

Evaluation report
February 2018

Representation for Children and Youth in Child Protection Cases

Office of Performance Evaluations
Idaho Legislature





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Senator Cliff Bayer (R) and Representative Mat Erpelding (D) cochair the committee.

From the director

February 2, 2018

Members
Joint Legislative Oversight Committee
Idaho Legislature

Every day a network of dedicated volunteer advocates, program staff, public defenders, pro bono attorneys, judges, and administrative staff at the Supreme Court are at work to ensure that kids in Idaho have someone to represent their interest in child protection cases. These stakeholders make some of the most consequential decisions affecting our kids.

In spite of stakeholders' commitment and best efforts, some kids do not have court-appointed representation. The state does not have a system to track how many kids should have received representation. Furthermore, the state does not have a single entity responsible for coordinating the efforts of multiple stakeholders.

We recommend the Legislature facilitate a coordinated, collaborative effort to bring together relevant stakeholders to help strengthen representation for our kids in child protection cases.

We are grateful to everyone who helped us with this evaluation, especially volunteers and foster kids.



Sincerely,



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Formal responses from the Governor, the Supreme Court, three guardian ad litem programs, and the CASA Association are in the back of the report.



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Executive summary



Evaluation context and approach

In our 2017 report, *Child Welfare System*, we found that guardian ad litem programs have some common implementation challenges: (1) program staff struggle to recruit enough volunteer advocates to adequately represent all children, (2) volunteer advocates are not consistently familiar with the legal system and have differing levels of monitoring and report writing skills, and (3) limited resources restrict the amount of volunteer training and support offered by the programs.

After the release of *Child Welfare System*, we were asked to explore these challenges and answer the question, “Does the CASA program provide effective advocacy for the best interest of children in the child protection system in Idaho?”

After we began our evaluation work, we realized that an important stakeholder was missing from the discussion. Information was available about the number of volunteer advocates representing children and youth. However, no one was sure how many cases were being appointed to public defenders across the state.



We use the term children to refer to individuals 11 years and younger.

Youth refers to individuals 12 years and older.

Gaps exist in Idaho's system of representation for children and youth in child protection cases.

We sought input from the Administrative Office of the Supreme Court and the seven nonprofit organizations that operate the guardian ad litem programs in Idaho to identify how children and youth are represented. As a theoretical framework, we relied on the recommendations of the Michigan Law School National Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-Child Rep). The center has spent the past nine years researching representation for children and youth in the United States. Its researchers have identified the core clinical and legal skills that are essential to effective advocacy.

Report message

How are children and youth represented?

Idaho's Child Protective Act requires court-appointed representation for children and youth who are the subjects of child protection cases. The requirement is satisfied through the appointment of a guardian ad litem, a public defender, or a combination of both. Guardians ad litem represent the best interest of children or youth. Public defenders serve as counsel for children or youth and represent their expressed wishes. Statute prioritizes the appointment of a guardian ad litem for children and requires a public defender for youth.

Of the 3,323 children and youths in child protection cases, 81 percent were represented by a guardian ad litem program in fiscal year 2017. In Idaho, guardians ad litem are not attorneys. Statute and rule contemplate guardians ad litem to be volunteer advocates. In practice, guardian ad litem programs assign cases to volunteer advocates and program staff.

Gaps exist in Idaho's system of representation for children and youth in child protection cases. We found a portion of children and youth did not have any type of court-appointed representation. In a sample of 207 children and youths in fiscal year 2017, 32 percent were not served by either a guardian ad litem or a public defender.

How does the type of representation that children and youth receive affect how they are served?

The research of the National Quality Improvement Center on the Representation of Children in the Child Welfare System has indicated that perhaps more important than the profession or type of representation provided, six core skills are essential for effective representation for children and youth. We found volunteer advocates and program staff serving as guardians ad litem have strong aptitudes in several of these skills: the ability to enter into a child's world, assess safety, and actively evaluate the needs of the child. Given their legal training and experience working within a complex government system, public defenders have an aptitude for developing a case theory and providing effective legal advocacy.

When working together, public defenders and guardians ad litem can provide strong, robust representation. They complement the strengths of each other and together become stronger in all six core skills.

Has Idaho designed a system for providing consistent, effective representation for children and youth?

We found three program conditions that contribute to consistent and effective representation: (1) early appointment of representation, (2) training, and (3) stability. Idaho is strongest in early appointment of representation. Child protection training is required for guardians ad litem but not for public defenders. The biggest system challenge for effective representation is consistency and stability. Guardian ad litem programs struggle to recruit and support enough volunteer advocates to serve all the children and youth in their district's child protection cases. Program stability and consistency is also affected by the amount of energy put into sustainability efforts, such as fundraising and public awareness.

Providing effective representation for children and youth requires coordination among counties, nonprofit organizations, judges, and the Supreme Court. Because of this complex structure, stakeholders are not clear about who is responsible for ensuring consistent practice and fulfilling the state's obligation that every child and youth has some form of representation.

Guardians ad litem advocate for best interests.

Public defenders advocate for expressed wishes.

The biggest system challenge for effective representation is consistency and stability.

We recommend the Legislature facilitate a coordinated and collaborated effort to bring together all relevant stakeholders.

How can we strengthen representation for children and youth in Idaho?

Stakeholders will need to make a coordinated effort to strengthen policies and implementation efforts for child protection cases. The Legislature, the Supreme Court, the nonprofit guardian ad litem programs, and public defenders in 44 counties each have a role in either setting or implementing policy. Because no single entity coordinates and offers guidance at the state level, we recommend the Legislature facilitate a coordinated and collaborated effort to bring together all relevant stakeholders to help strengthen representation.

We reaffirm our recommendation from our 2017 report *Child Welfare System* to create an oversight entity that looks at child welfare from a system level and assesses our recommendations.

In whatever form the Legislature decides to convene stakeholders, we recommend the groups consider the following:

- Recognize all types of representation: volunteer guardians ad litem, program staff serving as guardians ad litem, public defenders as legal counsel, and a combination of legal counsel and guardian ad litem

- Expand support and require training for public defenders working child protection cases

- Identify an entity that can provide stability and consistency for the organizations providing representation services for children and youth

Introduction



Legislative interest

Idaho has a network of guardian ad litem programs that provide representation services to most children and youth in child protection cases. Seven nonprofit programs recruit, screen, train, support, and supervise volunteer guardians ad litem, sometimes known as court-appointed special advocates. The programs follow the National Court Appointed Special Advocate Association model.

In our 2017 report, *Child Welfare System*, we found that guardian ad litem programs have some common implementation challenges: (1) program staff struggle to recruit enough volunteer advocates to adequately represent all children, (2) volunteer advocates are not consistently familiar with the legal system and have differing levels of investigation and report writing skills, and (3) limited resources restrict the amount of volunteer training and support offered by the programs.

After the release of *Child Welfare System*, we were asked to explore these challenges and answer the question, “Does the CASA program provide effective advocacy for the best interest of children in the child protection system in Idaho?” See appendix A for the evaluation request.

We use the term children to refer to individuals 11 years and younger.

Youth refers to individuals 12 years and older.

Donated ► items in the seventh judicial district.

Court-appointed representation is an essential safeguard to ensure the state is fulfilling its parental obligation to children and youth in care.

The stakes are high in child protection cases. Decisions are made about the safety, health, well-being, and families of children and youth in care. Decisions made in error will have lifelong and profound consequences. When the state steps into a family situation with the assertion that parents or guardians lack the capacity to provide a minimally sufficient level of care, the state then assumes the responsibility of the parent. In other words, the state takes on the obligation to protect the child and the child's best interest, now and in the future. Court-appointed representation for children and youth is an essential safeguard to ensure that the state is fulfilling its parental obligation.

Federal law recognizes the importance of representation and requires the appointment of an attorney or a guardian ad litem for every child or youth who is the subject of a child protection case. In 1974, with the enactment of the Child Abuse Prevention and Treatment Act, the federal government made child representation a prerequisite for states to receive federal funds for child protection services. Since then, every state has complied with this federal act.



Quality representation has been linked to three program conditions and six core advocate skills.

Over the past four decades, researchers have studied the effect of representation on child protection case outcomes. Strong representation has been demonstrated to have a positive impact on outcomes for children and youth including:

- Less time spent in the custody of the state
- Fewer placement changes
- More services received
- More permanent placement decisions including more reunifications with family and more adoptions

Three necessary conditions for effective representation

Three conditions are essential at the program level for achieving positive impacts. Programs must be structured in a way that ensures appointment of representation early in the child protection case, specialized training in child protection issues, and stable representation throughout the life of the case.

Early appointment

Research has found that early appointment of representation improves case planning and expedites permanency. The entire process runs more efficiently when representation is appointed early thus reducing cost to the state. Within the first 60 days, determinations are made about whether:

- The state has jurisdiction to take children and youth into care
- Efforts have been made by the Department of Health and Welfare to prevent the removal of children and youth
- Necessary safeguards are in place to ensure children and youth receive safe and proper care
- Temporary placement decisions are in the best interest of children and youth

Early appointment of representation can have positive benefits for children and youth.

Effective representation requires training specific to child protection.

Strategies for achieving a permanent and timely resolution of the case are in the best interest of children and youth

Services are in place to ensure successful completion of the case

Early court-appointed representation ensures that a child or youth has an advocate through the beginning stages of a child protection case when many foundational decisions are made.

Specialized training

Effective representation requires targeted training in legal, social, psychological, and developmental issues of child protection cases. Advocates should have training and education specific to state and federal child protection law, child abuse and neglect, interviewing children and youth, child development, trauma, bonding and attachment, and cultural competency.

The Federal Child Abuse Prevention and Treatment Act requires the appointment of an advocate who has received appropriate training. The American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings recommends that “states should establish minimum training requirements for lawyers who represent children.”

Stable representation

Children and youth coming into the state’s custody experience change in their homes, schools, and case workers. Advocates who serve throughout the life of a case are better able to establish a relationship with the child or youth. The relationship increases the level of trust and improves communication. Children and youth will be more likely to share important details about their case. The advocate is in a better position to know and represent a child’s or youth’s best interest or expressed wishes. With stable representation, children and youth will be more likely to accept decisions made in the case.

Six core skills of effective advocates

The Michigan Law School National Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-Child Rep) has spent the past nine years researching child representation in the United States. Its researchers have identified core clinical and legal skills essential to effective advocacy. Exhibit 1 illustrates these skills.

Exhibit 1

Six core skills, as identified by QIC-Child Rep, summarize the clinical and legal expertise required to be a successful advocate for children and youth.



Source: National Quality Improvement Center on the Representation of Children in the Child Welfare System, <http://www.improvechildrep.org/>.

Enter the child's world

“ Engage with the child, learn their needs, guide them, counsel them and advocate for their needs while accommodating their stated interests consistent with state law. —QIC-Child Rep

Children and youth who are subjects of a child protection case may be incapable of understanding their legal rights and interests. If they do understand, they may not be able to verbalize what they want or need.

