

# ALONE AND IGNORED: CHILDREN WITHOUT ADVOCACY IN CHILD ABUSE AND NEGLECT COURTS

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*Decades of legal scholarship regarding children’s advocacy in child welfare courts have assumed a non-existent reality. For the last forty years, scholars have debated the proper role of a child’s advocate and the proper weight and emphasis of a child’s opinion. This argument assumes that children are being represented, albeit perhaps inadequately, by some form of adult advocate in court. In this first-of-its-kind study, court observation data from Washington state reveal what is actually happening day-to-day in child abuse and neglect, or dependency, courts—widespread noncompliance with federal law and a complete lack of advocacy for many children. By failing to ask “what is happening?” before asking “what should be happening?” legal scholars have largely ignored a major failing of our court system. According to the court observation study discussed in this Article, in many cases children are left with no advocate and their needs are completely ignored in court hearings. In order for a child’s voice to be heard in a court proceeding, as scholars have repeatedly called for, courts must first and foremost acknowledge that the child exists.*

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## BACKGROUND

The power of the state to intervene into the private sphere of the family and physically remove children from their homes is vast and far-reaching. For the child at the center of an abuse or neglect investigation, decisions about nearly every aspect of their lives, from where they will live, to who they can have relationships with and what services and supports they can receive, are no longer made by their families and are instead made by the state.<sup>1</sup> The all-encompassing control over the child's life by the foster care system can have profound negative consequences on the child involved. One study examining children "on the margin" of foster care placement found a significant correlation between placement in foster care and higher rates of juvenile delinquency and teen birth.<sup>2</sup> In another study, researchers found that young adults who had experienced foster care in their youth were significantly more likely to be unemployed, to have failed to complete high school, to have criminal justice involvement, and to earn significantly less income than their non-foster care peers.<sup>3</sup> Another survey of alumni of the foster care system found that one in four alumni self-reported experiencing post-traumatic stress disorder.<sup>4</sup>

State courts are charged with overseeing this great power to control children and their families.<sup>5</sup> In 1974, in response to growing public awareness

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1. See Alicia LeVezu, *The Illusion of Appellate Review in Dependency Proceedings*, 68 JUV. & FAM. CT. J. 83, 87-88 (2017) (discussing the legal rights at play and the power of the state court over these children); Lisa Kelly & Alicia LeVezu, *Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children*, 50 FAM. L. Q. 383, 423-26 (2016).

2. Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1602, 1606-07 (2007).

3. MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26, at 20, 28, 36, 93 (2011).

4. CASEY FAMILY PROGRAMS, IMPROVING FAMILY FOSTER CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY 2 (2005), <https://perma.cc/2AXP-A25U>.

5. See CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 351 (Donald N. Duquette & Ann M. Haralambie eds., 2d ed. 2010).

of the prevalence of child abuse, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA).<sup>6</sup> CAPTA was the first of several comprehensive federal legislation packages dealing with child welfare and included criteria for states to receive federal funding for child abuse prevention programs.<sup>7</sup> Included in CAPTA was a provision that all children involved in abuse and neglect investigations must be appointed an advocate who will represent them in the resulting court proceedings, often called dependency proceedings.<sup>8</sup> As child abuse and neglect, or dependency, courts launched and formalized across the country, states also wrestled with the implementation of the new advocate requirement.<sup>9</sup>

Today, each state has a distinct court process, but regardless of the intricacies of that system, “[n]o child enters or leaves foster care without a judge’s decision.”<sup>10</sup> The dependency case generally begins with the state’s child welfare agency alleging that a parent is unable to properly care for the child, and if the state is successful in proving their case, the child is found to be dependent on the state for their care and support.<sup>11</sup> The court maintains jurisdiction over the case while the parent works to alleviate or mitigate the causes necessitating placement and attempts to prove to the court that he or she is suitable to regain legal custody of his or her children.<sup>12</sup> This process might lead to a separate termination of parental rights trial, where the parent-child relationship can be legally severed; an outcome that has been labeled “tantamount to imposition of a civil death penalty.”<sup>13</sup>

While the court evaluates whether continued separation is warranted, the child becomes a beneficiary of a host of legal rights, including: the right to regular visits by social workers, coordinated health care, and opportunities to engage in age appropriate activities.<sup>14</sup> When children are removed from their biological parents they may be placed with relatives, but are often placed by the state into foster care with a stranger or at a residential facility.<sup>15</sup> The court

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6. Pub. L. No 93-247, § 4(b), 88 Stat. 4 (1974), codified as amended at 42 U.S.C. § 5101; see JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 33 (3d ed. 2007).

7. Child Abuse Prevention and Treatment Act (CAPTA) of 1974, Pub. L. No 93-247, § 4(b), 88 Stat. 4, 6-7 (1974).

8. *Id.*

9. PETERS, *supra* note 6 at 33.

10. *Hearing to Examine Child Welfare Reform Proposals: Hearing Before the Subcomm. on Hum. Res. of the H. Comm. on Ways and Means*, 108th Cong. 20 (2004) (statement of Hon. William Frenzel, Chairman, Pew Commission on Children in Foster Care); PETERS, *supra* note 6, at 41 (exploring the unique features of each state’s child representation system and finding no trends between state systems).

11. See CHILD WELFARE LAW AND PRACTICE, *supra* note 5, at 354-55.

12. 42 U.S.C. § 675(5)(B)-(C) (2010).

13. *Drury v. Lang*, 776 P.2d 843, 845 (Nev. 1989).

14. See, e.g., 42 U.S.C. §§ 622, 624, 671, 675 (2017).

15. U.S. DEP’T OF HEALTH AND HUMAN SERVS., CHILDREN’S BUREAU, THE AFCARS REPORT: PRELIMINARY FY 2015 ESTIMATES AS OF JUNE 2016 1-2 (2016),

conducts regular review hearings to both monitor the parent's progress and ensure the child is receiving the care he or she needs.<sup>16</sup> Even after parental rights are terminated, the child's time in the dependency court system continues as the state maintains custody of the child.<sup>17</sup>

Many children in the United States are involved in dependency court processes: in 2015 there were over 400,000 children in foster care nationally, all of whom were subjected to a dependency court proceeding.<sup>18</sup> More than 64,000 of these children had been in foster care for more than three years, and more than 20,000 children had their cases dismissed because they simply became too old for the court to maintain jurisdiction.<sup>19</sup>

Intense discussion and debate about the proper functioning of child welfare courts has taken place over the last forty years since the implementation of CAPTA. Scholarship has largely focused on the proper role of the child's advocate that CAPTA requires; a review of the literature, however, shows a dire need for studies addressing whether or not the child's advocate is actually appointed, and the impact that appointment has on the children and the court process.<sup>20</sup>

Since CAPTA's implementation, a plethora of legal scholarship has been written to discuss the appropriate advocacy role and best practices for child advocates in dependency courts.<sup>21</sup> The majority of this debate over the role of

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<https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport23.pdf> (Sixty-three percent of children were placed either in a non-relative foster home (including pre-adoptive homes) or a residential setting (group home or institution)).

16. 42 U.S.C. § 675(5)(B)

[T]he status of each child is reviewed periodically but no less frequently than once every six months . . . in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, . . . the steps the State agency is taking to ensure the child's foster family home or child care institution is following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities . . . .

17. CHILD WELFARE LAW AND PRACTICE, *supra* note 5, at 361.

18. See THE AFCARS REPORT, *supra* note 15, at 1-2 (reporting that the median length of time in care for children in the U.S. is just over 12 months, however there were over 25,000 children nationally who had been in foster care for five years or more).

19. *Id.* at 2-3. Another 985 children had their cases dismissed after they ran away from care and 336 children's cases were closed due to their deaths. *Id.* at 3.

20. This is not to say that there hasn't been intensive attention to the child welfare system generally; case outcome measures and timeline to permanence measures are tracked and reported extensively. See, e.g., U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHILDREN'S BUREAU, CHILD MALTREATMENT 2015, at 25-26 (2017), <https://www.acf.hhs.gov/sites/default/files/cb/cm2015.pdf>; NAT'L DATA ARCHIVE ON CHILD ABUSE AND NEGLECT, <https://www.ndacan.cornell.edu> (last visited Aug. 12, 2017).

21. See, e.g., CHILD WELFARE LAW AND PRACTICE, *supra* note 5, at 351 (establishing best practices of children's representation); JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS 33 (3d ed. 2007) (same); JENNIFER L. RENNE, LEGAL ETHICS IN CHILD WELFARE CASES (2007) (highlighting the various ethical challenges unique

the child's advocate has focused on whether the child's representative should advocate for what that person believes to be in the child's best interest, referred to as "best interest" advocacy, or for what the child says they want, referred to as "stated interest," or client-directed, advocacy.<sup>22</sup> Another area of scholarship focuses on the value of attorney versus non-attorney advocates. While CAPTA mandates appointment of an advocate, that advocate is not required to be an attorney.<sup>23</sup> Instead of hiring attorneys, jurisdictions may use non-lawyers and community volunteers to act as best-interest advocates in court.<sup>24</sup> Over the years, a general consensus within the legal community appears to have emerged that best practice is the appointment of a stated-interest attorney to fill the child advocate role.<sup>25</sup>

Over the last fifteen years, particular emphasis has been placed on the importance of including the child's voice in dependency proceedings.<sup>26</sup>

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to children's representation and suggesting best practices for practitioners); Lisa Kelly & Alicia LeVezu, *Until the Client Speaks: Reviving the Legal-Interest Model for Preverbal Children*, 50 FAM. L. Q. 383 (2016) (discussing the various roles of children's attorneys and proposing a legal interest role as a replacement for best interest advocacy in preverbal children); Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 NEV. L.J. 805 (2006) (providing a critique of lawyers for children centered on the author's observations of children's attorneys in New York acting as best interest advocates); Donald N. Duquette, *Two Distinct Roles/Bright Line Test*, 6 NEV. L.J. 1240, 1246 (2006) (advocating for lawyers to shift from best interest advocates for small children to stated interest advocates as children age, relying on the bright line age of seven for that transition); Emily Buss, *You're My What?: The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 FORDHAM L. REV. 1699 (1996) (discussing the importance of, and challenges associated with, lawyers explaining their role to child clients).

22. See, e.g., Suparna Malempati, *Beyond Paternalism: The Role of Counsel for Children in Abuse and Neglect Proceedings*, 11 U.N.H. L. Rev. 97 (2013); Emily Buss, *Juvenile Court for Young Adults? How Ongoing Court Involvement Can Enhance Foster Youths' Chances for Success*, FAM. CT. REV., Apr. 2010, at 268; Annette Ruth Appell, *Representing Children Representing What?: Critical Reflections on Lawyering for Children*, COLUM. HUM. RTS. L. REV., Summer 2008, at 575; Donald N. Duquette, *Two Distinct Roles/Bright Line Test*, 6 NEV. L.J. 1240, 1246 (2006); Martin Guggenheim, *The Right to Be Represented but Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76, 99 (1984).

23. 42 U.S.C. § 5106a(b)(2)(B)(xiii).

24. C.S.R., INC., FINAL REPORT ON THE VALIDATION AND EFFECTIVENESS STUDY OF LEGAL REPRESENTATION THROUGH GUARDIAN AD LITEM, 2-11 (1995).

25. U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHILDREN'S BUREAU, LOG NO. ACYF-CB-IM-17-02, HIGH QUALITY LEGAL REPRESENTATION FOR ALL PARTIES IN CHILD WELFARE PROCEEDINGS 3 (2017); *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 6 NEV. L.J. 592, 592 (2006) ("During the nearly half century that legal norms have mandated appointment of counsel or other representation for children in legal proceedings, the children's attorneys' community has come to the conclusion that ethical legal representation of children is synonymous with allowing the child to direct representation.").

