson v. Williams</i>, 294 F.Supp.2d 369 (E.D.N.Y. 2003): Because New York State Budget Bill A.2106-B/S.1406-B, Part J, § 2 (2003), raising 18-B lawyer compensation to \$90 per hour, will come into effect on January 1, 2004, the preliminary injunction can end as of December 31, 2003.</li> <li>• <i>New York County Lawyers' Association v. State</i>, Index No. 102987/00 (N.Y.Sup.Ct. 2003), available at <a href="http://www.nycla.org/publications/decision.pdf">http://www.nycla.org/publications/decision.pdf</a>: The court found that the existing assigned counsel rates violated constitutional and statutory rights to effective assistance of counsel and ordered the rates increased to \$90 per hour, whether in-court or out-of-court. The low compensation rates of \$40 per hour for in-court and \$25 per hour for out-of-court work are decreasing the number of attorneys willing to serve at the same time as the caseload is increasing. The adoption of the Adoption and Safe Families Act (ASFA) has increased the focus on permanency and made termination proceedings more likely. The court issued a mandatory permanent injunction raising rates to \$90 per hour until the legislature acts. This ruling explicitly applies to both the city and state of New York.</li> </ul>	
36. North Carolina	<p>Juvenile Code. §7B-603</p> <ul style="list-style-type: none"> <li>• (a) An attorney or GAL appointed by the court shall be paid a reasonable fee fixed by the court or by direct engagement for specialized GAL services through the Administrative Office of the Courts.</li> </ul>	<p>Attorney advocates sign yearly contracts and are paid a monthly fee which differs from district to district based on case load, number of hearings, allotment from legislative budget, etc. For the 2004-5 fiscal year, attorney advocates earned a statewide average of approximately \$46/hour.</p>
37. North Dakota	<p>North Dakota Century Code, § 27-20-26</p> <ul style="list-style-type: none"> <li>• Unless they have undue financial hardship, parents are responsible for providing legal counsel and for paying other necessary expenses of representation for the parent's child.</li> </ul> <p>North Dakota Century Code, § 27-20-49 (effective after December 31, 2005)</p> <ul style="list-style-type: none"> <li>• The commission on legal counsel for indigents shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and the supreme court shall pay reasonable compensation for a GAL.</li> </ul>	

<p>38. Northern Mariana Islands</p>	<p>8 N. Mar. I. Code § 1716</p> <ul style="list-style-type: none"> <li>The court [in an action to establish paternity] may order reasonable fees of counsel, experts, and the child's GAL, and other costs of the action and pre-trial proceedings, to be paid by the parties in proportions and at times determined by the court. . .</li> </ul> <p>8 N. Mar. I. Code § 1719</p> <ul style="list-style-type: none"> <li>(a) At the pre-trial hearing [in an action to establish paternity] and in further proceedings, any party may be represented by counsel. The court shall appoint and pay for counsel for a party who is financially unable to obtain counsel.</li> </ul>	
<p>39. Ohio</p>	<p>Ohio Revised Code § 120.33</p> <ul style="list-style-type: none"> <li>(3) After requesting the bar association(s) of the country to submit a proposed schedule, the board of county commissioners shall establish a schedule of fees by case or on an hourly basis to be paid to counsel for legal services provided pursuant to a resolution adopted under this section. The schedule submitted shall be subject to the review, amendment, and approval of the board of county commissioners.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li><i>In re Ashton B.</i>, 2003 WL 21384862 (Ohio App. 6th Dist. 2003): The appellant was court appointed counsel in the title action. By accepting the appointment, she accepted the fee schedule established by the commission. (At the time of this case, the basic out-of-court fee was \$40 per hour and the basic in-court fee was \$50 per hour. The maximum fees were: \$750 for delinquency offenses, \$150 for guardian ad litem, and \$400 for "all others." Courts were also permitted to exceed the maximums on their discretion.) The court said: I appreciate the fact that counsel who accept appointments are, in most cases, underpaid for their skill, effort, and time. Trial courts who are required to appoint counsel often have difficulty finding competent counsel who will undertake the defense, knowing they will not be adequately compensated. However, trite as it may sound, perhaps members of the bar owe to the courts and our system of justice, as imposed on us, an obligation to accept, from time to time, [an] appointment, full well knowing that they will not be fully compensated. Quoting <i>In re Widener</i>, No. H-77-11 (Ohio App. 6th Dist. 1978). The court held that the trial court did not abuse its discretion in denying additional fees to the appellant.</li> </ul>	
