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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Human Development Services
Administration for Children, Youth and Families
Children's Bureau
National Center on Child Abuse and Neglect

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REPRESENTATION FOR THE ABUSED AND NEGLECTED CHILD:

THE GUARDIAN AD LITEM AND LEGAL COUNSEL

A Special Report from the National Center on Child Abuse and Neglect

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U.S. Department of Justice
National Institute of Justice

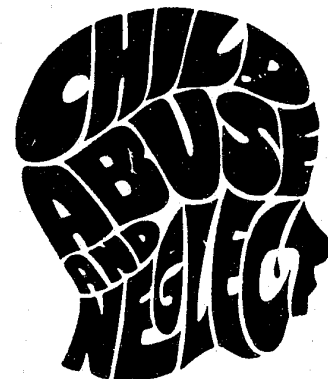
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I. INTRODUCTION

Child abuse and neglect cases are usually initiated when a report of suspected abuse or neglect is filed pursuant to the reporting laws that have been enacted in every state.¹ When a report of child abuse or neglect is received, a designated agency within the state, normally the state department of social services or child protective services, enters the case, conducts an investigation, and upon making a finding of child abuse or neglect, offers protective and counseling services to the child and his family.² Temporary emergency custody of the child may also be sought before or after a formal report is made.

As a result of its investigation, the social services department may choose to bring a petition in the juvenile court to have the child declared abused or neglected within the state's definition of those terms. Concurrently, the local district attorney may decide to file charges against the suspected abusive or neglectful parent or guardian under the state's criminal statutes.³ Typically the state will be represented in these proceedings by its district attorney, the social services department by its own attorney or by the city or county attorney, and the parents or guardians of the child by private or court-appointed counsel. It seems logical that the child, a central figure in the entire process, needs to be adequately represented.⁴ The child is entitled to a spokesman and an advocate who can totally, unequivocally, and actively pursue his rights and his interests.⁵

Recognizing this need, most states have enacted statutes that provide representation for the child who is the subject of an abuse or neglect proceeding. The Federal Child Abuse Prevention and Treatment Act of 1974, as amended, serves as an impetus to the enactment of such legislation.⁶ To qualify for a state grant under Section 4b1(1) of the Act, a state must "...provide that in every case involving an abused or neglected child which re-

sults in a judicial proceeding, a guardian ad litem shall be appointed to represent the child in such proceedings."⁷

During the past several years, the question of who should represent the child in abuse and neglect proceedings has received increasing attention. Some commentators believe that a guardian ad litem should represent the child, while others argue that independent legal counsel should do so. Still others believe the child needs both a guardian ad litem and independent counsel. The responsibility of each of these differs: the guardian ad litem uses his independent judgment to determine the best interests of the child, whereas legal counsel advocates for his client what the client determines is in his own best interests. The role and responsibilities of the representative in a child abuse or neglect proceeding have also received considerable attention, and training programs and materials are being developed by interested professionals to guide and assist the person who is appointed to represent the child.

This report discusses the role of the representative in child abuse and neglect proceedings and focuses on the issues of who should represent the child and how effective representation can be accomplished. State statutes providing for representation are compared, and studies evaluating the effectiveness of the representation are discussed. Information on training materials is included in an appendix to the report.

Some of the terminology used in this review may be ideosyncratic to a particular source and not generally accepted in practice throughout the country. The individual author's terminology was used and footnoted rather than modified by the reviewer. For clarification of any particular term, see the original source.

II. WHO SHOULD REPRESENT THE CHILD?

A. *The Nature of the Proceedings*

Once a report of suspected child abuse or neglect is received and an investigation completed, a petition may be filed in the juvenile court.⁸ Although judicial procedures vary from state to state, juvenile court proceedings can involve as many as five separate hearings.⁹ The first is the advisory hearing, at which time the respondent, who is usually a parent, foster parent or guardian, is formally notified of the allegations contained within the petition and is informed of his rights. The second is the setting, at which a mutually convenient date and time are set to debate the allegations. The third is the adjudicatory hearing. At the adjudicatory hearing, the only issue to be resolved is whether the respondent's behavior or the child's condition falls within the state's legal definition of child abuse or neglect. At the conclusion of the adjudicatory hearing, if the court decides that the child has not been abused or neglected, all legal proceedings cease. If, however, it is determined that the child has been abused or neglected, the juvenile court will order a dispositional hearing to determine to whom custody of the child should be awarded or whether the child should remain in the home, and what treatment should be offered to the child and his parents. The fifth possible hearing is a proceeding to obtain temporary custody of the child, which may be initiated at any point. Often temporary custody is sought when a child protective agency first becomes aware that a child may be the victim of abuse or neglect and it is believed that the child is in danger if left in the home while the subsequent investigation and legal determinations are made. The purpose of the hearing is to determine whether the child's safety is presently in jeopardy and if so, to remove the child and place him in a more secure environment until a legal disposition has been reached.

B. *The Need for an Independent Representative*

As a child abuse or neglect case proceeds through these stages in the judicial process there are usually at least three attorneys involved: the judge, the attorney for the parents or respondent and the attorney for the petitioner.¹⁰ At one time it was thought that this collection of legal expertise more than adequately represented the child's interests. However, an analysis of the roles and

responsibilities of these attorneys shows that they cannot fully represent the interests of the child and that there is a clear and demonstrable need to provide the child with independent representation in abuse and neglect proceedings.

In most states the petitioner in a case of child abuse or neglect is the local department of social services. The petition is filed by the local department on behalf of the child believed to have been abused or neglected. The person who actually presents the petition and case to the court is the city or county attorney or corporation counsel. Arguably, because the local department has filed the petition on behalf of the child, the city or county attorney represents the child's interests and those interests are therefore adequately represented. Realistically they are not because, in an increasing number of jurisdictions, the city or county attorney is simply regarded as a conduit into the courts for the local department of social services.¹¹ Once the attorney presents the petition to the juvenile court he assumes a quasi-prosecutorial role. His primary emphasis is not the independent representation of the child's interests; it is an attempt to establish, with the requisite burden of proof, the allegations contained within the petition. The establishment of the respondent's culpability and the protection of the child's interests are not the same.¹²

The respondent's attorney also cannot independently represent the interests of the child. In most child abuse and neglect cases, the respondent who is accused of abusing or neglecting the child is his parent or guardian.¹³ It is the responsibility of the parents' attorney to represent his clients' interests. In an abuse or neglect proceeding the attorney has, as his primary obligation to his clients, the duty to seek a finding most satisfactory to the parents and this translates itself most often into a position that no abuse or neglect has occurred.¹⁴ The stigma attached to a parent as a "child abuser" is one which the advocate must seek to prevent in his clients' best interests—despite the consequences to the child.¹⁵ Therefore, given the nature of a child abuse or neglect proceeding, the child's interests are often in direct conflict with the parents' interests, and the parents' attorney would be unable to represent effectively both the parents and the child.