26. See, e.g., Buss, *supra* note 22, at 268 (arguing that involvement in their court proceedings can help young adults develop decision making skills and a sense of ownership and responsibility of their futures.); Erik S. Pitchal, *Where Are All the Children?: Increasing Youth Participation in Dependency Proceedings*, 12 U.C. DAVIS J. JUV. L. & POL'Y 233, 242

Scholars have encouraged children's attendance at hearings and stressed that the child advocate has a duty to highlight the perspective of the child within the court hearing.<sup>27</sup> More than ten articles and reports have been published on this topic, with scholars presenting strong arguments in favor of increasing youth participation in their hearings.<sup>28</sup>

The inclusion of a child's voice and perspective in the court hearings is critical, not only to improve child welfare outcomes, but also to ensure that the child's interaction with the court system is not harmful to their well-being. Multiple studies have demonstrated that a person's perception of the justice system is largely impacted not by which decisions judicial officers eventually make, but by how fair the process by which those decisions are made appears.<sup>29</sup> One key component to perceptions of fairness is the procedure through which individuals are allowed to participate.<sup>30</sup> One study found that "people value the opportunity to present their arguments and state their views" even when they understood that their perspective ultimately had little or no impact on the decision-maker.<sup>31</sup> Another study, this one of civil commitment proceedings,

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(2008) (arguing for greater youth involvement in dependency court as something that will benefit youth, individual cases and society as a whole); Miriam Aroni Krinsky & Jennifer Rodriguez, *Giving a Voice to the Voiceless: Enhancing Youth Participation in Court Proceedings*, 6 NEV. L.J. 1302, 1304 (2006) (discussing the importance of youth involvement by relying on youth reports of their own needs and experiences in foster care.).

27. See note 25, *supra*.

28. See, e.g., Pitchal, *supra* note 26, at 249 ("When they are not present for court, youth must rely on adults to tell them what happened. Many young people report receiving conflicting information about what transpired in court without them. Often their law guardian tells them one thing, and their caseworker tells them something completely different—if they are told anything at all. Often, major case decisions are made—such as a change in placement—and the young person has no idea that anything has happened until suddenly her world turns upside down."); Krinsky & Rodriguez, *supra* note 26, at 1305; Carolyn S. Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in a Children's Law Clinic*, 17 ST. THOMAS L. REV. 623, 656 (2005) ("In fact, a child can experience greater anxiety from knowing that a judge is making decisions about what will happen to her, but not being allowed to speak to the judge. Karina said this about not being allowed to go to court for her foster care case: 'I wanted to go to court, but they wouldn't let me go because my guardian ad litem said that going to court might upset me. It was not being allowed to speak to the judge, that upset me.'").

29. TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* 75-102 (1997); Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79, 97 (2013); Krinsky & Rodriguez, *supra* note 26, at 1302; Tom R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 LAW & SOC'Y REV. 103, 128 (1988).

30. Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, 46 S.M.U. L. REV. 433, 439 (1992) ("Studies of people's reactions to judicial procedures consistently find that people regard procedures in which they are allowed to participate as fairer." (citing ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988))).

31. *Id.* at 440 (citations omitted) ("What is interesting is that people value the opportunity to present their arguments and state their views even when they indicate that

found that perceptions of fairness in the proceedings may even impact the course of the patient's treatment in the hospital.<sup>32</sup> The analogy between civil commitment and foster care is clear, where foster youth are court ordered into a placement and may be court ordered to undergo mental health treatment and services.<sup>33</sup>

Foster youth may benefit from participation in their court proceedings to an even greater extent than others interacting with the courtroom due to the high likelihood of having experienced trauma and/or violence. Scholars have previously highlighted the ability of state systems to mimic the dynamic of an abusive relationship through rejection, degradation, and isolation.<sup>34</sup> Conversely, respectful inclusion and participation of the abuse victim can serve as a form of "therapeutic jurisprudence," re-casting the individual "from 'an object to be used' to 'a person with rights'" who is now empowered to use those rights.<sup>35</sup> This value of including a child's voice in the process further aligns with research on trauma recovery and the understanding of trauma from a mental health perspective:

The first principle of recovery is the empowerment of the survivor. She must be the author and arbiter of her own recovery. Others may offer advice, support, assistance, affection, and care, but not cure. Many benevolent and well-intentioned attempts to assist the survivor founder because this fundamental principle of empowerment is not observed. No intervention that takes power away from the survivor can possibly foster her recovery, no matter how much it appears to be in her immediate best interest.<sup>36</sup>

Understanding these concepts of procedural justice and the potential therapeutic value of participation further demonstrates the importance of the child's voice in the dependency courtroom.

The child's presence in court also allows the judicial officer to make first-hand observations about the child, including their interactions with the other parties and caretakers.<sup>37</sup> Finally, the child's presence in the hearing serves as a quality control check on the child's advocates because the child is there and

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what they say is having little or no influence over the third-party authority. The most striking example of this effect is found in studies allowing people to present their evidence after a decision has been made.").

32. Bruce J. Winick, *Therapeutic Jurisprudence and the Civil Commitment Hearing*, 10 J. CONTEMP. LEGAL ISSUES 37, 47 (1999) (citing Alexander Greer et al., *Therapeutic Jurisprudence and Patients' Perceptions of Procedural Due Process of Civil Commitment Hearings*, in LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 923 (David B. Wexler & Bruce J. Winick eds., 1996).

33. See, e.g., Salisbury, *supra* note 28, at 649-50.

34. Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 587 (1999).

35. Salisbury, *supra* note 28, at 662.

36. Judith Lewis Herman, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE – FROM DOMESTIC ABUSE TO POLITICAL TERROR 133 (1997).

37. Krinsky & Rodriguez, *supra* note 26, at 1305.

could personally confirm that their advocate is following their directions. Therefore, poorly performing child's advocates may not encourage their child clients to attend court and keep them accountable.

Youth and alumni of foster care have joined in this call for increased youth voice in child welfare proceedings. A collection of writing and artwork from youth in foster care titled *MY VOICE, MY LIFE, MY FUTURE* was published to highlight the voices of children often ignored by the system.<sup>38</sup> Krystin, age 12, wrote: "All I want for my birthday is a voice . . . I want to know one thing: How old do I have to be? Sixteen? Eighteen? Twenty-one?"<sup>39</sup> Antoinette, age 14, pleaded: "Listen to me, since no one else will, and try to understand where I am coming from. Maybe I am a child, but I'm not dumb."<sup>40</sup>

Scholars in the juvenile delinquency field have analyzed self-reported state court data on representation and found high rates of un-represented youth,<sup>41</sup> despite a Supreme Court decision that mandates appointment in delinquency proceedings.<sup>42</sup> Conversely, in 2006, Professor Gerald Glynn looked at state self-reports in dependency cases and found the data to be "useless" due to inaccurate reporting.<sup>43</sup> The information that was presented in those state reports did, however, suggest that states were not complying with CAPTA and that perhaps many children were going unrepresented.<sup>44</sup> Although not all states report statistics, he noted that some states self-report that less than one percent of children receive representation, while others report more than 100% of children as represented.<sup>45</sup> Considering the high rates of unrepresented youth in delinquency courts, it would not be surprising to find high rates of unrepresented youth in dependency courts. The inaccurate self-reported data identified by Professor Glynn demonstrates the strong need for independent data collection on the rates of children's representation.

Professor Glynn looked to judiciary reports and other "internal" state audits to hypothesize that between 10-54% of children nationally are likely going without federally mandated advocates.<sup>46</sup> Despite this somewhat startling proposition, this hypothesis was not analyzed further; instead, scholarship and empirical research related to dependency court and the role of children's advocates appears to assume, without investigating, that every child is

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38. *HOME AT LAST, MY VOICE, MY LIFE, MY FUTURE* 3 (2006).

39. *Id.* at 10.

40. *Id.* at 13.

41. BARRY C. FELD, *JUSTICE FOR CHILDREN: THE RIGHT TO COUNSEL AND THE JUVENILE COURTS* 54 (1993).

42. *In re Gault*, 387 U.S. 1, 41 (1967).

43. Gerard Glynn, *The Child's Representative Under CAPTA: It Is Time for Enforcement*, 6 NEV. L.J. 1250, 1255, 1255 n.26 (2006) (noting that if the Department of Health and Human Services' numbers are to be believed, then 964% of Iowa's dependent children receive representation).

44. *Id.* at 1255-56.

45. *Id.* at 1255.

46. *Id.* at 1255-56.

appointed some form of advocate.<sup>47</sup> The literature has instead focused on the question of which form of advocate is best.

More recent federal data continue to be limited in scope, with only half of states reporting to the federal government whether children are represented in court as required by CAPTA.<sup>48</sup> If these data are to be believed, approximately 74% of children nationally are without any form of advocate.<sup>49</sup>

In addition to the lack of data regarding whether children's advocates are appointed, there has also been a lack of data regarding the impact of this failure to provide representation on the children and the court process. Professor Don Duquette and attorney Julian Darwall compiled a list of major dependency court studies related to children's representation in 2012 and found that "there seems to be no reliable empirical evidence as to whether legal representation of children actually makes a difference in case outcome."<sup>50</sup> Of the fourteen studies that Professor Duquette identified, eight exclusively focused on one type of children's representation and evaluated its effectiveness via surveys and other metrics of effectiveness.<sup>51</sup> Four studies compared represented children with a control group, but did not indicate whether the non-represented children had a different form of advocate than was being examined, or simply had no advocate at all.<sup>52</sup> Only two of the studies compared the effectiveness between multiple,

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47. See, e.g., Appell, *supra* note 22 at 575 (discussing challenges with the child's attorney role with the understanding that children's representation has become the norm); *infra* note 52 (studies that discuss the effectiveness of advocates without discussing whether all children in the jurisdiction receive an advocate).

48. CHILD MALTREATMENT 2015, *supra* note 20, at 88.

49. *Id.*

50. Donald N. Duquette with Julian Darwall, *Child Representation in America: Progress Report from the National Quality Improvement Center*, 46 FAM. L.Q. 87, 119 (2012).

51. ERIK S. PITCHAL, MADELYN D. FREUNDLICH & CORENE KENDRICK, NAT'L ASSOC. OF COUNSEL FOR CHILDREN, *EVALUATION OF THE GUARDIAN AD LITEM SYSTEM IN NEBRASKA*, at vi-vii (2009); JUDICIAL COUNCIL OF CALIFORNIA, *DEPENDENCY COUNSEL CASELOAD STANDARDS: A REPORT TO THE CALIFORNIA LEGISLATURE* 7, 9 (2008); CARLA HESS, SCHURKEY SWANKE & ANNALISA BATSON, *AN EVALUATION OF THE NORTH DAKOTA GUARDIAN AD LITEM PROJECT* 1-3 (2007); GARY A. LUKOWSKI & HEATHER J. DAVIES, ABA CTR. ON CHILDREN AND THE LAW, *A CHALLENGE FOR CHANGE: IMPLEMENTATION OF THE MICHIGAN LAWYER-GUARDIAN AD LITEM STATUTE* 4, 9 (2002); LUCY BERLINER WITH MONICA FITZGERALD, WASH. ST. INST. FOR PUB. POL'Y, *COURT-APPOINTED SPECIAL ADVOCATES FOR CHILDREN IN WASHINGTON STATE: A REVIEW OF EFFECTIVENESS* 1 (1998); Gail S. Goodman et al., *A Comparison of Types of Attorney Representation of Children in California Juvenile Court Dependency Cases*, CHILD ABUSE & NEGLECT, Apr. 2008, at 497; Manuela Stötzel & Jörg M. Fegert, *The Representation of the Legal Interests of Children and Adolescents in Germany: A Study of the Children's Guardian from a Child's Perspective*, 20 INT'L J.L. POL'Y & FAM. 201, 201, 207-08 (2005); Pat Litzelfelner, *The Effectiveness of CASAs in Achieving Positive Outcomes for Children*, CHILD WELFARE, Mar.-Apr. 2000, at 179 (2000).