Advocates are effective when they frequently spend time with the children and youth they represent. Advocates can then understand a child's or youth's living situation, educational and mental health status, general well-being, and wishes.

Six core skills apply to public defenders and guardians ad litem.

What Is QIC-Child Rep?



In 2009 the US Children’s Bureau named the University of Michigan Law School as the site for the National Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-Child Rep). The QIC-Child Rep was tasked with a six-year, multimillion-dollar project to gather, develop, and communicate knowledge on child representation, promote consensus on the role of legal representatives, and offer some of the first empirically based analyses of how representation might best be delivered.

The QIC-Child Rep has conducted several important pieces of research:

A 50-state summary of state laws governing child representation

A nationwide needs assessment with summary findings from Child and Family Service reviews from 49 states, Court Improvement Program reports and assessments from 47 states, focus groups of key stakeholders, and a review of evaluations conducted of CASA programs and attorney representation

An evaluation of a program piloted in Georgia and Washington that measured the impact of providing children and youth an attorney with specialized training in six core skills that QIC-Rep had identified as being essential to best practice

QIC-Rep has developed a set of recommendations to the Children’s Bureau and any interested state government about how to best promote quality representation for children and youth in child protection proceedings.

Source: 2009–2016 Activities Report, National Quality Improvement Center on the Representation of Children in Child Welfare (QIC-Child Rep); <http://www.improvechildrep.org>.

Assess child safety

“ Protect the child but without over-reacting. Remove the danger, but not the child whenever that can be done consistent with child safety. —QIC-Child Rep

Advocates can make an objective assessment of safety when they understand a child’s or youth’s circumstantial threats and vulnerabilities, and the protective capacities of the parents or guardians. A thorough and independent investigation allows an advocate to assess the circumstances of the case first hand and make recommendations for the safety of the child or youth.

Actively evaluate needs

“ Facilitate an appropriate assessment of the needs of the child and his/her family. Diagnose the problem. —QIC-Child Rep

An advocate who frequently contacts a child or youth and independently investigates issues throughout the life of the case can achieve a thorough, objective, and evolving assessment of a child’s or youth’s needs. With a foundational understanding of social sciences and child development, advocates can request professional evaluations when necessary and synthesize findings from these and other assessments to ensure their clients’ needs are being effectively met.

Advance case planning

“ Facilitate development of an appropriate case plan. —QIC-Child Rep

Advocates need to attend a child’s or youth’s case staffing and the family’s case plan meetings. An advocate’s presence during the case planning process in one study was found to result in more specific, tailored case plans. With specific case plans, advocates can more effectively monitor implementation of the case plan for compliance and expedited permanency. Advocates who understand the needs of children and youth can ensure that the objectives, services, and tasks built into the case plan have a clear tie to a child’s or youth’s needs.

Develop case theory

“ Develop an active and forward-looking theory of the case. What is going on here? Adopt, and maybe rule-out, alternative and tentative theories of the case. Provide force and direction to the advocacy. —QIC-Child Rep

By understanding case dynamics and thinking through multiple possibilities, advocates acquire leads for an independent investigation and form a case theory to which reality can be compared. Case theory is refined over time as advocates collect new information. The result is a shorter turnaround time for requesting adjustments to the case plan.

Advocate effectively in a variety of venues and levels of conflict

“ Use advocacy corollaries in meeting a child’s needs that stress problem-solving and nonadversarial approaches—but which include traditional adversarial modes when appropriate. —QIC-Child Rep

In many cases, parties generally agree about the desired trajectory and outcome of the case. Advocates can mediate and facilitate the discussion of parties to ensure everyone is on the same page and quickly resolve small differences of opinion. Other times, children and youth require more aggressive representation. More adversarial strategies, including petitioning the court and other legal tools, may be necessary to ensure that children’s and youth’s best interest or expressed wishes remains in the forefront of decisions.

Evaluation approach

We developed the scope of our evaluation by seeking input from the Administrative Office of the Courts and the executive directors of the guardian ad litem programs. We focused our scope on the performance of the guardians ad litem programs in Idaho. The scope can be found in appendix B.

After we began our evaluation work, we realized that an important stakeholder was missing from the discussion. Public defenders are required to be appointed to youth 12 and older. Additionally, public defenders often represent volunteer advocates. Information was available about the number of volunteer advocates representing children and youth; however, no one was sure exactly how many children and youth were served by public defenders across the state.

In this evaluation, we wanted to answer the questions posed in the request letter and look globally at representation for children and youth, including guardians ad litem and public defenders.

In chapter 2, we identify how many children and youth are represented by guardians ad litem, public defenders, or both.

In chapter 3, we assess how being represented by a guardian ad litem or a public defender may affect how children and youth are served. We use the six QIC-Child Rep Core Skills to compare and describe the strengths and challenges of the representation types.

In chapter 4, we assess whether children and youth are consistently receiving good representation and refer to the three necessary program conditions.

Finally, in chapter 5, we provide recommendations for how to strengthen representation for children and youth in Idaho.

We looked globally at representation for children and youth.

We analyzed data, conducted site visits, and interviewed stakeholders, including children, youth, and volunteers.

Methodology

This evaluation incorporates a mixed-method approach to answering our scope questions. A brief description of our data collection efforts is listed below. More details about our methodology can be found in appendix C.

Case data query and analysis

Before our evaluation, program data describing how many children and youth received guardian ad litem services was fragmented. Questions about data integrity or comparability across programs prevented us from using past reports prepared for the Legislature.

Instead, we created an original data set of case data from the Administrative Office of the Supreme Court and each of the seven guardian ad litem programs. We used the data from the Supreme Court to create a master list of all child protective act cases that were active at any point between July 1, 2016, and June 30, 2017, and matched the records queried from the seven programs.

We looked up the case register of action data in 373 cases to log the date of court-appointment for guardians ad litem and public defenders. From this data set, we were able to see how many children and youth were served by volunteer advocates, program staff, and public defenders and to estimate the potential number of children and youth who did not have court-appointed representation.

Literature review and program document review

We conducted a literature review of articles and other states' evaluations on effective child representation. We reviewed research on legal representation and the effectiveness of court-appointed special advocate programs.

Each guardian ad litem program gave us their policies and procedures and financial statements. The Administrative Office of the Courts gave us past legislative reports and program audits that had been conducted from fiscal years 2014 to 2017.

Stakeholder survey

We surveyed magistrate judges, public defenders, prosecutors, pro bono attorneys, social workers with Child and Family Services within the Department of Health and Welfare, and active volunteer advocates from the seven guardian ad litem programs. We received 322 completed responses.

Focus groups

We visited each of the seven programs and conducted seven focus groups with volunteer advocates and seven focus groups with members of the program boards of directors. We spoke with 59 active volunteer advocates and 39 board members.

Program staff interviews

During our site visits, we held 36 interviews with program staff from the seven guardian ad litem programs.

Interviews with children and youth

The Department of Health and Welfare selected and arranged for us to speak with 23 children and youths in five sessions across the state. The children and youths ranged from 5 to 17 years old. These children and youths had experience with different types of court-appointed representatives:

3 youths had an appointed public defender

14 children had an appointed guardian ad litem

6 youths had both a guardian ad litem and a public defender

2

Gaps in representation

How are children and youth represented in child protection cases?

Idaho's Child Protective Act requires court-appointed representation for children and youth who are the subjects of a child protection case. The requirement is satisfied through the appointment of a guardian ad litem, a public defender, or a combination of both. Guardians ad litem represent the best interest of the child or youth. Public defenders serve as counsel for children and youth and represent their expressed wishes. Statute prioritizes the appointment of a guardian for children and a public defender for youth.

Most children and youths (81 percent) in child protection cases were represented by a guardian ad litem in fiscal year 2017. In Idaho, guardians ad litem are not attorneys. Statute and rule contemplate guardians ad litem to be volunteer advocates. In practice, guardian ad litem programs assign cases to volunteer advocates and program staff.

Idaho's system has gaps in providing representation for children and youth in protection cases. We found a portion of children and youths who did not have any type of court-appointed representation.

Idaho code requires representation for all children and youth in child protection cases.

Idaho Code § 16-1614 of the Child Protective Act requires court-appointed representation for all children and youth in child protection cases. Statute states that children 11 years and younger shall be appointed a guardian ad litem, unless the guardian ad litem program does not have the capacity to serve the child. In this case, a public defender shall be appointed.

Statute states that youth 12 years and older shall have appointed counsel—a public defender paid for by the county. If a judge finds that a public defender is not practical or not appropriate, then the court shall appoint a guardian ad litem with their own legal counsel. Courts may appoint both a guardian ad litem and a public defender when appropriate.

Generally, a guardian ad litem is an individual appointed by a court to protect the best interests of a child or adult who does not have the capacity to advocate for themselves. In Idaho Code § 16-1602(23), a guardian ad litem is further defined as a person acting as a special advocate pursuant to a guardian ad litem program. Statute and rule contemplate guardians ad litem to be volunteer advocates.

Idaho has seven guardian ad litem programs, one in each judicial district. Exhibit 2 shows the cities where guardian ad litem programs are based and the corresponding judicial districts. Each program is an independent, 501(c)3 not-for-profit organization. The seven guardian ad litem coordinators (the chief executive officer or the executive director for the program) have statutory responsibility under Idaho Code § 16-1632 to recruit, screen, select, train, supervise, and remove volunteers who serve as guardians ad litem for each county in a judicial district.

Guardians ad litem represent best interests.

Statute and rule contemplate guardians ad litem to be volunteer advocates.

Guardian ad litem programs serve children and youth in all judicial districts.

Exhibit 2

Guardian ad litem services are administered by a nonprofit program in each judicial district.



Guardians ad litem have a more defined structure than attorneys.

Idaho's Child Protective Act describes the rights, powers, and duties of guardians ad litem, establishes a structure for creating a network of programs to provide services, and sets a level of expectation that programs will follow the National Court Appointed Special Advocate (CASA) Association model. Under the CASA model, most children and youth would be assigned a volunteer advocate. Under exceptional circumstances, a portion of cases could be served by program staff.

Idaho Code § 16-1634 gives guardians ad litem the rights of a party and authorizes them to file motions, pleadings, and briefs on behalf of a child or youth when represented by legal counsel. Guardians ad litem are required by Idaho Code § 16-1633 to perform six duties:

Conduct an independent factual investigation of the circumstances of a child or youth and their case

File a written report stating the results of the investigation, recommendations, the expressed wishes of a child or youth, and other information as the court may require before any adjudicatory, review, or permanency hearing

Advocate for a child or youth through each stage of the proceedings

Monitor the circumstances of a child or youth to assure that terms of the court's orders are being fulfilled and remain in the best interest of the child

Maintain confidentiality for all case information

Complete other and further duties as expressly imposed by the court order

By contrast, statute minimally directs how a public defender should represent children and youth. Idaho Code § 16-1614(3) says that public defenders will act as counsel and shall be paid by the county unless there is an independent estate to pay the cost.