The judge in the juvenile court also cannot adequately represent the interests of the child even though it is the court's responsibility to insure that the child's safety and interests are fully protected.¹⁶ The judge is placed in the awkward position of not only protecting the child's interests, but also weighing both sides of the argument and rendering an equitable decision based upon the merits of the case. Impartiality is lost if the judge becomes an active advocate for the child. To resolve this dilemma an independent third party should be appointed to represent and protect the child's interests. By relieving the judge of this responsibility abuse of discretion is less likely.

Most commentators today agree that a child who is the subject of an abuse or neglect proceeding needs an independent representative, but there is some disagreement over who the representative should be. Some commentators believe that the traditional guardian ad litem can adequately represent the child's interests. Others argue that the child not only needs independent legal counsel but also that a constitutional right to counsel can be inferred from court decisions. State law reflects the controversy—almost all states recognize the need for an independent representative but state laws vary on the appointment of attorneys and guardians ad litem to represent the child.

To understand the controversy, it is necessary to examine the role and responsibilities of both the traditional guardian ad litem and legal counsel and to analyze the advantages and disadvantages of these representatives for the child who is the subject of an abuse or neglect proceeding.

C. The Guardian Ad Litem

The concept of a guardian ad litem dates back to the early Roman and English common law systems, under which such guardians were appointed for the protection of infants or incompetents involved in specific court proceedings.¹⁷ Historically, a guardian ad litem was appointed by the court to represent a child named as a defendant. Conversely, the court appointed a "next friend" to represent the child as a plaintiff.¹⁸ The adversarial role that the guardian ad litem historically assumed is not the guardian's role today in a child abuse or neglect case because, in these proceedings, the child is neither the plaintiff nor the respondent.

In a child abuse or neglect proceeding, the court must insure that the child's safety and interests are fully protected. The court has the option of appointing a third party to help protect the child's interests. The third party may be a guardian

ad litem.¹⁹ This temporary transfer of the court's responsibility designates the guardian ad litem as an officer of the court, responsible not only to the child but to the court as well.²⁰

The guardian ad litem in the case of child abuse or neglect has been described as an advocate.²¹ His role is to make an independent evaluation as to what is truly in the child's best interests, both in terms of the present situation and also for long-term planning.²² Traditionally, the distinction between the guardian ad litem and the legal counselor has been that the former uses his independent judgment in determining the "best interests" of his ward, while the latter represents for his client what the client determines to be in his own best interests.²³

The role and responsibilities of the guardian ad litem in a child abuse or neglect case have been more fully described in the following way:

The guardian ad litem is a "special guardian" temporarily appointed to protect the child's interests. As a special guardian, the guardian ad litem is legally obligated to do everything within his power to insure a judgment that is in the child's best interests. Conversely, it is the court's obligation to insure that the guardian ad litem actively protects and promotes the child's best interests. If for some reason the guardian ad litem does not pursue and protect the child's interests, it becomes the duty of the court to intervene and to reassume those responsibilities. Furthermore, if the child's interests are compromised as a result of the guardian ad litem's neglect, the guardian may be punished and held responsible for any damages sustained by the child. The court remains the child's ultimate legal guardian and must continuously monitor the third party's performance.

As a special guardian, the guardian ad litem's duties are both temporary and limited in scope. He has no powers or duties prior to his appointment or after the case has terminated. Conversely, the child does not have either the legal capacity to waive the appointment or the unilateral right to dismiss his guardian. The guardian ad litem has no right to interfere with the child's person or property, nor the power to bind the infant or his estate. He is not the child's legal guardian, nor is he the child's trustee.²⁴

Traditionally, there was no requirement that the person appointed by the court to act as the guardian ad litem be an attorney.

In fulfilling the role of advocate for the child, the guardian ad litem assumes four functions. He is:

1) An investigator whose task it is to ferret out all of the relevant facts; 2) an advocate whose task it is to insure that all the relevant facts are before the court at all hearings; 3) a counsel whose task it is to insure that the court has before it at the dispositional hearing all the available options; and 4) a guardian in the simplest sense of the word, whose task it is to insure that the child's interests are fully protected.²⁵

To carry out these functions the guardian ad litem must collect all reports, evaluations, and records and be able to assess the thoroughness of the investigation in regard to the child's interests. When all the investigatory data are compiled, the guardian ad litem must integrate the data and determine whether there is a present danger to the child; if the child's injuries or the parent's behavior can be classified as child abuse or neglect under state law; and what physical, psychological, and developmental needs the child has.²⁶ If the child is in danger in his home environment, the guardian ad litem may request that the court order temporary custody or protective custody until judicial proceedings have been completed and a final disposition has been made.

The guardian ad litem assumes an active role in judicial proceedings. In most states he has the option of examining and cross-examining both the petitioner's and the respondent's witnesses.²⁷ The guardian ad litem may also have the option of examining his own witnesses, and introducing his own reports and evaluations. At the close of the proceedings, the guardian ad litem is given the opportunity to make recommendations to the court. A court is under no obligation to accept the recommendations of the guardian ad litem. The degree to which a court will accept them rests upon the guardian ad litem's ability and willingness to explore the complexities of the problem, to develop his own expertise, to conduct his own investigation, and upon his ability to articulate to the court the reasons for his recommendations.²⁸

The appointment of a guardian ad litem to carry out these responsibilities and functions in child abuse and neglect proceedings is an attempt to insure that the best interests of the child will be analyzed and presented to the court for consideration. While some commentators feel that the traditional guardian ad litem is an adequate representative for a child,²⁹ others argue that the child has a need for and a constitutional right to legal counsel in abuse and neglect proceedings.³⁰

D. The Right to Counsel

In 1967 in the case of *In re Gault*, the United States Supreme Court ruled that a child is entitled to certain constitutionally guaranteed safeguards when its liberty is endangered.³¹ One of the rights enumerated is the right to independent representation by counsel. Because *Gault* expresses a very strong belief in the importance of counsel in our judicial system, its holding may be capable of extension beyond its stated limitations.³² Some commentators feel that the right to counsel identified in the case is independent of the type of interest being protected and will eventually be expanded beyond those cases where liberty is at stake.³³ The holding of *Gault* was prompted by the grave consequences of juvenile court adjudications of delinquency and it has been argued that its reasoning applies to child abuse and neglect proceedings.³⁴