52. ANDREW E. ZINN & JACK SLOWRIVER, CHAPIN HALL CTR. FOR CHILD. AT U. CHICAGO, *EXPEDITING PERMANENCY: LEGAL REPRESENTATION FOR FOSTER CHILDREN IN PALM BEACH COUNTY* 2-5 (2008); CALIBER ASSOC., *EVALUATION OF CASA REPRESENTATION: FINAL REPORT* (2004); Cynthia A. Calkins & Murray Millar, *The Effectiveness of Court Appointed*

clearly identified forms of advocates. A 1987 study by Professors Duquette and Ramsay compared representation by attorneys, law students, and Court-Appointed Special Advocates (CASA)<sup>53</sup> in Michigan through interviews and court records, noting that an attorney supervised each type of advocate, following the requirements of Michigan law.<sup>54</sup> That study found no significant differences in the activities performed by advocates or the outcome measures for the youth.<sup>55</sup> A second study, this one from 1995, commissioned by the Department of Health and Human Services compared different forms of guardian ad litem advocacy: private attorneys, specialized attorneys, law students, and lay volunteers.<sup>56</sup> That study found high levels of activity and perceptions of effectiveness by the lay advocates, but low courtroom activity levels and problems with their legal representation and negotiation.<sup>57</sup> Both studies looked at the professional training (attorney vs. lay advocate), but did not compare advocates who were fulfilling different roles in terms of best interest or stated interest advocacy.<sup>58</sup> The studies therefore do not provide insight into the ongoing debate between best interest and stated interest advocacy.

Out of these fourteen studies identified, not one clearly discussed the rates and impact of a complete lack of representation for children in dependency court.<sup>59</sup> Professor Duquette's analysis of the existing data led him to the conclusion that "[c]learly, there is a need for further empirical research in this area."<sup>60</sup>

In addition to the studies identified by Professor Duquette, there have been at least four other research efforts focused on the effectiveness of representation for children in dependency proceedings. One of these studies was conducted by Professor Duquette after the aforementioned list was

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*Special Advocates to Assist in Permanency Planning*, CHILD & ADOLESCENT SOC. WORK J., Feb. 1999, 37, 40-41; Shareen Abramson, *Use of Court-Appointed Advocates to Assist in Permanency Planning for Minority Children*, CHILD WELFARE, July-Aug. 1991, at 478-81.

53. CASAs are citizen volunteers serving as non-attorney guardians ad litem (GALs) advocating on behalf of children in juvenile court. See Erin Shea McCann & Casey Trupin, *Kenny A. Does Not Live Here: Efforts in Washington State to Improve Legal Representation for Children in Foster Care*, 36 NOVA L. REV. 363, 364 (2012).

54. Donald N. Duquette & Sarah H. Ramsey, *Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation*, 20 J.L. REFORM 341, 359-60 (1987).

55. *Id.* at 370, 372, 380.

56. C.S.R., INC. FINAL REPORT, *supra* note 24, at xii-xiii.

57. *Id.* at 6-12, 6-21.

58. *Id.* at 2-7 to 2-11; Duquette & Ramsey, *supra* note 54, at 358-60.

59. At least one study acknowledged this potential reality in passing. See Goodman et al., *supra* note 49, at 498 ("After January 1, 2001, the law changed so that today, every child must have an attorney unless the judge makes specific findings that the child would not benefit from appointment of counsel. Judges seldom make such findings, with the result that nearly all children involved in the juvenile court have appointed counsel.>").

60. Donald N. Duquette with Julian Darwall, *supra* note 50, at 119.

compiled. That 2016 study compared the effectiveness of children's attorneys who received intensive training and support to children's attorneys without such training and support.<sup>61</sup> One study from 1982 looked at case outcomes and found children's attorneys to be ineffective at reducing removal rates of children; again in this study it was unclear whether the control group children received non-attorney guardian ad litem representation or no representation at all.<sup>62</sup> Another study conducted by Professors Knitzer and Sobie evaluated the attorney guardian ad litem model in New York State from 1984 and, through review of transcripts and court observation, found that lawyers were providing inadequate representation in almost one half of their cases.<sup>63</sup>

A final study compared effectiveness of lay best interest advocates with attorneys in a "large midwestern city" by reviewing case files of closed cases and found that generally, process measures and case outcomes between the two advocacy types were similar, though children represented by CASA tended to have more services, less time placed in their own home, and slightly longer cases.<sup>64</sup>

That study, conducted in 1990, brings the total number of identified empirical studies that clearly compare the various forms of child advocacy to three—none of which have been conducted in the last twenty years. Additionally, none of these studies identified the rates at which children failed to receive any form of advocacy or clearly compared the outcomes or process variables between children who did and did not receive advocates.

In addition to original empirical research, two nationwide surveys are worth mentioning here. First, the national research organization First Star has conducted national surveys of existing state laws regarding children's representation, though the surveys did not look at practice on the ground nor inquire about laws that would allow children to go without any form of advocate.<sup>65</sup> Additionally, Professor Jean Koh Peters conducted a 50-state survey of child representation, looking at statutes and interviewing practitioners in each state.<sup>66</sup> Interestingly, Professor Koh Peters could find no patterns in the

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61. DONALD N. DUQUETTE, *CHILDREN'S JUSTICE: HOW TO IMPROVE LEGAL REPRESENTATION OF CHILDREN IN THE CHILD WELFARE SYSTEM* viii-xi (2016).

62. Robert Kelly & Sarah Ramsey, *Do Attorneys for Children in Protection Proceedings Make a Difference?: A Study of the Impact of Representation Under Conditions of High Judicial Intervention*, 21 J. FAM. L. 405, 406-07 (1982-83).

63. JANE KNITZER & MERRIL SOBIE, N.Y. ST. BAR ASSOC., *LAW GUARDIANS IN NEW YORK STATE: A STUDY OF THE LEGAL REPRESENTATION OF CHILDREN* 8 (1984).

64. John Poertner & Allan Press, *Who Best Represents the Interest of the Child in Court?*, *CHILD WELFARE*, Nov.-Dec. 1990, at 539-40, 547.

65. See, e.g., FIRST STAR & CHILDREN'S ADVOCACY INSTITUTE, *A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN* 5, 7-8 (2nd ed. 2009).

66. Jean Koh Peters, *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*, 6 NEV. L.J. 966, 1000 (2006).

methods of representation and noted that within states the practice of children's representation also tended to vary, "from locality to locality, from county to county, even from courthouse to courthouse and lawyer to lawyer."<sup>67</sup> Similar to the First Star Report, Professor Koh Peters did not discuss whether or not there were children who were not receiving advocates.

All told, very little empirical research exists regarding the on-the-ground realities of dependency court process. This author could find no studies that replicate the court observation conducted by Professors Knitzer and Sobie in New York in the 1980s. Court observation has been used by social work scholars to evaluate how social workers can better prepare for and interact with court and by Court Administrators in evaluating judicial workloads, but neither of those studies report on how children are represented in the proceeding.<sup>68</sup> Clearly, more research into the realities of dependency court practice, the rates of non-representation and the impact of non-representation of children is necessary.

## I. WASHINGTON STATE COURT OBSERVATION STUDY

In 2015-2016 this author, supported by the Children and Youth Advocacy Clinic at the University of Washington School of Law, conducted an intensive six-month dependency court observation study to start filling in these gaps in information.<sup>69</sup> Because each county in Washington manages their dependency courts differently, with various customs, policies, and practices in each county, an observation across multiple counties will identify patterns across differences. The patterns detected across counties in Washington can be extrapolated to predict patterns across states with similar differences in customs, policies, and practices.

### A. Purpose

The court observation study was conducted to try to capture what exactly was happening in dependency courts on a day-to-day basis. Washington State was selected for this court observation study due to the author's familiarity with the state practices. Washington also provided an ideal setting for court

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67. *Id.* at 1001.

68. SHIRLEY DOBBIN, SOPHIA GATOWSKI & ALICIA SUMMERS, NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, MEASURING JUDICIAL WORK IN DEPENDENCY CASES: LESSONS LEARNED IN WASHINGTON STATE 1, 10 (2010); Alberta J. Ellett & Sue D. Steib, *Child Welfare and the Courts: A Statewide Study with Implications for Professional Development, Practice, and Change*, RES. ON SOC. WORK PRAC., Sept. 2005, at 340.

69. At the time of the court observation study, the author's position was funded in part by an Equal Justice Works Fellowship, Sponsored by Intellectual Ventures and Perkins Coie, LLP. This Article, along with the resulting analysis and recommendations, was written after the cessation of the fellowship project and was not reviewed or approved by Equal Justice Works, Intellectual Ventures, or Perkins Coie, LLP.

observation due to open court laws,<sup>70</sup> the various types of child advocates used,<sup>71</sup> an ongoing debate about the proper role of Washington's child advocates,<sup>72</sup> and troubling self-reports regarding the number of children who went unrepresented.<sup>73</sup> Additionally, any self-reported data from Washington state was bound to be unreliable given that the Washington State Center for Court Research reports not having reliable data regarding the rates of child representation.<sup>74</sup>

Washington State is somewhat unique in that various methods of advocacy are used somewhat interchangeably to fulfill the role of child's advocate. When a child is appointed an advocate, depending on the child's age, geographic location, and random luck, that person could either be an unpaid best interest volunteer, a professional best interest lay advocate, or a stated interest attorney.<sup>75</sup> The lack of a formal process in appointment from case to case simulates a randomized sample. Because of the random nature of appointment of an advocate, Washington provides the ideal laboratory for examining the impact of various types of advocacy on the child and the court process.

The purpose of this study was not to prove or disprove a hypothesis, but

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70. Open courts allow for the press and outside watchdog and advocacy organizations to monitor the dependency system and allow for "the threat of publicity" which may encourage participants to exercise greater care and professionalism in the courtroom. Some courts claim to be open, but in practice routinely prevent access to observers. In New York, where the courts were technically opened to the public in 1997, many family courts are still not allowing public access, even to the press. Open courtrooms become especially important in jurisdictions with closed discipline records, like New York, where an open court proceeding may be the only opportunity for outside organizations to evaluate the performance of children's attorneys. See Emily Bazelon, *Public Access to Juvenile and Family Court: Should the Courtroom Doors Be Open or Closed?*, 18 YALE L. & POL'Y REV. 155, 177 (1999); William Glaberson, *New York Family Courts Say Keep Out, Despite Order*, N.Y. TIMES (Nov. 17, 2011), <http://www.nytimes.com/2011/11/18/nyregion/at-new-york-family-courts-rule-for-public-access-isnt-heeded.html>.

71. Washington statutes allow for a best interest guardian ad litem, who can be a volunteer, staff person or an attorney, or a stated-interest attorney to represent the child. See WASH. REV. CODE §§ 13.34.100, 13.34.105 (2017). This variation in practice differs from Colorado, for example, where a best interest attorney is appointed in every case, see COLO. REV. STAT. § 19-3-203(1) (2016), and from Connecticut, where a stated-interest attorney is appointed in every case, see CONN. GEN. STAT. § 46b-129a(2) (2017).

72. Wash. St. Dep't of Soc. & Health Servs. v. Luak (*In re* Dependency of MSR), 274 P.3d 234, 244-45 (Wash. 2012); *In re* Dependency of S.K-P., 401 P.3d 442, 454-59 (Wash. Ct. App. 2017); Erin Shea McCann & Casey Trupin, *Kenny A. Does Not Live Here: Efforts in Washington State to Improve Legal Representation for Children in Foster Care*, 36 NOVA L. REV. 363, 369-74 (2012).

73. See, e.g., Washington v. Grey (*In re* Dependency of A.G.), 968 P.2d 424, 431 (Wash. Ct. App. 1998) ("At oral argument, counsel for DCFS candidly informed us that trial courts regularly fail to appoint a guardian ad litem in these circumstances or find good cause for not appointing one based on lack of resources.").

74. See, e.g., Email from Charlotte Jensen, Ct. Bus. Info. Coord., Office of Trial Ct. Servs. and Jud. Educ., Admin. Office of the Cts. (April 21, 2015, 9:47AM PST) (on file with author).

75. WASH. REV. CODE §§ 13.34.100, 13.34.105.

instead to capture data about what was actually happening each day in local dependency courts by observing a wide array of dependency hearings and tracking what occurred. As a starting point, there were five initial questions researchers were hoping to answer:

1. Do children have advocates in the courtroom?
2. Is the child's opinion shared with the judge?
3. Does the addition of an attorney for a child make a visible impact?
4. How are judges reacting to requests for attorneys for children?
5. What are the differences county by county?

