

# State Statutes Providing Right to Counsel as of 2006

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**O**ver the past few decades, states have passed hundreds of laws and court rules guaranteeing the right to counsel in a wide variety of civil cases. These laws have received little attention and merit more. They are surprising in their number (in the hundreds) and in the many different types of cases they cover (family law matters, involuntary commitment proceedings, medical treatment, and many others). They also vary widely in the extent to which they ensure that the counsel provided is competent and effective. In this article we give an overview of the statutes and rules.

The genesis of state right-to-counsel laws varies. Some implement court decisions establishing a constitutional right to counsel in one or more types of proceedings.<sup>1</sup> Others implement federal laws requiring the provision of counsel to specific types of individuals, such as members of the military or Indian children facing removal from their parents.<sup>2</sup> Still others flow from a legislature's belief that providing counsel in a particular type of case is good social policy.<sup>3</sup>

Here we discuss the types of cases where a statute or court rule provides for a right to counsel and the extent to which state right-to-counsel statutes attempt to ensure that counsel is competent. A table of a cross-section of state right-to-counsel statutes follows.

## I. Cases Where a State Statute or Court Rule Provides for a Right to Counsel

Most state right-to-counsel statutes and court rules fall into three broad categories: family law matters, involuntary commitment, and medical treatment.

### A. Family Law Matters

Federal law requires states receiving federal child abuse prevention and treatment funding to appoint a representative for children involved in abuse or neglect proceedings.

<sup>4</sup> Thus virtually all states have statutes guaranteeing either the right to an attorney or the right to a guardian ad litem for children in abuse and neglect cases.<sup>5</sup>

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By Laura K. Abel and Max Rettig

<sup>1</sup>E.g., New Jersey Rules of the Chancery Division, Family Part 5:3–4, implement rulings by New Jersey courts that counsel must be provided in civil and criminal cases with a "consequence of magnitude." See *Rodriguez v. Rosenblatt*, 277 A.2d 216, 223 (N.J. 1971) (Clearinghouse No. 7684); *Crist v. New Jersey Division of Youth & Family Services*, 343 A.2d 815, 816 (N.J. Super. Ct. App. Div. 1975) (Clearinghouse No. 12,695).

<sup>2</sup>See discussion *infra* I.A, I.D.

<sup>3</sup>E.g., Arkansas' 2001 enactment of a statute and court rule strengthening the right to counsel for custodial parents in abuse and neglect proceedings was apparently prompted by the state's determination that too many children of *pro se* parents were being placed in foster care unnecessarily. Telephone Interview by Max Rettig with Jean Carter, Executive Director, Center for Arkansas Legal Services (Jan. 31, 2006); see also ARK. CODE ANN. § 9-27-401 (West); Ark. Sup. Ct. Admin. Order No. 15.

<sup>4</sup>Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(A)(xiii).

<sup>5</sup>See *infra* tbl. § B.2; see also Astra Outley, Representation for Children and Parents in Dependency Proceedings 2–3, <http://pewfostercare.org/research/docs/Representation.pdf> (last visited June 2, 2006) (citing National Council of Juvenile and Family Court Judges, Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice 2–3 (1998)) (reporting that thirty states appoint an attorney who represents "both the best interests and the wishes of the child," ten appoint a guardian ad litem and a separate attorney for the child, and ten appoint only a nonattorney guardian ad litem).

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Many, but not all, states also have a statute guaranteeing the right to counsel for parents in state-initiated termination-of-parental-rights proceedings, and some have a statute guaranteeing the right for parents in abuse and neglect proceedings as well.<sup>6</sup>

Federal law also requires states to provide counsel for the parent of an Indian child in abuse, neglect, and termination-of-parental-rights proceedings.<sup>7</sup> A number of states have incorporated that requirement into their statutes.<sup>8</sup>

Other categories of family law matters in which statutes guarantee a right to counsel for one or more parties include  
n domestic violence proceedings;<sup>9</sup>  
n divorces and annulments;<sup>10</sup>  
n private petitions to terminate parental rights or for adoption;<sup>11</sup>  
n paternity proceedings;<sup>12</sup>  
n child custody, support, and visitation proceedings;<sup>13</sup> and  
n proceedings regarding visitation or permanency for children in foster care.<sup>14</sup>

### **B. Involuntary Commitment, Quarantine, or Removal of Legal Rights**

Other state statutes guarantee the right to counsel for people facing involuntary institutionalization for mental illness or alcohol or drug intoxication and for people facing disease quarantine.<sup>15</sup> Some statutes also guarantee counsel for anyone seeking to commit another involuntarily.

<sup>16</sup> A number of statutes provide a

<sup>6</sup>See *infra* tbl. § B.2; see also *id.* at 7 (citing National Council of Juvenile and Family Court Judges, Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice 21 (1998)) (reporting that six states require that counsel be appointed for indigent parents in all dependency proceedings, thirty-nine require that counsel be provided for indigent parents in at least some dependency proceedings, three require that counsel be provided for indigent parents in termination-of-parental-rights cases only, and three do not have statutes “explicitly” providing for the appointment of counsel for parents in any dependency or termination-of-parental-rights cases).

<sup>7</sup>Indian Child Welfare Act, 25 U.S.C. § 1912.

<sup>8</sup>See, e.g., MONT. CODE ANN. § 41-3-425(2); NEV. REV. STAT. § 128.100.

<sup>9</sup>New York has the only statute guaranteeing a right to counsel for petitioners and respondents in domestic violence proceedings. N.Y. FAM. CT. ACT § 262(a) (McKinney). However, a few statutes give courts the discretion to appoint counsel for the petitioner in such cases. See, e.g., ALASKA STAT. § 18.66.100 (permitting court to appoint counsel for minor who is the subject of a petition for a domestic violence protective order); CAL. FAM. CODE § 6386 (West) (permitting court to appoint counsel for minor or adult who is the subject of a petition for a domestic violence protective order).

<sup>10</sup>See, e.g., OR. REV. STAT. § 107.425(6) (guaranteeing right to counsel for children who request it in a divorce proceeding); VT. STAT. ANN. tit. 15, § 594 (guaranteeing right to counsel for children called as a witness in a divorce or annulment proceeding).

<sup>11</sup>See, e.g., ALASKA STAT. § 25.23.180(h) (requiring appointment of counsel for respondent to a private petition for termination of parental rights); 750 ILL. COMP. STAT. ANN. § 50/13B (West) (guaranteeing right to counsel for respondent in an adoption petition where the petition alleges the respondent to be unfit); MASS. GEN. LAWS ANN. ch. 119, § 29 (West)

(guaranteeing right to counsel for child in contested proceeding to dispense with need for consent to adoption); N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for a parent opposing adoption).

<sup>12</sup>See, e.g., CONN. SUPER. CT. FAM. MATTERS P. § 25-68(a) (guaranteeing right to counsel for putative father in a state-initiated paternity action); KAN. STAT. ANN. § 38-1125 (authorizing petitioner in a paternity proceeding to seek representation from county trustee, the county social services department, or the county attorney); N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for respondent in paternity proceeding).

<sup>13</sup>See, e.g., LA. REV. STAT. ANN. § 9:345 (guaranteeing right to counsel for child in child custody or visitation proceeding if any party presents a prima facie case that the child has been sexually, physically, or emotionally abused); MASS. GEN. LAWS ANN. ch. 209C, § 7 (West) (requiring appointment of counsel for either party in contested custody or visitation proceeding "whenever the interests of justice require"); N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for parents in a child custody proceeding); OR. REV. STAT. § 107.425(6) (guaranteeing right to counsel for children who request it in a custody proceeding or a proceeding regarding support of an out-of-wedlock child).

<sup>14</sup>See, e.g., N.Y. FAM. CT. ACT § 262(a) (McKinney) (guaranteeing right to counsel for petitioner in proceeding regarding visitation of child in foster care and for respondent in permanency proceeding).

<sup>15</sup>See *infra* tbl. § D.

<sup>16</sup>See, e.g., ALA. CODE § 22-52-5.

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right to counsel for adults who are the subject of a petition for involuntary protective services or guardianship.<sup>17</sup>

#### **C. Medical Treatment**

Being able to obtain access to or to be free of medical treatment is another subject of some right-to-counsel statutes. For example, some statutes guarantee counsel to minors seeking a judicial bypass of a requirement that they notify or obtain the consent of their parents before undergoing an abortion.<sup>18</sup> Other statutes guarantee the right to counsel for people who are the subject of an involuntary sterilization proceeding.<sup>19</sup> Connecticut also guarantees the right to counsel for people who are the subject of an involuntary vaccination order.<sup>20</sup>

#### **D. Other Types of Right-to-Counsel Statutes**

A few other mandatory right-to-counsel statutes fall into these categories:

*n Civil Arrest or Imprisonment.* North Carolina provides a right to counsel for people who are the subject of a petition seeking their imprisonment for a debt or their civil arrest.<sup>21</sup>

*n Individual Under Disability to Sue.* Maryland provides a right to counsel for people under a disability to sue.<sup>22</sup>

*n Petition for Special Immigrant Juvenile Status.* Pursuant to a Florida law passed in 2005, abused, neglected, or abandoned noncitizen children whom a state court determines may be eligible for special immigrant juvenile status under federal immigration law have a right to counsel for the purpose of petitioning the federal government for

special immigrant juvenile status.<sup>23</sup>

<sup>n</sup> *Release of Mental Health Records*. Indiana provides a right to counsel for the subject of a petition for the involuntary release of mental health records.<sup>24</sup>

<sup>n</sup> *Military Members*. The federal Servicemembers Civil Relief Act requires all states to provide counsel to a military member who is a defendant in a civil case and has not appeared in the case.<sup>25</sup> A number of states have incorporated this requirement into their laws.<sup>26</sup>

Although our focus here is on statutes providing an absolute right to counsel, not those giving courts the discretion to appoint counsel, statutes give courts the power to appoint counsel in

<sup>n</sup> civil rights cases,<sup>27</sup>

<sup>n</sup> housing discrimination cases,<sup>28</sup> and

<sup>n</sup> school attendance cases.<sup>29</sup>

<sup>17</sup>See, e.g., DEL. CODE ANN. tit. 31, § 3909 (guaranteeing right to counsel in proceeding for involuntary protective services); see also *infra* tbl. § C.

<sup>18</sup>See, e.g., ALASKA STAT. § 18.16.030(d) (guaranteeing right to counsel for minor seeking waiver of requirement that parental consent be obtained before seeking abortion); see also *infra* tbl. § E.1.

<sup>19</sup>See, e.g., W. VA. CODE § 27-16-1 (guaranteeing right to counsel for incompetent person who is the subject of a sterilization petition); see also *infra* tbl. § E.2.

<sup>20</sup>CONN. GEN. STAT. ANN. § 19a-131e(d) (West).

<sup>21</sup>N.C. GEN. STAT. ANN. § 7A-451(a)(7) (West).

<sup>22</sup>MD. R. CT. 2-202.

<sup>23</sup>FLA. STAT. ANN. § 39.5075(5) (West).

<sup>24</sup>IND. CODE § 16-39-3-5.

<sup>25</sup>Servicemembers Civil Relief Act, 50 U.S.C. app. § 521(b)(2).

<sup>26</sup>See, e.g., COLO. REV. STAT. § 13-6-407(3); see also *infra* tbl. § F.7.

<sup>27</sup>See, e.g., 775 ILL. COMP. STAT. ANN. § 5/10-102(B) (West); see also *infra* tbl. § F.2.

<sup>28</sup>See, e.g., 42 U.S.C. § 3613(b); ARIZ. REV. STAT. ANN. § 41-1491.32; see also tbl. § F.4.

<sup>29</sup>See, e.g., COLO. REV. STAT. § 19-1-105; see also tbl. § F.6.

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Also worth noting is a category of statutes denying the appointment of counsel to specific categories of people in several types of family law matters.<sup>30</sup> Courts have ruled at least some of these statutes unconstitutional either as an infringement of the court's inherent powers or as an infringement of the rights of the individual denied counsel.<sup>31</sup>

## **II. The Administration of the Civil Right to Counsel**

State right-to-counsel statutes differ in the extent of their provisions for ensuring that the attorneys appointed are competent and have the resources to represent their clients adequately. The administration and performance of assigned counsel duties have no national guidelines for all types of civil cases. However, there are national

guidelines for representing children in custody and child abuse cases and for representing people subject to involuntary civil commitment.<sup>32</sup> For a right-to-counsel system to be effective, the guidelines require, among others, that

- n appointed counsel must have adequate experience and training,
- n appointed counsel must fulfill particular duties,
- n appointed counsel must be assigned only as many cases as they can competently handle,
- n appointed counsel must be independent of the appointing authority,
- n counsel must be adequately compensated,
- n counsel must be appointed early enough in a particular proceeding, and
- n the appointment system must be uniform throughout a particular state.

In some jurisdictions, court rules impose some of these requirements.<sup>33</sup> Elsewhere some of these requirements are met in practice. However, conversations with practitioners around the country reveal that, more often than not, these requirements are neither imposed nor satisfied.

For example, in most types of cases the attorneys appointed need to have relevant experience and training.<sup>34</sup> Appointed attorneys should fulfill certain basic duties, such as interviewing clients, although the specific duties vary with case type.<sup>35</sup> However, virtually none of the civil right-to-counsel statutes or court rules requires experience, training, or the fulfillment of any particular duties.<sup>36</sup>

<sup>30</sup>See, e.g., N.H. REV. STAT. ANN. § 169-C:10.II(a) (barring appointment of counsel for any party other than the child or the parent in a neglect and abuse case); W. VA. CODE § 48-24-105 (barring appointment of counsel at the state's expense for parents in a paternity proceeding); Wis. STAT. ANN. § 48.23(3) (West) (barring appointment of counsel for any party other than the child in a children-in-need-of-protection proceeding).