A recent analysis of case law suggests that a right to counsel for children in abuse proceedings can be inferred from related cases.³⁵ Courts have recognized that a child is an independent human being with the right to articulate his own interests in matters affecting his custody and the quality of his life.³⁶ As such, he should be represented by counsel, because the child's interests may be distinct from any other party's.³⁷ It has been held that in a case concerning the custody of a foster child, where it appears that there is a significant conflict of opinion concerning what is in the best interests of the child, independent representation for the child is required.³⁸ The right of a child to independent representation in termination of parental rights proceedings has also been recognized.³⁹

A few courts have recognized a right to counsel for the child in dependency and neglect cases. The Court of Appeals of New York has stated that, although no statute so provides, in the absence of the most extraordinary circumstances, the family court should direct the appointment of a Law Guardian in permanent neglect cases to protect and represent the rights and interests of the child.⁴⁰ A federal district court also held that the Alabama child custody procedure violated the due process clause of the Constitution because the procedure did not provide for the appointment of independent counsel to represent a child in a neglect proceeding.⁴¹ The court stated that the Alabama law was similar to the Arizona juvenile delinquency law challenged in *Gault* and that much of the reasoning of the *Gault* case applies to a neglect determination proceeding.

E. The Need for Legal Counsel

Whether or not it is judicially recognized that a child who is the subject of an abuse or neglect proceeding is entitled to the benefits of independent counsel, several commentators believe that the nature of these proceedings necessitates representation by legal counsel or a guardian ad litem who is an attorney:

"It is the author's belief that representation for children who have been abused, neglected, or deprived is just as compelling as it is in juvenile delinquency cases. In fact, it would seem to be ludicrous to suggest that a child is entitled to and needs independent representation in cases in which his liberty is endangered, but is not entitled to and does not need representation in cases in which his life and mental health are endangered. Advocacy and independent representation for children who have been abused, neglected or deprived is an integral part of any good child abuse system."⁴²

Several reasons have been articulated to support the position that the child's representative should be an attorney. One argument focuses on the traditional distinctions in the functions that the two representatives are required to perform. It has already been stated that the responsibility of the guardian ad litem is to use his independent judgment to determine the best interests of the child, whereas the responsibility of an attorney is to advocate for his client what the client determines to be in his own best interests.⁴³ Therefore, the appointment of a lay guardian ad litem rather than an attorney gives the child who is old enough to express his desires no assurance that his wishes will be articulated or taken into consideration. The guardian must make an independent determination as to whether the child's wishes are in fact in the child's best interests.⁴⁴ One author states:

Children have very real and legitimate feelings and are entitled to have those feelings respected. At minimum, this requires procedures which insure that the child has meaningful input into the process which determines his future. Since it is the judicial process which ultimately makes such a determination, the child needs someone to serve effectively as an advocate for his wishes and feelings in the judicial forum. Such a function is best performed by an attorney acting in the traditional role of an advocate in an adversary context.⁴⁵

This position has been disputed and the rationale has been criticized. It is not clear that the appointment of a guardian ad litem would hamper

or frustrate meaningful input from the child as to his feelings and desires.⁴⁶ The court can ask the guardian ad litem, as part of his duties as an officer of the court, to ascertain and articulate the desires of the child. More important, an abused or neglected child's desires to return home should, in certain circumstances, be frustrated.⁴⁷ The concern has been expressed that in child abuse and neglect proceedings strict adherence to traditional ethical concepts of advocacy might ultimately result in exposing a child to further and more serious injury.⁴⁸ The possibility of this happening today appears minimal, because it has been recognized that effective advocacy in child abuse and neglect proceedings requires an attorney to depart from the traditional legal role:

Counsel for the child in a neglect or abuse proceeding occupies a position substantially different from that in which a lawyer normally finds himself in other litigations, since he is not required to take an adversary position. He is not called on either to prosecute or defend, but rather to insure that there is presented to the court all relevant facts necessary to adjudication and disposition, and to exert his efforts to secure an ultimate resolution of the case which, in his judgment, will best serve the interests of his client.⁴⁹

Several other reasons have been expressed to support the position that the child's representative should be an attorney who is skilled in representing children. In a proceeding in which the social services agency and the respondent are represented by legal counsel, the child should have a representative with equal skills to act as his spokesman. As the juvenile court becomes more formalized and procedures and rules become more structured, an active advocate for the child must have the ability to understand and to manipulate the legal system and this in turn would seem to dictate the need for a lawyer serving in this role.⁵⁰ He could bring to this task all the usual tools of an attorney: knowledge of the applicable law, an ability to make a thorough investigation and a capacity to present the pertinent facts logically and to argue his client's position forcefully and persuasively.⁵¹ The lawyer could protect the child and the whole process from arbitrary action and prejudice. He would also be available for pursuing appellate review, if warranted, and for any subsequent rehearing of the case.⁵² A guardian ad litem is unsuitable if he is not an attorney because he may be unaware of many procedures available to protect the legal rights of the child.⁵³

The advocate must also be able to discuss with the child the law and the alternatives open to the

child, and have the ability to explain clearly to him exactly what is happening in the courts.⁵⁴

The argument has also been raised that although a lay guardian ad litem can perform important functions, it is unlikely that courts would give to the guardian the right to settle or concede a judicial proceeding alleging abuse or neglect.⁵⁵ But if the representative does not have this power, it is difficult to distinguish his role from that of the protective worker, unless he is a lawyer who can represent the child's legal rights and interests.⁵⁶

The controversy concerning the representative may also be influenced by a movement toward improved representation for the child. A few commentators have suggested an expanded role for the child's advocate and these responsibilities may require the skills of an attorney. For example, one family court judge has suggested that children should be made actual parties to any litigation involving custody, and that the guardian ad litem for a child should be free to summon witnesses, avail himself of pre-trial discovery, cross-examine, offer evidence, present oral and written argument to the court, and to appeal decisions of the court if such decisions are felt to be adverse to the best interests of the child.⁵⁷

State legislation may also require the representative to perform specific functions that can best be performed by a legally trained advocate. A few statutes provide that the guardian ad litem has an affirmative obligation to insure a proper investigation, to examine and cross-examine the petitioner's and respondent's witnesses, to introduce his own evidence and own witnesses, and to make recommendations at the close of each hearing.⁵⁸

In spite of the arguments that the representative needs the skills of an attorney, it has also been asserted that there is no indication that an attorney would better serve the child's interests than some other person appointed as guardian ad litem.

Child abuse and neglect is a complex maze of medical pathology, psychiatry, social work, legalese, and common sense. An attorney may have expertise in legalese, but does not necessarily have the necessary ex-

pertise in medical pathology, psychiatry, social work and common sense. Every guardian ad litem must have access to legal expertise, but it does not follow that every guardian ad litem should be an attorney.⁵⁹

F. Model Acts

These conflicting views concerning who should represent the child are also found when one examines model acts and enacted legislation.