The goal was to compile a data set that would provide a concrete understanding of what, if any, inadequacies exist regarding the voice of the child in the dependency court system. As a precursor to this comprehensive study, a smaller pilot study was run during the winter of 2014-2015 and basic data from that study are available online.<sup>76</sup>

### B. Study Sample

The parameters for this court observation study were limited by two major logistical considerations: personnel and geography. A total of 21 volunteers assisted with the court observation, many only observing one court session, with a handful of volunteers observing additional sessions.<sup>77</sup> Because volunteers had limited time to commit to the project, the target observation sample was one that, if necessary, the author could observe herself. Washington State consists of 39 counties, many with their own unique dependency court processes, and extends approximately 360 miles from east to west, with two mountain ranges and the Puget Sound in between.<sup>78</sup> The size of the state prevented a meaningful observation of every county in Washington, and would have made it difficult with the limited personnel to observe counties at great distances from one another. Because there are significant county-to-county differences in policy and practice, however, generalized conclusions and recommendations would not be possible if only one county was observed.

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76. Access to Counsel Project, *Dependency Court Observation*, U.W. SCH. LAW. (Feb. 4, 2018, 1:50 PM), available at [https://www.law.uw.edu/media/140965/uw\\_dependency\\_court\\_monitoring\\_round\\_1\\_results.pdf](https://www.law.uw.edu/media/140965/uw_dependency_court_monitoring_round_1_results.pdf)

77. Volunteer court observers were recruited from the staff at Intellectual Ventures and students at the University of Washington School of Law.

78. WASHINGTON STATE, ENCYCLOPEDIA.COM (July 5, 2017, 3:38 PM), <http://www.encyclopedia.com/places/united-states-and-canada/us-political-geography/washington-state>. For an illustration of the variation in dependency court processes, compare King Cty. Local Juv. Ct. R. 3.12 (outlining the comprehensive motions process and format in dependency court in King County, which includes a requirement that motions be filed at least 14 days in advance of a hearing outside of emergency situations.) with Snohomish Cty. Local Juv. Ct. R. 3.9 (briefly covering the processes for every aspect of a dependency hearing, including motions, and clarifying that motions must be filed at least 5 days in advance of a hearing).

Although court observation studies often observe every hearing in a court process for a set period of time,<sup>79</sup> the desire to capture the processes of multiple counties and personnel limitations made this method impractical. Instead, the observation was set up so that multiple counties would be observed simultaneously with observers present for randomized portions of the dockets. The three counties selected for observation, Snohomish, King, and Pierce Counties, all had significant policy differences in their practices for children's representation.<sup>80</sup>

The observation schedule was set based on a target of observing 10% of all hearings in each county over a six-month period. Each county split their calendars into morning and afternoon sessions and held dependency court on different days. The observation schedule was therefore split into morning and afternoon sessions on days when dependency court was scheduled in that county.<sup>81</sup> The calendars of specialty courts, such as drug courts and family treatment court, were excluded from observation because they were held on different schedules in different courthouses and followed different procedures.<sup>82</sup> Additionally, trials were excluded from observation because they would last through multiple observation sessions. Finally, private dependencies where the State was not a party, and hearings to return on contempt of warrant, were also excluded. The majority of the hearings observed, therefore, were the following: 72 hour shelter care hearings, review hearings, permanency planning hearings, status conferences, and motion hearings.

All in all, observers recorded 91 sessions: 49 sessions in King County (comprising 249 hearings regarding 381 children), 22 sessions in Pierce County (comprising 248 hearings regarding 355 children), and 20 sessions in

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79. See, e.g., Elizabeth Siegel, *A Summary of Data Collected by the RFK Memorial/DC ACT Detention Study*, 3 D.C. L. Rev. 447, 447-58 (1995).

80. For example, Snohomish and King Counties have an unwritten policy of automatically appointing an attorney for youth on their 12<sup>th</sup> birthday (Pierce does not), Snohomish County relies heavily on attorneys to represent GALs/CASAs in Court (King and Pierce do not), Pierce County relies heavily on paid, staff GALs to supplement volunteers (which Snohomish and King do not). These practices are generally not codified in court rule or written into formal policy and are instead understood from personal experience and conversations with court clerks.

81. The author reached out to local practitioners for informal conversations in each county to determine the local dependency court calendars, which were not generally made available on court websites. All in all, King County had seventeen sessions spread between two courthouses each week, Pierce County had eight sessions and Snohomish County had seven. Due to the timing of federal holidays, the total number of sessions during the observation period varied slightly.

82. For example, in King County, Family Treatment court lasts all day with the same cases discussed in both the morning and afternoon sessions, and so any meaningful observation would need to include back-to-back shifts. Furthermore, in Snohomish County, cases that were post Termination of Parental Rights were treated as if they were specialty court proceedings, with hearings held in another courthouse and no regularly scheduled calendar. Because it was impossible to discern the schedule for these hearings, they were also excluded from observation.

Snohomish County (comprising 99 hearings regarding 136 children).<sup>83</sup> It is interesting to note from the outset that King and Pierce Counties had nearly identical numbers of children and hearings, with King County spreading those hearings over more than double the number of court sessions. Observers also witnessed similar numbers of court sessions in Snohomish and Pierce Counties, meaning that Pierce County had more than double the number of hearings than Snohomish County within the same amount of time. These comparisons suggest a very rushed dependency calendar in Pierce County as compared to King and Snohomish Counties. The number of hearings observed also tracks with the dependency population in each county, with Pierce and King having similar caseloads (1585 children in Pierce County, 1801 children in King County) and Snohomish county having a much smaller caseload (917 children).<sup>84</sup> Over the course of six months, observers recorded a total of 596 hearings regarding 872 children between the three Washington counties.<sup>85</sup>

Volunteers signed up for sessions based on their availability, with no discernable pattern in the date or time of availability. The remaining sessions were randomized for observation by the author (excluding times where the author was unavailable due to scheduling conflicts) using a random number generator. Volunteers primarily observed in King County, with Pierce County being entirely observed by the author.

### C. Materials

Sample court observation rubrics from the 1984 New York court observation study conducted by Professors Knitzer and Sobie and Washington's King County Sexual Assault Resource Center's court observation project were consulted in designing the rubric for this observation.<sup>86</sup> Drafts were shared with Professor Elena Erosheva with the University of Washington's Center for Statistics and the Social Sciences who suggested edits and improvements to ensure clarity and accuracy. Early drafts of the form were used in pilot observations by the author to assess both the content and the functionality of the form.<sup>87</sup> Before observing any hearings,

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83. On a few occasions, observers had to leave early or arrived late for the scheduled session. In these instances, the missed time was "made up" through additional short observation sessions.

84. WASHINGTON STATE CENTER FOR COURT RESEARCH, DEPENDENT CHILDREN IN WASHINGTON STATE: CASE TIMELINES AND OUTCOMES app. C-3 (2016), <https://www.courts.wa.gov/subsite/wscrc/docs/DTR2016.pdf>.

85. Because the observers did not record any identifying information in order to protect the confidentiality of the children and the hearings, it is impossible to discern whether or not 872 unique children were observed, or whether some children were observed during multiple hearings over the six-month observation window. *Id.*

86. KNITZER, *supra* note 63, at 225; KCSARC, *Court Watch: Reflections on Justice* (Sept. 25, 2014) (on file with author).

87. As noted above, a shorter initial study was conducted that is not reported in this

every volunteer was required to participate in a training session that lasted approximately one hour. The training involved what to expect in the courtroom (the layout, the process, the roles of each person) and what to record on the rubric, and it included both mock hearings and practice forms. Some questions on the rubric asked volunteers to record whether or not something was discussed in the hearing, such as “does the advocate relay the child’s position?” and volunteers were instructed to be as inclusive as possible in their recording, so that if any of the child’s positions were relayed, the observer should indicate “yes.”

Court files in Washington dependency cases are confidential and sealed from public view. Dependency court hearings, however, are open to the public.<sup>88</sup> In order to ensure children’s confidentiality was maintained, volunteers were instructed not to record identifying information about the case, such as names or case numbers, on the observation rubric.<sup>89</sup> In addition to the observation rubric, a cover sheet was included in the volunteer packet, which included basic observation standards (e.g., do not interfere with the proceedings, attempt to interview parties, or record any identifying information).

#### D. Data Coding, Recording, and Calculations

All tracking forms were entered into an Excel spreadsheet by the author. Excel is not the ideal program for recording data since the columns can be easily manipulated and data easily lost. Therefore, each month a back-up version of the Excel spreadsheet was saved and every paper tracking form was coded with a unique ID number which was logged into the Excel spreadsheet.<sup>90</sup> There were two instances in which volunteers wrote comments on the rubrics that did not match the boxes checked on the form. In these instances, follow-up calls were conducted with the volunteers, which made it clear that the volunteers had not understood the directions. These observations were struck from the pool, and make-up observations were scheduled with new observers.

Additionally, the tracking forms were filled out per-advocate instead of

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Article. That study used a slightly different rubric that was improved upon for this longer study.

88. WASH. REV. CODE § 13.50.100 (2017); *In re Adoption of M.S.M.-P.*, 358 P.3d 1163, 1165 (2015) (discussing the open nature of dependency court hearings and the limited circumstances under which a dependency hearing can be closed); *see also* WASH. CONST. art. I, § 10.

89. It was determined that because the study would consist only of observation of public hearings, and not include any interview portion, it was not a study of human subjects and therefore did not necessitate Institutional Review Board approval. *See* University of Washington Research, *Does Your Research Involve Human Subjects?* (July 5, 2017), <https://www.washington.edu/research/hsd/do-i-need-irb-review/does-your-research-involve-human-subjects/>.

90. The original hard copies of the tracking forms are on file with the author.

per-child; families with no advocates used only one form. This was due to the presentation of cases: Hearings often joined together children from the same family as a single group, even when different children had different advocates.<sup>91</sup> In order to report per-child data, forms about multiple children were broken out into multiple entries in the database.<sup>92</sup>

Finally, all questions on the observation form included “unclear” boxes, and a number of the forms submitted contained questions that were left unanswered. For questions marked either “unclear” or left blank, those entries were excluded from the calculations and a sensitivity analysis was conducted to understand the range of possible outcomes.<sup>93</sup> All calculations were completed by the author and then double-checked by a volunteer with extensive Excel experience.<sup>94</sup>

## E. Results

The information observed in the 596 hearings regarding 872 children is laid out in the tables below. Whenever there were more than a negligible number of “unclear” or “left blank” indicators, a sensitivity analysis is also included in the table to indicate the range of possibilities presented by these

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91. Tracking each child separately on different forms would not have been feasible due to the speed of the hearings and the size of many families. Nearly 40% of children were discussed as a part of a sibling group.

92. The options for each question about the children were: “Yes, all of the children”; “Yes, but only some of the children”; “No”; and “Unclear.” Whenever “Yes, all,” “No,” or “Unclear” were checked, that answer was indicated for each child in the database. However, whenever “Yes, but only some children” was checked, one child’s entry was marked “Yes,” one child’s entry was marked “No” and any remaining children’s entries were marked “Unclear.” Therefore, on forms where the “Yes, but only some children” boxes are checked, it is impossible to know for certain which children correlate to which situation. Based on this limitation, any analysis that sought to correlate between factors within one form (i.e. looking to see if there was any relation between a child’s presence in court and their likelihood of being discussed), would need to be conducted excluding the forms with the “Some, but not all children” box checked at any point. In order to preserve the entirety of the survey pool and ensure accuracy of reported data, those types of correlations among factors recorded on the form were not calculated. This manipulation of data was rarely used because it was quite unusual for the “Yes, but only some children” box to be checked by observers. In reality it only occurred in less than 3% of the children observed.

93. For example, if out of 10 forms, 2 indicated that a child was present, 4 indicated that the child was absent, 1 was left blank and 1 was marked “unclear,” the following data would be reported: 25% of children were present (2 of 8), with a sensitivity analysis indicating a range of 20-40% of children possibly present (as few as 2 of 10 and as many as 4 of 10).

94. Thanks to Matt Gee and Andrei Moran at Intellectual Ventures for this support. Due to the goal of the paper, which was to report on observed data instead of posing a hypothesis and using the data to test that hypothesis, in addition to the large margins presented in the calculations, consultation with statistics experts, including Professor Elena Erosheva with the University of Washington’s Center for Statistics and the Social Sciences, indicated that a statistical significance analysis was not warranted. Therefore, the presented calculations have not been run through a statistical significance formula.