Guardians ad litem are a recognized party in child protection cases.

Public defenders act as counsel.

In Idaho, the first child served by a guardian ad litem occurred in 1982.

History of the guardian ad litem programs in Idaho



In 1976 Idaho passed the Child Protective Act with requirements for court-appointed representation for children and youth. In 1980 the Junior League, the Boise Bar Association, and the Family Advocate Program received permission from the Honorable Richard Grant, Juvenile Magistrate, to initiate a pilot guardian ad litem program in Ada County. This program officially accepted its first child referral from the juvenile magistrate judge in 1982.

The pilot program in Ada County was similar to the first court-appointed special advocate program started in Seattle in 1977 by Judge David Soukup. The judge began using volunteers to conduct independent investigations and consult with children and youth in abuse and neglect cases to ensure that he received sufficient, relevant facts to make decisions in the best interest of the children. The program was conducted under the supervision of an attorney who provided training and consultation on every case. Volunteers underwent a rigorous background check and were recruited from professional groups who had experience working with children and youth. In 1984 Judge Soukup's program was the model for what became the National Court Appointed Special Advocate Association.

In Idaho, the Family Advocate Program worked with legislators to revise the Child Protective Act as follows: (1) add clarity to the role of guardian ad litem, (2) make the guardian ad litem a party to the legal proceedings, and (3) create a structure for passing state funds to programs to assist in the development and operation of guardian ad litem programs across the state. In 1989 the act was amended.

From 1989 to the mid-1990s, a guardian ad litem program was established in each of the seven judicial districts. Each program became an incorporated 501(c)3 and adopted the program model of the National Court Appointed Special Advocate Association.

Source: Family Advocates, *Guardian Ad Litem Handbook*; Judicial District VII CASA Program, *Guardian ad Litem Volunteer Handbook*.

Most children and youth were represented by guardians ad litem in fiscal year 2017.

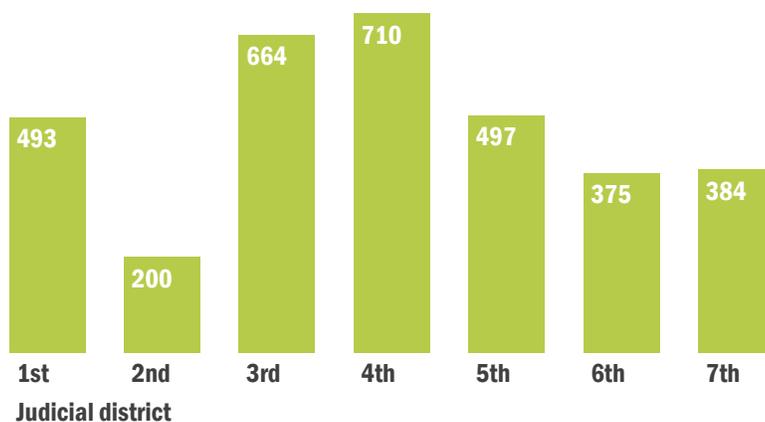
We encountered two problems when trying to discern the percentage of children and youth who are the subjects of child protection cases and served by one of the guardian ad litem programs or a public defender. First, the case management system used by the courts does not have a clean way to track or extract systemic data for court-appointed representation. Second, the seven guardian ad litem programs are independent, nonprofit organizations and have variations in data tracking. Additionally, they only have records for children and youth who were appointed to the program.

We addressed these problems by creating a dataset using data queried from the information management systems of the Supreme Court and the seven guardian ad litem programs. We selected cases that were active at any point during fiscal year 2017.

We found that Idaho had 1,863 active child protection cases involving 3,323 children and youths. Exhibit 3 reports the number of children and youths who were the subject of a child protection case. The data set had 2,370 (71 percent) children and 946 (29 percent) youths. Seven subjects in the data set were missing a birthday, so could not be categorized.

Exhibit 3

3,323 children and youths were the subjects of an active child protection case in fiscal year 2017.



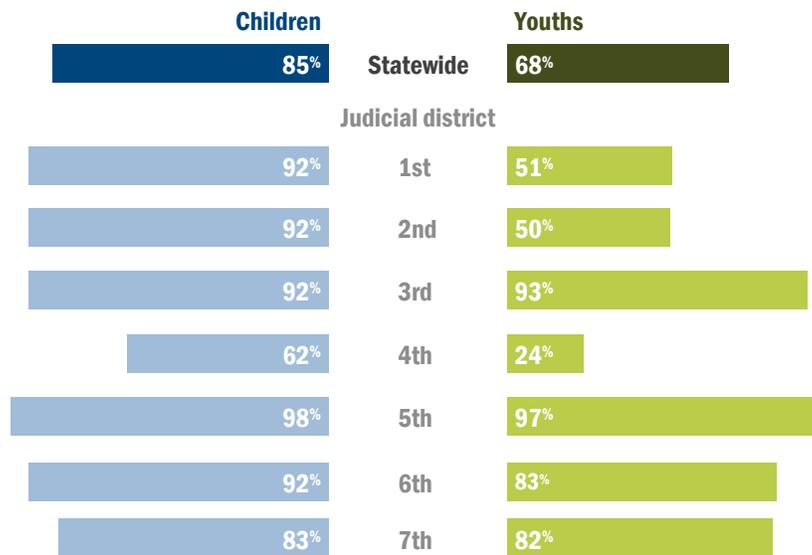
In fiscal year 2017, Idaho had 1,863 active child protection cases involving 3,323 children and youths.

71% of our dataset were children and 29% were youths.

Guardians ad litem programs served 2,677 (81 percent) children and youths in child protection cases during fiscal year 2017. A higher percentage of children than youths was served by guardian ad litem programs. Exhibit 4 illustrates the percentage of children and youths served by guardian ad litem programs.

Exhibit 4

Statewide, 85% of children and 68% of youths received representation services from a guardian ad litem program during fiscal year 2017.



Note: Includes children served by volunteer advocates and program staff.

Gaps exist in child representation.

We found that in fiscal year 2017, 946 youths were the subject of a child protection case. We also found 346 children who were not served by a guardian ad litem program. According to statutory requirements, all these children and youths should have been appointed a public defender. As previously noted, the state does not systematically track representation data for cases in which a guardian ad litem is not actively serving and, therefore, has no way to routinely validate that all children and youth are receiving representation.

To better understand what happens when a guardian ad litem program does not serve a child or youth, we reviewed the register of actions for the cases of 373 children and youths selected from the total population of 3,323. Of 373 children and youths in our sample, 207 were not served by a guardian ad litem program.

Of the 207 children and youths who were not served by a guardian ad litem program, 161 were in the fourth district. We oversampled the fourth judicial district because this district has the highest number of child protection cases and the lowest proportion of children and youths served by a guardian ad litem program. In addition to recruiting and training volunteer advocates, the guardian ad litem program in the fourth district is also responsible for recruiting pro bono attorneys to represent guardians ad litem in Ada County. Without both a volunteer advocate and a pro bono attorney, the program cannot serve a child or a youth in Ada County.

Of the 207 children and youths in our sample, we found 140 (68 percent) were appointed a public defender. The remaining 67 (32 percent) did not have any active representation from a public defender or a guardian ad litem. Though a policy requiring court-appointed representation for children and youth is a prerequisite to receive federal funding for child protection services, federal performance measures and audits only ask states to indicate they have statutes and policies in place. States are not required to assess implementation.

The state has no way to routinely validate that all children and youth are receiving representation.

Federal audits do not review the implementation of mandatory court-appointed representation policies.

We found a portion of children and youth were not served by a public defender or a guardian ad litem.

These cases revealed three circumstances in which there may be a gap in representation for children and youth in child protection cases:

Neither a public defender nor a guardian ad litem is appointed

A guardian ad litem is appointed, but the program does not have the capacity to serve and a public defender is not subsequently appointed

A guardian ad litem is appointed and serves for a period of time but then withdraws from the case and a public defender is not subsequently appointed

Exhibit 5 illustrates the percentage of our sample where gaps exist.

Exhibit 5

68% of our sample was represented by a public defender.

Our sample included 207 children and youths who were not served by a guardian ad litem program.

**Representation by public defender
68%**

**Gap in representation
32%**



Of the 67 children and youths without active representation, 21 had neither an order for a guardian ad litem nor a public defender in the register of actions for their case. They were the subjects of 16 different cases. Twelve were the subjects of cases that were closed or dismissed before or within days of the adjudicatory hearing. The representation status of three children and youths could not be confirmed through the register of actions. Three youths were the subject of one case that was still pending. The remaining three were the subjects of cases that had been open longer than 30 days.

In our sample, 110 had an order that appointed a guardian ad litem, but none received services in fiscal year 2017. Of those, 46 were not subsequently appointed a public defender. Looking further into these cases, we found that a portion of the 46 had never been served by a guardian ad litem program. Another portion had received services from a program; however, at some point before fiscal year 2017, the program withdrew from the case. One reason programs withdraw from cases is that they determine the volunteer advocate or program staff are more urgently needed on another case.

We found a few examples of sibling groups in which a portion were represented by either a guardian ad litem or a public defender. The others did not have representation clearly appointed to them in the register of actions. The guardian ad litem programs may provide some level of service to siblings whom they are not appointed to represent. They may check in on the status of the child while conducting their monthly visit with the children they are serving. However, this type of monitoring is not the same as full representation and would not meet the intent of federal or state law.

3

Representation types

How does the type of representation that children and youth receive affect how they are served?

States have developed multiple strategies to ensure children and youth have a guardian ad litem or an attorney to represent them. A growing body of research has emerged alongside states' strategies trying to determine if one type of representation is better than another. Multiple studies have demonstrated that with proper training, supervision, and access to legal services, volunteer advocates and paid, nonattorney staff can effectively represent children and youth.

At the same time, another school of thought has emerged, arguing that children and youth need legal representation if they are to stand a chance at successfully navigating the complexities of the system. The risk is high for an erroneous decision, and the consequences of a bad decision are dire. Proponents of this view would state that it is within the state's ability and interest to ensure every child and youth has legal representation.

The research of the QIC-Child Rep has shown that six core skills are essential to effective child representation. Research shows that guardians ad litem have strong aptitudes in several of these skills including the ability to enter into a child's world, assess safety, and actively evaluate the needs of the child. Given their legal training and experience working within a complex government system, public defenders have an aptitude for developing a case theory and providing effective legal advocacy.

We found three types of representation for children and youth in Idaho: guardian ad litem, public defender, and a combination of both. In our review of national literature and other state evaluations of child representation, we noticed a pattern. The three types of representation have an aptitude in some of the six

QIC-Child Rep core skills. This pattern was further supported through our interviews with advocates, staff, youth, and through our survey work of judges and attorneys. Exhibit 6 illustrates the three types of representation and whether the type is strong or needs additional support in each of the six QIC-Child Rep core skills.