The Draft Model Child Protection Act suggests that a child should be represented by an attorney who also serves as the child's guardian ad litem:

(a) Any child who is alleged to be abused or neglected in a juvenile court [family or other similar civil court] proceeding shall have independent legal representation in such proceeding. If independent legal representation is not available, the court shall appoint counsel to represent the child at public expense. The attorney representing a child under this section shall also serve as the child's guardian ad litem unless a guardian ad litem has been appointed by the appropriate court.⁶⁰

The comments to the section state that the parents of the child are often represented by counsel in these proceedings and since the interests of the parent and child may conflict, it is important that the interests of the child in a safe home environment also be represented. The guardian should be an attorney so that he is aware of the many procedures available to protect the child.⁶¹

The idea of legal counsel for neglected and dependent children also finds support in other model acts, such as the Model Child Abuse and Neglect Reporting Law;⁶² the National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act §26(a)(1968); National Council on Crime and Delinquency, Model Rules for Juvenile Courts Rule 3, 13, 39 (1960); National Council on Crime and Delinquency, Standard Juvenile Court Act § 19 (1959); and W. Sheridan, Legislative Guide for Drafting Family and Juvenile Court Acts § 25 (1969).⁶³

III. STATE LEGISLATION PROVIDING REPRESENTATION FOR THE CHILD

In order to be eligible for grants from the National Center on Child Abuse and Neglect, the Federal Child Abuse Prevention and Treatment Act requires states to appoint a guardian ad litem to represent the child in every abuse and neglect case which results in a judicial proceeding.⁶⁴ The regulations implementing the act state that the guardian ad litem need not be an attorney, but that the representative may be an attorney charged with the presentation in a judicial proceeding of the evidence alleged to amount to the abuse and neglect, so long as his legal responsibility includes representing the rights, interests, welfare, and well-being of the child.⁶⁵

Most states have enacted legislation that provides representation for children who are the subject of abuse or neglect proceedings.⁶⁶ Twenty jurisdictions require the appointment of a guardian ad litem to represent the child but do not specify any further qualifications for appointment.⁶⁷ Eleven other states expressly provide that the guardian ad litem must be an attorney.⁶⁸

Nine states require that legal counsel be appointed to represent the child in abuse and neglect proceedings.⁶⁹ At least one state provides for the appointment of both a guardian ad litem and legal counsel to represent the child.⁷⁰

Several states have specific conditions or requirements in their statutes providing for legal counsel or a guardian ad litem. For example, in Illinois, unless the guardian ad litem is an attorney, the minor must be represented by counsel.⁷¹ In Vermont the court may appoint a guardian ad litem or counsel.⁷² In Wyoming and Connecticut any attorney representing a child also serves as the child's guardian ad litem unless a separate guardian ad litem has been appointed by the court.⁷³

Only one state, Connecticut, further specifies the qualifications of the appointed representative. The Connecticut statute requires appointed counsel to be knowledgeable about the needs and protection of children.⁷⁴

Several states also specify in their legislation the persons who can and cannot serve as the representative for the child. For example, California provides that the probation officer or social worker who files the petition shall serve as the child's guardian ad litem.⁷⁵ Tennessee law states that a

party to the proceeding or his employee or representative shall not be appointed as the guardian ad litem for the child.⁷⁶ North Carolina prohibits the appointment of a public defender as guardian ad litem.⁷⁷ Wisconsin law states that the guardian ad litem shall not be the same as counsel for the alleged abuser or neglecter or any governmental or social agency involved.⁷⁸ South Carolina requires that counsel for the child shall in no case be the same as counsel for the parent, guardian, or other person subject to the proceeding or any governmental or social agency involved in the proceedings.⁷⁹

The right to representation created by state law may be either absolute or discretionary.⁸⁰ Thirty-eight jurisdictions require that a representative for the child be appointed in all abuse or neglect proceedings.⁸¹ Sixteen other states have only discretionary statutes that empower but do not mandate courts to appoint a guardian ad litem or legal counsel when it appears to them that this would be in the child's interests, or when otherwise needed to promote fairness and justice.⁸²

Only a few jurisdictions define in their statutes the duties and responsibilities of the appointed representative. North Carolina provides one of the most detailed descriptions of these responsibilities:

The duties of the guardian ad litem shall be to make an investigation to determine the facts, the needs of the child, and the resources available within the family and in the community to meet those needs; to appear on behalf of the child in the juvenile proceedings and to perform necessary and appropriate legal services on behalf of the child in order to present the relevant facts to the court at the adjudicatory part of the hearing and the possible options to the court at the dispositional part of the hearing; to serve the child and the court by protecting and promoting the best interests of and the least detrimental alternatives for the child at every stage of the proceeding until formally relieved of the responsibility by the court; to appeal, when deemed advisable, from an adjudication or order of disposition to the Court of Appeals...⁸³

The Colorado statute also sets forth the responsibilities of the guardian ad litem:

The guardian ad litem shall be charged in general with the representation of the child's interests. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.⁸⁴

Although few state legislatures have chosen to define the duties of the child's representative by statute, these responsibilities may be found in administrative regulations or be defined by judicial decisions.

At least one state expresses in its law the responsibility of the court to ensure effective representation for the child. The Ohio statute provides:

The court shall require such guardian ad litem to faithfully discharge his duties, and upon his failure to do so shall discharge him and appoint another.⁸⁵

IV. EVALUATION OF REPRESENTATIVES AND SUGGESTIONS FOR IMPROVEMENTS

Few studies have been conducted to determine the effectiveness of persons who are appointed pursuant to state laws to represent children in abuse and neglect proceedings, but the reports that do exist have prompted some commentators to suggest improvements and alternatives to the present systems.

In 1962 the New York Family Court Act established a system of Law Guardians to represent all children not represented by private counsel and in 1970 the legislature amended the act to require notice of the right to counsel to all children involved in abuse proceedings.⁸⁶ The New York Assembly Select Committee on Child Abuse conducted a three-year investigation to evaluate the effectiveness of the law in operation which culminated in the Child Abuse Report published in April 1972.⁸⁷ The committee's primary conclusion concerning counsel for the child was that in many political subdivisions of the state, the Law Guardians had failed to protect and represent the interests of the child adequately.

The committee found the Law Guardians ineffective, in most instances, in the investigation and presentation of abuse cases. It also discovered a significant difference in the quality of performance of these lawyers in urban and nonurban areas of the state. The effectiveness of the urban Law Guardians, who were generally attorneys of the Legal Aid Society, was found to be undermined by heavy caseloads and the lawyers' "institutional bent." These Law Guardians also represented children in delinquency actions, which created a bias on their part toward trying to prevent removal of the child from his home—a bias that had been wrongly carried over into abuse proceedings. The committee found that many Law Guardians performed no pretrial investigations, collected little evidence and played a passive, watching role during the court proceedings, except to make occasional recommendations to the judge.