<sup>31</sup>See, e.g., *In re Shelby R.*, 804 A.2d 435, 439–40 (N.H. 2002) (holding that N.H. REV. STAT. ANN. § 169-C:10.II(a), barring appointment of counsel for stepparent in neglect and abuse cases, was unconstitutional because due process provision of state constitution required appointment of counsel in such cases); *Joni B. v. Wisconsin*, 549 N.W.2d 411, 414 (Wis. 1996) (Clearinghouse No. 51,376) (holding that Wis. STAT. ANN. § 48.23(3), barring appointment of counsel for any party other than the child in children-in-need-of-protection proceedings, was an unconstitutional intrusion onto powers of the judiciary).

<sup>32</sup>See American Bar Association Section of Family Law, Standards of Practice for Lawyers Representing Children in Custody Cases (2003), available at [www.abanet.org/family/reports/standards\\_childcustody.pdf](http://www.abanet.org/family/reports/standards_childcustody.pdf); American Bar Association, Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (1996), available at [www.abanet.org/child/childrep.html](http://www.abanet.org/child/childrep.html); NATIONAL CENTER FOR STATE COURTS, GUIDELINES FOR INVOLUNTARY CIVIL COMMITMENT (1986).

<sup>33</sup>See, e.g., ARIZ. REV. STAT. ANN. § 36-537.B (listing specific duties of attorneys appointed to represent people in involuntary commitment proceedings).

<sup>34</sup>Standards of Practice for Lawyers Representing Children in Custody Cases, *supra* note 32, § VI.A.7; Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standards H-4, I-2, I-3; NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 22–23 (1995), available at [www.ncjfcj.org/images/stories/dept/ppcd/pdf/resguide.pdf](http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/resguide.pdf); NATIONAL CENTER FOR STATE COURTS, *supra* note 32, Guideline E1(a).

<sup>35</sup>NATIONAL CENTER FOR STATE COURTS, *supra* note 32, Guidelines E1(d), E2, E5.

<sup>36</sup>Not surprisingly, appointed counsel in family court, involuntary commitment, and right-to-refuse-medical-treatment cases

often lack training and experience essential to provide competent representation. See Michael L. Perlin, "And My Best Friend, My Doctor/Won't Even Say What It Is I've Got": *The Role and Significance of Counsel in Right to Refuse Treatment Cases*, 42 SAN DIEGO LAW REVIEW 735, 738-40, 743-44, 748-50 (2005); U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. GAO/HEHS-99-13, JUVENILE COURTS: REFORMS AIM TO BETTER SERVE MALTREATED CHILDREN 13 (1999), available at [www.gao.gov/archive/1999/he99013.pdf](http://www.gao.gov/archive/1999/he99013.pdf). Clearinghouse REVIEW *Journal of Poverty Law and Policy* n July-August 2006 249

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Exceptions in some states are notable.<sup>37</sup>

An Arizona statute spells out specific tasks for attorneys appointed to represent people who are the subject of an involuntary commitment petition.<sup>38</sup> An Arkansas court rule requires that attorneys appointed to represent parents or children in dependency and neglect proceedings have experience and training, that they receive continuing legal education in specified topics, and that they complete specific duties, such as reviewing relevant documents, attending court hearings, meeting with clients, and filing appropriate pleadings.

<sup>39</sup> In Florida each judicial district imposes its own standards for counsel in dependency cases, and all such standards must meet or exceed training and experience standards that the Florida Indigent Services Advisory Board suggests.<sup>40</sup> A number of states impose standards on counsel for children in abuse and neglect cases but apparently do not impose standards on counsel for the parents or in other types of cases.<sup>41</sup>

Courts should not assign appointed attorneys more cases than the attorneys can handle competently.<sup>42</sup> However, very few right-to-counsel statutes or court rules provide any caseload limits or guidelines. One exception is an Oregon court rule providing that "[n]either defender organizations nor assigned counsel should accept workloads that, by reason of their excessive size or complexity, interfere with rendering competent and adequate representation or lead to the breach of professional obligations."<sup>43</sup>

Appointed counsel should be independent of the court.<sup>44</sup> Commentators generally agree that someone other than the presiding judge should appoint counsel to ensure that counsel's desire to be appointed in other cases does not influence counsel's representation of clients.<sup>45</sup> However, very few civil right-to-

counsel statutes provide any guidelines about how judges should appoint

counsel. Judges presiding over the cases

37In addition to the statutes and rules cited in footnotes 38 to 41, public defenders and public defender commissions in some other jurisdictions impose training requirements. E.g., Montana's new unified public defender system, which represents people entitled to appointed counsel in civil cases, requires all public defenders and privately contracted attorneys to complete training. Telephone Interview by Max Rettig with Randi Hood, Chief Public Defender, State of Montana (Feb. 24, 2006). Oregon's Public Defense Services Commission adopted qualification standards for appointed counsel in all kinds of cases and specifies the tasks that they must undertake. OR. REV. STAT., Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense, Standards III, IV, Exhibit C.

38ARIZ. REV. STAT. ANN. § 36-537.B.

39Ark. Sup. Ct. Admin. Order No. 15; see also ARK. CODE ANN. § 9-27-401(d)(1) (West) ("[T]he Arkansas Supreme Court shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for indigent parents or guardians in dependency-neglect cases.").

40See Indigent Services Advisory Board, Final Report: Recommendations Regarding Qualifications, Compensation and Cost Containment Strategies for State-Funded Due Process Services, Including Court Reporters, Interpreters and Private Court-Appointed Counsel 5, 14 (2005), available at [www.justiceadmin.org/art\\_V/1-6-2005%20Final%20Report.pdf](http://www.justiceadmin.org/art_V/1-6-2005%20Final%20Report.pdf) (recommending that dependency counsel "shall have observed a total of thirty hours of hearings which shall include six shelter hearings, three dependency hearings and one termination of parental rights hearing and attend annually, at least three hours of continuing legal education at the Dependency Court Improvement Project Conference, or an equivalent," and that in termination-of-parentalrights cases "the attorney shall have at least ten dependency trials, or one year of dependency experience.").

41See, e.g., Md. R. CT., tit. 11 app. (Guidelines of Advocacy for Attorneys Representing Children in CINA [Children in Need of Assistance] and Related TPR [Termination of Parental Rights] and Adoption Proceedings); CAL. WELF. & INST. CODE § 317(c), (e) (West) (setting general caseload and training standards for attorneys for children and requiring the attorneys to fulfill specific duties).

42Standards of Practice for Lawyers Representing Children in Custody Cases, *supra* note 32, § VI.D; Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standard L.

43OR. REV. STAT. Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense, Standard II; see also WIS. STAT. ANN. § 977.08(5) (West) (imposing caseload limits on the trial unit of the state public defender office but not on assigned counsel).

44Standards of Practice for Lawyers Representing Children in Custody Cases, *supra* note 32, § VI.A.5; Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standard G-1; NATIONAL CENTER FOR STATE COURTS, *supra* note 32, Guideline E4(b).

45See AMERICAN BAR ASSOCIATION, *GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE 20* (2004), available at [www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf](http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf).

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are free to appoint the attorneys in those cases, and, except in jurisdictions where the public defender is responsible for representing people entitled to counsel in civil cases, that seems to be what generally happens.

Counsel must be adequately compensated.

46 Many civil right-to-counsel statutes do not address compensation beyond requiring that it be "reasonable."

47 In practice, funding falls short of need almost everywhere. Many of the statutes that do specify how much counsel should be paid provide for an hourly rate of between \$45 and \$75, which is far below what most attorneys in private practice receive.<sup>48</sup> Moreover, the fees are often capped at an extremely low rate.<sup>49</sup> Other statutes expressly permit or require courts to appoint uncompensated counsel.<sup>50</sup> Too often, the clients suffer because attorneys must maintain a very high caseload to make ends meet.<sup>51</sup> Counsel need to be appointed early enough to be able to represent and consult with the client during crucial stages

of the proceedings.<sup>52</sup> Some right-to-counsel statutes require that this happen, and some require the court to grant an adjournment for this to happen. For example, a Montana statute requires that counsel be appointed for a parent or guardian “immediately” following the filing of a petition seeking removal or placement of a child or termination of parental rights.<sup>53</sup> A New York statute provides that parties who have the right to counsel in family court also have “the right to have an adjournment to confer with counsel.”<sup>54</sup> However, many right-to-counsel statutes are silent about this important issue.

Where possible, counsel should be provided in a uniform manner throughout a state.<sup>55</sup> Lack of a uniform system can lead to individual judges or county

<sup>46</sup>Standards of Practice for Lawyers Representing Children in Custody Cases, *supra* note 32, § VI.C; Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standard J-1; NATIONAL CENTER FOR STATE COURTS, *supra* note 32, Guideline E4(c); see also NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 34, at 22 (stating that “[j]uvenile and family courts should urge state legislatures and local governing bodies to provide sufficient funding for attorney compensation”).

<sup>47</sup>See, e.g., ARIZ. REV. STAT. ANN. § 8-221; IND. CODE § 34-10-1-2.

<sup>48</sup>See, e.g., ALASKA R. CT. ADMIN. 12 (specifying that court-appointed attorneys be paid \$40 per hour); DELAWARE STAT. SUP. CT. R. 26.1(e) (stating that the maximum that attorneys may be paid in termination-of-parental-rights cases is \$50 per hour); Fla. 13th Jud. Cir. Admin. Order No. S-2005-158 (establishing an hourly rate of \$60 for appointed counsel in termination-of-parentalrights cases and judicial waiver of parental-notice-of-abortion proceedings); HAW. REV. STAT. § 571-87(b) (specifying that counsel in family cases be paid \$40 per hour for out-of-court services and \$60 per hour for in-court services).

<sup>49</sup>See, e.g., ARK. CODE ANN. § 20-47-212 (West) (capping fees in commitment cases at \$150); HAW. REV. STAT. § 571-87(b) (capping fees in child protective proceedings at \$1,500 before disposition and \$500 for postdisposition review); KY. REV. STAT. ANN. § 620.100(1) (West) (capping fees at \$250 for termination-of-parental-rights cases and at \$250 for dependency, neglect, and abuse proceedings disposed of in district court); LA. REV. STAT. ANN. § 46:431 (capping fees at \$10 for uncontested case and \$25 in contested case in proceeding to have a curator appointed for the purpose of applying for public assistance for a mentally incompetent person); S.C. FAM. CT. R. 41 (capping fees for attorneys appointed for children in abuse and neglect proceedings at \$100 unless the court determines that “extraordinary circumstances require the award of a fee larger than that which is specified in this rule ...”).

<sup>50</sup>See, e.g., ARK. CODE ANN. § 20-47-212 (West) (stating that, in involuntary commitment proceedings, “[t]he court shall have the authority to appoint counsel on a pro bono basis”); LA. REV. STAT. ANN. § 9:345(F) (stating that, when an attorney is appointed for a child in a custody or visitation proceeding, and the parents’ ability to pay for counsel is limited, “the court shall attempt to secure proper representation without compensation”).

<sup>51</sup>See *In re Nicholson*, 181 F. Supp. 2d 182, 186–87 (E.D.N.Y. 2002) (Clearinghouse No. 54.616) (“the current statutory rates do not permit [appointed] lawyers [in New York Family Court] to provide competent representation to their clients, and ... as a result mothers are consistently denied their constitutional rights”). After this ruling, the New York legislature raised the hourly rate, but it is still far lower than most attorneys receive in private practice.

<sup>52</sup>Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standard H-1; NATIONAL CENTER FOR STATE COURTS, *supra* note 32, Guideline E4(a).

<sup>53</sup>MONT. CODE ANN. § 41-3-425; see also ARK. CODE ANN. § 20-47-212 (West) (requiring appointment of counsel in involuntary commitment proceedings “immediately upon filing of the original petition”); N.H. REV. STAT. ANN. § 464-A:6 (requiring appointment of counsel “immediately upon the filing of a petition for guardianship of the person and estate, or the person, or estate”).

<sup>54</sup>N.Y. FAM. CT. ACT § 262(a) (McKinney).

<sup>55</sup>Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standards G-2, J-4. Clearinghouse REVIEW Journal of Poverty Law and Policy n July–August 2006 251

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administrators determining who should get counsel on an ad hoc basis. Even when individual counties have written policies, the differences between those policies can lead to vastly different access to counsel in different counties, despite the presence of an applicable statewide law guaranteeing the right to

counsel.

However, unified state systems to administer the right to counsel are very rare. In most states, individual counties are responsible for administering and often funding the right-to-counsel system. Often the counties themselves have no uniform procedures. Thus how the right to counsel is implemented tends to vary not only by state but also by county and by judge. For example, in Nevada's Clark County, a public defender office specializing in family law handles family law matters, with contract attorneys handling only those cases that the special public defender cannot handle. In the rest of the state, however, the general public defender's office or courtappointed contract attorneys handle family law matters.<sup>56</sup>

Alaska and Montana are exceptions to the general lack of uniformity. Alaska operates a statewide public defender office and an Office of Public Advocacy, both representing civil and criminal litigants with a right to counsel.<sup>57</sup> After a major lawsuit, Montana created a statewide public defender's office to represent low-income people in both civil and criminal matters.<sup>58</sup>

The table of a cross-section of civil right-to-counsel statutes begins on the following page.

**Authors' Acknowledgments**

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*opinions and any errors are ours alone.*

56 Telephone Interview by Max Rettig with Jane Femiano, Attorney, Clark County Special Public Defender's Office (April 7, 2006).

57 See ALASKA STAT. §§ 18.85.100, 25.23.180(h).

58 Telephone Interview by Max Rettig with Randi Hood, Chief Public Defender, State of Montana (Feb. 24, 2006); see also *White v. Martz*, No. CDV-2002-133 (Mont. Dist. Ct. filed April 1, 2002).

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#### **State Statutes Providing for a Right to Counsel in Civil Cases**

A collection of some representative right-to-counsel statutes, the table focuses primarily on statutes providing for an absolute right to publicly financed counsel.

But the table includes some statutes allowing courts to exercise discretion over whether to appoint counsel. The table does not catalogue statutes providing for a right to (1) counsel in criminal cases; (2) counsel for juveniles accused of crimes or in the juvenile delinquency system; (3) appointment of guardians or attorneys ad litem, “best interest” attorneys, or court-appointed special advocates; or (4) counsel for people charged with civil contempt.