Exhibit 6
Guardians ad litem and public defenders have strong aptitudes in skills needed to represent children and youth.

Core skills	Guardian ad litem	Public defenders	Combined
Enter the child's world	●	○	●
Assess child safety	●	○	●
Actively evaluate needs	●	○	●
Advance case planning	●	○	●
Develop case theory	○	●	●
Advocate in all settings	○	●	●

 Strength
  Needs additional support

Guardians ad litem are also referred to as court-appointed special advocates in Idaho.

Time, independence, and community perspective contribute to the aptitudes of guardians ad litem.

In Idaho, guardian ad litem programs follow the National Court Appointed Special Advocate model. Court-appointed special advocates, or CASAs, have strengths that translate into several of the core skills essential for effective advocacy. CASAs have time, independence, and are dedicated to service. CASA programs provide the opportunity for members of the general public to look into the child protection system and advocate for individual children and youth as well as raise community awareness for the entire system. Time, independence, dedication, and community values contribute directly into several of the QIC-Child Rep core skills.

The need for time when entering a child’s world

The basis for providing strong child advocacy is the ability to enter a child’s world. This takes time. By design, the CASA program model uses volunteers who will likely have more time to devote to a case than a staff attorney. The estimated average monthly time commitment to serving a case is 10 hours per case a month. The National CASA Association program standards require advocates to have, at minimum, one monthly in-person contact with the children and youth they represent. National CASA directs programs to assign no more than two cases at a time to a volunteer unless the program has provided the volunteer a waiver.

In talking to volunteer guardians, we were able to see their dedication and care for the children and youth they serve and their willingness to engage with children and youth to form meaningful relationships. Of the stakeholders who responded to our survey, approximately 70 percent agreed that guardians ad litem are effective at advocating for the best interest of the child and 72 percent agree that they also make a positive difference in the lives of the children they serve.

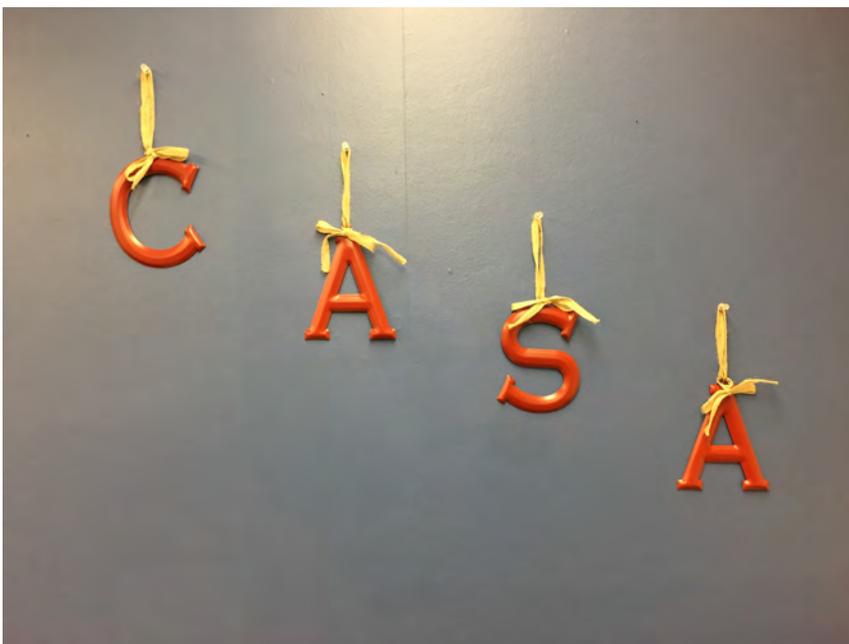
One volunteer said,

“CASA is time well spent. It’s not easy or pretty, but it will change the course of a child's life for the better. It will bring a great amount of satisfaction to a volunteer who is ready to change the community profile for tomorrow.”

When we interviewed children in the child protection system, many of them spoke about the personal relationship they developed with their guardian ad litem. Two young brothers in north Idaho talked fondly about looking forward to visits from their guardian ad litem. The children knew their guardian ad litem by name and even talked about the small gifts the guardian had brought them.

Time and independence when assessing safety and evaluating needs

Time and independence are necessary components of assessing safety and actively evaluating the needs of children and youth. An independent investigation is a core element of the CASA program and required by statute. As one volunteer advocate in the second judicial district described, guardians ad litem are “independent from the rest of the system. All we care about is the kids. [We] can isolate on one thing: advocating for the child.”



◀ Wall hanging in judicial district one.

The child protection system is heavily dependent on community advocacy and participation.

Community perspective and case planning

Volunteer advocates serving as guardians ad litem offer a unique perspective into the case planning process. Guardians ad litem advocate for the best interest of children and youth. The assessment of best interest is informed by training and a perspective that is unique from some of the other decision makers.

Most of the guardians ad litem are not social workers or attorneys. They bring a lay person or community perspective to the case. This perspective can be valuable during the case planning process where an overemphasis on one issue, such as safety, can be a detriment to the best interest of children.

A volunteer advocate in our focus group in the seventh district described how she persistently worked with the Department of Health and Welfare to ensure the case plan fit the needs of the child. She explained that the girls she was working with were in a living situation that was detrimental. The girls were being verbally abused and not allowed to see their friends and family. When the advocate first brought the issue to the social worker, she was told that the girls were not in imminent danger and would not be moved. The advocate continued to persistently monitor the plan and bring the issue to the department. In the end, the social worker was able to see what the advocate saw, and the girls were moved.

One of the judges we interviewed talked about the value that volunteers brought to the system as well as to individual cases. Guardians ad litem are able to perform community advocacy by raising public awareness for child protection issues. They can speak in generic terms about what they are seeing. The child protection system requires community engagement. Without foster parents, nonprofit organizations, community donations, and volunteer advocates, the system would never have enough resources to address the needs of children and youth.

To be effective, guardians ad litem need access to legal services.

With legal representation, guardians ad litem are able to develop a case theory and effectively advocate in all settings. Idaho statute requires guardians ad litem to be represented by legal counsel. Most counties in the state pay for public defenders to represent guardians ad litem. In Ada and Bonneville counties, guardian ad litem programs are required to recruit pro bono attorneys. Recruiting and training pro bono attorneys adds sustainability challenges for programs and may reduce the number of children and youth served by the guardian ad litem program.

Legal expertise brought by legal counsel provides strong advocacy and develops a strong case theory.

Child protection cases are legal cases, and a particularly complex form of legal case. Public defenders have the advantage of years of legal training to serve as a foundation for representing children and youth. A growing belief among child representation experts is that all children require legal representation. In the QIC-Child Rep needs assessment conducted in 2010, authors commented, “Without legal representation, a child has little prospect of successfully navigating the complexities of dependency proceedings.”

In relation to the QIC-Child Rep skills, researchers consider the legal counsel type as strong at developing case theory and advocating effectively in a courtroom setting. The type needs additional support to effectively enter a child’s world, assess child safety, actively evaluate needs, and advance case planning. Generally, child protection stakeholders held similar views in Idaho.

The burden of legal representation for youth largely falls on county public defenders.

Biggest strength of legal representation: the youth's expressed wishes are advocated.

Develop a case theory and advocate effectively in all settings

Judges spoke about the strength of public defenders in their knowledge of the legal process. Public defenders bring with them education, training, and courtroom experience that helps them effectively serve their clients, argue their case, file appropriate motions, and present evidence to the judge that builds a strong case for their client. As one judge said:

“ Attorneys generally have a better understanding of the legal process and the impact or effect of the legal process and decisions than CASA volunteers do.

Stakeholders said that attorneys are more effective advocates in the courtroom than volunteer guardians ad litem, providing children with strong advocacy in that setting. One judge put it this way:

“ Attorneys are better at presenting testimony and evidence. [They are] more likely to present relevant facts on specific issues in controversy.”

The biggest strength cited by stakeholders for the legal counsel type is that with legal representation, youth's expressed wishes are effectively advocated and a strong legal case theory can be developed. We were told by judges and other child protection stakeholders that the reason youth 12 years and older are appointed an attorney is to align with other practices in adoption cases where youth of the same age must give consent to adoption. Youth are likely able to articulate their expressed wishes.

Public defenders face challenges when serving children and youth.

Public defenders representing children and youth have challenges spending time with their clients outside the courtroom. Stakeholders told us that due to high caseloads and other constraints, children and youth may only see their public defender minutes before a hearing. The lack of time limits a public defender’s ability to enter a child’s world.

Public defenders serving children under 12 years old present challenges for the attorney and the children. For the attorney, Idaho code is clear that even when the child is under the age of 12, the attorney is still appointed as counsel with a duty to serve the expressed wishes of their client. If the attorney were to be appointed guardian ad litem, the attorney would be charged with serving the best interests of the child—a conflict of duty for any attorney.



◀ Toys and supplies donated to the first judicial district.

A child's or youth's expressed wishes and best interests do not always align.

Representation that includes legal counsel and a guardian ad litem is effective in meeting the six QIC skills.

In many cases involving youth, a public defender and a guardian ad litem are appointed. Guardians ad litem may serve on cases of a youth for several reasons: (1) the case may have begun when the child was younger than 12, and the guardian ad litem was initially assigned and has continued to serve the case through resolution, (2) a judge has discretion to appoint a guardian ad litem along with an attorney, (3) a youth may have younger siblings in the same family group who are served by a guardian ad litem and service may be extended to the older child.

Children served by a public defender and a guardian ad litem benefit from having two distinct interests advocated. First, attorneys can advocate strongly for a child's expressed wishes. Second, guardians ad litem can conduct an independent investigation and make recommendations to the court for what they consider is the best interest of a child. While a guardian ad litem is required to report the child's expressed interest, there are times when the expressed interest and the best interest conflict.

In our survey, one judge explained:

“ Sometimes the child has wishes that are or may be contrary to their best interests. The attorney is able to vocalize the child's wishes, while CASA is able to present what may really be in the child's best interest.

Stakeholders were generally positive about the benefits they observed when a volunteer guardian ad litem and a public defender appointed as counsel serve the same child. The following quotes represent statements made by many judges in our survey:

“ Attorneys are generally better equipped to inform the court and convey information, and to convey the desires of older children. CASA provides a nonlegal perspective that enhances the information provided.

“ In my opinion, this is the scenario that produces the best information to the court. You have an attorney appointed for the child who can give the legal background and representation, as well as a CASA worker who is usually in a better situation to give the court a broader, truer picture of what is going on.

The major challenges for widespread adoption of this type are a lack of sufficient volunteer guardians ad litem, too few training opportunities for attorneys, and sometimes poor coordination among parties. The cost to counties is greater for this type because a public defender is needed to represent both the guardian ad litem and the child. Public defenders may likely represent the parents too. We discuss these challenges in more detail in chapter 4.



◀ Quilts made in the second judicial district.