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unclear indicators. The data has been broken out by county to allow for comparison among jurisdictions and by type of advocate.

Washington State uses a combination of best interest advocates, commonly called guardians ad litem (GALs), and stated interest attorney representation of children.<sup>95</sup> To fill the best interest advocate role, some counties rely on paid guardians ad litem who are not attorneys, but are professional staff, employed by the courts.<sup>96</sup> Most often, however, best interest advocates took the form of CASAs.<sup>97</sup> Finally, at least one county appoints attorneys to act as guardians ad litem in some situations.<sup>98</sup> These attorneys are tasked with acting, not as client-directed attorneys, but as best interest representatives.<sup>99</sup> Even when a county relies on non-attorney staff and volunteers to act as best interest advocates, attorneys may be available for consultation and may join the volunteer or non-attorney staff member in court.<sup>100</sup> Because best interest advocates did not always identify their professional training, be it volunteer, paid staff, or attorney, best interest advocates are grouped together in this court observation study.

**Table 1: Type of Advocate Present Across All Hearings**

	No Advocate	No Advocate %	Stated Interest Attorney	Stated Interest Attorney %	Best Interest Advocate	Best Interest Advocate %	Both BI Advocate and Attorney	Both %
King	126	33%	116	31%	153	40%	16	4%
Snohomish	48	35%	27	20%	73	54%	12	9%
Pierce	28	8%	45	13%	305	86%	23	6%
<b>Across All 3 Counties</b>	<b>202</b>	<b>23%</b>	<b>188</b>	<b>22%</b>	<b>531</b>	<b>61%</b>	<b>51</b>	<b>6%</b>

95. WASH. REV. CODE § 13.34.100 (2017); STATEWIDE CHILDREN'S REPRESENTATION WORKGROUP, MEANINGFUL LEGAL REPRESENTATION FOR CHILDREN AND YOUTH IN WASHINGTON'S CHILD WELFARE SYSTEM: STANDARDS OF PRACTICE, VOLUNTARY TRAINING, AND CASELOAD LIMITS IN RESPONSE TO HB 2735, at 6 (2010).

96. *See, e.g., Kitsap County Juvenile, Dependency*, (August 14, 2017), <http://www.kitsapgov.com/juv/Non-Offender/Dependency.htm>.

97. The Washington State CASA program was launched in Seattle in 1977. *See McCann and Trupin, supra* note 72, at 364; *see also* Washington CASA, *Why CASA: History* (last visited July 6, 2017), <http://wacasa.org/history/>.

98. Snohomish County, *Snohomish County Juvenile Court Dependency Proceedings*, (Aug. 14, 2017), <https://snohomishcountywa.gov/DocumentCenter/View/6573>.

99. *Id.*

100. Volunteers were asked to track whether the best interest advocate was joined by an attorney or identified themselves as an attorney. Observers found that across all counties, 33% of best interest advocates identified that they were either represented by an attorney or were themselves an attorney in court.

Table 1 describes how children in the observed hearings were represented. In the hearings observed, almost one quarter of the children (23%) had no advocate representing them in their dependency hearing. In fact, it was more likely that a child would have no advocate than that a child would be appointed an attorney (22%). These figures varied significantly among the counties, with King and Snohomish Counties both leaving a third or more of their children without any advocate. Interestingly, although Snohomish and King Counties had similar rates of unrepresented children, King County children were significantly more likely to have an attorney than Snohomish County children (31% of King County children were represented by attorneys, as compared to only 20% of Snohomish County Children).

**Table 2: Type of Advocate Present, Excluding 72-Hour Shelter Care Hearings**

	No advocate	No advocate %	Stated interest attorney	Attorney %	Best interest advocate	BI advocate %	Both forms of advocate	Both %
King	82	25%	107	33%	153	48%	16	4%
Snohomish	18	19%	23	24%	68	70%	12	9%
Pierce	12	4%	45	13%	304	90%	23	6%
<b>Across All 3 Counties</b>	110	<b>15%</b>	175	<b>23%</b>	523	<b>69%</b>	51	<b>6%</b>

In response to critiques and questions about the lack of guardian ad litem representation in Washington, proponents of volunteer programs have highlighted the time that it takes to find volunteers that are good matches for the children. At least one judge has expressed an acceptance of this delay as an inevitable status quo in dependency court: “Further, the child is entitled to appointment of a guardian ad litem to protect his interests. No guardian ad litem can be appointed within 72 hours of filing a petition, much less act to protect the child’s interests.”<sup>101</sup> In order to evaluate the impact of a delay in appointing a volunteer, Table 2 reflects an analysis after all 72-hour shelter care hearings were removed from the data set. If the high percentage of children without advocates were due to slight, inevitable delays in finding and matching volunteers, we would expect the number of children without representation at later hearings to be almost non-existent. As Table 2 demonstrates, however, even when excluding the initial 72-hour shelter care hearings from consideration, one quarter of the children in King County remained without advocates. The rate of children without advocates dropped somewhat more significantly in Snohomish and Pierce Counties, resulting in an average of 15%

101. Dep’t of Soc. & Health Servs. v. Hileman (*In re Dependency of R.H.*), 117 P.3d 1179, 1181 (Wash. Ct. App. 2005).

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of children across all three counties still without an advocate in later hearings.

**Table 3: Appointment of An Attorney Raised When Child Had No Advocate**

	Children who had the issue raised	% of children where issue was raised	Sensitivity Analysis	When raised, how often was an attorney appointed?	% children appointed attorneys when issue raised	Of total children with no advocate, how many are appointed an attorney?	% children with no advocate appointed an attorney
King	6	5%	5-11%	2	33%	2	2%
Snohomish	0	0%	0-4%	0	0%	0	0
Pierce	2	8%	7-21%	0	0%	0	0
<b>Across All 3 Counties</b>	<b>8</b>	<b>4%</b>	<b>4-11%</b>	<b>2</b>	<b>25%</b>	<b>2</b>	<b>1%</b>

Washington State requires the appointment of an attorney for a child when any party requests an appointment and there is no guardian ad litem.<sup>102</sup> As Table 3 demonstrates, however, parties rarely utilized this provision. Even when the issue was raised, appointment of an attorney was not guaranteed, with only one quarter of such instances resulting in appointment of counsel, or 1% of unrepresented children.<sup>103</sup> These figures encompass any mention of appointing an attorney by any party or the judicial officer, and are not limited to actual requests that an attorney be appointed, as the court rule would require in order to trigger mandatory appointment.<sup>104</sup>

In addition to tracking what form of advocacy each child had in their hearings, observers also recorded information about the content of the hearings. Specifically, observers tracked a number of questions related to how child-centered the hearings were. First, observers noted whether the child's status was mentioned at all (e.g., who is the child living with, what needs does the child have). As noted in Part II above, volunteers were trained to interpret this

102. Wash. Juv. Ct. R. 9.2(c).

103. Due in part to the scope of this study, the sample size for these figures is quite small. Nonetheless, the fact that of those children, so few were subsequently appointed attorneys, is still deeply troubling.

104. *Id.*

question as broadly as possible, such that if the child was mentioned at all during the hearing, the observer would consider the topic covered. Other questions included whether the child's well-being was discussed (e.g., questions about mental health, physical health, progress in education, or any other qualitative information about the child), and whether any of the child's opinions about their situation were relayed. Observers found that, across all advocates, in 22% of cases the child was never mentioned. This figure was relatively consistent across the counties, with children in King County slightly more likely to be discussed (80% of children mentioned) than children in Pierce County (76% of children mentioned).

**Table 4: Childs's Status Mentioned at Hearing by Advocate Type**

	No advocate but status mentioned	% Status mentioned with no advocate	Sensitivity Analysis	Stated interest attorney and status was mentioned	% Status mentioned with stated interest attorney	Sensitivity Analysis	BI advocate and Status was mentioned	% Status mentioned with BI advocate	Sensitivity Analysis
King	77	68%	62-72%	97	92%	84-94%	115	82%	75-83%
Snohomish	33	72%	69-73%	26	100%	96-100%	55	79%	75-79%
Pierce	13	52%	46-57%	38	88%	84-89%	223	78%	73-79%
<b>Across All 3 Counties</b>	123	<b>67%</b>	61-70%	160	<b>92%</b>	85-93%	393	<b>79%</b>	74-80%

Table 4 demonstrates that the presence of an advocate, and the type of advocate appointed, did have some impact on the likelihood that a child would be discussed. A child was most likely to be discussed in their hearing when they were appointed an attorney (92% of children discussed) and least likely to be discussed when they had no advocate (only 67% of children discussed).

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**Table 5: Child's Well-being Mentioned at Hearings by Advocate Type**

	No advocate but well-being mentioned	% Well-being mentioned with no advocate	Sensitivity Analysis	Attorney and well-being was mentioned	% Well-being mentioned with SI attorney	Sensitivity Analysis	BI advocate and well-being was mentioned	% Well-being mentioned with BI advocate	Sensitivity Analysis
King	37	33%	29-41%	80	78%	69-81%	87	64%	57-68%
Snohomish	9	20%	19-25%	16	62%	59-63%	36	53%	49-56%
Pierce	5	20%	18-29%	32	78%	71-80%	190	67%	62-70%
<b>Across All 3 Counties</b>	51	<b>28%</b>	25-36%	128	<b>76%</b>	68-78%	313	<b>64%</b>	59-67%

Table 5 outlines the next question tracked by observers—whether a child's well-being was discussed in the hearing. This question required slightly more than the previous question, as observers were now looking not only for whether or not *something* about the child was mentioned, but also whether a description of the child's well-being was stated on the record. To be included in this measure, statements could be as simple as “the child is doing well in their current placement” or “the child is having some trouble adjusting to their new school.” Any mention, by any party, of a qualitative assessment of the child's well-being met the criteria for inclusion. Again, this question varied significantly based on the presence and type of advocate.

In cases where the child had no advocate to speak to the child's interests, the child's well-being was only mentioned 28% of the time. A child's well-being was most likely to be mentioned when they had an attorney (76% of the time), and was mentioned 64% of the time when they had a best interest advocate. Although Table 4 highlighted Pierce County as notable for its low

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rates of a child being mentioned at all, Table 5 shows a child was more likely to have their well-being discussed in Pierce County than in Snohomish County, which had the lowest rates of well-being discussion across all types of advocacy.

**Table 6: Child's Preference Relayed to Court by Advocate Type**

	No advocate but preference relayed	% Preference relayed with no advocate	Sensitivity Analysis	Stated interest attorney and preference relayed	% Preference relayed with SI t attorney	Sensitivity Analysis	BI advocate and preference relayed	% Preference relayed by BI advocate	Sensitivity Analysis
King	4	4%	3-16%	85	81%	73-83%	28	21%	18-29%
Snohomish	3	7%	6-10%	23	88%	85-89%	31	44%	42-47%
Pierce	3	12%	11-21%	30	73%	67-76%	64	23%	21-30%
<b>Across All 3 Counties</b>	<b>10</b>	<b>6%</b>	<b>5-15%</b>	<b>138</b>	<b>80%</b>	<b>73-82%</b>	<b>123</b>	<b>25%</b>	<b>23-32%</b>

The next question related to the child-centered nature of the hearings, and concerned whether or not the child's preferences were relayed. Table 6 demonstrates that children's wishes, preferences and positions were rarely heard in observed hearings. Only 29% of children overall had their preferences relayed to the court. Even assuming that one third of children were too young to vocalize a preference, that still leaves one third of verbal children whose preferences were not relayed in observed hearings.<sup>105</sup> Table 6 demonstrates that

105. Because children were not generally discussed in extensive detail or present for their hearings, volunteers were only aware of 34% of the children's ages. Of the children with reported ages, however, one third were age three or younger. For the purposes of this analysis, we are assuming that children ages four and above are capable of vocalizing their preferences.

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80% of children with attorneys had their preferences relayed to the court. In contrast, only 25% of children with best interest advocates had their preference relayed to the court. Age may be a factor influencing this distribution, however, as younger children were more likely to be appointed a best interest advocate than a stated interest attorney.<sup>106</sup> Further, only 6% of children without advocates had their preferences relayed to the court (presumably either by the child themselves or filtered through the lens of the other parties). Once again, even estimating one third of children as pre-verbal, a large portion of children are left without their perspectives being heard by the court.