#### **A. General Right to Counsel**

**Indiana:** IND. CODE § 34-10-1-2: “(b) If the court is satisfied that a person who makes an application [to proceed as an indigent person] does not have sufficient means to prosecute or defend the action, the court ... may, under exceptional circumstances, assign an attorney to defend or prosecute the cause. (c) The factors that a court may consider ... include the following: (1) The likelihood of the applicant prevailing on the merits of the applicant’s claim or defense. (2) The applicant’s ability to investigate and present the applicant’s claims or defenses without an attorney, given the type and complexity of the facts and legal issues in the action. (d) The court shall deny an application ... if the court determines any of the following: (1) The applicant failed to make a diligent effort to obtain an attorney before filing the application. (2) The applicant is unlikely to prevail on the applicant’s claim or defense.... (f) The reasonable attorney’s fees and expenses of an attorney appointed to represent an applicant ... shall be paid from the money appropriated to the court....”

**Massachusetts:** MASS. GEN. LAWS ANN. ch. 211D, § 6(b)(iii) (West): The Committee for Public Counsel Services “shall be assigned to represent persons in such proceedings as the chief counsel shall determine to be necessary.”

**New York:** N.Y.C.P.L.R. 1101, 1102(a) (McKinney): “[1101] Upon motion of any person, the court in which an action is triable, or to which an appeal has been or will be taken, may grant permission to proceed as a poor person.... [1102(a)] The court in its order permitting a person to proceed as a poor person may assign an attorney.”

#### **B. Family Law Matters**

##### **I. General**

**New Jersey:** N.J. CT. CH. DIV., FAM. PT. R. P. 5:3–4: All financially eligible parents, guardians, custodians, and children are entitled to court-appointed counsel (usually the public defender) in cases where one member of the family is facing institutional commitment or other “consequence of magnitude.” “The court shall also assign counsel to represent indigents in family actions where a party is by constitution, state or federal, or by law entitled to counsel and there is no publicly-funded source of

representation available.”

**New York:** N.Y. FAM. CT. ACT § 262(a) (McKinney):

“Each of the persons described below ... has ... the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same”: (1) respondents in proceedings regarding child protection or child abuse, (2) respondents in permanency hearings for children placed in foster care or freed for adoption, (3) petitioners seeking visitation of minors in foster care, (4) petitioners and respondents in domestic violence proceedings, (5) respondents in custody proceedings, (6) parents, foster parents, or other persons having legal or physical custody of a child in proceedings regarding dependent children in foster care, guardianship and custody of children not in foster care, guardianship and custody of destitute or dependent children, or foster care, (7) parents seeking custody or contesting custody proceedings of a minor, (8) defendants in contempt-of-court proceedings, (9) parents opposing adoption in adoption proceedings, and (10) respondents in paternity proceedings.

## **2. Dependency, Neglect, Termination of Parental Rights, Adoption**

**Federal Law:** 25 U.S.C. § 1912 [Indian Child Welfare Act]: “In any case in which the court determines indigency, the parent [of an Indian child] or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary [of the Interior] upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses....”

**Alabama:** ALA. CODE § 12-15-63: “(a) In delinquency and in need of supervision cases, a child and his parents, guardian or custodian shall be advised by the court or its representative at intake that the child has the right to be represented at all stages of the proceedings by counsel retained by them or, if they are unable to afford counsel, by counsel appointed by the court. If counsel is not retained for the child in a proceeding in which there is a

# **Table of Civil Right-to-Counsel Statutes**

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reasonable likelihood such may result in a commitment to an institution in which the freedom of the child is curtailed, counsel shall be appointed for the child. The court may appoint counsel in any case when it deems such in the interest of justice. (b) In dependency cases, the parents, guardian or custodian shall be informed of their right to be represented by counsel and, upon request, counsel shall be appointed where the parties are unable for financial reasons to retain their own. The court shall also appoint counsel for the child in dependency cases where there is an adverse interest between parent and child or where the parent is an unmarried minor or is married, widowed, widowed or divorced and under the age of 18 years or counsel is otherwise

required in the interests of justice.”

**Alaska:** ALASKA STAT. § 25.23.180(h): “If the respondent [to a private petition for the termination of parental rights] is financially unable to employ an attorney, the court shall appoint the office of public advocacy to represent the respondent in the proceedings.”

*Id.* § 47.10.089(i): “A person who [voluntarily] relinquished parental rights is entitled to the appointment of an attorney if a hearing is requested [regarding enforcement, modification, or vacature of a privilege retained in the termination order, vacature of a termination order, or a request that the court decline to incorporate a privilege retained in a termination order and recommended for incorporation in an adoption or guardianship decree] ... to the same extent as if the parent’s rights had not been terminated in a child-in-need-of-aid proceeding.”

**Arizona:** ARIZ. REV. STAT. ANN. § 8-221: “A. In all proceedings involving offenses, dependency or termination of parental rights that are conducted pursuant to this title and that may result in detention, a juvenile has the right to be represented by counsel. B. If a juvenile, parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person or persons unless counsel for the juvenile is waived by both the juvenile and the parent or guardian.... F. The county board of supervisors may fix a reasonable sum to be paid by the county for the services of an appointed attorney.”

**Authors’ Note:** In determining the circumstances in which a parent or guardian is entitled to counsel, judges must be guided by the case law, which provides, for example, that parents have a constitutional right to appointment of counsel in termination-of-parental-rights proceedings. See *Daniel Y. v. Arizona Department of Economic Security*, 77 P.3d 55, 58 (Ariz. Ct. App. 2003).

ARIZ. REV. STAT. ANN. § 8-872.D: “In a [dependency] proceeding for permanent guardianship, on the request of a parent, the court shall appoint counsel for any parent found to be indigent if the parent is not already represented by counsel. The court may also appoint one for the child if a guardian ad litem has not already been appointed.”

**Arkansas:** ARK. CODE ANN. § 9-27-316 (West): “(c) [In family-in-need-of-services,] [i]f counsel is not retained for the juvenile or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court unless the right to counsel is waived in writing.... (d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile’s commitment to an institution in which the freedom of the juvenile would be curtailed and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile....

(h)(1)(A) In all proceedings to remove custody from a parent or guardian or to terminate parental rights, the parent or guardian shall be advised ... of the right ... to appointed counsel if indigent.... (2)(A) Upon request by a parent or guardian from whom custody was removed and a determination by the court of indigence, the court shall appoint counsel for the parent or guardian from whom custody was removed in all circuit court proceedings to remove custody or terminate parental rights of a juvenile.”

**California:** CAL. FAM. CODE § 7862 (West): "If a parent appears without counsel [in a state or private petition for declaration of freedom from parental custody and control] and is unable to afford counsel, the court shall appoint counsel for the parent...." See also CAL. WELF. & INST. CODE § 366.26(f) (West) (guaranteeing appointment of counsel for parents and child in state-initiated termination-of-parental-rights proceedings and guardianship proceedings for dependent children); CAL. FAM. CODE § 7895 (West) (guaranteeing appointment of counsel for appellant in termination-of-parental-rights proceedings). CAL. WELF. & INST. CODE § 317 (West): "(a) When it appears to the court that a parent or guardian of the child desires counsel [in a dependency proceeding] but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section. (b) When it appears to the court that a parent or guardian of the child is presently financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioning agency is recommending that the child be placed in out-of-home care, the court shall appoint counsel.... (c) Where a child is not represented by counsel, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel.... Counsel for the child may be a district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the child's."

**Colorado:** COLO. REV. STAT. § 19-3-202(1): "At the first appearance of a respondent parent, guardian, or legal custodian [in a dependency proceeding], the court shall fully advise such party of his legal rights, including the right to seek the appointment of counsel if the party is unable financially to secure counsel on his own."

*Id.* § 19-3-602(2): "After a motion for termination of a parent-child legal relationship is filed ..., the parent or parents shall be advised of the right to counsel if not already represented by counsel of record; and counsel shall be appointed...."

**Connecticut:** CONN. GEN. STAT. § 45a-717(b): "If a party [to a termination-of-parental-rights petition] appears without counsel, the court shall inform such party of the party's right to counsel and upon request, if he or she is unable to pay for counsel, shall appoint counsel to represent such party."

*Id.* § 46b-135(b): "At the commencement of any proceeding on behalf of a neglected, uncared-for or dependent child or youth, the parent or parents or guardian of the child or youth shall ... be ... informed by the judge ... that if they are unable to afford counsel, counsel will be provided for them...."

**Delaware:** DEL. FAM. CT. R. CIV. P. 206(a): "The Court shall ... notify parents in writing of the appointment of counsel in cases of indigency" in all proceedings involving dependent, neglected, or abused children in state custody. See also *id.* 207 (setting forth procedure for appointment of counsel for parents).

**District of Columbia:** D.C. CODE § 16-2304: "(a) If the

child [alleged to be delinquent or in need of supervision] and his parent, guardian, or custodian are financially unable to obtain adequate representation, the child shall be entitled to have counsel appointed for him.... The child and his or her parents or guardian, if indigent, have the right to court-appointed counsel in termination of parental rights proceedings.... (b)(1) When a child is alleged to be neglected or when the termination of the parent and child relationship is under consideration, the parent, guardian, or custodian of the child named in the petition or in a motion to terminate is entitled to be represented by counsel at all critical stages of the proceedings, and, if financially unable to obtain adequate representation, to have counsel appointed.... (c) The [Family] Division [of the Superior Court] shall maintain a register of those attorneys who have expressed an interest in being appointed to represent parties or to serve as guardians ad litem in neglect proceedings, and shall attempt insofar as possible to make appointments from the register.

(d) There are authorized to be appropriated such funds as may be necessary for the administration of this section.”

**Florida:** FLA. STAT. ANN. § 39.013(1), (9)(a) (West): “Parents who are unable to afford counsel [at any stage of a dependency proceeding] must be appointed counsel.”

*Id.* § 39.013(11): “Court-appointed counsel representing indigent parents at shelter hearings shall be paid from state funds appropriated by general law.”

*Id.* § 39.807: Indigent parents have the right to courtappointed counsel in termination-of-parental-rights proceedings.

**Georgia:** GA. CODE ANN. § 15-11-98 (West): “(a) In any proceeding for terminating parental rights ... the court shall appoint an attorney to represent the child as the child’s counsel.... (b) If the parent or parents of the child desire to be represented by counsel but are indigent, the court shall appoint an attorney for such parent or parents, which shall be a charge upon the funds of the county upon certification thereof by the court....”

**Hawaii:** HAW. REV. STAT. § 587-34: During child protective proceedings, “[t]he court may appoint ... counsel for the child ... or ... for any other party if the party is an indigent, counsel is necessary to protect the party’s interests adequately, and the interests are not represented adequately by another party who is represented by counsel.”

*Id.* § 571-87(a): “Appointed counsel ... shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and fees pursuant to subsection (b). All of these expenses shall be certified by the court and paid upon vouchers approved by the judiciary and warrants drawn by the comptroller.”

**Idaho:** IDAHO CODE ANN. § 16-1614: “In any proceeding under [the Child Protective Act] the court shall appoint a guardian ad litem for the child or children ... and in appropriate cases shall appoint counsel to represent the guardian, and in appropriate cases, may appoint separate counsel for the child.”

*Id.* § 16-2009: “[I]f counsel is requested [at a termination-of-parental-rights hearing] and the parent or guardian is financially unable to employ counsel, counsel shall be provided.”

**Illinois:** 750 ILL. COMP. STAT. ANN. § 50/13B(c) (West): “If

the [adoption] petition alleges a person to be unfit [i.e., 'inability to discharge parental responsibilities' supported by competent evidence from a mental health worker], such person shall be represented by counsel. If such person is indigent or an appearance has not been entered on his behalf at the time the matter is set for hearing, the court shall appoint as counsel for him either the Guardianship and Advocacy Commission, the public defender, or, only if no attorney from the Guardianship and Advocacy Commission or the public defender is available, an attorney licensed to practice law in this State."

705 ILL. COMP. STAT. ANN. § 405/1-5(1) (West): In proceedings under the Juvenile Court Act of 1987, which governs abused, neglected, and dependent minors, among other matters, "[a]t the request of any party financially unable to employ counsel, with the exception of a foster parent permitted to intervene under this Section, the court shall appoint the Public Defender or such other counsel as the case may require."

**Indiana:** IND. CODE § 31-32-4-2: "The [juvenile] court may appoint counsel to represent any child in any ... proceeding."

*Id.* § 31-32-4-3: "(a) If: (1) a parent in proceedings to terminate the parent-child relationship does not have an attorney who may represent the parent without a conflict of interest; and (2) the parent has not lawfully waived the parent's right to counsel ... the juvenile court shall appoint counsel for the parent at the initial hearing or at any earlier time. (b) The court may appoint counsel to represent any parent in any other proceeding."

*Id.* § 31-34-4-6: A parent, guardian, or custodian of a child alleged to be abused or neglected "has the right to be represented by a court appointed attorney ... upon the request of the parent, guardian, or custodian if the Clearinghouse REVIEW Journal of Poverty Law and Policy n July–August 2006 255  
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court finds that the parent, guardian, or custodian does not have sufficient financial means for obtaining representation...."

**Iowa:** IOWA CODE § 232.89: "1. Upon the filing of a [child-in-need-of-assistance] petition the parent, guardian, or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel. 2. Upon the filing of a petition, the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings."

*Id.* § 232.113: "1. Upon the filing of a [termination-of-parental-rights] petition the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If the parent desires but is financially unable to employ counsel, the court shall appoint counsel. 2. Upon the filing of a petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings."

*Id.* § 232.126: "The court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance unless the child already has such counsel or guardian. The court shall appoint counsel for

the parent, guardian or custodian if that person desires but is financially unable to employ counsel.”