<p>40. Oklahoma</p>	<p>Oklahoma Statutes, tit. 10, § 7003-3.7</p> <ul style="list-style-type: none"> <li>(A)(2)(a). When the court appoints counsel to represent the child and the child's legal guardian is financially capable, the legal guardian shall reimburse the Court Fund for the attorney's services.</li> <li>C(4). A court-appointed special advocate shall serve without compensation.</li> </ul>	<p>Payment systems vary by judicial districts, particularly between urban and rural districts.</p>

	<p>Oklahoma Statutes, tit. 10, § 24</p> <ul style="list-style-type: none"> <li>• (A)(1) The court shall appoint counsel when the minor desires counsel but is indigent.</li> <li>• (A)(2) If there appears to be a conflict of interest between a legal guardian and the child so that one attorney could not properly represent both, the court may appoint counsel. In counties having county indigent defenders, the county indigent defender will assume the duties of representation.</li> </ul> <p>Cases</p> <ul style="list-style-type: none"> <li>• In re <i>Christopher W</i>: When the court appoints counsel to represent a child because of conflicts of interest, the county in which trial occurs must compensate the attorney, or the public defender's office is to provide such services.</li> </ul>	
41. Oregon	<p>Oregon Statutes § 419A.170</p> <ul style="list-style-type: none"> <li>• (1) If the court appointed special advocate is represented by counsel, counsel shall be paid from funds available to the Court Appointed Special Advocate Volunteer Program. No funds from the Public Defense Services Account or Judicial Department operating funds may be used for this purpose.</li> </ul> <p>Oregon Statutes § 419A.170</p> <ul style="list-style-type: none"> <li>• (6) Whenever the court appoints a court appointed special advocate or other person under subsections (1) to (3) of this section to represent the child or ward, it may require a parent or guardian of the estate, if able, to pay, in whole or in part, reasonable costs of CASA services including reasonable attorney fees.</li> <li>• (10) There is created a CASA Fund in the General Fund. The fund consists of all moneys credited to it. Moneys appropriated to the CASA Fund may be used only to carry out the purposes of this section. The State Commission on Children and Families may apply for and receive funds from federal and private sources for carrying out the provisions of this section and ORS 419B.035 and 419B.045.</li> <li>• (11) The state commission may expend moneys from the CASA Fund directly or indirectly through contracts or grants for the creation, supervision and operation of CASA Volunteer Programs statewide. The commission may also expend moneys from the CASA Fund to pay the reasonable costs of its administration of the CASA Fund.</li> </ul> <p>Oregon Statutes § 419B.201</p> <ul style="list-style-type: none"> <li>• When the court appoints counsel for the child and the child is determined to be entitled to, and financially eligible for, appointment of counsel at state expense, and the parent or guardian is without sufficient financial means to employ counsel, the compensation for counsel and reasonable fees and expenses of investigation, preparation and presentation paid or incurred shall be determined and as provided in ORS 135.055.</li> </ul>	

42. Pennsylvania	<p>Pennsylvania Statutes, Title 42, § 6337</p> <ul style="list-style-type: none"> <li>The court will provide counsel to any party entitled to but is unable to afford counsel.</li> </ul>	<p>Compensation and benefits for CASAs are competitive with other non-profits. There is no statutory authority in PA dealing with compensation of representatives for children. Compensation for court-appointed representatives for children varies from county to county.</p>
43. Puerto Rico	[Research did not reveal results on compensation]	
44. Rhode Island	<p>Rhode Island General Laws § 40-11-14</p> <ul style="list-style-type: none"> <li>The court may appoint a GAL and/or CASA to represent the child. If the parent is financially unable to engage counsel, the court may appoint the public defender or other council to represent this person. The cost of other counsel in those instances shall be paid by the state.</li> </ul>	