**Table 7: Arguments Offered by Advocate in Favor of Child's Preference when Relayed, by Advocate Type**

	Attorney and arguments offered	% SI Attorneys offering arguments in favor of child's position	Sensitivity Analysis	Best Interest Advocate and arguments offered	% Best Interest advocates offering arguments in favor of child's position	Sensitivity Analysis
King	64	76%	75-76%	7	29%	25-39%
Snohomish	12	55%	52-57%	13	54%	42-65%
Pierce	15	56%	50-60%	12	20%	19-27%
<b>Across All 3 Counties</b>	91	<b>68%</b>	66-70%	32	<b>30%</b>	26-39%

In the cases where a child's preference was relayed, a follow-up question was asked of observers—namely, whether or not the advocate presented arguments in favor of the child's position. These results are reported in Table 7. While a child's position was more likely to be argued for by a stated interest attorney than a best interest advocate (68% vs. 30% of cases in which the child's position was relayed), rates of advocacy through the presentation of arguments were quite low across the board. In total, 32% of stated interest attorneys failed to advance arguments in favor of their client's position, while 30% of best interest advocates appeared to agree with their client's position by advocating for what the child wanted as the outcome that was in the child's best interest.

Whether or not the child's advocate actually advocated for the child's position varied significantly between counties. Interestingly, in Snohomish County there was barely any difference in the rate at which best interest

106. For children with reported ages, 40% of children with best interest advocates were age 3 or younger.

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advocates and children's attorneys advocated for their child client's position. Children's attorneys in Snohomish County advocated for their child client's position only 55% of the time, but best interest advocates provided arguments supporting the child's position 54% of the time, much more frequently than best interest advocates in the other two counties. Children were most likely to have their positions argued for if they were represented by attorneys in King County, with 76% of those attorneys presenting arguments to support their client's position. Children were least likely to have their positions argued for if they were represented by best interest advocates in Pierce County, with only 20% of those children having their position argued for.

**Table 8: Child Presence by Advocate Type**

	Children with no advocate present	% of children with no advocate present	Children with stated interest attorneys present	% of children with attorneys present	Children with GALs present	% of children with BI advocates present
King	3	2%	28	24%	4	3%
Snohomish	4	8%	10	37%	8	11%
Pierce	0	0%	11	24%	26	9%
<b>Across All 3 Counties</b>	7	<b>3%</b>	49	<b>26%</b>	38	<b>7%</b>

In observed dependency hearings across all advocacy types, children were rarely present. Approximately 10% of children were present for their hearings across the three counties. This issue was not always obvious for observers to record because children were not always seated at counsel table next to their advocate and were, on occasion, instead seated in the gallery. Table 8 demonstrates that children with attorneys were most likely to be present for their hearings, at just over one quarter of children with attorneys present for their hearings. Only 7% of children with best interest advocates were present and 3% of children without advocates were present.<sup>107</sup> It also appeared that children were most likely to be present, across all advocate types, in Snohomish County, which is an interesting juxtaposition with the low rate of advocacy for

107. The percentage of children without advocates who were present for their hearings is quite small. However, the image of any child sitting in court with no advocate at all is quite disheartening, even if observers only saw seven such children over the course of the observation period.

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the child's stated position in Snohomish County.

## II. ANALYSIS

A clear theme from the data is that children are often unrepresented and ignored in the dependency hearings that control their lives.

## A. Too Many Children Are Unrepresented

According to these court observation data, nearly one quarter of children in dependency court may be left without any form of advocacy.<sup>108</sup> Even excluding the initial hearing from consideration, observers found that 15% of children continued to be without advocates in these hearings.<sup>109</sup> In several observed hearings, observers noted that cases appeared to have been ongoing for one year or longer with no advocate appointed.<sup>110</sup> As discussed in Part I above, federal law under CAPTA has required the appointment of an advocate for every child in the dependency court system since 1974.<sup>111</sup> Clearly Washington State is not in compliance with federal law.

In addition to federal mandates that require appointment of an advocate, the data show that children without advocates are more likely to not be mentioned in hearings, to have their well-being ignored by the court, to not have their preferences relayed, and to be absent from the hearing itself.<sup>112</sup> 72% of children with no advocates had their well-being completely ignored by the court and other parties in the hearing.<sup>113</sup> Only 6% of children with no advocate had their preferences relayed to the court by another party, and only 3% of children with no advocate attended their hearings.<sup>114</sup> Clearly the presence of an advocate for a child is critical to ensure that the court fulfills its duty to monitor the child's health and safety and ensure they are in the most appropriate placement.

Current Washington statute allows courts to proceed without guardians ad litem for children if the court "finds the appointment unnecessary" for "good cause."<sup>115</sup> This statute runs afoul of CAPTA, which requires guardians ad litem

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108. See Table 1.

109. See Table 2.

110. These data were recorded on "comments" sections of the observation sheets where observers identified the case had been open for one year or more based on information provided by parties on the record. Seven such children were noted in King County and one in Snohomish County. Observers were not specifically instructed to look out for this data point and so its frequency of occurrence may be significantly higher than recorded.

111. See 42 U.S.C. § 5106a(b)(2)(B)(xiii); see also Glynn, *supra* note 43, at 1251-52.

112. See Tables 4, 5, 6, and 8.

113. See Table 5.

114. See Tables 6 and 8.

115. WASH. REV. CODE § 13.34.100(1) (2017).

to be appointed for every child.<sup>116</sup> Considering this exception, observers were asked to record any reasons the judicial officer or parties stated as to why there was no guardian ad litem present. Interestingly, no volunteers indicated any statements regarding a “good cause” finding. Instead, reasons for the lack of a guardian ad litem were only offered for 21% of the hearings in which no guardian ad litem or attorney appeared.<sup>117</sup> One interpretation of this figure is that the parties did not see any reason to provide a rationale because it is seen as so commonplace for a guardian ad litem not to be present.

Observers did notice significant discrepancies between counties on rates of appointment, with Pierce County having very few children unrepresented, only 6% across all hearings and 4% across later hearings.<sup>118</sup> The discrepancy between the counties may be partially explained by Pierce County’s use of paid guardians ad litem to supplement volunteer CASAs, while King and Snohomish Counties rely primarily on volunteer CASAs to serve as guardians ad litem for children. This suggests that some counties have been able to find solutions that meet the needs of children despite loopholes in state law.

Washington law also includes provisions for the appointment of an attorney for children in some situations, including situations where a guardian ad litem has not been appointed. The statute dealing with guardians ad litem states that appointment of a guardian ad litem “may be deemed satisfied if the child is represented by an independent attorney in the proceedings.”<sup>119</sup> Additionally, Washington court rules mandate that whenever a guardian ad litem is not appointed for a child, the child must be appointed an attorney upon request by any party.<sup>120</sup> These two provisions read together reflect an apparent intention to, at the very least, use attorneys for children as an alternative when there are no guardians ad litem available. However, the data reflect that when children have no advocate it is extremely rare for a party or the judge to even raise the idea of appointing an attorney to represent the youth, with the issue only being raised in 4% of observed cases.<sup>121</sup>

In one case in which the children were without an advocate, an observer noted that the issue at stake in the hearing was visitation between the children and their mother. The mother was seeking enforcement of a visitation order that should have facilitated daily visitation with the children. Instead, the children

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116. 42 U.S.C. § 5106a(b)(2)(B)(xiii). For a full discussion of the lack of enforcement of this provision nationally, see Glynn, *supra* note 43.

117. The primary reason for a lack of guardian was that a specific CASA appointment was “pending,” in other words the program was waiting to find an appropriate volunteer. As noted in Table 2, children were waiting for volunteer appointments beyond just their first court hearing, with 15% of children still unrepresented after the first hearing. Other reasons included the advocate being appointed, but not present at the hearing (which did not prevent the hearing from going forward), or the guardian ad litem withdrawing from the case.

118. See Tables 1 and 2.

119. WASH. REV. CODE § 13.34.100(1).

120. Wash. Juv. Ct. R. 9.2(c).

121. See Table 3.

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had only seen their mother twice in two months. This situation was a clear violation of the children's right to visitation and yet no inquiry was made as to whether or not the children should be appointed an advocate. While in that case the mother's attorney was able to bring the motion before the court, parents in other cases may not be participating. In another case, after eight months in a dependency proceeding, the state was the only party who appeared for a review hearing, leaving no party to check the state's power. Despite this, the judicial officer did not appoint an advocate for the children. In a third case, relatives came forward and asked to have siblings placed in their home. The court denied the relatives' placement request in favor of keeping the children in separate foster homes, again without appointing an advocate for the children.<sup>122</sup>

Even if the idea is brought up, appointment of an attorney for a child is not guaranteed. In fact, it is more likely that a child will continue to have no advocate than be appointed an attorney when the issue is brought up, with only 25% of unrepresented children being appointed attorneys after someone raised the issue.<sup>123</sup> This means that only 1% of all unrepresented children were appointed an attorney to represent their interests in court hearings.<sup>124</sup> In one observed case, a father requested that his child no longer be forced to participate in mental health treatment and asked about appointing an attorney for the youth. Despite the child's rights at stake in the hearing, an inquiry regarding appointment of an attorney, and no appointed guardian ad litem, the court still did not appoint an attorney for the youth.

#### B. Both Best Interest Advocates and Stated Interest Attorneys Have Significant Room for Improvement

Dependency cases originate from allegations of abuse or neglect of a child and continue as the court monitors the child's well-being and progress towards placement in a permanent home. Therefore, it seems obvious that every dependency court hearing should, at the very least, mention the child. Unfortunately, observers found that in almost a quarter of cases observed, children were never mentioned.<sup>125</sup> This figure may partially be explained by the use of status conferences, where a judge sets a hearing with the sole purpose of discussing a specific issue. If a status conference were held about an issue related to the parents, one could understand the lack of discussion of the child. However, when removing all status conferences (regardless of topic) from the data set, a total of 18% of hearings still did not mention the child.<sup>126</sup> Therefore,

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122. The above situations were noted in the "comments" section of observation sheets. Because observers were not instructed to record which issues specifically were discussed in hearings, the frequency of similar occurrences may be significantly higher than recorded.

123. See Table 3.

124. See *id.*

125. See Table 4.

126. This data is not represented in the above tables. There were, however,

the lack of discussion of children in their hearings cannot be attributed solely to the use of status conferences.

Unfortunately, no one method of representation guaranteed that children would be discussed—8% of children with attorneys and 21% of children with best interest advocates were not discussed in their hearings at all.<sup>127</sup> The one exception to this trend was attorney representation in Snohomish County; 100% of children with attorneys in Snohomish County were at least mentioned in their court hearings.<sup>128</sup> Pierce County had the lowest rates of a child being discussed across all categories of representation, with only 52% of children being discussed in hearings when they had no advocates.<sup>129</sup> As mentioned in Part II, Pierce County dependency court dockets are twice as full as King and Snohomish Counties, creating a much faster pace of proceedings.<sup>130</sup> Therefore, it is not entirely surprising to see this discrepancy in discussions of the child. In several cases in Pierce County, observers noted that while a best interest child's advocate was present, the judicial officer did not allow the advocate an opportunity to speak. No such instances were noted when the child was appointed a stated interest attorney, which may reflect an increased level of comfort among attorneys to assert themselves and their positions in the courtroom.<sup>131</sup>

The first step to representing a child's interests in court is to ensure that the child is at least mentioned in the hearing. Meaningful advocacy likely requires some mention of how the child is actually doing in their placement: Are they building supportive relationships within their community and families, or are they isolated and withdrawn? Are they struggling or succeeding in school? Are there services and supports that the child needs and is not receiving, or are they thriving as well as can be expected? Unfortunately, both best interest advocates and stated interest attorneys apparently struggle with ensuring that a child's well-being is discussed, or at least mentioned, in court. A full 36% of children with best interest advocates do not have their well-being mentioned in court, and the appointment of an attorney only drops that figure to 24%.<sup>132</sup> Courts

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approximately 66 observed hearings labeled "status conference." Of the remaining 759 hearings in which the observer indicated whether or not the child's status was mentioned, 137 did not include any mention of the child.