**Kansas:** KAN. STAT. ANN. § 38-1505: (a) On good cause shown, the court may appoint a second attorney for a child, in child-in-need-of-care proceedings, in addition to a guardian ad litem. “(b) ... If at any stage of the proceedings [alleging that a child is in need of care] a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent.”... (e) attorneys appointed under this section “shall be allowed a reasonable fee for their services, which may be assessed as an expense in the proceedings....”

*Id.* § 38-1582(d): “Prior to a hearing on a petition or a motion requesting termination of parental rights, the court shall appoint an attorney to represent any parent who fails to appear and may award a reasonable fee to the attorney for services. The fee may be assessed as an expense in the proceedings.”

*Id.* § 59-2136: “(c) In stepparent adoptions ..., the court may appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. In all other cases, the court shall appoint an attorney to represent any father who is unknown or whose whereabouts are unknown.... (h) If a father [who appears and asserts parental rights] desires but is financially unable to employ an attorney, the court shall appoint an attorney for the father.”

**Kentucky:** KY. REV. STAT. ANN. § 620.100(1) (West): In dependency, neglect, and abuse proceedings, “(a) The court shall appoint counsel for the child.... (b) The court shall appoint separate counsel for the parent who exercises custodial control or supervision if the parent is unable to afford counsel.... (c) The court may, in the interest of justice, appoint separate counsel for a nonparent who exercises custodial control or supervision of the child, if the person is unable to afford counsel....” In each instance, the Finance and Administration Cabinet pays the counsel, and the fee may not exceed \$500 dollars, unless there is a final disposition in the district court, in which case the fee may not exceed \$250.

*Id.* § 625.080(3): “The parents have the right to legal representation in involuntary termination actions. The Circuit Court shall determine if the parent is indigent and, therefore, entitled to counsel.... If the Circuit Court so finds, the Circuit Court shall inform the parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the parent ... to be provided or paid for by the Finance and Administration Cabinet a fee to be set by the court and not to exceed five hundred dollars (\$500).”

**Louisiana:** LA. CHILD. CODE ANN. art. 607: “A. In every [children-in-need-of-care] proceeding ..., the court shall appoint qualified, independent counsel for the child, including a referral to the indigent defender board. B. If the court finds that the parents of the child are financially able, it may order the parents to pay some or all of the costs of the child’s representation.”

*Id.* art. 608: “B. If the parents of a child [who is the subject of a child-in-need-of-care proceeding] are financially unable to afford counsel, the court shall appoint counsel, or refer the parents for representation by the

indigent defender board.”

*Id.* art. 1016: In a termination-of-parental-rights proceeding, “B. The court shall appoint a qualified, independent attorney to represent the child.... C. If the court determines that the parent is indigent and unable to employ counsel solely for that reason, an attorney shall be appointed to represent the parent.”

**Maine:** ME. REV. STAT. ANN. tit. 22, § 4005(2): “Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order ... or a petition for a medical treatment order ..., but including hearings on those orders.... The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.”

**Maryland:** MD. ANN. CODE, art. 27A, § 4(b)(5): “Legal representation shall be provided indigent defendants or parties in the following proceedings.... As to a parent, a hearing in connection with guardianship [of a child committed to the local department] or adoption [without prior termination of parental rights]....”

MD. CODE ANN., CTS. & JUD. PROC. § 3-813 (West): In children-in-need-of-assistance proceedings, provides for a right to counsel at state expense for all parties who are indigent, younger than 18, or incompetent by reason of mental disability.

MD. CODE ANN., FAM. LAW § 5-307(a)(1) (West): “Unless the public defender is required ... to provide representation, in a case under Part II [guardianship] or Part III

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[adoption without prior termination of parental rights] of this subtitle, a juvenile court shall appoint an attorney to represent a parent who: (i) has a disability that makes the parent incapable of effectively participating in the case; or (ii) when a petition for guardianship or adoption is filed, is a minor.” See also *id.*, FAM. LAW § 5-3A-07 (guaranteeing right to counsel for minor parents, parents with disabilities, and some children in private agency guardianship or adoption proceedings); *id.*, FAM. LAW § 5-3B-06 (guaranteeing right to counsel for minor parents, parents with disabilities, and some children in independent adoption proceedings).

**Massachusetts:** MASS. GEN. LAWS ANN. ch. 119, § 29 (West): In care and protection proceedings, if the child “is not able to retain counsel, the court shall appoint counsel for said child. The parent, guardian or custodian of such child shall have and shall be informed of the right to counsel at all hearings [in those proceedings] and in any other proceeding regarding child custody where the department of social services or a licensed child placement agency is a party .... and [i]f said parent, guardian or custodian of such child is financially unable to retain counsel, the court shall appoint counsel for said parent, guardian or custodian.”

*Id.* ch. 210, § 3(b): In a proceeding to dispense with the need for consent to an adoption, “[t]he court shall appoint counsel to represent the child in the proceeding unless the petition is not contested by any party.”

**Michigan:** MICH. CT. R. 3.915(B)(1)(a)(i): In child protective proceedings, “the respondent has the right to a court appointed attorney if the respondent is financially unable to retain an attorney.”

**Minnesota:** MINN. STAT. ANN. § 260C.163(3) (West): “(b) Except in proceedings where the sole basis for the petition is habitual truancy, if the child, parent, guardian, or custodian desires counsel but is unable to employ it, the court shall appoint counsel to represent the child who is ten years of age or older or the parents or guardian in any case in which it feels that such an appointment is appropriate. (c) In any proceeding where the sole basis for the petition is habitual truancy, the child, parent, guardian, and custodian do not have the right to appointment of a public defender or other counsel at public expense. However, before any out-of-home placement, including foster care or inpatient treatment, can be ordered, the court must appoint a public defender or other counsel at public expense in accordance with paragraph (b).” See also MINN. R. JUV. PROTECTION P. 25.02 (effectuating the requirements of Section 260C.163).

**Mississippi:** MISS. CODE ANN. § 43-21-201(1) (West): In child-in-need-of-supervision, abuse, neglect, and dependency proceedings, “[i]f indigent, the child shall have the right to have counsel appointed for him by the youth court.”

**Missouri:** MO. ANN. STAT. § 211.211 (West): In juvenile court proceedings, if the custodian requests counsel and is indigent and if a “full and fair hearing” requires the appointment of counsel, then the court shall appoint counsel for the custodian. The court shall appoint counsel for indigent children who request counsel “when necessary to assure a full and fair hearing.”

*Id.* § 211.462.2: In termination-of-parental-rights proceedings, “[t]he parent or guardian of the person of the child shall be notified of the right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel shall be appointed by the court... [§ 211.462.]<sup>4</sup> Court costs shall be paid by the county in which the proceeding is instituted, except that the court may require the agency or person having or receiving legal or actual custody to pay the costs.”

*Id.* § 453.030.12: In adoption proceedings, “the court may appoint an attorney to represent a birth parent if: (1) A birth parent requests representation; (2) The court finds that hiring an attorney to represent such birth parent would cause a financial hardship for the birth parent; and (3) The birth parent is not already represented by counsel.”

**Montana:** MONT. CODE ANN. § 41-3-425(2): “[T]he court shall immediately appoint or have counsel assigned for: (a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding ...; (b) any child, youth, or guardian ad litem involved in a[n abuse or neglect] proceeding; and (c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.”

**Nebraska:** NEB. REV. STAT. § 43-279.01(1): “When the petition alleges the juvenile to be within the provisions of subdivision (3)(a) of section 43-247 [neglect, lack of support, abandonment] or when termination of parental rights is sought ... and the parent or custodian appears with or without counsel, the court shall inform the parties of the ... [r]ight to ... have counsel appointed if unable to afford to hire a lawyer....”

**Nevada:** NEV. REV. STAT. § 128.100: “In any proceeding

for terminating parental rights, or any rehearing or appeal thereon, the court may appoint an attorney to represent the child as his counsel.... If the parent or parents of the child desire to be represented by counsel, but are indigent, the court may appoint an attorney for them.... Each attorney appointed under the provisions of this section is entitled to the same compensation and expenses from the county as provided ... for attorneys appointed to represent persons charged with crimes.”

*Id.* § 432B.420: “1. A parent or other person responsible for the welfare of a child who is alleged to have abused or neglected the child may be represented by an attorney at all stages of any [abuse or neglect] proceedings.... Except as otherwise provided in subsection 2, if the person is indigent, the court may appoint an attorney to represent him. The court may, if it finds it appropriate, appoint an attorney to represent the child. 2. If the court determines that the parent of an Indian child for whom protective custody is sought is indigent, the court: (a) Shall appoint an attorney to represent the parent; (b) May appoint an attorney to represent the Indian child; and (c) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney, as provided in the Indian Child Welfare Act. 3. Clearinghouse REVIEW Journal of Poverty Law and Policy n July–August 2006 257

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Each attorney, other than a public defender, if appointed under the provisions of subsection 1, is entitled to the same compensation and payment for expenses from the county....

**New Hampshire:** N.H. REV. STAT. ANN. § 169-C:10.II(a):  
“In cases involving a neglected or abused child under this chapter, where the child’s expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child. In any case of neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused his or her child. In addition, the court may appoint an attorney to represent an indigent parent not alleged to have neglected or abused his or her child if the parent is a household member and such independent legal representation is necessary to protect the parent’s interests. The court shall not appoint an attorney to represent any other persons involved in a case brought under this chapter.”

**Authors’ Note:** The court ruled the provision barring appointment of counsel for stepparents unconstitutional. *In re Shelby R.*, 804 A.2d 435 (N.H. 2002).  
N.H. REV. STAT. ANN. § 170-C:10: In termination-of-parental-rights proceedings, the court must notify the parent of his or her right to counsel and, if requested, “shall” appoint counsel for an indigent parent.

**New Mexico:** N.M. STAT. ANN. § 32A-4-10. B (West):  
“At the inception of an abuse or neglect proceeding, counsel shall be appointed for the parent, guardian or custodian of the child. The appointed counsel shall represent the parent, guardian or custodian who is named as a party until an indigency determination is made at the custody hearing. Counsel shall also be appointed if, in the court’s discretion, appointment of counsel is

required in the interest of justice.”

**North Carolina:** N.C. GEN. STAT. ANN. § 7A-451(a)(12), (14), (15) (West): “An indigent person is entitled to services of counsel in ... the case of a juvenile alleged to be abused, neglected, or dependent ...; [a] proceeding to terminate parental rights where a guardian ad litem is appointed; [and an] action brought ... to terminate an indigent person’s parental rights [based on abuse, neglect, or dependency].”

*Id.* § 7B-602(a): “In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. When a petition is filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall appoint provisional counsel for each parent named in the petition and indicate the appointment on the juvenile summons or attached notice. At the first hearing, the court shall dismiss the provisional counsel if the respondent parent: (1) Does not appear at the hearing; (2) Does not qualify for court-appointed counsel; (3) Has retained counsel; or (4) Waives the right to counsel.”

*Id.* § 7B-1101.1(a): In termination-of-parental-rights proceedings, “[t]he parent has the right to counsel, and to appointed counsel in cases of indigency.... The fees of appointed counsel shall be borne by the Office of Indigent Defense Services.”

**North Dakota:** N.D. CENT. CODE § 27-20-26: “1. Except as otherwise provided under this chapter, a party is entitled to representation by legal counsel at custodial, postpetition, and informal adjustment stages of proceedings under this chapter [the Uniform Juvenile Court Act, covering delinquent, deprived, and unruly children, and terminations of parental rights] and, if as a needy person the party is unable to employ counsel, to have the court provide counsel for the party.”

*Id.* § 27-20-45(5): “If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights ..., that parent is entitled ... to legal counsel during all stages of a proceeding to terminate the parent and child relationship.”

**Ohio:** OHIO REV. CODE ANN. § 2151.352 (West): “If, as an indigent person, a party is unable to employ counsel [in a matter under the Juvenile Code], the party is entitled to have counsel provided for the person” except in a number of specified proceedings (including applications for consent to marry and child support orders not ancillary to action for divorce).

**Oklahoma:** OKLA. STAT. ANN. tit. 10, § 24 (West): In dependency, neglect, and termination-of-parental-rights proceedings, “A. 1. When it appears to the court that a minor or the minor’s parent or legal guardian desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. 2. In any case in which it appears to the court that there is a conflict of interest between a parent or legal guardian and a child so that one attorney could not properly represent both, the court may appoint counsel, in addition to counsel already employed by a parent or guardian or appointed by the court to represent the minor or parent or legal guardian; provided, that in all counties having

county indigent defenders, the county indigent defenders assume the duties of representation in proceedings such as above. 3. In no case shall the court appoint counsel to represent a grandparent or other relative of a minor, unless the grandparent or other relative is the duly appointed legal guardian of the minor or the court finds: a. that the grandparent or other relative is functioning as the guardian or relative custodian of the minor ... or b. that the appointment of counsel for the grandparent or other relative is in the best interests of the child.”

*Id.* tit. 10, § 7003-3.7: In deprivation proceedings and cases in which termination of parental rights is a possible remedy, “[i]f the parents, legal guardian or custodian of the child requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the court ... provided that the court may appoint counsel without such request, if it deems representation by counsel necessary to protect the interest of the parents, legal guardian or custodian.... [T]he court shall appoint a separate attorney [for the child].... The attorney shall be allowed a reasonable fee for such services....”

*Id.* § 7505-1.2: In contested adoptions, “A. 1. In a proceeding pursuant to the Oklahoma Adoption Code, the court shall appoint an attorney for a minor in a contested proceeding pursuant to the Oklahoma Adoption Code and may appoint an attorney for a child in an uncontested proceeding.... 4. Upon approval of the court, the attorney may be allowed a reasonable fee for services provided by this section.”

*Id.* tit. 10, § 7505-2.1C: In private petitions for termination of parental rights, “[w]hen a putative father appears at the hearing and desires counsel but is indigent and cannot for that reason employ counsel, the court shall appoint counsel. In all counties having county indigent defenders, the county indigent defenders shall assume the duties of the representation in such proceedings.”

