

Why do Kids in Abuse and Neglect Cases Need Lawyers?

Why is the representation of children in abuse, neglect and dependency proceedings so important?

Designed to protect children from abuse and neglect, dependency court proceedings can be intrusive and disruptive to the child and family. The most basic rights and needs of children will be decided by these proceedings:

- » Who will be their mother, father, or siblings? Will they visit?
- » Where will they live? Where will they go to school?
- » Will they be hospitalized and what medications will they take?
- » What will the future hold for them? How will they transition into adulthood safely?

An abuse/neglect case that results in the child's removal from the home may immediately or ultimately result in the child being thrust into an array of confusing and frightening situations, including movement from home to home with total strangers, group home or institutional commitment, even locked detention for running away or otherwise violating a court order. Sometimes these moves have more to do with the State's fiscal or administrative interests than the child's welfare.

Our notion of basic civil rights demands that children have a trained legal advocate to speak on their behalf and to protect their legal rights, just as they would if they were facing a month in juvenile detention. The Model Act seeks to embed in state law a set of standards, duties and mechanisms to ensure the provision of high-quality, effective lawyering for children.

Access to a lawyer:

- » Will provide children and youths with someone who knows how to use the legal process to ensure that their rights are being protected and that they are safe in a foster home or safe to return to their biological family's home.
- » Can help prevent children and youths from running away and can help them or their parents to gain access to needed services.
- » Provides a confidential and privileged relationship to ensure the court's awareness of the entire family story. An adolescent may be comfortable revealing information about why they want to go home ONLY to their lawyer because of that confidential and privileged relationship.

In the absence of counsel for children, trial courts lack the information necessary to make what is arguably the most important decision in a child's life—who will be that child's family forever.

What if a child tells his attorney to ask for something unsafe or outrageous?

- 1) Lawyering for children relies largely on client counseling: explaining pros & cons of certain choices, and explaining how or why a court may make a decision about a specific request.
- 2) Most children's lawyers report that they rarely go into court and argue for things that are absurd because they've counseled their client through the options. Given the safe, confidential relationship of the lawyer-client relationship, they work together to formulate the child's position.
- 3) The ABA Model Act Governing the Representation of Children in Abuse, Neglect and Dependency Proceedings provides guidance for lawyers who feel that they need to take protective action when their clients are at risk of harm.

ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

What the *Model Act* Does:

- 1) Requires appointment of a lawyer for every child and youth in abuse/neglect proceedings.
- 2) Builds upon existing ABA Standards and Policy to offer a model state statute format that can be adopted by various state legislatures.
- 3) Improves the quality of legal representation for children and youth in abuse and neglect cases by setting clear qualifications and performance guidelines consistent with ABA Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases and ABA Model Rules of Professional Conduct.
- 4) Ensures that lawyers for children are bound by the same ethical rules that bind all lawyers.

What the *Model Act* DOES NOT DO:

- 1) Does **not** supplant the important role of child welfare courts: judges, not lawyers, will ultimately decide what is in the best interest of the child.
- 2) Does **not** restrict the authority of a judge to appoint an advocate to present information about a child's best interest, at any point in the case, such as a court-appointed special advocate (CASA), lawyer or other best interest advocate.
- 3) Does **not** apply in any way to domestic relations child custody cases such as disputes between parents.

Why the *Model Act*?

- 1) **Children involved in court proceedings involving state intervention should have a statutory right to legal representation.** Many states have no statutory right to counsel, resulting in thousands of children and youths being denied a lawyer to represent them.
- 2) **Courts have routinely found that foster care placements and other forms of state custody confine and can threaten foster children's physical liberty.** *Kenny A.*, 356 F. Supp. 2d at 1360-61 ("children in state custody are subject to placement in a wide array of different types of foster care placements, including institutional facilities where their physical liberty is greatly restricted."). See *Braam v. State*, 150 Wn.2d 689, 698, 81 P.3d 851 (2003) (emphasis added) (quoting *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) (comparing foster children to individuals involuntarily committed to hospitals)).
- 3) **Lawyers for children allow them to be participants in the proceedings that affect their lives and safety.** Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and be heard. Youngsters are more likely to accept the court's decision because of their involvement in the process.
- 4) **The *Model Act* was written with experts** from the ABA Center on Children and the Law and 30+ children's law centers around the country that represent children daily. Drafters also met with representatives from the ABA Family Law Section to integrate their comments.