The committee's evaluation of the operation of the Law Guardian system in the nonurban subdivision of the state was more favorable. In a number of these areas, attorneys conducted active pre-trial investigations and played a forceful part at proceedings. However, these effective attorneys represented only a minority of all Law Guardians and the report concluded that the Law Guardians as a

group had failed to assume a role of active representation.

The committee's response to these findings was not to propose ways to improve the effectiveness of the Law Guardians, but instead, to suggest that in each county a full-time Children's Attorney be appointed with responsibility for the effective investigation and presentation of all child protective cases. The Children's Attorney would be a specialized public prosecutor and a "necessary party" to all abuse proceedings. He would represent the petitioner, the state, and its subdivision—not the children themselves, although his purpose would be "the protection of children and the community through justice and due process." The Law Guardian would remain the child's attorney, despite the committee's prior findings regarding their ineffectiveness. Although the Children's Attorney bill was approved in both houses of the legislature, it was subsequently vetoed by Governor Nelson Rockefeller.⁸⁸

In 1977 a guardian ad litem program was initiated in King County, Washington, to provide representation for children in abuse and neglect proceedings.⁸⁹ The program is part of the juvenile court administrative structure, and its purpose is to provide judges with a considered, thoughtful recommendation on what should be planned for the child, based on the guardian's independent investigation of the facts. The program was developed to overcome the prohibitive cost of lawyers' fees and to provide a more thorough social investigation than most lawyers were equipped to undertake.⁹⁰ The persons who serve as guardians ad litem are trained volunteers from the community and their sole function is to determine which course of action would be in the child's best interests. Attorneys provide legal training for the volunteers and consultation on individual cases, and represent the program at adjudicatory and other hearings where the guardian's recommendation on the child's interests is likely to be seriously contested.

Although the program has been operating for only two years, program management believes that it has successfully demonstrated the practicability of using concerned citizens to promote the interests of dependent children.⁹¹ Among the factors it identifies as accounting for the program's suc-

cess are the high value placed on the program by judges, the training provided for volunteers, and effective legal consultation and representation. The project is cost-effective since it is financed from savings made by not hiring attorneys to act as guardians ad litem. Although it is encouraging that this type of volunteer lay guardian ad litem program can be organized successfully and receive favorable evaluations, such a program raises two issues previously discussed: whether a child can be adequately represented by a lay guardian ad litem whose sole function is to determine the best interests of the child, and whether any representative who is so closely tied to the juvenile court is independent and objective enough to represent adequately the interests of the child.

In 1979 the Regional Institute of Social Welfare Research released the results of a study concerning representation for children in abuse and neglect proceedings.⁹² The purpose of the study was to evaluate how states were meeting the guardian ad litem mandate of the federal Child Abuse Prevention and Treatment Act and the results were based on the responses of judges having jurisdiction over juvenile matters.

In the eight states surveyed, attorneys served as guardians ad litem in over three-fourths of cases in which representation was provided.⁹³ Social workers accounted for slightly more than ten percent, concerned citizens around seven percent, and law students approximately three percent. However, the federal mandate to appoint a guardian ad litem in every abuse and neglect case which results in a judicial proceeding was not realized.⁹⁴ Among the states with an explicit mandatory statutory provision to appoint a representative in every case, slightly more than fifty percent of the judges indicated the appointment of a guardian ad litem in every case. This compared to approximately one-third of the judges among the states which either did not have a statutory provision or which made the appointment discretionary.

The report indicates that many judges do not believe that representation for the child should be mandatory in all abuse and neglect proceedings, but instead believe that it should be within the court's discretionary powers to make the determination regarding the appointment and retention of the guardian ad litem.⁹⁵ Almost sixty percent of the judges felt that appointment in abuse cases should be at the court's discretion and over sixty percent indicated the need for the court's discretionary powers in appointing guardians ad litem in neglect cases.

Over seventy percent of the judges felt that attorneys who served as guardians ad litem in their courts were adequately prepared and knowledge-

able in the area of child abuse and neglect.⁹⁶ However, over ninety percent felt that training in the area of child abuse and neglect needed to be provided to attorneys who served as guardians ad litem.⁹⁷

The judges viewed social workers as the most likely alternatives to attorneys as guardians ad litem.⁹⁸ Social workers represented slightly more than forty percent of the total responses judges gave. Concerned citizens accounted for over twenty percent, law students around eighteen percent, and close relatives just under fifteen percent.

Drawing upon the findings of the study, the research staff felt it necessary to develop a guardian ad litem model that would lend itself to local implementation and fulfill the mandate of the federal act.⁹⁹ The model suggests that an attorney is needed to represent the child in adjudicatory and dispositional hearings, but that highly trained volunteers can be used to perform many pre-court activities. The volunteers can also act as consultants in the dispositional stage and in post-dispositional activities.

The report also suggests that in order to provide a guardian ad litem in every abuse and neglect case which results in a judicial proceeding, and to provide for the representation of the child's rights, interests, welfare and well-being, it is necessary to develop a more comprehensive and coherent approach to guardian ad litem programs.¹⁰⁰ A proposed model for a Guardian Ad Litem Office is presented, in which salaried attorneys would serve as guardians ad litem assisted by para-legal aides and trained volunteers. The responsibility for the child would rest with the attorney but the aides would perform many of the pre-court and post-disposition tasks under the attorney's supervision. The office would be quasi-independent. It might become a branch of the office of the attorney general but it would not become a branch of the court nor of the public social agency that provides protective services to children.¹⁰¹

Another suggestion to improve representation for the child that has been made by several commentators involves the use of child protection teams to offer assistance to the child's representative and suggestions for the disposition of a child found to be abused or neglected.¹⁰²

Many lawyers who are appointed as guardian ad litem have little knowledge of the complex problems of child abuse and neglect, have had little experience in the juvenile court and have little knowledge of the physical, psychological and developmental aspects of children. The guardian ad litem

does have the option and should utilize the expertise of other professionals who have this knowledge. If a child protection team is currently functioning within the community, the guardian ad litem is free to make full use of their expertise.¹⁰³

Depending on the community and the circumstances of individual cases, these child protection teams will include a representative from the department of social services, the local law enforcement agency, a physician, a psychiatrist, a lawyer, and a representative of the local court with juvenile jurisdiction.¹⁰⁴ The object of these teams is to provide the child with the full range of social,

medical, legal, and psychological services needed to determine whether the child has been abused or neglected and then to develop the proper prognosis and plan for treatment.¹⁰⁵ The team's collective expertise can provide valuable guidance to the guardian ad litem who represents the child.¹⁰⁶

It has also been suggested that persons who represent children in abuse and neglect proceedings, whether they be lay guardians ad litem or attorneys, need further training in child abuse and neglect in order to be effective representatives.¹⁰⁷ An appendix to this report includes a list of training manuals and handbooks that have been developed to meet this need.