**Oregon:** OR. REV. STAT. § 419B.195: In dependency proceedings, “[i]f the child, ward, parent or guardian requests counsel for the child or ward but is without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court may appoint suitable counsel to represent the child or ward at state expense if the child or ward is determined to be financially eligible.... Whenever requested to do so, the court shall appoint counsel to represent the child or ward in a case filed [in the Juvenile Court]....”

*Id.* § 419B.205(1): In dependency proceedings, “[c]ounsel shall be appointed for the parent or legal guardian whenever the nature of the proceedings and due process so require, and when the parent or legal guardian has been determined by the court to be [financially] eligible.... In deciding whether to appoint counsel under this section, the court shall consider the following factors: (a) The duration and degree of invasiveness of the interference with the parent-child relationship that possibly could result from the proceeding; (b) The complexity

of the issues and evidence; (c) The nature of allegations and evidence contested by the parent or legal guardian; and (d) The effect the facts found or the disposition in the proceeding may have on later proceedings or events, including but not limited to termination of parental rights or criminal proceedings.”

*Id.* § 419B.518: In termination-of-parental-rights proceedings, “[i]f the parents are determined to be financially eligible, and request the assistance of appointed counsel, the court shall appoint an attorney to represent them at state expense.”

**Pennsylvania:** 23 PA. CONS. STAT. ANN. § 2313 (West): In adoptions, “(a) Child.—The court shall appoint counsel to represent the child in an involuntary termination proceeding when the proceeding is being contested by one or both of the parents. The court may appoint counsel ... to represent any child who has not reached the age of 18 years and is subject to any other proceeding under this part whenever it is in the best interests of the child.... (a.1) Parent.—The court shall appoint counsel for a parent whose rights are subject to termination in an involuntary termination proceeding if, upon petition of the parent, the court determines that the parent is unable to pay for counsel or if payment would result in substantial financial hardship.”

42 PA. CONS. STAT. § 6337 (West): “[A] party is entitled to representation by legal counsel at all stages of any proceedings under this chapter [delinquency and dependency proceedings] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him.”

**Rhode Island:** R.I. GEN. LAWS § 40-11-7.1(b)(4): Upon the filing of an ex parte abuse or neglect petition, the court shall “[a]ppoint an attorney to represent the parent or parents or any other person having care of the child alleged to have abused or neglected a child when the parent or custodian is unable to afford representation, as determined by the court.”

**South Carolina:** S.C. CODE ANN. § 20-7-110: “In all child abuse and neglect proceedings: (1) Children must be appointed legal counsel and a guardian ad litem by the family court.... (2) Parents, guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court.”

*Id.* § 20-7-1570: “(A) Parents, guardians, or other persons subject to a termination of parental rights action are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court, unless the defendant is in default.

(B) ... If a guardian ad litem who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian ad litem is an attorney, the judge must determine on a case-by-case basis whether counsel is required for the guardian ad litem. However, counsel must be appointed for a guardian ad litem who is not an attorney in any case that is contested.”

*Id.* § 20-7-1695(A)(2): In an adoption proceeding, a court determining whether to waive the consent or relinquishment requirement for a parent mentally incapable

of giving consent or relinquishment “shall appoint a guardian ad litem for an incompetent parent for whom there has been no prior appointment and shall appoint independent counsel for an incompetent parent who is indigent. However, upon good cause shown, the court may waive the requirement for the appointment of independent counsel for an incompetent and indigent parent.”

**South Dakota:** S.D. CODIFIED LAWS § 26-7A-31: “If the child or the child’s parents, guardian, or other custodian requests an attorney in [abuse or neglect] proceedings ... and if the court finds the party to be without sufficient financial means to employ an attorney, the court shall appoint an attorney for the party. The court may  
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appoint an attorney for any child or any party to the proceedings without request of the party if the court deems representation by an attorney necessary to protect the interests of the party.”

*Id.*: The county is responsible for compensating courtappointed attorneys.

**Tennessee:** TENN. R. JUV. P. § 39-(f)(2): “At the beginning of [a termination-of-parental-rights] hearing, any party who appears without an attorney shall be informed of the right to an attorney, and in the case of an indigent respondent, the court shall consider the facts and circumstances alleged and make a determination as to whether an attorney should be appointed.”

**Texas:** TEX. FAM. CODE ANN. § 107.013 (Vernon): “(a) In a suit filed by a governmental entity in which termination of the parent-child relationship is requested, the court shall appoint an attorney ad litem to represent the interests of: (1) an indigent parent of the child who responds in opposition to the termination; (2) a parent served by citation by publication; (3) an alleged father who failed to register with the registry ... and whose identity or location is unknown; and (4) an alleged father who registered with the paternity registry ..., but the petitioner’s attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.... (c) In a suit filed by a governmental entity requesting temporary managing conservatorship of a child, the court shall appoint an attorney ad litem to represent the interests of an indigent parent of the child who responds in opposition to the suit.”

*Id.* § 107.012: “In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child....”

*Id.* § 107.021: “(a) In a suit in which the best interests of a child are at issue, other than a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, the court may appoint ... an attorney ad litem.... (a-1) In a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, the court shall, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with

the child's interests, appoint one of the following: (1) an amicus attorney; or (2) an attorney ad litem. (b) In determining whether to make an appointment under this section, the court: (1) shall: (A) give due consideration to the ability of the parties to pay reasonable fees to the appointee; and (B) balance the child's interests against the cost to the parties that would result from an appointment by taking into consideration the cost of available alternatives for resolving issues without making an appointment; (2) may make an appointment only if the court finds that the appointment is necessary to ensure the determination of the best interests of the child, unless the appointment is otherwise required by this code; and (3) may not require a person appointed under this section to serve without reasonable compensation for the services rendered by the person."

**Utah:** UTAH CODE. ANN. § 78-3a-913 (West): "(1)(a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the [abuse, neglect, and termination-of-parental-rights] proceedings.... [I]f any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court...."

**Vermont:** VT. STAT. ANN. tit. 15A, § 3-201: "(a) In a proceeding under [the Adoption Act] which may result in the termination of a relationship of parent and child, the court shall appoint an attorney for any indigent, minor, or incompetent person who appears in the proceeding and whose parental relationship to a child may be terminated, unless the court finds that the minor or incompetent person has sufficient financial means to hire an attorney, or the indigent person declines to be represented by an attorney."

*Id.* tit. 33, § 5525: "(a) The juvenile court, at any stage of a [child-in-need-of-supervision] proceeding, on application of a party or on its own motion, shall appoint a guardian ad litem or counsel for a child who is a party to the proceeding, if he has no parent or guardian or custodian appearing on his behalf or their interests conflict with those of the child, or in any other case where the court believes the interests of the child require such guardian or counsel."

**Virginia:** VA. CODE ANN. § 16.1-266 (West): "A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect.... If the court determines that the parent, guardian or other adult is indigent ... the court shall appoint an attorney-at-law to represent him.... In all other cases which in the discretion of the court require counsel or a guardian ad litem, or both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law may be appointed by the court."

**Washington:** WASH. REV. CODE ANN. § 13.32A.160 (West): Upon filing of a child-in-need-of-services petition, the court must: "(b) notify the parent of the right to be represented by counsel and, if indigent, to have counsel appointed for him or her by the court; (c) appoint legal counsel for the child."

*Id.* § 13.34.090(2): "At all stages of a proceeding in

which a child is alleged to be dependent, the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court."

**West Virginia:** W. VA. CODE § 49-2-16: In proceedings concerning the voluntary placement of a child in state care, "[t]he court shall appoint an attorney for the child...."

*Id.* § 49-6-2: In abuse or neglect proceedings, "the child, his or her or parents and his or her legally established  
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custodian or other persons standing in loco parentis to him or her ... shall be informed by the court ... that if they cannot pay for the services of counsel, that counsel will be appointed.... The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases. Any attorney appointed pursuant to this section shall ... receive a minimum of three hours of continuing legal education training on representation of children, child abuse and neglect: *Provided, however,* That where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the child."

**Wisconsin:** WIS. STAT. ANN. § 48.23 (West): "(1m)(b)1. If a child is alleged to be in need of protection or services ..., the child may be represented by counsel at the discretion of the court.... 2. If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the factfinding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.... (2) ... Whenever a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel.... If a proceeding involves a contested adoption or the involuntary termination of parental rights, any parent 18 years old or older who appears before the court shall be represented by counsel.... (2m) ... (a) When an unborn child is alleged to be in need of protection or services ..., the expectant mother of the unborn child, if the expectant mother is a child, shall be represented by counsel.... (3) Except in [certain proceedings regarding children alleged to be in need of protection or services], at any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. The court may not appoint counsel for any party other than the child in [such] a proceeding.... (4) ... In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly and voluntarily waived, the court shall refer the child to the state public defender and counsel shall be appointed by the state

public defender ... without a determination of indigency....  
In any situation under sub. (2) or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer the parent or adult expectant mother to the authority for indigency determinations.... In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition [for a child abuse restraining order or harassment restraining order] to reimburse counsel for the child who is named as the respondent in that petition."

**Authors' Note:** The prohibition in WIS. STAT. § 48.23(3) against appointing counsel for a party other than the child has been ruled unconstitutional. See *Joni B. v. Wisconsin*, 549 N.W.2d 411 (Wisc. 1996) (Clearinghouse No. 51,376).

**Wyoming:** WYO. STAT. ANN. § 14-3-211: In abuse and neglect proceedings, "[t]he court shall appoint counsel to represent any child.... The court may appoint counsel for any party when necessary in the interest of justice."  
*Id.* § 14-2-318: In termination-of-parental-rights proceedings, "[t]he court may appoint counsel for any party who is indigent."

### **3. Divorce, Child Custody, Visitation, Child Support, Paternity**

**Alaska:** ALASKA STAT. § 25.24.310(a): "In an action involving a question of the custody, support, or visitation of a child, the court may, upon the motion of a party to the action or upon its own motion, appoint an attorney or the office of public advocacy to represent a minor with respect to the custody, support, and visitation of the minor or in any other legal proceeding involving the minor's welfare or to represent an unmarried 18-year-old child with respect to post-majority support while the child is actively pursuing a high school diploma or an equivalent level of technical or vocational training and living as a dependent with a parent or guardian or a designee of the parent or guardian."

*Id.* § 44.21.410: "(a) The office of public advocacy shall ... (4) provide legal representation ... to indigent parties in cases involving child custody in which the opposing party is represented by counsel provided by a public agency...." See also ALASKA R. CT. ADMIN. 12 (setting forth procedure for appointment of counsel at public expense).

**Arizona:** ARIZ. REV. STAT. ANN. § 25-321: "The court may appoint an attorney to represent the interests of a minor or dependent child with respect to the child's support, custody and parenting time. The court may enter an order for costs, fees and disbursements in favor of the child's attorney. The order may be made against either or both parents."

**California:** CAL. FAM. CODE § 3150(a) (West): "If the court determines that it would be in the best interest of

the minor child, the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding." See also *id.* § 3151(a) (setting out attorney's duties).

**Connecticut:** CONN. SUPER. CT. P. FAM. MATTERS R. 25-68(a): "A putative father named in a state initiated paternity action shall be advised by the judicial authority of his right to be represented by counsel and his right Clearinghouse REVIEW Journal of Poverty Law and Policy n July–August 2006 261  
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**Delaware:** DEL. CODE ANN. tit. 13, § 1516(c): In divorce and annulment proceedings, "[w]henver it seems appropriate, in the interest of justice, the Court may designate a disinterested attorney to defend, or otherwise participate in, a proceeding before the Court, and a fee for such attorney shall be taxed as part of the costs."

**District of Columbia:** D.C. CODE § 16-914(g): In proceedings between parents regarding custody, "[t]he Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child's interests."

*Id.* § 16-918: "(a) In all cases [involving divorce, annulment, and separation], where the court deems it necessary or proper, a disinterested attorney may be appointed by the court to enter his appearance for the defendant and actively defend the cause. (b) In any proceeding wherein the custody of a child is in question, the court may appoint a disinterested attorney to appear on behalf of the child and represent his best interests. (c) An attorney appointed under this section may receive such compensation for his services as the court determines to be proper, which the court may order to be paid by either or both of the parties."

**Kansas:** KAN STAT. ANN. § 38-1125: The petitioner in a paternity proceeding may seek representation from the county trustee, the county social services department, or the county attorney. The court may appoint a guardian ad litem for the child and shall appoint counsel for any other party to a paternity action "who is financially unable to obtain counsel."

**Louisiana:** LA. REV. STAT. ANN. § 9:345: "A. In any child custody or visitation proceeding, the court, upon its own motion, upon motion of any parent or party, or upon motion of the child, may appoint an attorney to represent the child if, after a contradictory hearing, the court determines such appointment would be in the best interest of the child. In determining the best interest of the child, the court shall consider: (1) Whether the child custody or visitation proceeding is exceptionally intense or protracted. (2) Whether an attorney representing the child could provide the court with significant information not otherwise readily available or likely to be presented to the court. (3) Whether there exists a possibility that neither parent is capable of providing an adequate and stable environment for the child. (4) Whether the interests of the child and those of either parent, or of another party to the proceeding, conflict. (5) Any other factor relevant in determining the best interest of the child. B. The court shall appoint an attorney

to represent the child if, in the contradictory hearing, any party presents a prima facie case that a parent or other person caring for the child has sexually, physically, or emotionally abused the child or knew or should have known that the child was being abused.... F. Any costs associated with the appointment of an attorney at law shall be apportioned among the parties as the court deems just, taking into consideration the parties' ability to pay. When the parties' ability to pay is limited, the court shall attempt to secure proper representation without compensation."

**Maryland:** MD. CODE ANN., FAM. LAW § 1-202 (West): "In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court may: (1) appoint to represent the minor child counsel who may not represent any party to the action; and (2) impose against either or both parents counsel fees."

**Massachusetts:** MASS. GEN. LAWS ANN. ch. 209C, § 7 (West): "In [paternity] actions in which custody or visitation [is] contested, court may appoint counsel to represent either party whenever the interests of justice require."

