

NACC envisions a justice system wherein every child has his/her voice heard with the assistance of well-trained, well-resourced independent lawyers resulting in the child's rights being protected and needs being met.

READING THE SIGNS:

How to Detect Potential Child Abuse Despite Declining Statistics

by Sarah Andrzejczak, NACC Fellow

The national child abuse rate has dropped for the fifth straight year according to the Department of Health and Human Services' latest annual report, which was released this past December. Cases of child abuse or neglect were estimated at 681,000 in the 2011 fiscal year, compared to 695,000 in 2010 and 723,000 in 2007.¹ If these statistics are correct, why do stories of child deaths linked to potential abuse keep surfacing across the country? Two such stories appeared in the news only days ago, one involving a 4-year-old boy in Colorado² and another involving an 8-year-old boy in California.³ In both instances, "red flags" of child abuse were said to be clearly visible, but ignored. Despite

statistics that support the idea that things are getting better, we must continue to analyze the child abuse issue and educate society about how to recognize the signs of child abuse to prevent these tragic deaths from occurring in the future.

The term "child abuse" was coined in the early 1960s and is often referred to as a "hidden" problem. By the late 1960s, each of the fifty states enacted child abuse statutes in hopes of preventing parents from inflicting harm on their children.⁴ Most statutes criminalize child abuse when an adult intentionally or recklessly causes some sort of physical or mental injury to a child.⁵ If most states agree on a definition similar to this one, why is it that as a nation we are still unclear about what qualifies as child abuse, how to recognize it, and why it still manages to go unnoticed?

1. David Cray, *Child Abuse Rates in the U.S. Drops for 5th Straight Year*, Huffington Post (Dec. 12, 2012), http://www.huffingtonpost.com/2012/12/12/child-abuse-rate-in-us_n_2288223.html
 2. See Yesenia Robles, *Trial of Commerce City woman accused of killing grandson, 4, begins*, Denver Post (May 29, 2013), http://www.denverpost.com/breakingnews/ci_23346044/trial-commerce-city-woman-accused-killing-grandson-4
 3. See Garrett Therolf, *Boy's death prompts outrage, red flags of child abuse 'ignored'*, L.A. Times (May 31, 2013), <http://www.latimes.com/local/lanow/la-me-in-boy-killed-20130531,0,5891315.story>

4. Joelle Anne Moreno, *Killing Daddy: Developing a Self-Defense Strategy for the Abused Child*, 137 U. Pa. L. Rev. 1281, 1300 (1989)
 5. Scott A. Davidson, *When is Parental Discipline Child Abuse?: The Vagueness of Child Abuse Laws*, 34 U. Louisville J. Fam. L. 403, 404 (1996).

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First, the broad language used in many states' statutes provide little guidance in borderline situations that may be child abuse, but may also be adequate parenting.⁶ This can lead to both the under- and over-reporting of child abuse and neglect. Second, there are many common characteristics of abuse, but there is no complete, definitive profile of what the typical "violent" or "abusive" relationship or home looks like.⁷ Because we have no clear picture of what abuse looks like in each and every situation, we are less confident when it comes to identifying and reporting potential abuse. Third, even when an adult faces charges for child abuse, it is often difficult to prove abuse did in fact occur. Hearsay rules create many problems when questioning witnesses about the possible abuse. Hearing from the child himself is sometimes not enough either, as the American judicial system has historically treated the testimony of child witnesses with skepticism.⁸ Lastly, child abuse itself is a very complex problem; not only is child abuse a result of complex and unique patterns of behavior amongst individuals,⁹ but it also requires the cooperation of law enforcement, child protective services, and the judicial system.¹⁰ It takes great understanding of and communication about this multifaceted issue in order to attack it efficiently and there appear to be many things that are somehow still getting lost in translation along the way.