127. See Table 4.

128. *Id.*

129. *Id.*

130. As discussed in Section II, Pierce and King Counties had a similar number of hearings, but in King County they were spread across twice as many court sessions. Pierce and Snohomish County had a similar number of court sessions, with Pierce County having more than double the number of hearings within those sessions as Snohomish.

131. The above situations were noted in the "comments" section of observation sheets. Because observers were not instructed as to whether or not the advocates were given the opportunity to speak, the frequency of similar occurrences may be significantly higher than recorded.

132. See Table 5.

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cannot ensure that a child's health and safety are protected if the child's health and safety are ignored in the court hearing.

When it comes to relaying the child's position to the court, best interest advocates and stated interest advocates have different roles, and so one would expect different observations for each role. In Washington, when a child is appointed an attorney, the role of that attorney is to promote the child's stated interests, so long as the child is old enough to vocalize those interests.<sup>133</sup> In other words, the children's attorney role is to advocate for the expressed interests, or preferences, of the child. Therefore, it is somewhat troubling that 20% of children with attorneys did not have their preferences relayed to the court.<sup>134</sup> One thing to note is that a child's attorney must follow the direction of their child clients, which can include the direction to not take a position on issues before the court, or to not relay the child's preferences to the court.<sup>135</sup> Children's attorneys, unlike best interest advocates, have a duty of confidentiality to their child clients. Therefore, attorneys are only able to relay their client's interest if the client gives permission.<sup>136</sup> For a number of reasons, a child may be hesitant to share their preferences with the court and may withhold permission for the attorney to advocate for that preference.<sup>137</sup> Therefore, it is difficult to say with any certainty if the 20% of children who had an attorney that did not relay a position was a result of stated interest attorneys protecting their child clients' wishes or of not fulfilling their communication and advocacy obligations.

Conversely, the best interest role is to advocate for what the appointed adult personally believes to be in the child's best interests, which may or may not align with the child's preferences.<sup>138</sup> Regardless of the best interest advocate's position, Washington statute requires best interest advocates to relay the child's position on any issues before the court.<sup>139</sup> Interestingly, best interest advocates are not required to ask the child about their preferences, only to relay those preferences once volunteered by the child.<sup>140</sup> Additionally, if the child's preferences do not pertain to any issues currently before the court, there is no obligation for the best interest advocate to raise those issues or to file a motion

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133. STATEWIDE CHILDREN'S REPRESENTATION WORKGROUP, *supra* note 95, at 5-6.

134. *See* Table 6.

135. Wash. R. Prof. Conduct 1.2(a).

136. Wash. R. Prof. Conduct 1.6(a).

137. For example, a child might not want the other parties, often the child's parents, to know what the child's preferences are.

138. WASH. REV. CODE § 13.34.105(1)(f) (2017).

139. *Id.* § 13.34.105(1)(b).

140. *Labberton v. Dep't of Soc. & Health Servs. (In re Dependency of K.M.L.)*, 2013 WL 425339, at \*5 (Wash. Ct. App. Feb. 3, 2013) ("Here, there is no indication in the record that any of the . . . children ever expressed their views regarding the termination proceeding to the CASA. Moreover, it is not the CASA's duty to elicit a child's views regardless of the circumstances.").

or otherwise bring those issues before the court.<sup>141</sup> Even accounting for the age of the children, it is still troubling that only 25% of children with best interest advocates have their position relayed to the court as required by state statute.<sup>142</sup> In several cases, observers noted that parents relayed their children's preferences when best interest advocates failed to do so. This suggests that the children may have had opinions that the best interest advocates were not sharing, leaving the judicial officer in the difficult position of determining how much weight to give the information coming from the potentially biased position of the parent.

The final advocacy metric tracked by observers was whether or not the advocate actually *advocated* for the child's position, as measured by whether or not they went beyond merely relaying the child's position to actually presenting arguments in favor of the child's position. While best interest advocates are required to relay a child's position, their more fundamental purpose is to advocate for what they personally believe to be in the child's best interest.<sup>143</sup> The best interest advocate has no obligation to offer arguments in favor of the child's position and may even actively disagree with the child.<sup>144</sup> It is helpful to track the rate at which best interest advocates actually do advocate for the child's stated position, because Washington courts have previously (erroneously) stated that the role of a CASA is to advocate for both the child's best interest and stated interest.<sup>145</sup> If a best interest advocate's role were to advocate for a child's wishes, not just relay the child's wishes, then we would expect a rate of offering arguments in favor of a child's position to be 100%. Instead, of the children who had a best interest advocate who stated the child's position, only 30% of those children's best interest advocates actually advocated for those stated positions by offering any arguments to support them.<sup>146</sup> This metric suggests that 30% of best interest advocates who relayed their child client's position also believed that the child's wishes were in their best interest and therefore argued for that position.

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141. *Id.*; see also WASH. REV. CODE § 13.34.105(1)(b).

142. See Table 6.

143. WASH. REV. CODE § 13.34.105(1)(f).

144. See, e.g., Dep't of Soc. & Health Servs. v. Luak (*In re Dependency of MSR*), 271 P.3d 234, 244-45 (Wash. 2012) (noting that a CASA or GAL has an obligation to the child's best interest, without regard to the child's preferences, and holding that the child's due process right to an attorney in Termination of Parental Rights proceedings is not universal under the federal constitution, and should be evaluated on a case-by-case basis).

145. See, e.g., Dep't of Soc. & Health Servs. v. MacArthur (*In re Dependency of A.B.*), 2017 WL 1148836, at \*10 (Wash. Ct. App. Mar. 27, 2017) ("But, a CASA is obligated to advocate both for the child's best interest as well as the child's stated interest."). As we have seen, this is a misperception of what is required under Washington statute. See *Dependency of MSR*, 271 P.3d at 244 ("[T]he GAL advocates for the GAL's perception of what is in the best interests of the child without regard to the child's wishes."). Cf. WASH. REV. CODE § 13.34.105(1)(f) (providing that the GAL's role is to "represent and be an advocate for the best interests of the child").

146. See Table 7.

Conversely, the attorney's role is to be a stated-interest advocate and as such, is required by the Rules of Professional Conduct to follow the client's direction in terms of objectives of the representation.<sup>147</sup> Attorneys should not simply be relaying their client's position with their client's consent, but should be advocating for that position. One would therefore expect that 100% of attorneys are offering arguments in support of their client's position when that position is relayed. Unfortunately, in the observed cases, when the child's preference was relayed, attorneys only presented arguments in favor of those preferences 68% of the time.<sup>148</sup> This means that 32% of children who had attorneys had preferences that were not being truly represented by their supposedly client-directed counsel. Additionally, observers noted significant differences in the behavior of child advocates across counties, with children's attorneys in Snohomish County much less likely to advocate for their clients than children's attorneys in King County.<sup>149</sup> The data likely reflect significantly different cultures among the counties in terms of the consideration and weight of the child's voice in the hearings.

Across the counties, far too many Washington children and youth are being appointed attorneys who are not advocating for their clients. The data demonstrate that appointment of an attorney alone, without training and support for those attorneys, does not guarantee a child's voice will be heard and respected in court. While Washington has issued standards, caseload limits, and training requirements for some children's attorneys, they are only mandatory for those attorneys who are appointed through the statewide program for legally free youth and are otherwise considered recommended and voluntary.<sup>150</sup>

Finally, the direct participation of the youth in the court proceedings can be highly beneficial: increasing the likelihood that the child will understand his or her situation, increasing the youth's sense of participatory justice, providing therapeutic benefits to youth in regaining control over their narratives, and allowing the judicial officer to make first-hand observations about the child.<sup>151</sup> Unfortunately, children were rarely present in court, regardless of their form of advocate, with only 7% of children present when represented by best interest advocates, and 26% of children present when represented by stated interest attorneys.<sup>152</sup>

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147. Wash. R. Prof. Conduct 1.2(a).

148. See Table 7.

149. *Id.*

150. See WASH. REV. CODE 13.34.100(6)(c)(i); STATEWIDE CHILDREN'S REPRESENTATION WORKGROUP, *supra* note 95, at 1.

151. See Erik S. Pitchal, *supra* note 26, at 247-58 (2008).

152. See Table 8. Observers also tracked whether the appointed BI advocate, either volunteer or staff member, appeared in person for the hearing themselves or sent a representative. Shockingly, nearly 50% of best interest advocates at hearings were filling in for or representing the actual advocate, with the appointed advocate not present. This made it difficult for judges and other parties to engage in any sort of meaningful discussion with the advocate about the basis for their best interest recommendations.

The discrepancies among child presence between best interest advocates and attorney may be at least partially attributed to the child's age, as younger children were disproportionately assigned best interest advocates instead of attorneys. Additionally, the age of the child may have influenced whether or not adults involved in the case (the best interest advocate, caregiver, biological parent or social worker) felt it necessary to bring the child to court. In two separate hearings, however, observers noted the value of a child's presence in court when they have best interest advocates. In those hearings, youth were able to address the court directly and advocate for themselves when their best interest advocate disagreed with them. Unfortunately, in both of those cases the judge was not swayed by the youth's appeal and the children were not offered or appointed stated interest attorneys who might be able to assist them in presenting their arguments moving forward.

Despite best practice recommendations that encourage a child's presence, when the child was absent from the hearing, an explanation for their absence was only offered in 6% of cases.<sup>153</sup> Similar to the lack of explanation when no advocate was present, this failure to explain may reflect a culture of acceptance and a recognition of children's absence in court as the status quo.

#### C. Stated Interest Attorneys Performed Better on All Measured Variables Than Best Interest Advocates

Although there is certainly room for improvement for Washington's stated interest attorneys, children who were appointed client-directed legal counsel were more likely to be mentioned, to have their well-being discussed, to have their preference relayed and argued for, and to be present for their hearings, than children with best interest advocates.<sup>154</sup> In one case, the presence of a stated interest attorney made a significant difference in a child's life. In this case, the state had no suitable placement options for a child and instead proposed to the court that the child stay in hotels overnight or in a youth correctional facility. The child's attorney was able to prevent placement in juvenile detention by explaining to the court that returning the child to their home, with supports and state services in place, was safer and better for the child's overall well-being.<sup>155</sup>

Assuming one agrees that ensuring children are mentioned, their well-being is discussed, and their preferences are relayed is best practice, this court observation study supports the increased use of stated interest attorneys in child

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153. This figure is not represented in the above tables. A total of 787 children were observed as being absent from their hearings, but observers only recorded 49 instances where a reason was given on the record.

154. See Tables 4-8.

155. The above situation was noted in the "comments" section of the observation sheet. Because observers were not instructed to record which issues were discussed in hearings, the frequency of similar occurrences may be significantly higher than recorded.

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dependency courts. These findings line up with the growing consensus among practitioners that appointing client-directed attorneys to represent children is best practice in children's advocacy.<sup>156</sup>

### III. RECOMMENDATIONS

There are three short recommendations below that scholars and policy makers should consider after reviewing the data and analysis presented thus far: (1) ensure all children receive advocates by eliminating loopholes in statutes; (2) whenever possible, appoint stated-interest attorneys to represent children; and (3) provide training and oversight for all child advocates.

#### A. Ensure All Children Receive Advocates by Eliminating Loopholes in Statutes

Despite requirements in CAPTA that all children have an advocate, the court observation data make clear that the reality in courts is very different from the structure envisioned by the federal government. This lack of representation cannot solely be explained by delays in appointing volunteers, because even when excluding the first hearing from analysis, 15% of children remained unrepresented.<sup>157</sup> The ongoing academic debate over the proper role of a child's advocate once that person gets appointed is largely missing the initial issue that many children receive neither a best interest or stated interest advocate at all. The data show that in terms of court processes, both best interest advocates and stated interest attorneys improve the likelihood that the child will be mentioned, their well-being discussed, and their position relayed. From these measures at least, it appears that an advocate of either role is better than no advocate at all.