45. South Carolina	<p>South Carolina Statutes § 20-7-129</p> <ul style="list-style-type: none"> <li>The General Assembly shall provide the funds necessary to carry out the South Carolina Guardian ad Litem Program.</li> </ul> <p>South Carolina Rules of the Family Court, Rule 41</p> <ul style="list-style-type: none"> <li>(a) In all child abuse and neglect proceedings, the court shall grant to legal counsel appointed for the child a fee not to exceed \$100. The court shall grant to a GAL a fee not to exceed \$50.</li> <li>(b) If the court determines that extraordinary circumstances require a larger fee, the court may award a fee to the appointed legal counsel or GAL in an amount which the court determines to be just and proper.</li> </ul>	
46. South Dakota	<p>South Dakota Statutes § 26-7a-31</p> <ul style="list-style-type: none"> <li>If the court finds the party to be without sufficient financial means to employ an attorney, the court shall appoint an attorney for the party. Reasonable and just compensation for services of a court-appointed attorney and for necessary expenses and costs incident to the proceedings shall be determined by the court within guidelines established by the presiding judge of the circuit court and shall be paid by the county in which the action is being conducted according to the manner prescribed by the court.</li> </ul> <p>Cases</p> <ul style="list-style-type: none"> <li><i>In re</i> Guardianship of Sedelmeier, 491 N.W.2d 86 (S.D. 1992): Attorney fees for lawyer appointed to represent child in guardianship petition were payable by county in which action was conducted; no statute gave court authority to assess costs of court-appointed attorney fees against petitioners for guardianship, and court lacked inherent power to do so.</li> </ul>	<p>House Bill 1053, passed in 2004, increased liquidated costs to thirty dollars for convictions for convictions for certain violations, two dollars of which go toward the CASA fund.</p>
47. Tennessee	<p>Tennessee Code Annotated Section 37-1-610</p> <ul style="list-style-type: none"> <li>(b) In those cases in which the parents are financially able, the court may order such parents to reimburse the court to the extent of insurance coverage; provided, that the court shall order the perpetrator in all cases, whether such person is a parent or other person, to fully reimburse the court for such expenses, for the cost of provision of GAL services and any medical and treatment costs resulting from the child sexual abuse. Reimbursement to the individual providing such services shall not be contingent upon successful collection by the court from the parents.</li> </ul>	

	<p>Tennessee Juvenile Procedure Rule 37</p> <ul style="list-style-type: none"> <li>• (d) Reasonable compensation for a GAL may be allowed as provided by Tenn. Code Ann. § 37-1-150 or other statutes. If child abuse is alleged, the state shall compensate the GAL as provided by law.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>State Dept. of Human Serv. v. Harris</i>, 849 S.W. 2d 334 (Tenn. 1993): Holding regarding the fees of a GAL in a proceeding to terminate parental rights, fees allowed the GAL of the child cannot be assessed against the department of children's services unless it was found that parents were indigent.</li> </ul>	
48. Texas	<p>Texas Family Code § 107.015</p> <ul style="list-style-type: none"> <li>• (a) An attorney appointed to serve as an attorney ad litem for a child is entitled to reasonable fees and expenses in the amount set by the court to be paid by the parents of the child unless the parents are indigent.</li> <li>• (c) If indigency of the parents is shown, an attorney ad litem shall be paid from the general funds of the county according to the fee schedule that applies to an attorney appointed to represent a child in a suit under Title 3 as provided by Chapter 51. The court may not award attorney ad litem fees under this chapter against the state, a state agency, or a political subdivision of the state except as provided by this subsection.</li> </ul> <p>Cases:</p> <ul style="list-style-type: none"> <li>• <i>Bryant v. Hibbert</i>, 639 S.W.2d 718 (Tex.App. 1982): The attorney ad litem for the children requested an order for fees of \$4,020 and received only \$250. The standard for fees is reasonableness, and it is the responsibility of the attorney claiming the fees to present evidence of the hours worked and the quality of work. Since the attorney here did not do so, the judgment of the trial court stands.</li> <li>• <i>Harris County Children's Protective Services v. Olvera</i>, 77 S.W.3d 336 (Cal. 14th DCA 2002): When CPS became involved in a divorce proceeding, two attorneys ad litem were appointed. They were awarded fees for their services, and CPS challenged the award. In the ensuing battle over fees, the attorneys managed to get more money to compensate them for the appeal of their own fees. This court holds that the fees for the appeal of their own fees was not a service to the clients and are not allowable.</li> </ul>	
