State Statutes Providing for a Right to Counsel in Civil Cases

By Laura K. Abel and Max Rettig

Laura K. Abel
Deputy Director

Max Rettig
Research Associate

Poverty Program
Brennan Center for Justice
New York University School of Law
161 Avenue of the Americas,
12th Floor
New York, NY 10013
212.998.6737
laura.abel@nyu.edu
max.rettig@nyu.edu

Over 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.[1] 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.[2] Still others flow from a legislature's belief that providing counsel in a particular type of case is good social policy.[3]

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.[4] 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.[5]

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[1] 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).

[2] See discussion *infra* I.A, I.D.

[3] 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.

[4] Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(A)(xiii).

[5] 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).

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.[6]

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

Other categories of family law matters in which statutes guarantee a right to counsel for one or more parties include

- domestic violence proceedings;[9]
- divorces and annulments;[10]
- private petitions to terminate parental rights or for adoption;[11]
- paternity proceedings;[12]
- child custody, support, and visitation proceedings;[13] and
- proceedings regarding visitation or permanency for children in foster care.[14]

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.[15] Some statutes also guarantee counsel for anyone seeking to commit another involuntarily.[16] A number of statutes provide a

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[6]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).

[7]Indian Child Welfare Act, 25 U.S.C. § 1912.

[8]See, e.g., MONT. CODE ANN. § 41-3-425(2); NEV. REV. STAT. § 128.100.

[9]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).

[10]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).

[11]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).

[12]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).

[13]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).

[14]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).

[15]See *infra* tbl. § D.

[16]See, e.g., ALA. CODE § 22-52-5.

right to counsel for adults who are the subject of a petition for involuntary protective services or guardianship.[17]

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.[18] Other statutes guarantee the right to counsel for people who are the subject of an involuntary sterilization proceeding.[19] Connecticut also guarantees the right to counsel for people who are the subject of an involuntary vaccination order.[20]

D. Other Types of Right-to-Counsel Statutes

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

- *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.[21]
- *Individual Under Disability to Sue.* Maryland provides a right to counsel for people under a disability to sue.[22]
- *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.[23]
- *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.[24]
- *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.[25] A number of states have incorporated this requirement into their laws.[26]

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

- civil rights cases,[27]
- housing discrimination cases,[28] and
- school attendance cases.[29]

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

[18]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.

[19]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.

[20]CONN. GEN. STAT. ANN. § 19a-131e(d) (West).

[21]N.C. GEN. STAT. ANN. § 7A-451(a)(7) (West).

[22]MD. R. CT. 2-202.

[23]FLA. STAT. ANN. § 39.5075(5) (West).

[24]IND. CODE § 16-39-3-5.

[25]Servicemembers Civil Relief Act, 50 U.S.C. app. § 521(b)(2).

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

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

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

[29]See, e.g., COLO. REV. STAT. § 19-1-105; see also tbl. § F.6.

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.[30] 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.[31]

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.[32] For a right-to-counsel system to be effective, the guidelines require, among others, that

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

In some jurisdictions, court rules impose some of these requirements.[33] 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.[34] Appointed attorneys should fulfill certain basic duties, such as interviewing clients, although the specific duties vary with case type.[35] However, virtually none of the civil right-to-counsel statutes or court rules requires experience, training, or the fulfillment of any particular duties.[36]

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[30]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).

[31]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).

[32]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; 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; National Center for State Courts, Guidelines for Involuntary Civil Commitment (1986).

[33]See, e.g., Ariz. Rev. Stat. Ann. § 36-537.B (listing specific duties of attorneys appointed to represent people in involuntary commitment proceedings).

[34]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; National Center for State Courts, *supra* note 32, Guideline E1(a).

[35]National Center for State Courts, *supra* note 32, Guidelines E1(d), E2, E5.

[36]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.

Exceptions in some states are notable.[37] An Arizona statute spells out specific tasks for attorneys appointed to represent people who are the subject of an involuntary commitment petition.[38] 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.[39] 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.[40] 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.[41]

Courts should not assign appointed attorneys more cases than the attorneys can handle competently.[42] 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."[43]

Appointed counsel should be independent of the court.[44] 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.[45] However, very few civil right-to-counsel statutes provide any guidelines about how judges should appoint counsel. Judges presiding over the cases

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[37]In 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.

[38]ARIZ. REV. STAT. ANN. § 36-537.B.

[39]Ark. 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.").

[40]See 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 (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-parental-rights cases "the attorney shall have at least ten dependency trials, or one year of dependency experience.").

[41]See, 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).

[42]Standards 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.

[43]OR. 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).

[44]Standards 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).

[45]See 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.

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.[48] Moreover, the fees are often capped at an extremely low rate.[49] Other statutes expressly permit or require courts to appoint uncompensated counsel.[50] Too often, the clients suffer because attorneys must maintain a very high caseload to make ends meet.[51]

Counsel need to be appointed early enough to be able to represent and consult with the client during crucial stages of the proceedings.[52] 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.[53] 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."[54] 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.[55] Lack of a uniform system can lead to individual judges or county

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[46]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").

[47]See, e.g., ARIZ. REV. STAT. ANN. § 8-221; IND. CODE § 34-10-1-2.

[48]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-parental-rights 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).

[49]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 ...").

[50]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").

[51]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.

[52]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).

[53]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").

[54]N.Y. FAM. CT. ACT § 262(a) (McKinney).

[55]Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *supra* note 32, Standards G-2, J-4.

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 court-appointed contract attorneys handle family law matters.[56]

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.[57] After a major lawsuit, Montana created a statewide public defender's office to represent low-income people in both civil and criminal matters.[58]

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[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).