

DOMESTIC VIOLENCE AND CHILD WELFARE LEVERS FOR



Advance Legal Protections

Navigating Child Welfare: When Are Parents Informed About Access to Legal Support?

Understanding when parents, guardians, or caretakers (parents) are informed about their right to legal representation in child welfare cases is important because having a lawyer can help them navigate this process and make sure their voices are heard. Numerous studies have concluded that the presence of parents' counsel positively impacts outcomes for the parents, the children, and the courts.¹ Some of the benefits highlighted include (1) increased parent participation both in and out of court; (2) improvement of the perception of fairness; (3) a reduction in delays to achieving permanency for children and families; (4) better judicial decision-making; and (5) saving jurisdictions money by reducing the amount of time children spend in the foster care system.²

Disclaimer:

The information in this toolkit is meant to help domestic violence advocates, survivors, and other service providers gain a better understanding of the topic. It is not legal advice. The details in this tool are based on legal information up to August 2023, but laws can change.³ It is important to talk to a legal expert in your area to get the most accurate and up-to-date information. This research might not cover everything, and we can't promise it's always right. Laws change, and this information is not exhaustive.



NATIONAL CENTER TO ADVANCE PEACE
for Children, Youth, and Families

The National Center to Advance Peace for Children, Youth, and Families (NCAP), is a coalition led by Caminar Latino-Latinos United for Peace and Equity and includes Ujima: National Center on Violence Against Women in the Black Community, the Alaska Native Women's Resource Center, the National Indigenous Women's Resource Center, and Futures Without Violence.



¹ Notably, statutes analyzed during the production of this document from the following states are based on legislation to be enacted either October 2023 or January 2024: Arizona, Arkansas, Colorado, Maryland, Montana, Washington, and Wisconsin.

² Leonard Edwards, Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment, JUDGE LEONARD EDWARDS (explaining that parent representation improves outcomes, such as timely hearings, more frequent reunification and fewer terminations of parental rights).

³ Legal Representation in Child Welfare Proceedings, ABA CENTER FOR CHILDREN AND THE LAW, https://www.americanbar.org/content/dam/aba/administrative/child_law/cwrepinfoGraphic.pdf (last visited Sept. 13, 2023).

What Does the Process Look Like?

Before we discuss when parents are informed about their right to counsel it is important to understand where in the child welfare process we are. First, someone reports that they suspect a child may be a victim of abuse or neglect to the child welfare agency. Next, the child welfare agency looks at the report. They might decide it's not a serious concern and close the case, or they might think it needs more attention and open an investigation.

Then, if during that investigation, the agency finds proof that the child has been harmed and believes there's a potential for more harm in the future, they might go to court. This is the part of the process where this toolkit comes in – when the agency asks the court to take the child out of the home. At this point, the law in most states says that parents have a right to have an attorney represent them.⁴



Right to Legal Representation vs. Access to Free Legal Representation

The right to be represented by counsel in criminal matters exists under the 6th Amendment of the Constitution; however, in civil matters it exists only in limited circumstances. Further, having the right to be represented by an attorney is not the same as having the right to access free legal representation.

⁴In New Hampshire, an indigent parent may be appointed an attorney if that “parent [is] 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 interest. The court shall not appoint an attorney to represent any other persons involved in a case brought under this chapter. RSA 169-C:10.

In most states, parents who are considered indigent are provided with a court appointed attorney or represented by the office of the Public Defender;⁵ otherwise, the parent would have to cover the costs of representation by a private attorney. A person who is indigent is one without sufficient income to afford a lawyer.⁶ A finding of indigency will vary by state with certain jurisdictions having specific factors that must be considered by the court.⁷ Further, in some states to have access to free legal representation, the indigent parent must request appointment of counsel by the court.⁸

Who has the right to be represented by an attorney?

- Someone charged with a crime (criminal defendants).
- In civil cases only under limited circumstances (i.e. child welfare cases)

Who has the right to access free legal representation?

- Criminal defendants that are considered indigent.
- In certain states, parents in child welfare cases who are considered indigent, in some states representation must be requested.

Who can be considered indigent?

- A person without sufficient income to afford legal representation
- Generally, those whose income is less than 125% of the federal poverty level.
- In civil child welfare cases, some states have specific factors that must be met.

⁵ Some states that may appoint a public defender to represent parents include Illinois, Maryland, New Jersey, Oklahoma, Vermont (this list is not exhaustive).

⁶ Law.com Legal Dictionary indigent definition, <https://dictionary.law.com/Default.aspx?selected=944>, (last visited Sept. 27, 2023).

⁷ See: 16 Del. C. § 910; See Also: § 211.211 R.S. Mo., ORS § 419B.205, Tenn. Code Ann. § 37-1-126, and Tex. Fam. Code § 107.013.