4

Strengths and challenges

Has Idaho designed a system for providing consistent, effective representation for children and youth?

Chapter 1 described three essential program conditions for delivering effective representation: early appointment, training, and stable representation. Idaho's current system appoints representation early in the life of the case. Training is required and provided for guardians ad litem, but not for public defenders. The biggest system challenge for providing effective representation is consistency and stability.

None of the guardian ad litem programs have enough volunteer advocates to serve all the children and youth in their district. Programs use different strategies to address the shortage. Some programs have program staff serve as guardian ad litem. Other programs withdraw from cases when they do not have the volunteers to serve.

All programs struggle to supplement the money they receive from state funds with fundraising and other sources of revenue. Programs also have challenges with adapting procedures and managing stakeholder relationships that may vary from one county to the next.

Providing consistent and effective representation for children and youth requires coordination among counties, nonprofit organizations, judges, and the Supreme Court. Within this complex structure, stakeholders do not always have clarity about who is responsible for ensuring consistent practice and fulfilling the state's obligation for every child and youth to have some form of representation.

Idaho is strong at appointing representation early.

A child protection case can be initiated one of several ways:

- Declaration of imminent danger by law enforcement

- Petition for removal by a county prosecutor or deputy attorney general

- Expansion of a proceeding under the Juvenile Corrections Act by the courts

- Idaho Safe Haven Act after a parent has relinquished an infant

After a child protection case has been initiated, statute outlines a series of hearings that are to be held and the required timeline in which decisions are to be made. Exhibit 7 illustrates the typical flow of a child protection case.

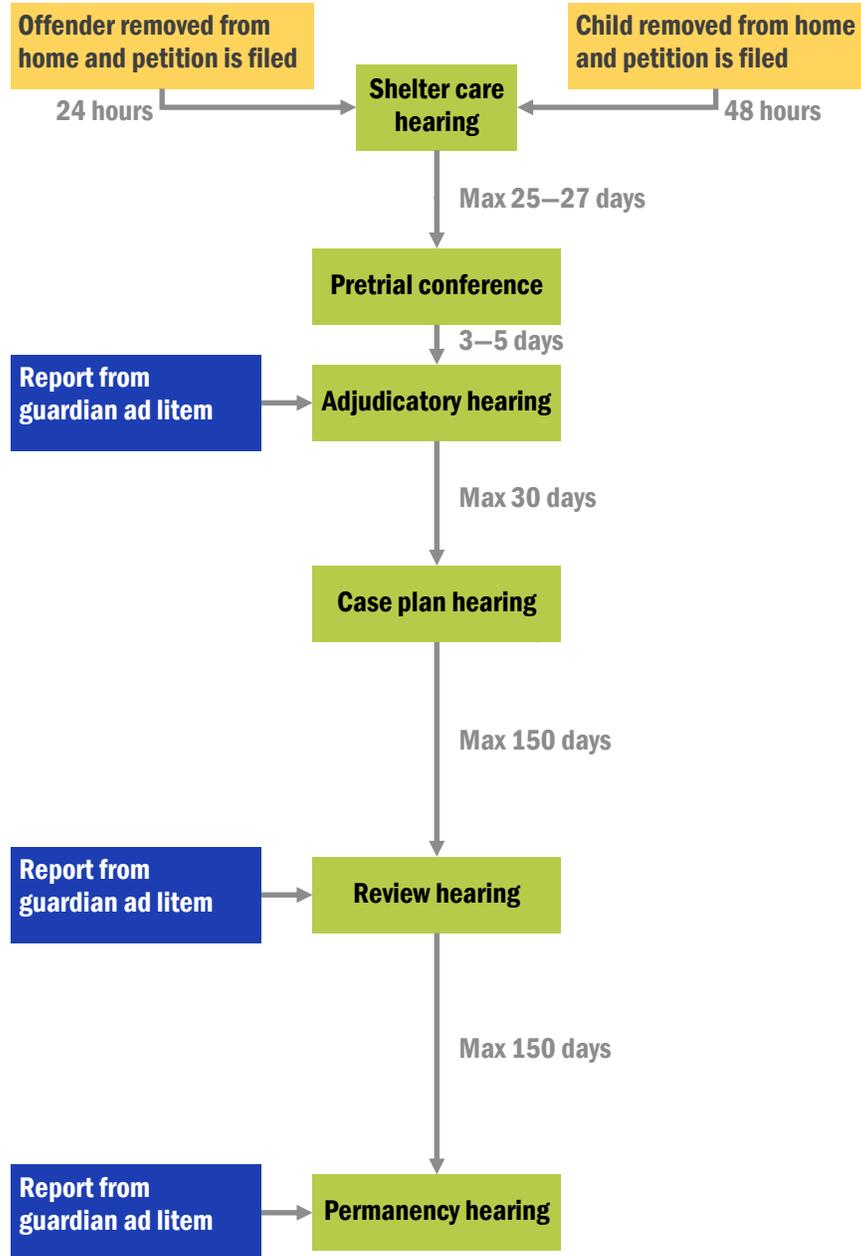
Statute does not specify at what point in the child protection case representation for children and youth should be appointed.

Judicial Rule 36a states that, “as soon as practical after the filing of the petition, the court shall appoint a guardian ad litem.” The Idaho Child Protection Manual states, “Upon the filing of a petition, the recommended best practice is for the court to immediately appoint an attorney or guardian ad litem for the child.”

Stakeholders do not always have clarity about who is responsible for ensuring consistent practice.

Exhibit 7

Many important decisions are made within the first 60 days of a child protection case.



Based on Child Protective Act Timelines flowchart, *Child Protection Manual* (2015) p. 7, Idaho Office of the Courts.

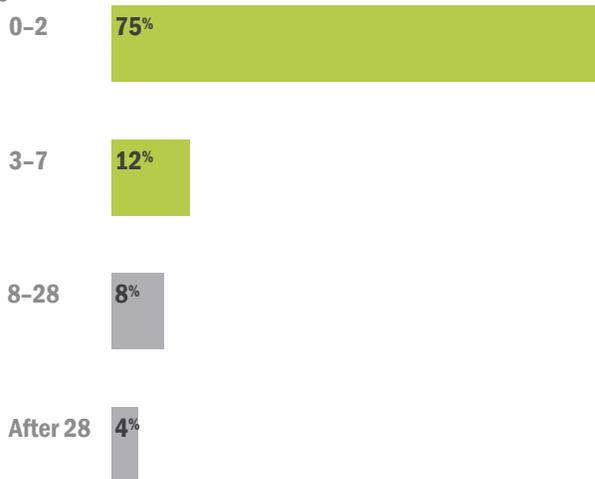
Note: This timeline applies to cases without aggravated circumstances.

The proportion of children and youth who are appointed representation early in the child protection proceedings is a strength for the state. We sampled 373 children or youths and found that 87 percent had been appointed representation within seven days after the case filing date. Only 4 percent were appointed representation more than 28 days after. Exhibit 8 illustrates the length of time between the day a case was filed and the day the court ordered representation for our sample.

Exhibit 8

Of our sample, 87% of the initial orders to appoint representation occurred within one week of the date the case was filed.

Days between order and case file



Note: Percentages do not sum to 100 because of rounding. Sample size is 373 of 3,323 children and youths.

Any individual who represents children and youth should receive training specific to the legal, social, psychological, and community issues of child protection.

Training is required for guardians ad litem but not for public defenders.

Child protection is a complex legal arena requiring specialized training. Training provides a framework for those who must make nuanced judgments and recommendations. No profession comes to the arena of child protection fully equipped. Training helps individuals understand the facts and judgments each stakeholder brings to the table in a child protection case. As a volunteer advocate in the third judicial district described, training “help[s] people remove their own biases and focus on facts.”

A 1987 study of attorneys, volunteer advocates, and law students appointed to represent children in dependency cases made two important findings. First, training improved the performance of each group. The improved advocacy led to better case outcomes. Second, each group was able to offer quality representation after they received training.

This study has two important policy implications. First, any individual who represents children and youth in a child protection case should receive training specific to the legal, social, psychological, and community issues of child protection. Second, because individuals who are not attorneys can perform advocacy activities well when properly trained, states can use more than one method for providing representation to children and youth.

Training for guardians ad litem

The Child Protective Act (Idaho Code § 16-1632(h)) requires that guardian ad litem programs train volunteer advocates. Idaho Juvenile Rule 35 requires that guardian ad litem programs offer 30 hours of preservice training before a volunteer is eligible to be appointed to a case in addition to court observation time. The volunteer must complete 12 hours of annual in-service training to remain active. This requirement is the same as the program standards of the National Court Appointed Special Advocate Association.

Preservice training covers a standard set of topics including the role and responsibility of a guardian ad litem, court process, state and federal law, confidentiality, child development, permanency planning, communication and information gathering, special needs of children, and cultural competency. The National

Association has issued new curriculum in 2017 to help local programs perform high-quality training. Each local program can take the standard template and customize training to meet the specific needs of its community.

The Administrative Office of the Courts reviews advocate records on-site to ensure programs are completing the training requirements and proper documentation of training is in place.

Guardians ad litem report that the training they receive is effective in preparing them for their role. In our survey of active volunteer advocates across the state, respondents indicated that training provided by the programs was effective in helping them to identify the best interest of a child (92 percent), investigate and gather case information (87 percent), and protect confidential information (93 percent). Advocates reported that training was least effective in preparing them to speak in court (63 percent) or operate in a high-conflict situation (62 percent).

New volunteer advocates have benefitted from being paired with a more experienced advocate. In the first judicial district, the guardian ad litem program has implemented a peer-coordinator model that connects new advocates to peer mentors who help provide connection, support, and supervision. Participants in staff interviews and focus groups explained that the job shadowing or mentoring that volunteer advocates received was particularly helpful. This pairing helped translate classroom learning into a real world application. When we asked volunteer advocates what program changes helped most as a court-appointed special advocate, respondents most often selected (1) opportunities to engage with other volunteers and (2) access to a more experienced volunteer or mentor.

Training for public defenders

The Child Protective Act does not have any requirements for public defender training. The Idaho State Bar requires attorneys to complete 30 credit hours of continuing legal education every three years, but this is a general requirement applicable to all members of the bar and does not speak to additional requirements for those representing children in protection cases. Various groups in Idaho offer several child protection training courses with continuing legal education credits. In addition, the Idaho State Bar gives attorneys an opportunity to obtain a child welfare specialist certification through the National Association of Counsel for Children.

Program staff acting as guardians ad litem should complete same training that volunteers complete.

Child protection training is not required for attorneys.

Quilt in the ► fifth judicial district.

In our survey, we asked public defenders and pro bono attorneys whether they had ever received training in child protection. Of the 24 respondents who reported that they had represented children or youth in the past year, 21 had at some point in time received training. The training varied in length and content. Training came from a variety of sources, some approved for continuing legal education. The guardian ad litem programs in the fourth and seventh judicial districts were a major contributor to attorney education.