V. SUMMARY

Almost all commentators today agree that a child who is the subject of an abuse or neglect proceeding needs an independent representative to protect his rights and interests. However, there is disagreement as to whether the child should be represented by a traditional guardian ad litem or legal counsel. State law reflects this controversy—although most states have statutes mandating representation for the child, the states vary concerning whether a guardian ad litem or legal counsel is required.

The role and responsibilities of the guardian ad litem and legal counsel in child abuse and neglect proceedings have been described and commentators' arguments concerning the advantages and disadvantages of each have been set forth. Most arguments support the position that the child's representative should be legally trained.

Little research on actual representation has been conducted, but the reports that do exist are not encouraging. The Johnson report indicates that the federal mandate to provide representation for all children who are the subject of abuse or neglect judicial proceedings is not being fully realized. The New York study implies that even if children are being represented, the representation might be ineffective.

These reports suggest that there is a need for further study to determine whether representatives are actually being appointed and if the representatives are providing effective advocacy for children. Such research should also indicate what changes can be implemented to improve representation for the child in abuse and neglect proceedings.

FOOTNOTES

1. For a discussion of child abuse and neglect reporting laws, see National Center on Child Abuse and Neglect, *Child Abuse and Neglect State Reporting Laws* (1979) and B.G. Fraser, "A Glance at the Past, A Gaze at the Present, A Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes," *Chicago-Kent Law Review* 54 (1978): 641-686.
2. Education Commission of the States, Early Childhood Projects, *Trends in Child Protection Laws*, (Denver, 1977), p. 11.
3. *Id.*
4. *Id.*, p. 12.
5. B.G. Fraser, "The Concept of a Guardian Ad Litem," *Child Abuse and Neglect* 1 (1977): 463.
6. 42 U.S.C. § 5101-06 (1974).
7. 42 U.S.C. § 5103 (b)(2)(G) (1974).
8. B.G. Fraser, "Independent Representation for the Abused and Neglected Child: The Guardian Ad Litem," *California Western Law Review* 13 (1976-1977): 28 [hereinafter cited as Fraser].
9. See Fraser, *supra*, note 8, pp. 40-41, and B. Fraser and H.P. Martin, "An Advocate for the Abused Child," in H.P. Martin, Ed., *The Abused Child*. Cambridge: Ballinger, pp. 173-174, 1976 [hereinafter cited as Fraser and Martin].
10. Fraser and Martin, *supra* note 9, at 172.
11. Fraser, *supra* note 8, at 32.
12. Fraser and Martin, *supra* note 9, at 172.
13. Fraser and Martin, *supra* note 9, at 172.
14. J.R. Redeker, "The Right of an Abused Child to Independent Counsel and the Role of the Child Advocate in Child Abuse Cases," *Villanova Law Review* 23 (1977-78): 528 [hereinafter cited as Redeker].
15. *Id.*
16. Fraser and Martin, *supra* note 9, at 172.
17. See E.K. Solender, "The Guardian Ad Litem—A Valuable Representative or an Illusory Safeguard?" *Texas Tech Law Review* 7 (1976): 619-620, and R.T. Makaitis, "Protecting the Interests of Children in Custody Proceedings: A Perspective on Twenty Years of Theory and Practice in the Appointment of Guardians Ad Litem," *Creighton Law Review* 12 (1978): 234 [hereinafter cited as Makaitis].
18. Fraser, *supra* note 8, at 27.
19. Fraser, *supra* note 8, at 28.
20. Fraser and Martin, *supra* note 9, at 172.
21. C. Ray-Bettineski, "Court Appointed Special Advocate—The Guardian Ad Litem for Abused and Neglected Child," *Juvenile and Family Court Journal* 29 (1978): 66 [hereinafter cited as Ray-Bettineski].
22. *Id.*
23. K.M. Krause, "Child Abuse and Neglect Reporting Legislation in Missouri," *Missouri Law Review* 42 (Spring 1977): 262 [hereinafter cited as Krause].
24. Fraser, *supra* note 8, at 29-30.
25. Fraser, *supra* note 8, at 33.
26. Fraser, *supra* note 8, at 40.
27. Fraser, *supra* note 8, at 29.
28. B.G. Fraser, "A Glance at the Past, A Gaze at the Present, A Glimpse at the Future: A Critical Analysis of the Development of Child Abuse Reporting Statutes," *Chicago-Kent Law Review* 54 (1978): 682.
29. See Ray-Bettineski, *supra* note 22.
30. See Redeker, *supra* note 14.