**Michigan:** MICH. COMP. LAWS ANN. § 722.714(4) (West): In parentage actions, "[i]f the county family independence agency of the county in which the mother or alleged father resides first determines that she or he has physical possession of the child and is eligible for public assistance or without means to employ an attorney; if the family independence agency is the complainant; or if the mother, alleged father, or child is receiving services under part D of title IV of the social security act, ... then the prosecuting attorney or an attorney employed by the county ... shall initiate and conduct proceedings under this act."

**Montana:** MONT. CODE ANN. § 40-6-119 (Uniform Parentage Act): "The court shall order the office of state public defender ... to assign counsel for a party who is financially unable to obtain counsel.... The court may order reasonable fees of counsel ... to be paid by the parties in proportions and at times determined by the court."

**Nevada:** NEV. REV. STAT. §126.201.1: "If a party is financially unable to obtain counsel, the court may appoint counsel to represent that party with respect to the determination of the existence or nonexistence of the parent and child relationship and the duty of support...."

**North Carolina:** N.C. GEN. STAT. ANN. § 50-13.9 (e), (f) (West): "The judge shall appoint an attorney [who has volunteered to represent parties in child support proceedings] to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid...."

**Authors' Note:** These sections are scheduled to be repealed as of July 1, 2007.

**Oklahoma:** OKLA. STAT. ANN. tit. 10, § 24 (West): "When it appears to the court that a minor or the minor's parent or legal guardian desires counsel [in a paternity proceeding] but is indigent and cannot for that reason employ counsel, the court shall appoint counsel." The court may appoint counsel for the juvenile's grandparent or other relative if the grandparent or relative is the minor's guardian or if the appointment of counsel for the grandparent or relative is "in the best interests of the child."

*Id.*: The county indigent defender assumes the duty of

representing the party for whom the court has appointed counsel.

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**Oregon:** OR. REV. STAT. § 107.425(6): In suits regarding domestic relations, custody or support of an out-of-wedlock child, paternity, or a petition by a person with an emotional tie to a child for intervention in a child custody, placement, or guardianship proceeding, “[t]he court, on its own motion or on the motion of a party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for public defense services.”

**Texas:** TEX. R. CIV. P. 308a: The court may appoint an attorney to represent a person claiming violation of an order “for child support or possession of or access to a child.”

*Id.*: “Except by order of the court, no fee shall be charged by or paid to the attorney representing the claimant. If the court determines that an attorney’s fee should be paid, the fee shall be adjudged against the party who violated the court’s order.”

**Vermont:** VT. STAT. ANN. tit. 15, § 594: In annulment and divorce proceedings, “(a) The court may appoint an attorney to represent the interest of a minor or dependent child with respect to child support and the allocation of parental rights and responsibilities. (b) The court shall appoint an attorney for a minor child before the minor child is called as a witness in a [divorce or annulment] proceeding...”

**Washington:** WASH. REV. CODE ANN. § 74.20.350 (West): “The secretary of social and health services may pay the reasonable and proper fees of attorneys admitted to practice before the courts of this state, who are engaged in private practice for the purpose of maintaining actions under [the Uniform Parentage Act] on behalf of such children, to the end that parent and child relationships be determined and financial support obligations be established by superior court order. The secretary or the secretary’s designee shall make the determination in each case as to which cases shall be referred for representation by such private attorneys. The secretary may advance, pay, or reimburse for payment of, such reasonable costs as may be attendant to an action under [the Uniform Parentage Act].”

**West Virginia:** W.VA. CODE § 48-9-302: In domestic relations proceedings regarding child custody, “(b) In its discretion, the court may appoint a lawyer to represent the child, if the child is competent to direct the terms of the representation and court has a reasonable basis for finding that the appointment would be helpful in resolving the issues of the case.... (c) When substantial allegations of domestic abuse have been made, the court shall order an investigation ... or [appoint a guardian ad litem or attorney for the child] unless the court is satisfied that the information necessary to evaluate the allegations will be adequately presented to the court without such order or appointment.”

**Authors’ Note:** A provision bars the appointment of

counsel at the state's expense for parents in paternity proceedings. *Id.* § 48-24-105.

**Wisconsin:** WIS. STAT. ANN. § 767.52 (West): "(1) At the pretrial hearing, at the trial and in any further proceedings in any paternity action, any party may be represented by counsel. If the respondent is indigent and the state is the petitioner, ... the petitioner is represented by a government attorney ... or the action is commenced on behalf of the child by an attorney appointed under § 767.045(1)(c), counsel shall be appointed for the respondent.... (2) An attorney appointed under sub. (1) who is appearing on behalf of a party in a paternity action shall represent that party, subject to the limitations under sub. (2m), in all issues and proceedings relating to the paternity determination. The appointed attorney may not represent the party in any proceeding relating to child support, legal custody, periods of physical placement or related issues. (2m) Representation by an attorney appointed under sub. (1) shall be provided only after the results of any genetic tests have been completed and only if all of the results fail to show that the alleged father is excluded and fail to give rise to the rebuttable presumption ... that the alleged father is the father of the child."

### **C. Adult Protective Services or Guardianship, Removal of Legal Rights**

**Alabama:** ALA. CODE § 26-2A-135: "Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, ... [u]nless the person to be protected has chosen counsel, the court shall appoint an attorney to represent the person who may be granted the powers and duties of a guardian ad litem."

**Alaska:** ALASKA STAT. § 13.26.106(b): "The respondent [in a guardianship proceeding regarding an incapacitated adult] is entitled to be represented by an attorney in the proceedings. If the respondent is financially unable to employ an attorney, the court shall appoint the office of public advocacy ... to represent the respondent in the proceedings."

*Id.* § 13.26.195(b): "Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, ... [u]nless the person to be protected has counsel of the person's own choice, the court must appoint a lawyer to represent the person."

**Arizona:** ARIZ. REV. STAT. ANN. § 14-5310.C: "Unless the proposed ward is represented by independent counsel, the court shall appoint an attorney to represent the proposed ward in the [guardianship] proceeding on receipt of the petition for temporary appointment." See also *id.* §§ 14-5312.02.B (guaranteeing right to counsel in conversion-of-guardianship proceedings), 14-5401.01 (guaranteeing right to counsel in conservatorship proceedings), 14-5407 (guaranteeing right to counsel in proceedings concerning appointment of conservator or other protective order because of minority).

**Colorado:** COLO. REV. STAT. § 15-14-305: "(2) The court shall appoint a lawyer to represent the respondent in the [guardianship] proceeding if: (a) Requested by the respondent; (b) Recommended by the visitor; or (c) The Clearinghouse REVIEW Journal of Poverty Law and Policy n July–August 2006 263  
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court determines that the respondent needs representation....

(3)(d) ... all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate unless the court directs otherwise." See also *id.* § 15-14-406 (same for petition for a conservatorship or other protective order for a respondent for reasons other than being a minor).

*Id.* § 27-10.5-110(5)(a): "When a petition is filed [to impose a legal disability on or to remove a legal right from a person with a developmental disability], the person subject to the petition shall be advised by the court ... that if such person cannot afford to pay an attorney, one will be appointed by the court without cost. Attorney fees for court-appointed counsel shall be paid by the court."

*Id.* § 27-10-125(4)(a): "Upon the filing of a petition [to obtain a determination as to the imposition of a legal disability or the deprivation of a legal right for any person who is mentally ill and a danger to himself or others, is gravely disabled, or is insane], the court shall appoint an attorney-at-law to represent the respondent. The respondent may replace said attorney with an attorney of the respondent's own selection at any time. Attorney fees for an indigent respondent shall be paid by the court."

**Delaware:** DEL. CODE ANN. tit. 31, § 3909: "The infirm person has the right to counsel [at a hearing on a petition for involuntary protective services].... If the person is indigent or lacks the capacity to waive counsel, the Court shall appoint counsel. Where the person is indigent, the Court shall assess reasonable attorney's fees, such as are customarily charged by attorneys in this State for comparable services. To the extent that funding for this purpose is budgeted and available, such funds shall be drawn from the budget for adult protective services upon an order directing payment signed by the Court."

**Hawaii:** HAW. REV. STAT. § 346-234(a): "The court shall appoint counsel for the dependent adult at any time where it finds that the dependent adult requires a separate legal advocate [other than a guardian ad litem] and is unable to afford private counsel."

**Indiana:** IND. CODE § 12-10-3-22: "At a hearing at which a court determines whether an endangered adult should be required to receive protective services, the endangered adult is entitled to ... have the court appoint counsel for the endangered adult if the court determines the endangered adult is indigent."

**Louisiana:** LA. REV. STAT. ANN. § 46:431: In a proceeding to have a curator appointed for the purpose of applying for public assistance for a mentally incompetent person unable to apply because of his incompetency, "the court, if it deems it necessary or desirable, may appoint special counsel and the person so appointed shall be entitled to a fee of \$10.00 in an uncontested case and \$25.00 in a contested case, the fee to be taxed as costs against the person initiating the proceedings."

**Maryland:** MD. CODE ANN., EST. & TRUSTS § 13-211(b) (West): In a proceeding on a petition to appoint a guardian of the property of a minor or disabled person, "the court shall appoint an attorney to represent him in the proceeding."

*Id.*, EST. & TRUSTS § 13-705: In a proceeding on a petition to appoint a guardian of the person of a disabled person, “the court shall appoint an attorney to represent him in the proceeding. If the person is indigent, the State shall pay a reasonable attorney’s fee.”

*Id.*, FAM. LAW § 14-404(c): At a hearing before a review board regarding a guardianship held by the government, “[t]he disabled individual shall ... be represented ... by ... a lawyer who is appointed by the court.”

**Massachusetts:** MASS. GEN. LAWS ANN. ch. 19C, § 7(a) (West): On a petition for a finding that a disabled person lacks the capacity to consent to the provision of protective services, if the person is indigent “the court shall appoint counsel” for him.

**Missouri:** MO. ANN. STAT. § 475.062 (West): Requires the court to appoint an attorney for an alleged disabled person on a petition for appointment of a conservator of the person’s estate.

**New Hampshire:** N.H. REV. STAT. ANN. § 464-A:6: “If the proposed ward [for whom a temporary guardian or guardianship of the person and estate, or person, or estate, is sought] does not have his or her own counsel, the court shall appoint counsel for the proposed ward immediately upon the filing of a petition for guardianship of the person and estate, or the person, or estate.”

**North Carolina:** N.C. GEN. STAT. ANN. § 7A-451(a)(11), (13) (West): “An indigent person is entitled to services of counsel in ... [a] proceeding for the provision of protective services [of an abused, neglected, or exploited adult and a] proceeding to find a person incompetent.”

**Rhode Island:** R.I. GEN. LAWS § 33-15-7: On a petition for appointment of a guardian for an adult, “(d) If the respondent wishes to contest the petition, to have limits placed on the guardian’s powers, or to object to a particular person being appointed guardian, and, if legal counsel has not been secured, the court shall appoint legal counsel. If the respondent is indigent, the state shall bear the expense of legal counsel. (e) If the respondent requests legal counsel, or if the guardian ad litem determines it is in the best interest of the respondent to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the respondent is indigent, the state shall bear the expense of legal counsel.”

**South Carolina:** S.C. CODE ANN. § 43-35-45(C): “Within ten days following the filing of a petition [for adult protective services] ... the court must appoint a guardian ad litem and an attorney for the vulnerable adult...”

**Tennessee:** TENN. CODE ANN. § 76-6-107: In an adult protective-services proceeding, “[i]f the adult is indigent ... then the court shall appoint counsel.”

**Vermont:** VT. STAT. ANN. tit. 14, § 3065: “(a) Counsel shall be appointed for the respondent in initial proceedings relating to an involuntary guardianship up to and  
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**State Statutes Providing for a Right to Counsel in Civil Cases** including the appointment of a guardian ... or dismissal of the petition.... (c) ... For indigent respondents, the court shall maintain a list of pro bono counsel from the private bar to be used before appointing nonprofit legal services organizations to serve as counsel.”

*Id.* tit. 18, § 9308: “Upon the filing of the petition [for guardianship services for a person with a mental disability],

the court shall appoint counsel for the respondent...  
Compensation shall be paid by the department  
to counsel assigned by the court, any rule or law to the  
contrary notwithstanding.”

**West Virginia:** W. VA. CODE § 44A-2-7(a): In a guardianship  
or conservatorship proceeding, “[t]he court shall  
appoint legal counsel for the alleged protected person.

**D. Involuntary Commitment and Quarantine**

**Alabama:** ALA. CODE § 22-52-5: On a petition for commitment  
of a mentally ill person, “[t]he probate judge  
shall appoint an attorney to serve as the advocate in  
support of the petition to commit in all matters regarding  
a petition to commit.”

**Alaska:** ALASKA STAT. § 18.85.100: “(a) An indigent person  
who is ... isolated, quarantined, or required to be  
tested [for a condition of public health importance], or  
against whom commitment proceedings for mental illness  
have been initiated, is entitled (1) to be represented,  
in connection with the crime or proceeding, by an  
attorney to the same extent as a person retaining an  
attorney is entitled; and (2) to be provided with the necessary  
services and facilities of this representation,  
including investigation and other preparation. (b)  
Subject to the provisions of AS 18.85.155 [requiring  
municipalities to pay for costs of attorney but allowing  
court to order defendant to pay costs “to the extent that  
the defendant is able to do so”], the attorney services  
and facilities and the court costs shall be provided at  
public expense to the extent that the person, at the time  
the court determines indigency, is unable to provide for  
payment without undue hardship.”

*Id.* § 47.30.700(a): Upon finding probable cause that a  
mentally ill person is a danger to himself or others,  
“[t]he court shall provide findings on which the conclusion  
is based, appoint an attorney to represent the  
respondent...”

*Id.* § 47.37.200(f): At a hearing on a petition for the  
commitment of a person alleged to be dangerous or  
incapacitated by reason of drug or alcohol intoxication,  
“[t]he court shall inform the person whose commitment  
or recommitment is sought of the right ... to have counsel  
appointed by the court or provided by the court, if  
the person is unable to obtain counsel...”