⁸ See: Ala. Admin. Code r. 660-5-34-.11 stating “[t]he parents, guardians, or custodians shall be informed of their right to be represented by counsel and, upon request, counsel shall be appointed when the parents are unable, for financial reasons, to retain their own.” See also: A.C.A. § 9-27-316(C)(ii) stating in part: “[c]ounsel shall not be appointed to a party in a dependency-neglect proceeding unless... [c]ounsel is requested by the parent, putative parent, or custodian of the juvenile after the parent, putative parent, or custodian is informed of his or her right to be appointed counsel, 705 ILCS 405/1-5(1) stating in part: “(1) [...] the minor’s parents, guardian, legal custodian or responsible relative who are parties respondent have [...] the right to be represented by counsel. At the request of any party financially unable to employ counsel...”, Burns Ind. Code Ann. § 31-34-4-6 stating in part “The parent, guardian, or custodian has the right to be represented by a court appointed attorney under clause (A) upon the request of the parent...”, 22 M.R.S. § 4005 stating in part that parents “may request the court to appoint legal counsel for them.”, ORS § 419B.518 stating in part that: “[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.”, S.D. Codified Laws § 26-7A-31 stating in part that if the parent “requests an attorney in proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C 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.”, Rev. Code Wash. (ARCW) § 13.34.090 stating in part that parents have the right to have counsel appointed if they have “appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency.”, and Wyo. Stat. § 14-3-422 stating in part that “[t]he court shall upon request appoint counsel to represent the child’s parents, guardian or custodian if the child’s parents, guardian or custodian are unable to obtain counsel.”

Timing

How and when parents are told about their right to legal representation in child welfare cases can be different depending on the state where they live.⁹ Some parents are told right away, while others might not know until later. Understanding when parents must be legally informed of their right to counsel is essential for ensuring their rights are upheld in child abuse or neglect proceedings. See below for more information.

No Information Provided in the Law

In ten states, including Alabama, Indiana, Maine, Maryland, New Jersey, Oregon, South Carolina, Utah, Vermont, and Wisconsin, there is no specific information within the legal framework about when parents should be informed of their right to counsel.¹⁰

As Soon as Practicable Prior to the Start of a Hearing

In Idaho, parents are informed of their right to counsel as soon as practicable before the start of a hearing.¹¹

As Soon As Possible

Minnesota law requires that parents be informed of their right to counsel as soon as possible in the legal process.¹²

⁹ It is important to note that The federal Indian Child Welfare Act (ICWA), which governs child welfare proceedings in state court,⁷ provides: “In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding....Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.” 25 U.S.C. § 1912(b).

¹⁰ See: Ala. Admin. Code r. 660-5-34-.11, Code of Ala. § 12-15-305, Burns Ind. Code Ann. § 31-34-4-6, Burns Ind. Code Ann. § 31-34-4-6, 22 M.R.S. § 4005(2), 22 M.R.S. § 4005(2), Md. Courts and Judicial Proceedings Code Ann. § 3-813, N.J. Stat. § 9:6-8.43, N.J. Stat. § 9:6-8.43, ORS § 419B.205, ORS § 419B.518, S.C. Code Ann. § 63-7-1620, 2014 Ut. SB 221, 2014 Utah Laws 275, 2014 Ut. Ch. 275, 2014 Ut. ALS 275, 2014 Ut. SB 221, 2014 Utah Laws 275, 2014 Ut. Ch. 275, 2014 Ut. ALS 275, 2021 Ut. HB 285, 2021 Utah Laws 261, 2021 Ut. Ch. 261, 2021 Ut. ALS 261, 2021 Ut. HB 285, 2021 Utah Laws 261, 2021 Ut. Ch. 261, 2021 Ut. ALS 261, 13 V.S.A. § 5232, 33 V.S.A. § 5306, V.R.F.P. Rule 2, and Wis. Stat. § 48.23.

¹¹ Idaho Code § 16-2009.

¹² Minn. Stat. § 260C.176.