31. 387 U.S. 1 (1967), as discussed in Fraser, *supra* note 8, at 21.
32. Genden, J.K., "Separate Legal Representation for Children: Protecting the Rights and Interests of Minors in Judicial Proceedings," *Harvard Civil Rights - Civil Liberties Law Review* 11 (1976): 582 [hereinafter cited as Genden].
33. *Id.*
34. D. Pedicord, "Courts: Seen and not Heard: The Child's Need for His Own Lawyer in Child Abuse and Neglect Cases," *Oklahoma Law Review* 29 (1976): 440.
35. Redeker, *supra* note 14, at 525.
36. Redeker, *supra* note 14, at 523, discussing *Stapleton v. Dauphin County Child Care Service*, 228 Pa. Super. Ct. 371, 324 A.2d 562 (1974).
37. Redeker, *supra* note 14, at 524, discussing *In re Clouse*, 244 Pa. Super. Ct. 396, 369 A. 2d 780 (1976).
38. *Doe v. State Department of Human Services*, 398 A. 2d 562 (N.J. Super. Ct. App. Div. 1979).
39. P. Piersma, *Law and Tactics in Juvenile Cases*, 3d Ed., (Philadelphia: ALI-ABA Committee on Continuing Professional Education, 1977), p. 502, discussing *State ex. rel. Juvenile Dept. v. Wade*, 19 Or. App. 314, 527 P.2d. 753 (1974).
40. *Matter of Orlando*, 386 N.Y.S. 2d 64, 351 N.E. 2d 711 (1976).
41. *Roe v. Conn*, 417 F. Supp. 769 (M.D. Ala. 1976).
42. Fraser and Martin, *supra* note 9, at 175-176. See also Redeker, *supra* note 14.
43. Krause, *supra* note 24, at 262.
44. Krause, *supra* note 24, at 262.
45. V. DeFrancis and C. Lucht, *Child Abuse Legislation in the 1970's*, Rev. Ed., (Denver: The American Humane Association, 1974), p. 49-50, as reported in Krause, *supra* note 24, at 262.
46. Krause, *supra* note 24, at 263.
47. Krause, *supra* note 24, at 263.
48. J. Issacs, "The Role of the Lawyer in Child Abuse Cases," in C.H. Kempe and R. Helfer, Ed., *Helping the Abused Child and His Family*. Philadelphia: Lippincott, p. 225, 1972, as discussed in Krause, *supra* note 24, at 263 [hereinafter cited as Isaacs].
49. *Id.*, p. 230.
50. Fraser and Martin, *supra* note 9, at 174.
51. Makaitis, *supra* note 17, at 252.
52. Krause, *supra* note 24, at 263.
53. Redeker, *supra* note 14, at 541.
54. Genden, *supra* note 34, at 590.
55. D. Besharov, "The Legal Aspects of Reporting Known and Suspected Child Abuse and Neglect," *Villanova Law Review* 23 (1977-78): 582.
56. *Id.*
57. M.A. Levin, "Guardian ad Litem in a Family Court," *Maryland Law Review* 34 (1974): 363.
58. Fraser, *supra* note 8, at 43.
59. Fraser and Martin, *supra* note 9, at 465.
60. Model Child Protection Act With Commentary, draft, August 1977, section 25, p. 98.
61. *Id.*, p. 99.
62. Model Child Abuse and Neglect Reporting Law § 15A (1975), reprinted in A. Sussman and S. Cohen, *Reporting Child Abuse and Neglect* 54 (1975), as discussed in Redeker, *supra* note 14, at 527.
63. As reported in P. Piersma, *Law and Tactics in Juvenile Cases*, 3d Ed., (Philadelphia: ALI-ABA Committee on Continuing Professional Education, 1977), p. 502.
64. 42 U.S.C. § 5103 (b)(2)(G) (1974).
65. C.F.R. § 1340.3-3 (d)(7) (1978).
66. Appendix C includes a compilation of state statutory citations that provide representation for children.
67. They are: Alaska, Arkansas, Colorado, Delaware, Georgia, Iowa, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Mexico,

- North Dakota, Ohio, Rhode Island, South Carolina, Utah, American Samoa, Puerto Rico, and the Virgin Islands.
68. They are: Alabama, District of Columbia, Florida, Idaho, Kansas, New Jersey, New York, North Carolina, Pennsylvania, Virginia, and Wisconsin.
 69. They are: Arizona, California, Connecticut, Michigan, Nevada, New Hampshire, Oklahoma, South Dakota, and West Virginia.
 70. South Carolina.
 71. ILL. ANN. STAT. ch. 37, § 704-5 (Smith-Hurd Supp. 1979).
 72. VT. STAT. ANN. tit. 33, § 653(a) (Supp. 1978).
 73. WYO. STAT. § 14-3-211(a) (1978); CONN. GEN. STAT. ANN. § 17-38a(f) (Supp. 1978).
 74. CONN. GEN. STAT. ANN. § 17-38a(f) (Supp. 1978).
 75. CAL. WELF. & INST. CODE § 326 (West Supp. 1979).
 76. TENN. CODE ANN. § 37-248 (1977 Repl. Vol.).
 77. N.C. GEN. STAT. § 7A-283 (Supp. 1977).
 78. WIS. STAT. ANN. § 48.23(3m) (1979).
 79. S.C. CODE § 20-10-180(A) (Supp. 1978).
 80. See E.N. Kaplan, "Domestic Relations—Appointment of Counsel for the Abused Child—Statutory Schemes and the New York Approach, New York State Assembly Select Committee on Child Abuse, Report (1972)," *Cornell Law Review* 58 (1972-73): 177-190 [hereinafter cited as Kaplan], and Makaitis, *supra* note 17.
 81. They are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, American Samoa, Guam, Puerto Rico, and the Virgin Islands.
 82. They are: Arizona, Delaware, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maryland, Montana, Nevada, North Carolina, Oklahoma, Oregon, Texas and Vermont.
 83. N.C. GEN. STAT. § 7A-283 (Supp. 1977).
 84. COLO. REV. STAT. § 19-10-113(3) (Repl. 1978).
 85. OHIO REV. CODE ANN. § 2151.281 (Page Repl. Vol. 1976).
 86. Kaplan, *supra* note 82, at 185.
 87. Kaplan, *supra* note 82, at 185.
 88. Kaplan, *supra* note 82, at 189.
 89. Ray-Bettineski, *supra* note 22, at 65.
 90. Ray-Bettineski, *supra* note 22, at 66.
 91. Ray-Bettineski, *supra* note 22, at 69.
 92. See C.L. Johnson, *Much More to do About Something: The Guardian Ad Litem in Child Abuse and Neglect Judicial Proceedings*, (Athens, Ga.: Regional Institute of Social Welfare Research, Inc., 1979) [hereinafter cited as Johnson] and C.L. Johnson, "Statutory Provisions Regarding the Guardian Ad Litem Mandate: Some Findings from a Regionwide Survey of Judges in the Southeast," *Juvenile and Family Court Journal* 30 (August 1979): 15-20.
 93. Johnson, *supra* note 94, at 47. In the three states that mandated representation by attorneys or legal counsel, only attorneys served as guardians ad litem.
 94. Johnson, *supra* note 94, at 59.
 95. Johnson, *supra* note 94, at 111.
 96. Johnson, *supra* note 94, at 139.
 97. Johnson, *supra* note 94, at 145.
 98. Johnson, *supra* note 94, at 108.
 99. Johnson, *supra* note 94, at 144-145.
 100. Johnson, *supra* note 94, at 168.
 101. Johnson, *supra* note 94, at 171.
 102. See Fraser and Martin, *supra* note 9, and

D.C. Bross, "Legal Advocacy for the Maltreated Child," *Trial* 14 (July 1978): 29-68.

Childhood Projects, *Trends in Child Protection Laws*, (Denver, 1977), p. 13.

103. Fraser and Martin, *supra* note 9, at 175.

106. Fraser, *supra* note 8, at 24.

104. Fraser and Martin, *supra* note 9, at 171.

107. See Isaacs, *supra* note 50, and Johnson, *supra* note 94.

105. Education Commission of the States, Early

Appendix A

TRAINING MATERIALS

- Bar Association of the District of Columbia. *Representing Juveniles in Neglect, PINS and Delinquency Cases in the District of Columbia*. Washington, D.C., 1975.
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- ten Bensel, R.W. *Training Manual in Child Abuse and Neglect*. Minneapolis: Minnesota Systems Research Inc., 1978.