**Arizona:** ARIZ. REV. STAT. ANN. § 36-529: In a proceeding  
for commitment of a person with a mental disorder,  
“[t]he court shall promptly appoint counsel for the proposed  
patient.”

**Arkansas:** ARK. CODE ANN. § 20-47-212 (West): “(a) If it  
appears to the court that the person sought to be involuntarily  
admitted [to a mental health facility because of  
mental illness] is in need of counsel, counsel shall be  
appointed immediately upon filing of the original petition.

(b)(1) Whenever legal counsel is appointed by the  
court, the court shall determine the amount of the fee,  
if any, to be paid the attorney so appointed and issue an  
order for payment. (2) The amount allowed shall not  
exceed one hundred fifty dollars (\$150) based upon the  
time and effort of the attorney in the investigation,  
preparation, and representation of the client at the court  
hearings. (3) The court shall have the authority to  
appoint counsel on a pro bono basis.” See also *id.* § 20-  
64-820 (same for commitment of alcohol or drug

dependents).

**Colorado:** COLO. REV. STAT. § 25-1-310(6): “Whenever a person is involuntarily detained [because he is intoxicated or incapacitated by alcohol and clearly dangerous to the health and safety of himself or others], he shall immediately be advised ... of his right ... to have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel.”

*Id.* § 25-1-311(10): “The court shall inform the person whose commitment or recommitment is sought [on the grounds that the person is an alcoholic and that he has threatened or attempted to inflict or inflicted physical harm on himself or on another] of his right ... to have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel.”

*Id.* § 25-1-1106(6): “Whenever a person is involuntarily detained [because he is under the influence of or incapacitated by drugs and clearly dangerous to the health and safety of himself or others], he shall be advised within twenty-four hours ... of his right ... to have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel.”

*Id.* § 25-1-1107(11): “The court shall inform the person whose commitment or recommitment is sought [on the grounds that the person is a drug abuser and that he has threatened or attempted to inflict or inflicted physical harm on himself or on another and that unless committed he is likely to inflict physical harm on himself or on another or that he is incapacitated by drugs] of his right ... to have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel.”

*Id.* § 27-10-106(10): “Whenever a person is involuntarily admitted to a seventy-two-hour treatment and evaluation facility [on the grounds that that the respondent is mentally ill and, as a result of such mental illness, is a danger to others or to himself or is gravely disabled], he shall be advised ... that if he cannot afford to pay an attorney, upon proof of indigency, one will be appointed by the court without cost.”

**Authors’ Note:** A variety of other statutes provide for counsel at subsequent stages of a civil commitment proceeding.

See *id.* §§ 27-10-107, 27-10-108, 27-10-111.

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**State Statutes Providing for a Right to Counsel in Civil Cases**

**Connecticut:** CONN. GEN. STAT. § 17a-498(b): “If the court finds [a] respondent [in a hearing on an application for commitment of a person with a psychiatric disability] is indigent or otherwise unable to pay for counsel, the court shall appoint counsel for such respondent.... If the respondent does not select counsel or if counsel selected by the respondent refuses to represent such respondent or is not available for such representation, the court shall appoint counsel for the respondent from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator in accordance with regulations promulgated by the Probate Court Administrator.... The reasonable compensation of appointed counsel shall be

established by, and paid from funds appropriated to, the Judicial Department[;] however, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.” See also *id.* § 17a-510 (regarding release or transfer of person from commitment). *Id.* § 17a-685(c): At a hearing on a petition for commitment of a person to an inpatient treatment facility for treatment of alcohol or drug dependency, the person must receive “notice that he or she has a right to be present at the hearing, that he or she has the right to counsel and, if indigent, to have counsel appointed to represent him or her....”

*Id.* § 19a-131b(g): “If the court finds [a] respondent [in a hearing on a quarantine order] is indigent or otherwise unable to pay for or obtain counsel, the court shall appoint counsel for such respondent.... If the respondent does not select counsel or if counsel selected by the respondent refuses to represent the respondent or is not available for such representation, the court shall appoint counsel for the respondent from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator. If the order of quarantine or isolation applies to individuals present in a described geographic area, the court may appoint one or more attorneys to represent all the individuals present in the described geographic area where there is a commonality of interests of such individuals, except that an individual may choose to be represented by his or her own attorney on an individual basis. The reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, but, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund.” See also *id.* §§ 19a-221(f) (guaranteeing right to counsel for subject of municipal quarantine order); 19a-265 (guaranteeing right to counsel for subject of emergency commitment of person with active tuberculosis).

**Delaware:** DEL. CODE ANN. tit. 16, § 2214: “Upon the filing of a petition [under the Substance Abuse Treatment Act] the court shall promptly: (1) Schedule a hearing to determine based on clear and convincing evidence whether the patient is a person in need of treatment and that cause exists for the involuntary treatment of the patient, and if unable to afford counsel, to appoint counsel to represent the involuntary patient.”

*Id.* tit. 16 § 5006: “A person whom the hospital has determined to be a mentally ill person [and has involuntarily committed] shall be entitled: ... (3) To be represented by counsel at all judicial proceedings, such counsel to be court appointed if the involuntary patient cannot afford to retain counsel....”

*Id.* tit. 20, § 3136: A person isolated or quarantined “shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this subchapter.”

**Hawaii:** HAW. REV. STAT. § 802-1: “Any indigent person

who is ... threatened by confinement, against the indigent person's will, in any psychiatric or other mental institution or facility; or ... the subject of a petition for involuntary outpatient treatment ... shall be entitled to be represented by a public defender."

**Illinois:** 405 ILL. COMP. STAT. ANN. § 5/3-805 (West): "Every respondent alleged to be subject to involuntary admission shall be represented by counsel. If the respondent is indigent or an appearance has not been entered on his behalf at the time the matter is set for hearing, the court shall appoint counsel for him. A hearing shall not proceed when a respondent is not represented by counsel unless, after conferring with counsel, the respondent requests to represent himself and the court is satisfied that the respondent has the capacity to make an informed waiver of his right to counsel. Counsel shall be allowed time for adequate preparation and shall not be prevented from conferring with the respondent at reasonable times nor from making an investigation of the matters in issue and presenting such relevant evidence as he believes is necessary. 1. If the court determines that the respondent is unable to obtain counsel, the court shall appoint as counsel an attorney employed by or under contract with the Guardianship and Mental Health Advocacy Commission, if available. 2. If an attorney from the Guardianship and Mental Health Advocacy Commission is not available, the court shall appoint as counsel the public defender or, only if no public defender is available, an attorney licensed to practice law in this State. 3. [T]he court shall determine a reasonable fee for such services. If the respondent is unable to pay the fee, the court shall enter an order upon the county to pay the entire fee or such amount as the respondent is unable to pay." See also *id.* § 5/2-107.1(a-5)(3) (guaranteeing right to counsel for adult recipient of services facing involuntary medical treatment).

**Indiana:** IND. CODE § 16-41-9-2: "An indigent individual who is the subject of judicial proceedings [regarding the imposition of restrictions on or mandatory testing of individuals with communicable diseases] is entitled to be represented by court appointed counsel."

**Iowa:** IOWA CT. R. 12.3(3) (West): On a petition for involuntary hospitalization of a mentally ill person, the person must be notified of the "immediate right to counsel, at county expense if necessary."

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**State Statutes Providing for a Right to Counsel in Civil Cases**

*Id.* R. 13.3(3): On a petition for involuntary commitment or treatment of a chronic substance abuser, the person must be notified of the "immediate right to counsel, at public expense if necessary."

**Kansas:** KAN. STAT. ANN. § 59-29b59(b): Upon receipt of a petition for determination of whether a person has an alcohol or substance abuse problem, "[i]f the person with respect to whom the request has been filed has not yet retained or been appointed an attorney, the court shall appoint an attorney for the person."

*Id.* § 59-29b81: "The [attorney's] costs shall be taxed to the estate of the patient, to those bound by law to support such patient or to the county of the residence of the patient as the court having jurisdiction shall direct, except that if a proposed patient is found not to be a person with an alcohol or substance abuse problem subject

to involuntary commitment under this act, the costs shall not be assessed against such patient's estate but may at the discretion of the court be assessed against the petitioner or may be paid from the general fund of the county of the residence of the proposed patient."

**Louisiana:** LA. REV. STAT. ANN. § 28:54C: A respondent in a proceeding for involuntary commitment on the grounds of mental illness or substance abuse "if indigent or otherwise qualified, has the right to have counsel appointed to represent him by the Mental Health Advocacy Service...."

*Id.* § 28:454.5D(3)(c): A respondent in a proceeding on a petition seeking to have a person with a developmental disability remanded to the custody of the department on the grounds that he is either dangerous to himself or dangerous to others, "if indigent or otherwise qualified, has the right to have counsel appointed to represent him."

*Id.* § 40:31.25D(2)(a): A person taken into protective custody on grounds of tuberculosis has "the right to have counsel appointed to represent him if he is indigent or otherwise qualified."

See also LA. CHILD. CODE ANN. art. 1442 (guaranteeing right to appointed counsel for minor who is facing mental health involuntary commitment and is unable to pay for counsel).

**Maryland:** MD. CODE ANN., EST. & TRUSTS § 13-709(f) (West): In a petition for involuntary commitment of a person, "if the person is indigent or lacks the capacity to waive counsel, the court shall appoint counsel. Where the person is indigent, the State shall pay reasonable attorney's fees."

*Id.*, HEALTH-GEN. § 18-906(c): At a hearing contesting government-ordered isolation or quarantine, "[t]he court shall appoint counsel to represent individuals or a group of individuals who are not otherwise represented by counsel." See also *id.*, PUB. SAFETY § 14-3A-05(f)(2): (requiring appointment of counsel for people ordered by the government to go to or remain in isolation or quarantine because of a health emergency).

**Massachusetts:** MASS. GEN. LAWS ANN. ch. 111, § 94C(1) (West): At a hearing on a petition for involuntary commitment of a person with tuberculosis, if the person cannot be present because of his condition "the court shall appoint legal counsel to represent the person's interests...."

*Id.* ch. 123, § 5: At a hearing on the commitment or retention of a person for medical treatment, "the court shall appoint counsel for such person whom it finds to be indigent and who is not represented by counsel, unless such person refuses the appointment of counsel."

*Id.* ch. 201, § 6(c): At a hearing on court authorization of involuntary treatment of a mentally ill person with antipsychotic medication, "counsel shall be provided for any indigent mentally ill person." See also *id.* ch. 201, § 6A(c) (same for mentally retarded person).

*Id.* ch. 123A, § 13(c): At a hearing on a petition for involuntary temporary commitment of a sexually dangerous person, if the person named in the petition is indigent, "the court shall appoint an attorney." See also *id.* ch. 123A, § 14 (same for longer commitment).

**Mississippi:** MISS. CODE ANN. § 41-21-67(3) (West): When an affidavit for temporary commitment of a person

in need of mental treatment is filed, “if the chancellor determines that respondent for any reason does not have the services of an attorney, the chancellor shall forthwith appoint an attorney....”

**Missouri:** MO. ANN. STAT. § 631.135 (West): A respondent in an involuntary drug or alcohol commitment proceeding must be informed that “[a]n attorney has been appointed who will represent him....”

*Id.* § 199.200.2: Upon the filing of a petition for commitment and hospitalization of a tuberculosis patient, “[t]he court shall appoint legal counsel for the individual named in the petition if requested to do so if such individual is unable to employ counsel.”

**Montana:** MONT. CODE ANN. § 53-21-116: “If the person [suffering from a mental disorder and requiring commitment] is indigent or if in the court’s discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender ... to immediately assign counsel to represent the person at either the hearing or the trial, or both.”

*Id.* § 53-24-302(9): “If the court believes that the person [whose commitment or recommitment is sought on the grounds of alcoholism] needs the assistance of counsel, the court shall order the office of state public defender ... to assign counsel for the person regardless of the person’s wishes.”

**Nevada:** NEV. REV. STAT. § 433A.270(1): “The allegedly mentally ill person or any relative or friend on his behalf is entitled to retain counsel to represent him in any proceeding before the district court relating to involuntary court-ordered admission, and if he fails or refuses to obtain counsel, the court shall advise him and his guardian or next of kin, if known, of such right to counsel and shall appoint counsel, who may be the public Clearinghouse REVIEW Journal of Poverty Law and Policy n July–August 2006 267  
**State Statutes Providing for a Right to Counsel in Civil Cases** defender or his deputy.” See also *id.* § 441A.660 (containing similar language for proceedings regarding court-ordered isolation or quarantine).

**North Carolina:** N.C. GEN. STAT. ANN. § 7A-451(a)(6), (17) (West): “An indigent person is entitled to services of counsel in ... [a] proceeding for an inpatient involuntary commitment [of a mentally ill person or a substance abuser and a] proceeding involving limitation on freedom of movement or access [of people exposed to nuclear, biological, or chemical agents in a terrorist attack or to a communicable disease].”

**North Dakota:** N.D. CENT. CODE § 25-03.1-13: In civil commitment proceedings, “[u]nless an appearance has been entered on behalf of the respondent, the court shall, within twenty-four hours, ... appoint counsel to represent the respondent.... If the court determines that the respondent is indigent, the court shall order that appointed counsel be compensated from county funds ... in a reasonable amount....”

**Ohio:** OHIO REV. CODE ANN. § 5122.05(C) (West): “Any person who is involuntarily detained in a hospital ... may ... be represented by court-appointed counsel ... at public expense if the person is indigent.”

**Oregon:** OR. REV. STAT. § 426.100(3)(b): In a proceeding regarding involuntary commitment of a mentally ill person, “[i]f the person is determined to be financially eligible

for appointed counsel at state expense, the court will appoint legal counsel to represent the person.” The public defense services executive director must pay “the reasonable expenses related to the representation of the person and compensation for legal counsel.”

**Pennsylvania:** 50 PA. STAT. ANN. § 7304(e)(1) (West): “The person [facing involuntary mental treatment] shall have the right to counsel....”