Although the majority of public defenders and pro bono attorneys who responded to our survey reported that they had received some level of child protection training, statute does not require curriculum or number of training hours. Attorneys reported that they had participated in child protection trainings that varied in content and length. The effectiveness of this training or its ability to improve the quality of representation is unknown. One judge commented:

“ In cases where the statute mandates that an attorney be appointed for older children, I have not seen that this representation has been very effective. Problems have been a lack of training for the attorneys representing the children on their roles and responsibilities and a lack of access to their clients.



Stability and consistency are the greatest challenges for representation.

The ability of guardian ad litem programs to offer stable representation at the case level depends on an adequate number of volunteers. The state faces a shortage of volunteer advocates. Programs have different strategies for managing the shortage: assigning cases to program staff, prioritizing services to children, withdrawing from cases, and monitoring cases.

Program staff are capable of being strong advocates as long as programs manage their caseloads. When program staff are overworked, volunteer advocates do not receive the support and supervision they require and the quality of service received by children and youth is likely to suffer.

Each program faces additional challenges that are unique to their district. Programs serving largely rural areas have time and transportation challenges. Each courtroom, community, and district in the Department of Health and Welfare vary, which affects how the guardian ad litem programs function.

Programs are making the recruitment of new advocates a priority. For fiscal year 2018, the guardian ad litem programs received a significant increase in their state appropriation. The Legislature increased programs' general fund appropriation by 73 percent for a total of \$1.1 million. The purpose of this new funding was intended to focus resources on recruitment and training of new volunteers. Programs received funds based on the total number of children in care within each judicial district. In a grant application, programs were required to list which activities would be supported with the new funds and to set recruitment goals. The Supreme Court and the programs plan to update the Legislature in 2019 with results of how these new funds have affected volunteer recruitment and retention.

Program staff serving as guardians ad litem

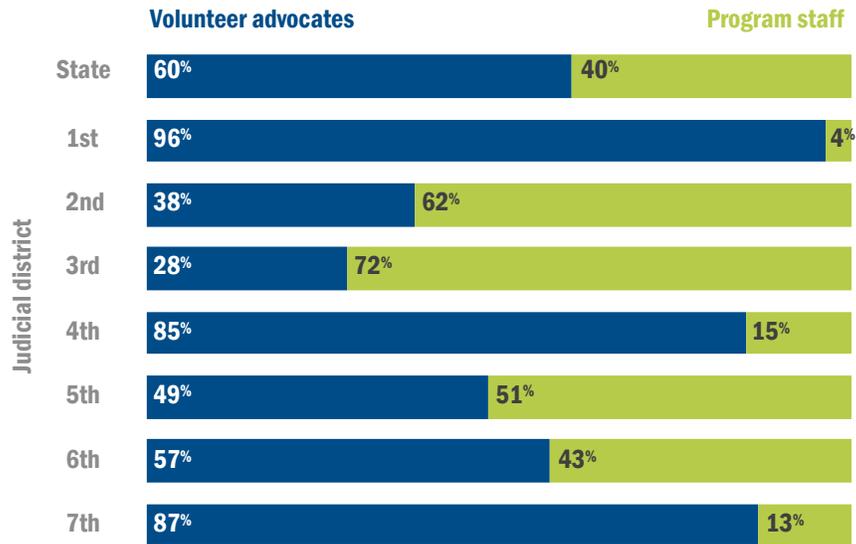
In light of an insufficient number of volunteer advocates, one strategy that programs have used to maximize the number of children and youth served is to assign them to program staff. Exhibit 9 reports the percentage of guardian ad litem cases served by a volunteer advocate and by program staff in each judicial district. In fiscal year 2017, volunteers in the first judicial district served 96 percent of their children with volunteer

The state lacks sufficient volunteers to meet its needs.

Some districts rely more on program staff as guardians ad litem than other districts.

Exhibit 9

Guardian ad litem programs across the state vary in their ability to serve children and youth with volunteer advocates.



Percentages based on the number of children and youths served by the guardian ad litem program in fiscal year 2017.

advocates, the highest percentage of the seven programs. Conversely, volunteers in the third judicial district served 28 percent of the children in fiscal year 2017.

Program staff serving as guardians ad litem could be a viable option and a way to ensure that all children have active representation. Having program staff serve may not align with National CASA standards nor with some interpretations of Idaho Code. However, programs that are assigning cases to program staff have made the determination that it is better for program staff to fill the role of guardian ad litem than for the program to serve fewer children and youth.

For program staff to be effective, programs should ensure that cases assigned to program staff do not detract from the support needed by volunteer advocates. Programs need to ensure that staff have reasonable workloads. Performance audits conducted by the Administrative Office of the Supreme Court have found that the ratio of staff to volunteers and cases served are consistently out of compliance with National CASA standards. Considering the findings of the audits, the workload of program staff is likely impacting their ability to serve children and youth.

The consequence of program staff serving as guardians ad litem without sufficient balance in their workload is that they invest less time in recruiting, training, supporting, and supervising volunteer advocates. Programs are actively working to address this challenge. For example, some districts have hired dedicated staff for recruitment and training with the new funds appropriated for fiscal year 2018. This targeted assignment has alleviated some pressure that program staff felt from having multiple responsibilities. Still, not all programs have the same staff capacity.

Consistency in quality of service

Programs also have different policies that impact how consistently children are served. In the event that there are not enough guardians ad litem, each district has prioritization policies to ensure children with the most need are assigned a guardian ad litem. Programs approach prioritization differently depending on their program capacity. For example, some programs focus on serving children under 12. Other programs may petition the court to withdraw from the case when sufficient volunteers are not available. If a guardian ad litem is not available or if the child is placed in a home far away, programs may adjust the frequency a child is visited. In one judicial district, judges appoint cases to the program and multiple guardians ad litem or program staff serve the child.

Programs should ensure that cases assigned to program staff do not detract from the support needed by volunteer advocates.

Programs may petition the court to withdraw from the case when sufficient volunteers are not available.

Children and youth may have different experiences in the child protection system, depending on which jurisdiction they reside in.

Guardian ad litem programs at times use a prioritization policy commonly referred to as monitoring. When a program does not have sufficient volunteers to represent every child and youth in their district, some receive infrequent visits, and social workers provide information for the court reports. In fiscal year 2017, three programs reported 53 children and youths who were monitored.

If a child is being monitored, we could assume that the guardian ad litem visits the child less frequently than once a month. However, even for children and youth who are not being monitored, we cannot quantify the quality of care that children receive. Guardians ad litem may visit infrequently or they may rely less on their own independent investigative efforts and more on the information in the reports filed by the child’s assigned social worker. To assess the quality of representation, a thorough case file review would need to be conducted for a sample of cases.

Challenges in rural areas

Serving children in rural areas presents unique challenges. Rural areas have sparse populations, long travel times between communities, and confidentiality issues in communities where everybody knows each other. Districts 2 and 7 have considerable challenges covering large areas of land with sparse populations. Volunteers, attorneys, and even judges travel long distances to work child protection cases. For guardians ad litem, visiting a child regularly or being present for court hearings can be challenging when the drive takes several hours.

Stakeholder consistency

Processes of the child protection system differ across the state: (1) judges administer proceedings slightly different in each courtroom, (2) relationships vary between the guardian ad litem programs and the Department of Health and Welfare, and (3) community resources vary, such as foster homes or specialty courts. As a result, children may have different experiences in the child protection system, depending on which jurisdiction they reside in.

The relationship that guardian ad litem programs have with social workers from the Department of Health and Welfare can make information sharing seamless or extremely difficult. For example, when a guardian ad litem program is not notified in a timely manner for events like shelter care hearings or placement

changes, guardians ad litem are hindered in their ability to effectively advocate. The lack of communication can either delay or prohibit guardians ad litem from obtaining accurate information to conduct independent investigations.

Investigations are further hampered if guardians ad litem have difficulty obtaining information they are entitled to receive from counselors, doctors, or other service providers.

The court process is another aspect of child protection cases that can be inconsistent across districts and counties within a district. For example, some judges in more populated areas specialize in child protection or juvenile cases and are more familiar with these types of cases. In more rural counties, judges may only hear a few child protection cases each year and may not be as familiar with the processes or may not have developed expertise in child protection. The same analogy applies to prosecuting attorneys and public defenders. In our survey of attorneys and judges, a large number spoke about the need for more consistent and extensive training in child protection.

The guardians' ad litem contribution during court proceedings is another variation. Some judges do not allow guardians ad litem to speak in the court room except through their appointed attorney. In other court rooms, judges allow guardians ad litem to freely speak, even when their appointed attorney is not present.

The variability of community resources is something that came up in our survey of stakeholders. Many spoke about the uneven availability of foster families, mental health services, and transportation options. Generally, stakeholders spoke about the importance of guardians ad litem being knowledgeable about which services are available in their community so that appropriate recommendations can be made for children and their parents. One volunteer provided this insight:

“ I have served as a CASA in three different regions in the state of Idaho. All CASA programs are not created equal. The level of organization, quality and availability of training, and other resources have not been the same in every region.

When guardians ad litem and social workers seamlessly share information with each other, children and youth benefit.

Stakeholders spoke about the uneven availability of foster families, mental health services, and transportation options.

The state general fund does not cover all program costs.

Funding presents instability and inconsistency challenges.

Guardian ad litem programs are partially supported by state general fund dollars that the Legislature appropriates to the Supreme Court. The Supreme Court uses a formula to distribute funds to the seven guardian ad litem programs. The formula is based on several factors including the number of active volunteers and the number of children the program served in the prior fiscal year. However, the amount of money that districts receive in state funds does not cover all the costs to operate the programs. Programs need to seek funding from other sources to function.

Districts, and even communities within districts, have varying levels of capacity for corporate and individual fundraising opportunities. The time and resources needed to invest in raising private funds takes time away from program staff who serve their assigned children, support their volunteers, and operate the program. Very few programs have individuals solely dedicated to raising funds. Fundraising responsibilities primarily fall upon executive directors and board members.

Exhibit 10 shows the amount of state funds, fundraising, and in-kind donations in fiscal year 2017 as a percentage of expenditures. The exhibit illustrates the variability in programs' reliance on fundraising and in-kind donations to supplement state funds.