Appendix B

NATIONAL PROGRAMS PROVIDING LEGAL AND TECHNICAL SUPPORT TO
CHILD ABUSE REPRESENTATION PROJECTS

National Legal Resource Center for Child
Advocacy and Protection
American Bar Association
1800 M Street, N.W.
Washington, D.C. 20036
(202) 331-2250
Howard A. Davidson, Director

National Association of Counsel for Children
1205 Oneida
Denver, CO 80220
(303) 321-3963
Donald Bross, Executive Director

National Center for Youth Law
3701 Lindel Boulevard
St. Louis, MO 63108
(314) 533-8868
Adrienne Volenik, Managing Attorney

National Center for Youth Law
693 Mission Street, Sixth Floor
San Francisco, CA 94105
(415) 543-3307
Peter Bull, Director

American Civil Liberties Union
Children's Rights Project
22 East 40th Street
New York, NY 10016
(212) 725-1222
Marcia R. Lowry, Director

Children's Defense Fund
1520 New Hampshire Ave., NW
Washington, D.C. 20036
(202) 483-1470
Marian Wright Edelman, Director

Appendix C

State Statutes Providing for Representation for the Child in Abuse and Neglect Proceedings (State Laws in Effect January 1, 1979)

Alabama — ALA. CODE § 26-14-11 (1975).

Alaska — ALASKA STAT. ch. 17, § 47.17.030(e) (1979); ch. 10, § 47.10.050(a) (1979).

Arizona — ARIZ. REV. STAT. § 8-225(A) (Supp. 1978).

Arkansas — ARK. STAT. ANN. § 42-817(a) (1977).

California — CAL. WELF. & INST. CODE §§ 317, 326 (West Supp. 1979).

Colorado — COLO. REV. STAT. § 19-10-113(3) (Repl. 1978); § 19-3-105(4) (Repl. 1978).

Connecticut — CONN. GEN. STAT. ANN. § 17-38a(f)(2) (Supp. 1978).

Delaware — DEL. CODE ANN. tit. 10, § 925(14) (1975).

District of Columbia — D.C. CODE ANN. § 16-2304(b)(2) (Supp. 1978).

Florida — FLA. STAT. ANN. § 827.07(12) (Supp. 1979).

Georgia — GA. CODE ANN. § 24A-3301 (1976).

Hawaii — HAWAII REV. STAT. § 571-24 (1976).

Idaho — IDAHO CODE § 16-1618(a) (Supp. 1978).

Illinois — ILL. ANN. STAT. ch. 37, § 704-5 (Smith-Hurd Supp. 1979).

Indiana — IND. CODE ANN. § 31-5.5-3-9 (Supp. 1978).

Iowa — IOWA CODE ANN. § 232.28 (1969).

Kansas — KAN. STAT. ANN. § 38-821(a) (Supp. 1978).

Kentucky — KY. REV. STAT. § 208.060(3)(a) (Supp. 1978).

Louisiana — LA. REV. STAT. § 14:403(G)(7) (1974).

Maine — ME. REV. STAT. ANN. tit. 22, § 3858 (Supp. 1978).

Maryland — MD. CTS. & JUD. PROC. CODE ANN. § 3-834 (Supp. 1978).

Massachusetts — MASS. GEN. LAWS ANN. ch. 119, § 29 (Supp. 1979).

Michigan — MICH. COMP. LAWS ANN. § 722.630 (Supp. 1978).

Minnesota — MINN. STAT. ANN. § 260.155 (1971) as amended by § 260.155 (4) (Supp. 1979).

Mississippi — MISS. CODE ANN. § 43-21-17 (Supp. 1978); § 43-23-15 (Supp. 1978).

Missouri — MO. REV. STAT. § 210.160 (Supp. 1979).

Montana — MONT. CODE ANN. § 41-3-401(12) (1978).

Nebraska — NEB. REV. STAT. § 43-205.06(2), (3) (Supp. 1978).

Nevada — NEV. REV. STAT. § 128.100 (1975).

New Hampshire — N.H. REV. STAT. ANN. § 604-A:1a (Repl. 1974); § 462:1 (1968).

New Jersey — N.J. STAT. ANN. § 9:6-8.21(d) (Supp. 1979); § 9:6-8.23 (a) (1976); § 9:6-8.43 (a) (Supp. 1978).

New Mexico — N.M. STAT. ANN. § 32-1-27 (1978).

New York — N.Y. FAM. CT. ACT § 249(a) (McKinney Supp. 1978).

North Carolina — N.C. GEN. STAT. § 7A-283 (Supp. 1977).

North Dakota — N.D. CENT. CODE § 50-25.1-08 (Supp. 1977).

Ohio — OHIO REV. CODE ANN. § 2151.281
(Page Repl. Vol. 1976).

Oklahoma — OKLA. STAT. ANN. tit. 21, § 846
(B) (Supp. 1978).

Oregon — OR. REV. STAT. § 419.494 (Repl. Part
1977).

Pennsylvania — PA. STAT. ANN. tit. 11, § 2223
(a) (Supp. 1978).

Rhode Island — R.I. GEN. LAWS § 40-11-14
(1977).

South Carolina — S.C. CODE § 20-10-180(A)
(Supp. 1978).

South Dakota — S.D. COMP. LAWS ANN. § 26-
10-12.1 (1976).

Tennessee — TENN. CODE ANN. § 37-248 (1977
Repl. Vol.)

Texas — TEX. FAM. CODE ANN. § 11.10 (1975)
as amended by § 11.10 (Supp. 1978).

Utah — UTAH CODE ANN. § 78-3b-11 (Supp.
1978).

Vermont — VT. STAT. ANN. tit. 33, § 653(a)
(Supp. 1978).

Virginia — VA. CODE § 16.1-266 (a) (Supp.
1978).

Washington — WASH. REV. CODE ANN. §
26.44.053(1) (Supp. 1977).

West Virginia — W. VA. CODE § 49-6-2(a) (Supp.
1978).

Wisconsin — WIS. STAT. ANN. §§ 48.02(8),
23(1)(b), (3m) (1979).

Wyoming — WYO. STAT. § 14-3-211(a) (1978).

American Samoa — A.S. CODE tit. 21, ch. 29, §
2911(a) (Supp. 1978).

Guam — GUAM CODE CIV. PRO. § 262 (1970).

Puerto Rico — P.R. Act No. 104 of 1976, § 7.

Virgin Islands — V.I. CODE ANN. tit. 19, § 183
(1976), as amended by § 183 (Supp. 1978).

Appendix D

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