6. *Id.*

7. Moreno, *supra* note 4, at 1304.

8. Dana D. Anderson, *The Reliability of Child Testimony in Sexual Abuse Cases*, 69 S. Cal. L. Rev. 2117, 2121 (1996).

9. Moreno, *supra* note 4, at 1307.

10. Douglas J. Besharov, *Child Abuse Arrest and Prosecution Decision-Making*, 24 Am. Crim. L. Rev. 315, 357 (1986).

Knowing that there are several problems with the current approach to combating child abuse does not initially give much hope. Even though the average citizen may not be able to write a new state statute or change the hearsay rules involved in witness testimony, there are things that each and every person can do to try to protect children that may be suffering from abuse.¹¹ Symptoms of neglect include poor hygiene, unattended medical problems, or signs of malnutrition. Physical abuse symptoms include being afraid of a parent or having unexplained bruises, burns, or welts on the body. If a parent or caregiver gives explanations for such marks, it may be a sign of physical abuse if the explanation does not seem to match the injury. Sexual abuse might be occurring if the child has any pain, bleeding, redness, or swelling in the anal or genital area; or if the child has age-inappropriate sexual knowledge or inappropriate play with toys, self, or others. Extremes in behavior; social withdrawal; and delays in physical, emotional, or intellectual development may be signs of emotional abuse. Being able to recognize these warning signs is crucial, and it is imperative that anyone who suspects child abuse may be occurring report the suspected abuse or neglect immediately. Although making these reports might not solve the problems that exist at the very core of this issue, it may be able to, at the very least, save the life of a child whose cries for help would otherwise remain unheard.

11. See generally Bryan Samuels, *Preventing Child Maltreatment and Promoting Well-Being: A Network for Action* (2013).

CLICK THE **R** TO REGISTER NOW!

for the **36th National Child Welfare, Juvenile, and Family Law Conference**

Atlanta, GA August 26-28, 2013 Pre-Conference August 25, 2013

Please join us for this years' conference: **Strategies for Success: Enhancing Advocacy for Children, Youth and Families.**

As an NACC member and as a professional dedicated to the rights and interests of vulnerable children in America, you don't want to miss this opportunity to debate the issues with the leading minds in our field, as we work together to shape the future of children in our country's legal systems.

What you will hear, see and learn at this conference can change your career and forever alter how you advocate for children and families.

» [Download a PDF of the conference brochure](#)



Amicus

In re Dependency of M.C.D.P.

The NACC signed on to an amicus curiae brief to the Court of Appeals of the State of Washington in the case of *In re Dependency of M.C.D.P.* The brief provides support for the Appellant by arguing that providing children a statutory right to counsel in dependency matters is consistent with national trends and best practices, in addition to being solidly supported by state and federal constitutional law.

The brief first acknowledges the fact that children subject to dependency proceedings have no affirmative right to independent counsel under Washington's current statutory scheme, which instead makes a child's right to counsel dependent on the child's age, the opinion of a non-attorney advocate, and the court. The conditional and discretionary nature of this statute in turn fails to protect children's fundamental rights, and fails to allow for their interests to be heard.

Twenty-seven states and the District of Columbia provide an automatic right to legal representation for children in dependency proceedings, either by statute, regulation, or rule. The number of states that guarantee legal representation for children in dependency proceedings also continues to grow, reflected by a 33% increase of states adopting such legislation between 2007 and 2009. The brief relies on these statistics to show that Washington is clearly in the minority in its views regarding this issue and therefore needs to correct its flawed scheme.

The brief relies on national experts in crafting its argument as well, as these individuals agree that children require legal counsel in dependency proceedings to adequately protect their rights. The American Bar Association has recognized that the lawyer serves an advantageous and significant role to the child who, without the guidance of a lawyer, risks proceeding in an uninformed and careless manner. Two significant conferences of distinguished professionals and experts (one at Fordham University and the other at the University of Nevada, Las Vegas) also endorsed the child-directed model.

Lastly, scientific research on child development further supports the brief's position. Children lack the experiences of adults that help develop decision-making abilities as well as the degree of physical brain development that would allow them to process information and consider consequences in the same way adults do. Psychosocial factors influence adolescents' perceptions and judgment, limit their capacity for autonomous choice, and ultimately make children more impulsive in their decision-making. The brief uses these findings to show that independent legal counsel is crucial in protecting the rights and welfare of children, perhaps even more so than adults with more advanced decision-making capabilities.

The Supreme Court has consistently held that children and youth have a unique place in society and thus deserve an equally unique place in the law, which is consistent with this brief's position on the issue. The brief concludes by urging the court to reverse the trial court's holding and recognize a state and federal constitutional right to client-directed counsel for children in dependency proceedings.

NACC Mission

As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:

- Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake
- Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy
- Advancing systemic improvement in child-serving agencies, institutions and court systems
- Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families



Cases

In the Interest of W L H

The Supreme Court of Georgia considered whether a child in a deprivation action has standing to appeal when the child is represented by counsel and the child's guardian ad litem chooses not to appeal.