49. Utah	<p>Utah Statutes § 78-3a-912</p> <ul style="list-style-type: none"> <li>• (6)(a) The juvenile court is responsible for all costs resulting from the appointment of an attorney GAL and the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds appropriated by the Legislature for the GAL program to cover those costs.</li> </ul>	

	<ul style="list-style-type: none"> <li>• (6)(b)(i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate. When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.</li> <li>• (6)(b)(ii) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent who is found to be impecunious.</li> </ul> <p>Utah Statutes § 78-7-9</p> <ul style="list-style-type: none"> <li>• (5) The court is responsible for all costs resulting from the appointment of an attorney or GAL and shall use funds appropriated by the Legislature for the GAL program to cover those costs.</li> <li>• (6)(a) If the court appoints the Office of the GAL in a civil case, the court may assess all or part of those attorney's fees, court costs, paralegal, staff, and volunteer expenses against the minor's parent, parents, or legal guardian in an amount that the court determines to be just and appropriate.</li> <li>• (6)(b) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent, parents, or legal guardian who is found to be impecunious.</li> <li>• (6)(c) If the court appoints the Office of the GAL in a criminal case and if the defendant is convicted of a crime which includes child abuse or neglect, the court shall include as part of the defendant's sentence all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses of the Office of the GAL.</li> </ul> <p>Utah Statutes § 78-7-45</p> <ul style="list-style-type: none"> <li>• (2)(a) When the court appoints a private attorney as GAL to represent the best interest of the minor, the court shall assess all or part of the attorney GAL fees, court costs, and paralegal, staff, and volunteer expenses against he parties in a proportion the court determines to be just.</li> <li>• (2)(b) If the court finds a party to be impecunious, the court may direct the impecunious party's share of the assessment to be covered by the attorney GAL pro bono obligation established in Subsection (6)(b).</li> </ul> <p>Utah Code of Judicial Administration, Rule 4-906</p> <ul style="list-style-type: none"> <li>• (6)(D) [Note: A conflict GAL is appointed where another GAL has a conflict of interest.] A conflict GAL's compensation shall not exceed \$50/hour or \$1000/case in any twelve month period, whichever is less. Under extraordinary circumstances, the Director may extent the payment limit upon request from the conflict GAL. The request shall include justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most GAL assignments. Incidental expenses incurred in the case shall be included within the limit. If a case is appealed, the limit shall be extended by an additional \$400.</li> </ul>	
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50. Vermont	[Research did not reveal results on compensation]	All GALs in Vermont are volunteers, reimbursed only for telephone calls and mileage. Vermont has received significant CASA funding over the past few years. The purpose of the grant money is to develop a program for Vermont that is more in line with CASA's requirements.
		Appointed counsel for children in family court are usually lawyers from public defenders' offices. There are either staff or contract public defender offices in each of Vermont's 14 counties, and these offices typically represent children in juvenile proceedings in family court. Some of these offices have one attorney dedicated to the juvenile docket. Vermont also has an assigned counsel contract system for cases in which the public defender's office has a conflict. There are contracts in each county under which private attorneys are engaged on an annual basis to represent children in juvenile proceedings where a conflict exists with the local public defender's office. Contract lawyers are paid through the defender general's office.