Although CAPTA requires appointment of a child's representative, the legislation as currently written and construed is largely unenforceable.<sup>158</sup> In

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156. In 2006, child advocates gathered at UNLV to discuss the role of a child's attorney; this conference followed the 1996 Fordham Conference on the same issue. The UNLV Conference resulted in a compilation of published articles on the topic of children's legal representation. The Introduction to that compilation began with the following sentiment: "During the nearly half century that legal norms have mandated appointment of counsel or other representation for children in legal proceedings, the children's attorneys' community has come to the conclusion that ethical legal representation of children is synonymous with allowing the child to direct representation." *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 6 NEV. L. J. 592, 592 (2006).

157. See Table 2.

158. See Glynn, *supra* note 43, at 1257 ("The statutory remedy provided in most federal spending statutes is the denial of federal dollars or a penalty to the states that have failed to live up to their obligations under the federal statutes. Understandably, no one advocates for this remedy, which would make the plight of foster children in the offending state worse.").

order to ensure that children's rights are protected, efforts must be made to alter CAPTA's enforcement mechanisms, including clearly allowing civil enforcement actions.<sup>159</sup> In addition to federal legislative change, individual states must amend their statutes and court rules to prevent the subversion of the requirement that a child be appointed an advocate.

There are specific statutory and court rule amendments that can reduce or eliminate this issue in Washington, and states with similar loopholes should similarly look to reduce and eliminate them. The first Washington loophole that can be eliminated is the good cause exception to the guardian ad litem requirement.<sup>160</sup> The existence of the good cause exception may be contributing to the attitude of acceptance of nonrepresentation as the status quo. Despite CAPTA's requirements, children in observed hearings were regularly left without any advocate, and this lack of advocacy was rarely discussed on the record.<sup>161</sup> Although the good cause exception was rarely mentioned on the record in observed hearings, court orders were not reviewed to determine whether this exception was recorded in other ways. Further, Washington appellate decisions suggest that the good cause exception has been pointed to after the fact as the justification for not appointing an advocate.<sup>162</sup>

A simple way to come into compliance with CAPTA and increase children's advocacy is to eliminate this exception altogether so that Washington statutes mandate guardian ad litem or attorney appointments in every case. When courts have failed to appoint an advocate, Washington appellate courts have thus far indicated that the error is not, per se, reversible.<sup>163</sup> This lack of enforcement at the appellate level leaves whatever minimal requirements exist without any teeth. In order to ensure any statutory loopholes are truly closed, statutes should clarify that failure to appoint an advocate constitutes reversible error, which will ensure mistakes will be corrected and courts will be motivated to comply with the law.

A second loophole is found in Washington's Juvenile Court Rules, which mandate that if a child has no guardian ad litem, the child must be appointed an attorney if a party requests that appointment.<sup>164</sup> The data collected in this study,

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159. Professor Glynn discusses this possibility in his article and presents arguments that support a private right of action for enforcing the right to counsel provision. *See* Glynn, *supra* note 43, at 1260.

160. WASH. REV. CODE § 13.34.100(1) (2017).

161. *See supra* Part III(A).

162. *See, e.g.,* *May v. Dep't of Soc. & Health Servs. (In re Dependency of O.J.)*, 947 P.2d 252, 255 (Wash. Ct. App. 1997) (“[Had the parent] drawn the court’s attention to its failure to make a finding of good cause not to appoint a guardian ad litem and the court still failed to act or relied for its finding on something other than good cause, there might well be reversible error. But a party may not be delinquent in raising such an issue and expect to obtain relief.”)

163. *See, Id.; In re Welfare of T.B.*, 209 P.3d 497, 505 (Wash. Ct. App. 2009); *State v. Grey (In re Dependency of A.G.)*, 968 P.2d 424, 430 (Wash. Ct. App. 1998).

164. Wash. Juv. Ct. R. 9.2(c)(1). While this rule appears at first glance to require

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however, reflect that when children have no advocate, it is extremely rare for another party to make such a request.<sup>165</sup> In Washington State, both parents and the state are represented by counsel. It is somewhat unsurprising that counsel for a potentially opposing party would not seek to have that opposing party represented. Relying on a potentially opposing, or at least competing, party to protect the rights of the child is antithetical to the principle of due process. As the data show, it also is ineffective. Therefore, Washington's Juvenile Court Rule 9.2(c) should be amended to require appointment of counsel for any child not represented by a guardian ad litem, with no requirement that a party affirmatively make such a request.

**B. Appoint Attorneys to Represent Children Whenever Possible**

The data reflect that among those children who are appointed advocates, those represented by a stated interest attorney are much more likely to receive active representation.<sup>166</sup> This court observation study supports the growing consensus in the legal community that client-directed attorney representation is best practice for children's representation in child welfare court. While best interest volunteers may be great additions to the advocacy team, appointment of a client-directed attorney as the first line of advocacy has a better chance of ensuring the child's rights are protected in court. Therefore, states must make efforts to expand the appointment of stated interest attorneys to children in the dependency court process.

**C. Improve Training and Oversight of Advocates**

It is troubling to see just how infrequently a child's status and well-being are mentioned in their hearings, whether the child is represented by best interest advocates or by stated interest attorneys. When a child is lucky enough to have an advocate appointed, there is still no guarantee that their interests will be advocated for in court.

One possible explanation for the low rates of discussion of a child's status and well-being in court by best interest advocates is the lack of training and experience with court process that lay advocates possess. In Washington, volunteer CASA trainings vary by county. The National CASA Association does have a suggested curriculum that identifies attending every court hearing as one of the responsibilities of a CASA volunteer.<sup>167</sup> Further, the National

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financial hardship on the part of the child in order to qualify for appointed counsel, the subsequent sentences effectively nullifies that requirement by mandating appointment in cases where a custodian refuses to pay for private counsel.

165. See Table 3.

166. See Tables 4-8.

167. NATIONAL CASA ASSOCIATION VOLUNTEER TRAINING CURRICULUM: VOLUNTEER MANUAL 2007 EDITION V8-27 (2007).

CASA core curriculum covers the court process and what to expect. The training on court processes, however, is limited to two pages of a ten-chapter guide.<sup>168</sup> Training for best interest volunteers that is thorough and specific to the dependency court experience could help ensure that best interest volunteers are more comfortable in the courtroom and more likely to speak up on behalf of their child clients.

While a child is most likely to be discussed if they have an attorney, the data suggest that a significant percentage of children with attorneys still do not have their well-being discussed in hearings.<sup>169</sup> While Washington State has issued standards, caseload limits, and training requirements for some children's attorneys,<sup>170</sup> these standards and requirements are only mandatory for those attorneys who are appointed through a statewide program; for the many attorneys contracted at the county level, these standards and requirements are simply recommended and voluntary.<sup>171</sup> Similar to the best interest advocates, attorneys could benefit from mandatory training specific to their role as a child's attorney as opposed to a best interest advocate, focusing on the attorney's responsibility to advocate for their client's position.

For both best interest advocates and stated interest attorneys, increased training does not ensure that advocates will change their behaviors. Therefore, in order to supplement training requirements, oversight measures must be increased so that advocates who are not fulfilling their obligations can be easily reported by their child clients and any adult supporting the child, and, if necessary, removed from the case. Attorneys are overseen by state bar associations and in Washington, anyone, not just a client, can file a complaint with the Bar.<sup>172</sup> Failure of an attorney to follow their client's direction is a violation of Washington's Rules of Professional Conduct and therefore could result in a complaint to the state bar association.<sup>173</sup> The attorney discipline process has been widely criticized, however, as "inefficient, overly secretive, and unduly lenient."<sup>174</sup> One reason for the claim that the process is too lenient is the small number of lawyers each year who receive serious public sanctions in comparison to the number of complaints received.<sup>175</sup> For example, the 2015 Survey on Lawyer Discipline Systems shows that out of the 116,175 complaints reviewed by discipline agencies, only 3,146, or 2.7%, resulted in

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168. *Id.* at V9-13 to V9-14.

169. *See* Table 5 (showing that 20% of observed children with attorney representation still did not have their well-being discussed).

170. *See* WASH. REV. CODE § 13.34.100(6)(c)(i) (2017).

171. *See* STATEWIDE CHILDREN'S REPRESENTATION WORKGROUP, *supra* note 95, at 1.

172. *See Lawyer Discipline in Washington*, WASHINGTON STATE BAR ASSOCIATION (last visited May 14, 2018), <https://www.wsba.org/docs/default-source/licensing/discipline/ldw.pdf>.

173. *Id.*; *see also* Wash. R. Prof. Conduct 1.2.

174. Quintin Johnstone, *Bar Associations: Policies and Performances*, 15 YALE L. & POL'Y REV. 193, 217 (1996).

175. *Id.*

public sanctions to an attorney.<sup>176</sup> Furthermore, only 703 complaints, or 0.6%, resulted in the most serious sanction of disbarment.<sup>177</sup> This number of serious sanctions issued seems especially small when one considers that, as the harshest sanction, even disbarment is not permanent and lawyers can later apply to re-join the bar.<sup>178</sup> These figures suggest that public sanctions and harsh punishments of lawyers by state bar associations are extremely rare and do not present sufficient safeguards for child clients.

Because state bar complaint procedures are not designed for use by children and are not known to be highly responsive to client needs, supplemental complaint procedures must be put in place for attorneys who represent children. County courts or state agencies that contract with children's attorneys should utilize a complaint process that can be easily accessed by youth and adults connected to those youth. The complaint form should ask about communication with child clients, attendance at hearings, and the attorney's practice of following their client's direction and advocating for their client's stated interests. If the contracting agency finds that an attorney has not followed state standards for representing children, those attorneys can be removed from the contracts and prevented from representing children. This would provide a check to ensure any attorneys that are resistant to training and standards do not continue to be appointed to represent these vulnerable children. In Washington, the statewide Children's Representation Program has recently added a youth-friendly complaint form to their website, but the practice must be expanded to local county programs in order to ensure all children's attorneys are covered.<sup>179</sup>

Best interest advocate oversight can also be improved upon. Currently in Washington, each county is required to have its own complaint process for CASAs and GALs.<sup>180</sup> But not every county publicizes these processes or makes them easy to find.<sup>181</sup> Expanding visibility and access to complaint procedures must continue, and complaint forms should include questions about the volunteer's participation in court.

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176. AMER. BAR ASS'N, 2015 SURVEY ON LAWYER DISCIPLINE SYSTEMS (S.O.L.D.) 3, 7, 20 (2015).

177. *Id.* at 20. This figure includes both voluntary and involuntary disbarment.

178. *Id.* at 24 (showing that in 2015, 35 attorneys were granted reinstatement after disbarment).

179. *Children's Representation*, OFFICE OF CIVIL LEGAL AID (Aug. 15, 2017), <http://ocla.wa.gov/programs/childrens-representation>.

180. Wash. Guardian Ad Litem R. 7.

181. Recent scandals in Snohomish County, where it was revealed that all complaints over the last 10 years had been thrown out without full investigations due in part to a failure to train and understand the complaint process by the volunteer program, has likely spurred other counties across the state to make their policies and procedures more visible. *See, e.g.*, Susannah Frame, *Judge: Misconduct Could Jeopardize Adoptions in Snohomish Co.*, SEATTLE KING 5 NEWS (NBC satellite television broadcast March 23, 2016), <https://www.king5.com/article/news/local/investigations/judge-misconduct-could-jeopardize-adoptions-in-snohomish-co/99070574>.

## CONCLUSION

With many articles and books written on the issue of how children *should* be represented in court, it is concerning that so little attention has been paid to how children *are* represented in court. Very few studies compare the impacts of one form of advocacy with others, and even fewer acknowledge the possibility that children may go completely unrepresented. Court observation data from Washington State demonstrate that too many of our children are left with no advocate, and that many children are largely ignored in their court hearings. Although it does not guarantee protection, when children do have an advocate, it is more likely that they will be mentioned, have their well-being discussed, their position relayed, and be present in court than children without advocates. Children with stated interest attorneys do better on each of these measures than children with best interest advocates, supporting the notion that attorney representation is best practice.

In order to fully engage in debates about the appropriate role of a child's advocate, we must first acknowledge that children should never be left without advocacy. Children should not be left to navigate the complexities of dependency court, and the various legal rights to which they are entitled, by themselves and without assistance. Court hearings that are intended to ensure the health and safety of children must, at a minimum, include a mention of the child's well-being. In order to truly listen to and respect the child's voice in dependency proceedings, we in the legal profession must first and foremost acknowledge that the child exists.