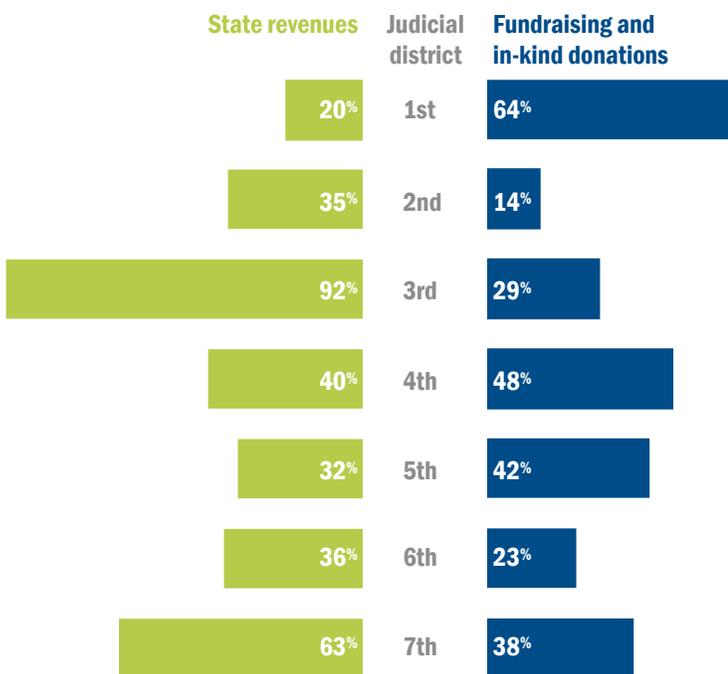
In our survey of stakeholders, many addressed the issue of funding and the burden of fundraising on the program. One volunteer guardian ad litem noted:

“ A small nonprofit has to fill the role of supervisor while trying to raise money, recruit and train new volunteers, and mentor, support, and retain existing volunteers. Low volunteer numbers are not a function of staff not doing their job, but just the opposite. The children and cases come first and that leaves little time to do all the other functions. Meanwhile, the number of kids in the system continues to increase over time. I am amazed that staff members stay for years in poorly paid, minimal benefit positions with the huge stress associated with the kinds of cases and trying to keep the doors open.

Exhibit 10

Guardian ad litem programs use fundraising and in-kind donations to help supplement expenses not covered by state funds.

Revenue as a percentage of fiscal year 2017 expenditures by judicial district.



Source: Fiscal year 2017 financial statements from each of the seven guardian ad litem programs.

Programs have different levels of success raising donations.

The Legislature has delegated most of the responsibility for providing representation services to the seven guardian ad litem programs and to the 44 counties.

Judicial ► district seven: suitcases, pajamas, and blankets.

State-level coordination is insufficient to ensure consistent, quality representation.

Providing consistent and effective representation for children and youth in child protection cases requires coordination among counties, nonprofit organizations, judges, and the Supreme Court.

The Legislature has delegated most of the responsibility for providing representation services to the seven guardian ad litem programs and to the 44 counties. The Legislature sets high-level policy and appropriates funding. The Supreme Court sets judicial policy and serves as the grant administrator for the guardian ad litem account.

Public defense services are not coordinated at the county or state level. The Idaho Public Defense Commission does not have any standards or training requirements specific to representing children and youth.

Because of this complex structure, stakeholders are not clear about who is responsible for ensuring consistent practice and fulfilling the state's obligation for every child to have some form of representation.



Strengthening representation



How can we strengthen representation for children and youth in Idaho?

All stakeholders will need to make coordinated efforts to strengthen policies and implementation efforts for child protection cases. The Legislature, the Supreme Court, the nonprofit guardian ad litem programs, and public defenders in 44 counties each have a role in either setting or implementing child representation policy. Because no single entity coordinates and offers guidance to child representation at the state level, we recommend the Legislature help facilitate a coordinated and collaborated effort to bring together all relevant child representation stakeholders to help strengthen representation for children and youth in Idaho.

In whatever form the Legislature decides to convene stakeholders, we recommend the groups consider the following:

- Recognize all types of child representation

- Expand support and require training for public defenders working child protection cases

- Identify an entity that can offer stability and consistency for the organizations providing child representation services



Judicial ►
district two: a
painting for
fundraising.

Recognize all types of representation.

We recommend future policy decisions of child representation be expanded to include all types of representation for children and youth in child protection cases. Children and youth in Idaho are represented by volunteer guardians ad litem, program staff serving as guardians ad litem, public defenders as legal counsel, and a combination of legal counsel and guardian ad litem. Each type of representation brings strengths and weaknesses.

If the state's desired goal is for every child to have some form of representation, policymakers should focus on leveraging the strengths of guardians ad litem and public defenders to maximize coverage. By working together, attorneys and guardians ad litem can better serve children and youth. Should policymakers pursue this strategy, code should be updated to acknowledge program staff serving as guardians ad litem.



Expand support and require training for public defenders working child protection cases.

In our evaluation, we found three deficits in representation for children and youth in child protection cases. First, not all children and youth in Idaho are actively represented through the entire life of their child protection case. Gaps in representation are caused by the inability of the guardians ad item programs to recruit and retain enough volunteer advocates to effectively serve every child and youth who are the subject of a child protection case. The state's focus on providing representation services through the guardians ad litem programs leaves gaps in representation. The state does not have a way to routinely validate that children and youth are appointed a public defender when they are not served by a guardian ad litem.

The state does not have training requirements for public defenders specific to child protection. Research on effective child representation emphasizes the importance of training, and the Child Abuse Prevention and Treatment Act requires appropriate training for anyone who is representing children and youth. Attorneys achieve better outcomes for their clients when they receive training.

We recommend that the Legislature explore opportunities to expand support services for public defenders who provide representation for children and youth. This expansion would include tracking data for the number of children and youth served by public defenders and validating that all children and youth have active representation.

We also recommend that the Legislature explore whether to require training for anyone representing children and youth in protection cases. This training would ensure that Idaho adheres to federal standards and follows best practice guidelines. The QIC-Child Rep two-day training for attorneys may offer an efficient curriculum option and has been demonstrated to improve representation. Public defenders who represent parents and guardian ad litem would also benefit from specific child protection training as would pro bono attorneys who represent guardians ad litem.

Training for public defenders would ensure Idaho adheres to federal standards.



Stability and consistency are Idaho's two greatest challenges for child representation.

Stakeholders are unclear what entity is responsible for ensuring consistent practices.



Identify an entity that can provide stability and consistency to organizations providing child representation services.

Stability and consistency are Idaho's two greatest challenges for child representation. The state has a shortage of volunteer advocates, which increases the following likelihoods:

- Children and youth will experience turnover in representation

- Programs will withdraw from the case before the final case resolution

- Program staff will serve more cases leaving less time for support and supervision

- More children and youth will be served by public defenders who generally have higher caseloads

Program stability and consistency is also affected by the amount of energy that executive directors and program staff must put into sustainability efforts like fundraising and public awareness. These activities detract from volunteer recruitment, support, and supervision.

We recommend that the Legislature identify an entity whose role would be clearly defined to support guardians ad litem and public defenders. The entity could provide the following support activities:

- Track data for early appointment, training, stability, and other identified performance indicators

- Facilitate shared learning by using statewide data to explore known gaps in the system

- Provide or sponsor training on child protection topics

- Facilitate policy discussions

- Distribute money appropriated for guardians ad litem programs

- Stabilize nonprofits through leadership capacity building

We recommend that the entity's focus be on the continued work of the QIC-Child Rep, particularly the six core skills. Performance measures could be built around those skills that would apply to any entity providing representation services. Data for those measures needs to be reliably tracked and reported to policymakers.

Using the data tracked through the performance indicators, this entity could promote shared learning across districts. We identified two questions that could benefit from additional discussion and shared learning:

How is representation affected when children are placed out of area?

How is representation affected when a case is moved from one district to another?

Should policymakers pursue this strategy, the Legislature should work with child protection stakeholders to identify the entity, define roles and responsibilities, and update code.





The child protection system is a collaboration of state and local governments and nonprofit organizations.

Continue consideration of how to coordinate efforts of stakeholders within the child protection system.

We recommend that policymakers continue their consideration of how Idaho can coordinate efforts of all three branches of government, counties, and nonprofit organizations to strengthen the child protection system. In our 2017 report, *Child Welfare System*, we described the complex nature of the child welfare system. Many problems within the system are exceptionally difficult to manage because each problem may have multiple sources, system stakeholders have widely differing views, the consequences for making the wrong decision are significant and long-lasting, and the context is constantly evolving. To address these problems, we had recommended the formation of a formal, system-wide oversight entity with authority to ensure ongoing accountability, visibility, and accessibility for all child welfare partners and stakeholders.

The issue of representation for children and youth in the child welfare system is a good example for how such an entity could be beneficial. The system in Idaho is a collaboration between state and local governments and nonprofit organizations. Each stakeholder contributes valuable assets and makes child representation in the state stronger. For the system to work at its maximum capacity, system-level coordination and support is required.

Every day, a network of hundreds of volunteer advocates, program staff, public defenders, pro bono attorneys, judges, county clerks, and staff at the Administrative Office of the Supreme Court work to ensure that every child and youth in Idaho has someone to represent their interest throughout the life of an abuse or neglect case. The network enlists more people, applies more financial resources, and engages broader expertise than what would otherwise be available if the responsibility for providing representation services fell to one single entity. The challenge is making sure the efforts of all involved are coordinated across the system to maximize consistency, effectiveness, and efficiency.

Good representation improves the overall performance of every stakeholder in the child protection system by developing more robust case plans with clearly defined expectations for families, social workers, and the courts and by holding the state accountable for meeting its legal responsibilities. To understand the interplay between child representation and the rest of the system, the state needs an entity tasked with this high-level approach.

We reaffirm our recommendation to create an oversight entity that looks at child welfare from a system level and assesses our recommendations for child representation system-wide.



◀ Quilt in
judicial district
seven.



Request for evaluation



Sen. Cherie Buckner-Webb

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Idaho State Senate

SENATOR CHERIE BUCKNER-WEBB

Assistant Minority Leader

March 13, 2017

Joint Legislative Oversight Committee
Attn: Co-chair Senator Cliff Bayer
Attn: Co-chair Representative Mat Erpelding

Dear Senator Bayer and Representative Erpelding,

In Idaho, Court Appointed Special Advocates (CASA) are volunteers who are appointed by the courts to investigate, report, and make recommendations surrounding the circumstances of children in child protection proceedings. The CASA program was designed to ensure that throughout court proceedings the best interests of abused and neglected children are represented.

In the 2017 report, Child Welfare System, the Office of Performance Evaluation found that CASA programs have some common implementation challenges: (1) program staff struggle to recruit enough volunteers to adequately represent all the children who are appointed an advocate, (2) volunteers have a variety of professional training and skills, and (3) program resources can only provide a limited amount of training. In the end, volunteers are not consistently familiar with the legal system and have differing levels of monitoring and report writing skills.

Considering these findings, we would like to request an evaluation to answer the following questions:

- Does the CASA program provide effective advocacy for the best interest of children in the child protection system in Idaho?
- Is there alignment between expectations, delivery of services, resources, and outcomes?
- Is the CASA program seen as an effective source of accountability for child and Family Services activities?
- What are the best practices for structuring and implementing CASA programs?
- What opportunities exist for improving the effectiveness of Idaho's CASA program?
- What impediments exist that affect the performance of Idaho's CASA program?

Sincerely,

A handwritten signature in black ink that reads "Cherie Buckner-Webb".