51. The Virgin Islands	[Research did not reveal results on compensation]	
52. Virginia	<p>Virginia Statutes § 16.1-267</p> <ul style="list-style-type: none"> <li>• A. When the court appoints counsel to represent a child, the court will assess costs against the parents if the parents are financially able. Counsel will be compensated pursuant to § 19.2-163.</li> </ul> <p>Virginia Statutes § 19.2-163</p> <ul style="list-style-type: none"> <li>• Counsel appointed to represent an indigent shall be compensated for his services in an amount fixed by each of the courts in which he appears.</li> </ul>	

53. Washington	[Research did not reveal results on compensation]	
54. West Virginia	<p>W.Va. Code § 49-6-3(a)</p> <ul style="list-style-type: none"> <li>• The court may allow to each appointed attorney a fee in the same amount which appointed counsel can receive in felony cases.</li> </ul> <p>W.Va. Code § 29-21-13</p> <ul style="list-style-type: none"> <li>• (a) The appointing court shall review submitted vouchers to determine if the time and expense claims of attorneys are reasonable, necessary and valid, and shall forward the voucher to the agency with an order approving payment of the claimed amount or of a lesser sum the court considers appropriate.</li> <li>• (b) Public defender services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by appointed attorneys.</li> </ul>	
	<ul style="list-style-type: none"> <li>• (c) A panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than 6 months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by public defender services during the case.</li> <li>• (d) The panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred: <ul style="list-style-type: none"> <li>• (1) \$45/hour for out-of-court work</li> <li>• (2) \$65/hour for in-court work</li> <li>• (3) The maximum amount for compensation is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, \$3000 unless the court approves payment of a larger sum</li> </ul> </li> <li>• (e) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation shall be reimbursed to a maximum of \$1500 unless the court approves reimbursement of a larger sum.</li> </ul> <p>West Virginia Trial Court Rules on Guardians Ad Litem, Rule 21</p> <ul style="list-style-type: none"> <li>• 21.01 – appointed GALs may (a) serve on a voluntary basis without compensation, (b) be paid by a litigant or a litigant-parent of an infant for whom the appointment is made if the litigant or litigant parent is not an indigent person, or (c) be paid by the Supreme Court of Appeals as provided in rule 21.05.</li> </ul>	
55. Wisconsin	<p>Wisconsin Statutes § 48.235</p> <ul style="list-style-type: none"> <li>• (8) A GAL shall be compensated at a reasonable rate, except when the court orders the county to pay. The court may also order either or both of the parents to pay all or part of the compensation. If the parents are indigent, the court may order the county to pay the compensation.</li> </ul>	<p>A Supreme Court Order deemed that "reasonable" compensation for GALs was \$70/hour. However, counties typically contract with GAL on an annual basis. The average rate is approximately \$35-40/hour.</p>



<p>56. Wyoming</p>	<p>Wyoming House Bill No. 0314 (effective July 1, 2005)</p> <ul style="list-style-type: none"><li>• (a) Appropriated state funds for district courts to establish and administer a program to reimburse attorneys providing legal representation as GAL in child protection cases.</li><li>• (a)(i)(C) The rules recommended by the district judges' judicial conference shall include a method for legal representation for juveniles based upon a system which mandates a negotiated contract between a county and each service provider for services on an hourly basis, a per-case basis or by a time limited contract.</li><li>• (a)(iv) No state money appropriated under this section shall be expended in any county unless the county agrees to match, at a minimum, 25% of the state money for the reimbursement of legal representation of children by attorneys in child protection or children in need of supervision cases. In consultation with the board of judicial policy and administration, the supreme court and the individual county shall establish the reimbursement rate within the county for attorneys providing legal representation as GAL in child protection and children in need of supervision cases.</li></ul>	
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