W.L.H. had been in the custody of his first cousin and her husband since he was roughly 17 months old. The couple was acting as W.L.H.'s legal guardians in August 2010 when the Walton County Department of Family and Children Services (DFACS) filed a complaint alleging the child did not have proper care. On August 9, the juvenile court entered a shelter care order after W.L.H.'s guardian admitted she struck the child and left bruises, an action that violated a safety plan prohibiting physical discipline in light of prior physical abuse allegations. On the same day, the court appointed a Court Appointed Special Advocate (CASA) for W.L.H. pursuant to OCGA § 15-11-9. DFACS later filed a petition alleging deprivation based on physical abuse and entered a case plan for the parents, while the court appointed an attorney to represent the child as his counsel.

The court decided the child would remain out of the courtroom for all evidence and that testimony from the child would be given in the judge's

chambers, in the presence of W.L.H.'s attorney. W.L.H. filed a motion to allow him access to the proceedings, but the court denied the motion. The court found W.L.H. to be deprived on the ground that his guardians lacked the financial resources needed to secure the residential treatment he needed. W.L.H. subsequently appealed with the assistance of his counsel, questioning the court's handling of his due process rights.

W.L.H. contended that the decision to appeal the trial court's finding of deprivation was his alone, regardless of his guardian ad litem's opinion of his best interests, and that he therefore had standing to bring the appeal through his attorney. The Supreme Court of Georgia disagreed with W.L.H. based on the following sources of authority.

First, Georgia's Legislature has provided for representation of children by adults in civil matters based on the belief that children are not generally competent to represent themselves in legal actions or to decide their own best interests because they are of "tender years." Both OCGA § 9-11-17 (c) and OCGA § 15-11-9 (b) recognize that children are not the correct parties to determine what is in their own best interests in regards to civil matters.

Second, recent case law has held that, "[w]hen a court appoints a guardian ad litem to represent a minor, the minor is in effect made a party to the action and has standing *through the guardian ad litem* to appeal. [Cits.]." (Emphasis supplied.) *In the Interest of J.F.*, 310 Ga. App. 807, 808, n. 1 (714 SE2d 399) (2011). The court stated that this was the appropriate result in a deprivation action like the one here. Because all of the adults who were legally entrusted with the child's best interests did not believe an appeal was necessary, the court believed

it would be inappropriate to allow a deprived child to override these adults' decisions.

The court also acknowledged that following the dissent's analysis would allow a child of any age to mandate such an appeal, which would be highly misguided.

Ultimately, the court affirmed the Court of Appeals' ruling that W.L.H. lacked standing to appeal the trial court's finding of deprivation.

[> View case](#)

NOTICE TO READERS : Decisions reported herein may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice. Featured cases are identified by NACC staff and our members. We encourage all readers to submit cases. If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

Do you know of an important case which you feel NACC members should be made aware of?



If so, please let us know. Email: advocate@childrenscolorado.org.



Policy & News

Correctional Education Recs

The NACC signed on to federal policy recommendations geared at improving the quality of and access to education for young individuals in correctional facilities and upon reentry into the community.

The overall goal of these recommendations is to ensure that formerly incarcerated youth offenders have the tools and support they need in order to become positively engaged members of society, especially in terms of being prepared for future employment opportunities. To achieve this goal, three general strategies are implemented. First, there is a need to improve the quality and availability of education programs, including special education programs, programs for those that are learning English as a second language, and career/technical training for young people in correctional facilities. Second, improved access to quality education including post-secondary education options, as well as support for youths entering the community after confinement are both needed. The last strategy noted a necessary improvement in cross-system collaboration and appropriate information-sharing to facilitate these strategies.

Hopefully, implementing the above general strategies and the 20 additional, more specific

recommendations would not only improve educational opportunities and reduce recidivism for youths in correctional facilities, but would also create a more educated workforce and stronger community overall.

In addition to the NACC, 126 organizations and 84 individuals signed on to these policy recommendations before they were presented to the U.S. Department of Education, other federal partners, and community leaders at a recent Summit on Correctional Education hosted by the U.S. Department of Education and the Ford Foundation.

Foster Children Opportunity Act

The NACC signed on to a letter of support regarding Congressman Beto O'Rourke's introduction of the Foster Children Opportunity Act, an act that is geared towards the reformation of the federal immigration system in regards to children and youth.

One out of every four children in the U.S. is a child of an immigrant, though these children are often disregarded in national immigration policy decisions. Because of this, immigrant children and U.S. citizen children with immigrant parents continue to face a number of hardships, including family separation, emotional trauma, economic stability, and poor educational outcomes.