**Rhode Island:** R.I. GEN. LAWS § 21-28.2-3(4): In a proceeding for the commitment of a narcotic addict, “if he or she desires the aid of counsel and is financially unable to obtain counsel, then counsel shall be assigned.”

*Id.* § 23-1.10-12: In a proceeding for the commitment of an alcoholic, “[i]f the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes.”

*Id.* § 23-10-6(d): In a tuberculosis quarantine proceeding, the person being detained “has the right to arrange to have counsel appointed....”

*Id.* § 40.1-5-8: In a proceeding for involuntary commitment on mental health grounds, “[i]f the person is unable to afford counsel, the court forthwith shall appoint the mental health advocate for him or her.”

**South Carolina:** S.C. CODE ANN. § 44-4-540(F): “The court must appoint counsel to represent individuals or groups of individuals who are or who are about to be isolated or quarantined pursuant to the provisions of this act and who are not otherwise represented by counsel. Payment for these appointments must be made in accordance with other appointments for legal representation in actions arising outside of matters in this act....”

See also *id.* § 44-29-115 (concerning appointment of an attorney in isolation proceedings).

*Id.* § 44-17-530: “Within three days after [a] petition for judicial commitment [of a mentally ill person] is filed, ... the court shall appoint counsel to represent the person if counsel has not been retained....” See also *id.* § 44-24-90(D) (same for commitment of a child).

*Id.* § 44-24-60(F): A court that finds probable cause for the involuntary admission of a child to a hospital for treatment because he is a danger to himself or others “shall appoint counsel for the child if he has not retained counsel....”

*Id.* § 44-52-60(E): A court that orders emergency drug or alcohol abuse detention “shall ... appoint counsel for the patient if counsel has not been retained....” See also *id.* §§ 44-52-70 (guaranteeing right to counsel “at all stages of the [involuntary drug or alcohol commitment] proceeding”), 44-52-80 (requiring court to provide subject of involuntary commitment proceeding with notice of right to counsel).

**South Dakota:** S.D. CODIFIED LAWS § 34-20A-70: “The circuit court judge, upon receipt of a written application [for involuntary commitment on grounds of alcohol or drug abuse] prepared by the clerk of courts, shall appoint an attorney to represent the applicant.”

*Id.* § 34-20A-70.1: “The appointed attorney shall be paid by the county where the hearing and commitment proceedings are taking place at a rate to be fixed by the circuit judge. The county shall be reimbursed for such expense by the petitioner, if the petitioner is a family

member and is financially able to do so.”

*Id.* § 34-20A-85: “The court shall inform the person whose commitment or recommitment is sought of his right to ... have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes.”

*Id.* § 34-20A-85.1: “The attorney appointed by a court to represent the interests of a person being committed for alcohol or drug abuse shall be paid by the county where the hearing and commitment proceedings are taking place. The attorney shall be compensated at a rate to be fixed by the circuit judge. The county shall be reimbursed for the expenses by the person if the person is financially able to do so. If the person is not financially able to pay such expenses, the cost of legal counsel shall be paid to the county by the person legally bound for the support of such person.”

**Vermont:** VT. STAT. ANN. tit. 18, § 7111: “In any proceeding before, or notice to, a court of this state involving a patient [qualified for treatment as a mentally ill or mentally retarded individual] or student [at the Brandon Training School], or a proposed patient or student, that person shall be afforded counsel, and if the patient or student or proposed patient or student is unable to pay for counsel, compensation shall be paid by the state to counsel assigned by the court; however, this section shall not apply to a proceeding [for a warrant for immediate examination of a person].”

**West Virginia:** W. VA. CODE § 16-3D-9: An order for immediate involuntary commitment of a person with tuberculosis “shall appoint counsel for the individual.”

**Wisconsin:** WIS. STAT. ANN. § 51.20(3) (West): “At the time of the filing of the petition the court shall assure that the subject individual is represented by adversary counsel. If the individual claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations specified under § 977.07(1). If the individual is a child, the court shall refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in § 48.23(4).”

*Id.* § 48.23(1m)(c): “(c) Any child subject to the jurisdiction of the court under § 48.14(5) [involuntary commitment and protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons, and for persons with other like incapacities] shall be represented by counsel.”

## **E. Medical Treatment<sup>1</sup>**

### **1. Bypass of Abortion Parental Notification or Consent Requirements**

**Alaska:** ALASKA STAT. § 18.16.030(d): “If the complainant [i.e., ‘[a] woman who is pregnant, unmarried, under 17 years of age, and unemancipated who wishes to have an abortion without the consent of a parent, guardian, or custodian’] has not retained an attorney, the court shall appoint an attorney to represent the

complainant.”

**Authors’ Note:** The Office of Public Advocacy provides representation. See *id.* § 44.21.410(4).

**Delaware:** DEL. CODE ANN. tit. 24, § 1784(e): At a hearing by a minor for waiver of parental-notice-for-abortion requirement, “[t]he Supreme Court shall advise the minor that she has a right to court-appointed counsel and shall provide her with such counsel upon request, at no cost to the minor.”

**Florida:** FLA. STAT. ANN. § 390.01114(4)(a) (West): “The court ... shall provide [a minor seeking waiver of the parental-notification requirement] ... with counsel upon her request at no cost to the minor.”

*Id.* § 390.01114(4)(h): The statute specifically absolves counties of the responsibility to pay the “salaries, costs, or expenses of any counsel appointed by the court under this subsection.”

**Indiana:** IND. CODE § 16-34-2-4(e): “Unless the juvenile court finds that the pregnant minor is already represented by an attorney, the juvenile court shall appoint an attorney to represent the pregnant minor in a waiver proceeding brought by the minor [regarding parental-consent-to-abortion requirement] and on any appeals. The cost of legal representation appointed for the minor under this section shall be paid by the county.”

**Mississippi:** MISS. CODE ANN. § 41-41-55(2) (West): In an application for waiver of the abortion consent requirement for a minor, the court “shall provide [the minor] with ... counsel upon her request or if she is not already adequately represented.”

**Missouri:** MO. ANN. STAT. § 188.028.2(2) (West): In an application for a waiver of parental-consent requirement, “[i]f any party is unable to afford counsel, the court shall appoint counsel at least twenty-four hours before the time of the hearing.”

**North Carolina:** N.C. GEN. STAT. ANN. § 7A-451(a)(16) (West): “An indigent person is entitled to services of counsel in ... [a] proceeding involving consent for an abortion on an unemancipated minor...”

**South Carolina:** S.C. CODE ANN. § 44-41-32(3): On a petition by a minor for access to an abortion without parental consent, the court “shall provide her with counsel upon her request.”

**Wisconsin:** WIS. STAT. ANN. § 48.23(1m)(cm) (West): “Any minor who is subject to the jurisdiction of the circuit court under § 48.16 [waiver of parental consent for abortion] and who is required to appear in court shall be represented by counsel.”

## **2. Sterilization**

**Colorado:** COLO. REV. STAT. § 27-10.5-130: “(2) Upon petition to the court [to hold a hearing to determine whether an incompetent person with a developmental disability should be ordered to be sterilized], the court shall appoint an attorney who will represent the interests of the person with a developmental disability.... (5) Reasonable fees and costs incurred pursuant to this section shall be paid by the court for a person who is indigent.”

**Vermont:** VT. STAT. ANN. tit. 18, § 8710: “If the [sterilization] petition states that the respondent is unable to pay for counsel, the court shall appoint counsel to be paid by the state or set a hearing for a determination of respondent’s ability to pay for counsel.”

**West Virginia:** W. VA. CODE § 27-16-1: "For every ... incompetent person who is [the subject of a sterilization petition and is] not represented by counsel the court shall appoint competent legal counsel...."

*Id.* § 27-16-5: "When, in any [sterilization] case, the court, or judge thereof in vacation, is satisfied that the counsel appointed by the court has rendered substantial

<sup>1</sup>Some of the statutes listed in § D *supra* provide for a right to counsel for mentally ill people or chronic alcohol or substance abusers facing involuntary medical treatment.

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### **State Statutes Providing a Right to Counsel in Civil Cases**

service to the mental incompetent, it may allow him reasonable compensation therefor, and his actual expenses, if any, to be paid by the petitioners."

### **3. Mandatory Vaccination**

**Connecticut:** CONN. GEN. STAT. § 19a-131e(d): "If the court finds [a] respondent [in a hearing regarding a mandatory vaccination order issued in a public health emergency] is indigent or otherwise unable to pay for or obtain counsel, the court shall appoint counsel for such respondent.... The court shall provide such respondent a reasonable opportunity to select such respondent's own counsel to be appointed by the court. If the respondent does not select counsel or if counsel selected by the respondent refuses to represent such respondent or is not available for such representation, the court shall appoint counsel for the respondent from a panel of attorneys admitted to practice in this state provided by the Probate Court Administrator. If the order of vaccination applies to individuals present in a described geographic area, the court may appoint one or more attorneys to represent all the individuals present within the described geographic area where there is a commonality of interests of such individuals, except that an individual may choose to be represented by his or her own attorney on an individual basis. The reasonable compensation of appointed counsel shall be established by, and paid from funds appropriated to, the Judicial Department, but, if funds have not been included in the budget of the Judicial Department for such purposes, such compensation shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund."

### **F. Miscellaneous**

#### **1. Civil Execution or Arrest Against a Person**

**North Carolina:** N.C. GEN. STAT. ANN. § 7A-451(a)(7) (West): "An indigent person is entitled to services of counsel in ... [a]ny case of execution against the person [i.e., imprisonment for debt] ... and in any civil arrest and bail proceeding...."

#### **2. Civil Rights**

**Illinois:** 775 ILL. COMP. STAT. § 5/10-102(B) (West): "Upon application by a person alleging a civil rights violation or a person against whom the civil rights violation is alleged, if in the opinion of the court such person is financially unable to bear the costs of such action, the court may: (1) appoint an attorney for such person[:] any attorney so appointed may petition for an award of attorneys fees...."

#### **3. Domestic Violence**

**Alaska:** ALASKA STAT. § 18.66.100: When a parent, guardian, or other representative appointed by the court petitions for a domestic violence protective order for a minor, "[t]he court may appoint a guardian ad litem or

attorney to represent the minor.”

**California:** CAL. FAM. CODE § 6386 (West): “(a) The court may, in its discretion, appoint counsel to represent the petitioner in a proceeding to enforce the terms of a protective order, .... (b) In a proceeding in which private counsel was appointed by the court pursuant to subdivision (a), the court may order the respondent to pay reasonable attorney’s fees and costs incurred by the petitioner.”

**New York:** N.Y. FAM. CT. ACT § 262(a) (McKinney): The petitioner and respondent in a domestic violence proceeding have “the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same.”

#### **4. Housing Discrimination**

**Federal Law:** 42 U.S.C. § 3613(b): “Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the [state or federal] court may—(1) appoint an attorney for such person....”

**Arizona:** ARIZ. REV. STAT. ANN. § 41-1491.32: “On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the superior court may appoint an attorney for the person.”

**Arkansas:** ARK. CODE ANN. § 16-123-337 (West): “On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person to the extent provided by applicable law concerning indigents in civil actions.”

**Colorado:** COLO. REV. STAT. § 24-34-307(9.5): “Upon application by a person alleging a discriminatory housing practice under section 24-34-502 or a person against whom such a practice is alleged, the court may appoint an attorney for such person ..., if in the opinion of the court such person is financially unable to bear the costs of such action.”

**Delaware:** DEL. CODE ANN. tit. 6, § 4613(b): “Upon application by a person alleging ... a discriminatory housing practice or a person against whom such a practice is alleged the court may: (1) appoint an attorney for such person....”

#### **5. Release of Mental Health Records**

**Indiana:** IND. CODE § 16-39-3-5: In a proceeding seeking the involuntary release of a person’s mental health records, “[i]f the patient is under an inpatient commitment to a mental health facility at the time a petition ... is filed and the patient is unable to afford an attorney, the court shall appoint an attorney for the patient.”

#### **6. School Attendance**

**Colorado:** COLO. REV. STAT. § 19-1-105: “[I]n all proceedings under the ‘School Attendance Law of 1963’, ... the court may appoint counsel or a guardian ad litem for the child, unless the child is already represented by counsel.”

#### **7. Servicemembers Civil Relief**

**Federal Law:** 50 U.S.C. app. § 521(b)(2) [Servicemembers Civil Relief Act]: “If in [a civil action or proceeding in which the defendant does not make an appearance] it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney”

to represent the defendant. If an attorney appointed under this section to represent a servicemember cannot locate the servicemember, actions by the attorney in the case shall not waive any defense of the servicemember or otherwise bind the servicemember.”

**Colorado:** COLO. REV. STAT. § 13-6-407(3): “In any [small claims court] action to which the federal ‘Soldiers’ and Sailors’ Civil Relief Act of 1940’, 50 App. U.S.C. sec. 521, is applicable, the court may enter a default against a defendant who is in the military without entering judgment, and the court shall appoint an attorney to represent the interests of the defendant prior to the entry of judgment against the defendant.”

**West Virginia:** W. VA. CODE § 50-4-10(2)(B): “No judgment by default may be rendered against a person in active military service of the United States who has not made an appearance unless the provisions of 50 App. U.S.C. § 520 [sic] have been followed, including the appointment of an attorney upon motion of a plaintiff.”

#### **8. Special Immigrant Juvenile Status Adjustment for Abused, Neglected, or Abandoned Children**

**Florida:** FLA. STAT. ANN. § 39.5075(5) (West): Noncitizen immigrant children who have been abused, neglected, or abandoned by their parent or guardian have the right to court-appointed counsel when a state court determines that the child is, under federal immigration law, eligible for special immigrant juvenile status. “The department or community-based care provider shall, directly or through volunteer or contracted legal services, file a petition for special immigrant juvenile status and the application for adjustment of status to the appropriate federal authorities on behalf of the child.”

#### **9. Suit Against Individual Under Disability to Sue**

**Maryland:** Md. R. 2-202(d): “In a suit against an individual under disability [to sue], ... [i]f there is no ... guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.”