When Child Placed in Out-of-Home Care or Taken into Custody

In California, parents are informed of their right to counsel when their child is placed in out-of-home care or when the agency recommends such placement.¹³ In Washington, parents are informed of their right to counsel as part of the notice of custody and rights when a child is taken into custody.¹⁴

In the Summons or Court's Initial Order

In Georgia and Montana, parents are typically informed of their right to counsel when they receive the summons related to the case.¹⁵ West Virginia law mandates that parents be informed of their right to counsel in the court's initial order related to child abuse or neglect cases.¹⁶

At the All Hearings or the Commencement of Any Proceeding

Connecticut law mandates that parents be informed of their right to counsel at the commencement of any proceeding related to child abuse or neglect.¹⁷ In Massachusetts, parents are generally informed of their right to counsel at all hearings related to child abuse or neglect.¹⁸

If Child Custodian Appears Without Counsel or No Counsel on Record

In Missouri, Nebraska, North Dakota, Ohio, and Tennessee, parents are informed of their right to counsel if the child's custodian appears before the court without legal representation after the petition has been filed.¹⁹ In Pennsylvania, parents are informed of their right to counsel if counsel doesn't enter an appearance for a party.²⁰

¹³ *Cal Wel & Inst Code § 317.*

¹⁴ *Rev. Code Wash. (ARCW) § 13.34.062.*

¹⁵ *See: O.C.G.A. § 15-11-160, and § 211.462 R.S. Mo.*

¹⁶ *See: W. Va. Code § 29-21-2, and W. Va. Code § 49-4-60.*

¹⁷ *Conn. Gen. Stat. § 46b-135.*

¹⁸ *ALM GL ch. 119, § 29.*

¹⁹ *See: § 211.211 R.S. Mo., R.R.S. Neb. § 43-279.01, 2021 N.D. HB 1035, 2021 N.D. Laws 245, 2021 N.D. Ch. 245, 2021 N.D. ALS 245, 2021 N.D. HB 1035, 2021 N.D. Laws 245, 2021 N.D. C, ORC Ann. 2151.352, and Tenn. Code Ann. § 37-1-126.*

²⁰ *Pa. R.J.C.P. 1151.*

Upon or Within 7 days of Filing of a Petition for Dependency

In Iowa, Louisiana, North Carolina, and Oklahoma, parents are notified of their right to counsel upon the filing of a petition related to child abuse or neglect.²¹ In Rhode Island, parents are typically informed of their right to counsel within 7 days of filing the petition related to child abuse or neglect.²²

During Dependency-Neglect Petition or Ex-Parte Emergency Order, and First Appearance

Arkansas law mandates that parents be informed of their right to counsel either at the time of the dependency-neglect petition or ex-parte emergency order, whichever occurs first, and at their first appearance in court.²³ Ten states, including Colorado, Delaware, Illinois, Kansas, Michigan, Mississippi, New York, South Dakota, Texas, and Wyoming, notify parents of their right to legal representation at their first appearance in court.²⁴

Temporary Removal or Dependency Hearing²⁵

In Kentucky, parents are informed of their right to counsel if, as a result of a temporary removal hearing, further proceedings are required, and counsel may be appointed.²⁶ In Alaska, Arizona, Nevada, and New Mexico, parents are typically informed of their right to legal representation during the dependency hearing.²⁷

Prior to Adjudicatory Hearing²⁸

In Virginia, parents are informed of their right to counsel prior to the adjudicatory hearing.²⁹

²¹ See: Iowa Code § 232.89, La. Ch.C. Art. 608(A), N.C. Gen. Stat. § 7B-602, and 10A Okl. St. § 1-4-306.

²² R.I. Gen. Laws § 40-11-7.1.

²³ A.C.A. § 9-27-316(h)(1)(D).

²⁴ See: C.R.S. 19-3-202, Del. Family Ct. Civ. R. 206, 705 ILCS 405/1-5, K.S.A. § 38-2205, MCLS § 712A.17c, Miss. Code Ann. § 43-21-201, NY CLS Family Ct Act § 262, S.D. Codified Laws § 26-7A-30, Tex. Fam. Code § 107.013, and Wyo. Stat. § 14-3-422.

²⁵ A temporary removal hearing usually happens when a child is first taken away from their parents' care. During this hearing, both parents and the child welfare agency can provide evidence to the court. It's the judge's job to decide where the child should stay temporarily.

²⁶ KRS § 625.0405.

²⁷ See: Alaska Stat. § 47.10.142, A.R.S. § 8-824, Nev. Rev. Stat. Ann. § 432B.480, and N.M. Stat. Ann. § 32A-4-10.

²⁸ During an adjudicatory hearing, the focus is on listening to evidence related to whether the child has been abused or neglected that was mentioned in the original complaint. At the end of the hearing, the judge can either dismiss the case or make a decision that the child was abused or neglected.

²⁹ Va. Code Ann. § 16.1-266.

Resources

If you are not assigned an attorney and are unable to afford one, these organizations may be able to help:

- [American Bar Association Pro-Bono Resource Listing](#)
- [The Legal Service Corporation](#) (“America’s Partner for Equal Justice”)
- [National Legal Aid and Defender Association](#)

For more information on the child welfare levers for change, please visit our website: www.centertoadvancepeace.org/levers-for-change



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