The Foster Children Opportunity Act has several objectives. First, it hopes to make certain that abused and neglected immigrant children have an opportunity to obtain the legal immigrant status they are entitled to prior to aging out of the foster care system. Second, the act seeks to ensure that all foster care children are screened for immigration relief options. One such relief option is Special Immigrant Juvenile Status (SIJS). The bill, if adopted, would

clarify that states can obtain reimbursement for the foster care costs of a child with SIJS status and that children who receive SIJS are exempted from the 5 year ban placed on receiving Federal means-tested public benefits. Additionally, the Foster Children Opportunity Act would provide the necessary technical assistance and resources to train child welfare agencies, judges, and attorneys on this matter of immigration relief for foster care children.

TRAINING CALENDAR

Abstracts Open through June 30, 2013

› [8th Latin American International Conference on Child Abuse and Neglect](#)

August 25–28, 2013 · Atlanta, GA

› [36th National Child Welfare, Juvenile, and Family Law Conference](#)

This conference is the NACC's premier training, and is the product of 36 years of experience. It is designed primarily for attorneys who practice child welfare, juvenile, and family law. Registration will open in April.

September 15–18, 2013 · Dublin, Ireland

› [Thirteenth European Regional Conference on Child Abuse & Neglect](#)

The goal of this conference is to support individuals and organizations working to protect children from abuse and neglect worldwide.

November 8, 2013 · Austin, Texas

› [Child Friendly Faith Project Conference](#)

Child Welfare Law Certification



If you represent children, parents, or the state child welfare agency you may be eligible to become certified in child welfare law. The NACC certification program is accredited by the ABA and has been endorsed by the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the Conference of State Court Administrators.

Certification gives you the recognition as an expert and will help you negotiate better pay for your services.

NACC Child Welfare Law Certification is available to attorneys who serve in the role of Child's Attorney (including Guardian ad Litem, Law Guardian, Attorney ad Litem), Parent's Attorney, and Agency / Department / Government Attorney. The specialization area as approved by the ABA is defined as "the practice of law representing children, parents or the government in all custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption. Child Welfare Law does not include representation in private child custody and adoption disputes where the state is not a party."

Certification Preparation

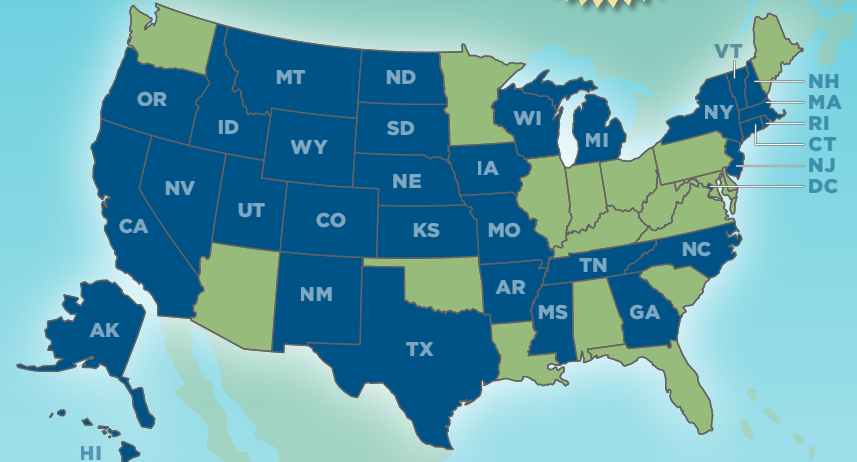
Your legal education, practice experience, and continuing legal education in child welfare, delinquency, family law, and related areas all help prepare you for the certification exam. Upon submitting a Certification Application, you will also receive a copy of the *Child Welfare Law and Practice* (Red Book).

Apply to be certified for free!

NACC has received funding from the U.S. Department of Health and Human Services to pay the application fee for up to 200 applicants for certification. This funding comes through HHS' Children's Bureau. We are now open in 34 jurisdictions and have more than 500 Child Welfare Law Specialists (CWLS). The waivers are available on a first-come, first-serve basis through September 30, 2013. Applying takes about 20 minutes and applicants then have two years to complete all components including the exam.

Eligibility at a Glance

- 3+ years practicing law
- 30% or more of the last 3 years involved in child welfare law
- 36 hours CLE/3 years (45 hours/3 years CA only) in courses relevant to child welfare law
- A writing sample demonstrating legal analysis in the field of child welfare law drafted in the last 3 years (court memo, motion, brief, article, etc.)
- Substantial Involvement Waivers are available for judicial officers, professors, and policy/supervising attorneys



If you meet these basic requirements, we would love to have you apply while we have funding from Children's Bureau to pay for your \$300 application fee!

To apply or for more information, please visit our Certification page at

www.naccchildlaw.org

or contact Daniel Trujillo, 303-864-5359, or Daniel.Trujillo@childrenscolorado.org