Senator Cherie Buckner-Webb

B

Evaluation scope

Building upon the findings of the 2017 report *Child Welfare System*, our evaluation will seek to answer the following questions:

What is the structure of the guardians ad litem program in Idaho?

How well does the structure of the program align policy and procedures, stakeholder expectations, available resources, and quality control measures?

How does this alignment effect the program's ability to adequately advocate for children's best interests in child protection cases?

What opportunities exist for improving the effectiveness of Idaho's CASA organizations?



Methodology



Evaluation approach

Building upon the 2017 *Child Welfare System* report, we approached this evaluation by seeking to highlight the work at local and state levels to represent children in child protection cases. Our primary objectives were to identify what is working well in the guardian ad litem programs and what opportunities exist to improve child representation.

We used a mixed-methods approach. We combined qualitative and quantitative data to capture the perspectives of stakeholders, report the number of children and youths who had representation, and the proportion of children and youth who were served by different methods of representation.

We employed a variety of methods to answer the questions outlined in our evaluation scope as well as address other questions that arose from our field work.

Document analysis

We conducted a review of publications from multiple sources. The following list briefly describes the types of publications:

- Idaho statute and court rules

- Administrative Office of the Supreme Court documents, including reports compiled on the guardian ad litem programs for the Legislature and reports on site visits

- Policies and procedures manuals for the guardian ad litem programs

- Financial summaries and audits of the guardian ad litem programs

We interviewed or surveyed a wide variety of child protection stakeholders.

Child Protection Committee and Guardian ad Litem Subcommittee meeting minutes

These documents helped us form an understanding of the guardian ad litem program. We used this information to help us develop our evaluation scope and methodology and to answer our scope questions.

Background interviews

We interviewed the following key stakeholders about the program.

Legislators, including the study requesters and the cochairs of the interim Foster Care Study Committee

Staff at the Administrative Office of the Supreme Court

Magistrate judges

Staff at the Department of Health and Welfare

Program staff at the guardian ad litem programs

The interviews typically lasted 60 minutes. The questions were open-ended and varied among the individuals interviewed.

Committee meetings

We were present and provided project updates at meetings of the Guardian ad Litem Subcommittee, the Child Protection Committee, and the interim Foster Care Study Committee. We used these opportunities to share our evaluation scope and methodology with stakeholders in the judicial and legislative branches and to solicit feedback about what information they would find useful from our evaluation.

Site visits

In September and October 2017, we conducted two-day site visits in each of the seven judicial districts. The purpose of the site visits was to gather program data from the guardian ad litem programs, meet with volunteer advocates, program staff, and board members, and conduct focus groups with children and youth.

We used the results of the interviews and data to triangulate findings from our document review, literature review, and other analyses.

Board member group interviews

We facilitated group interviews of 39 board members, including the board president of the guardian ad litem program. We discussed the board’s contribution to the program, how the board measures the performance of the program, and goals of the board. The group interviews took place at the offices of the guardian ad litem programs. The following number of board members participated in our group interviews:

	District						
	1st	2nd	3rd	4th	5th	6th	7th
Number of board members interviewed	3	3	2	15	7	5	4

The group interviews lasted approximately 60 minutes. At least two evaluators were present at each interview with one person moderating the discussion and one taking notes. We asked open-ended questions and solicited feedback from all members of the group. We developed the questions before the site visits and asked the same questions in each district, allowing time for discussion and topics that could arise. Two group interviews were a part of an already scheduled board meeting. The other interviews were scheduled as a stand-alone appointment. In five of the seven group interviews, program staff were not present.

Program staff interviews

We conducted 36 individual interviews with all program staff, including the executive director in each district. We discussed their job duties not only as support staff for volunteers, but also as guardians ad litem. Program staff also told us what was working well and what needed improvement in the program and in the child protection system. The interviews took place in the offices of the guardian ad litem programs.

	District						
	1st	2nd	3rd	4th	5th	6th	7th
Number of staff interviewed	8	3	4	5	7	7	2

Guardian ad litem programs are governed by their own boards of director.

Children and youth told us about their first-hand experiences with guardians ad litem and public defenders.

Individual staff interviews lasted approximately 45 minutes. We developed a standard set of open-ended questions for all staff. However, we asked different job-specific questions to staff that focused more on recruitment or fundraising duties. In almost all cases, two evaluators were present in every interview. The interviews were usually conducted in the employee’s office or in a room where the conversation could be kept private from other staff.

Children and youth focus groups

We facilitated focus groups with children and youth who were in foster care. The ages of the children youths ranged from 8 to 17 years old. The children and youths provided insight about their representation—guardian ad litem or legal counsel. They also spoke about their experiences in the child protection system. Foster parents and guardians ad litem attended some of the focus groups. The focus groups primarily took place at the regional offices of the Department of Health and Welfare. A social worker was present to speak to the children and youth if needed.

	District						
	1st	2nd	3rd	4th	5th	6th	7th
Number of children and youth interviewed	6	1	0	2	8	0	6

Three of the youths had an appointed public defender, 14 children had an appointed volunteer advocate or program staff person, and 6 youths had both a volunteer advocate and an attorney. We worked with staff at the Department of Health and Welfare to identify children and youths who would be willing to speak with us. Department staff selected the children and youths and information about whether the children and youths were represented by a guardian ad litem or legal counsel. We gave the children and youths a consent form that outlined our expectations, confidentiality, and reporting process. We did not ask the children or youths questions about any specific details of their case or why they were placed in care. Two evaluators were present in each focus group. We asked open-ended questions that varied depending on how talkative the children or youths were.

Volunteer advocate focus groups

We facilitated focus groups with 59 volunteer guardians ad litem. Attending were a mix of new volunteers who had only been with the program for less than a year and more tenured volunteers that had been with the program several years. We discussed their perceptions on what was working well and what needed improvement in the program and the child protection system. The focus groups primarily took place at the offices of the guardian ad litem programs.

	District						
	1st	2nd	3rd	4th	5th	6th	7th
Number of volunteers interviewed	17	8	3	10	7	5	9

The focus groups varied in length but typically lasted an hour or more. No program staff were present during the focus groups. Two evaluators were present for each focus group. We developed a standard set of open-ended questions before the site visits so that we could compare answers across districts.

Collection of program data

We queried data from the data management systems of the seven programs. Five of the seven districts use the same system, CASA Manager, while the other two districts use their own in-house system. We queried data for fiscal year 2017 including the number of active volunteers who worked a case, the number of cases worked by program staff, and basic program performance and fiscal figures.

Literature review

Our review was conducted, in part, to answer the following questions:

What is the history of representation for children in child protection cases in Idaho and in other states?

What are the requirements for representation for children who are the subjects of child protection cases?

What is the definition of a guardian ad litem?

What are the national policy issues?

Volunteer advocates spoke about their challenges representing children and youth.

Scholarly literature and evaluations from other states gave us a national perspective on child representation.

What part does National CASA play nationally in child representation?

Has CASA been found to be an effective program?

What are the appropriate measures of success for child representation?

What are some other program types for representing children in court?

We searched academic journals, law reviews, federal and state sponsored research, and nonprofit research. The search yielded 79 articles and reports. The literature review provided us with information on what conclusions other researchers had made on guardians ad litem and legal counsel in child protection cases.

Stakeholder surveys

We conducted a series of online surveys with six different child protection stakeholder groups. The purpose of the surveys was to measure the differences and similarities in stakeholder perceptions of the guardian ad litem programs. From a review of literature and other states’ evaluations of volunteer guardian ad litem programs, we found diverging views about the purpose and value of the program. We asked a series of similar questions of all of the stakeholder groups to compare one group’s perceptions with another.

The goal of the survey was to answer the following questions:

Do stakeholders have a common understanding of the role of the CASA program?

How well do stakeholders believe the program is performing?

What is the impact of not having adequate representation to children in child abuse and neglect cases?

Survey group	Sample size	Completed responses
Magistrate judges	~ 50	42
Active volunteer advocates	299	130
Public defenders	~ 300	33
Pro bono attorneys	137	31
Prosecuting attorneys	47	7
Social workers	~ 200	79

To solicit feedback, we sent the survey questions to staff at the Administrative Office of the Supreme Court, the seven guardian ad litem programs, and the Department of Health and Welfare before distributing the survey to the target population. A professor at Boise State University also reviewed the survey questions and provided feedback. The survey included a combination of closed- and open-ended questions.

Survey limitations

When possible, we sent the survey to potential respondents using a contact distribution list. For three of the surveys (judges, social workers, and public defenders), we were not able to get a complete list of potential respondents. Instead, we worked with three organizations to distribute the survey: the Administrative Office of the Supreme Court, the Department of Health and Welfare, and the Public Defense Commission. Because of this limitation, we are not able to quantify exactly how many individuals received the survey link for these populations.

Data analysis

Up to this time, Idaho had never had a comprehensive analysis of the number of child protection cases and how each child or youth involved is represented. For this report, we conducted such an analysis. First, we queried the court's case management repositories (ISTARS and ODSYSSEY) to get a list of all the child protection cases that were active at any point during fiscal year 2017. Then, we visited each of the seven guardian ad litem program offices and queried from their record management systems for the number of children and youths served. We matched the data from all sources to create a master data set of cases and children and youths served from July 1, 2016, to June 20, 2017. We used data from the Department of Health and Welfare to verify subject's names, gender, and birthdate. These queries resulted in a master list of 1,863 cases and 3,323 subjects.

We categorized cases into one of two categories: served or not served. The category served represented children and youths who had a guardian ad litem appointed to them and the guardian ad litem program provided advocacy services during fiscal year 2017.

We categorized children and youths in our data set by calculating the age of the subject on June 30, 2017. We categorized children as those 11.99 years or younger on that day, and youths as those 12.00 years and older on that day.

We did not evaluate the effectiveness or quality of child representation services.

Children and youth categorized as not served by the guardians ad litem program should be served by a public defender per statute. The data queried from the court’s case management repositories did not verify that this was occurring. Overall, 643 children and youths (20 percent) were not served by a guardian ad litem program. Over half (343) of the children and youths who were not served by a guardian ad litem program were from the fourth judicial district.

We looked up the register of actions for cases involving 373 children and youths across the state. We randomly selected 212 cases outside of the fourth judicial district. We oversampled from the fourth judicial district, randomly selecting cases for 161 children and youths who were not served by the guardian ad litem program. In total, 207 children and youths in our sample were not served by a guardian ad litem program.

Data and analysis limitations

There are two identified limitations in our data analysis. First, the data we collected did not allow us to systematically study turnover in representation. Questions still remain about the number of times a child or youth has a change in representation (e.g., from one volunteer advocate to another, from volunteer advocate to program staff, or from guardian ad litem to public defender). Our data indicate that changes in representation are made frequently, but we cannot quantify the change based on the data in our data set.

Our analysis did not measure the quality of services provided. We can clearly identify what effective representation looks like; however, we cannot quantify the extent to which all the duties of a guardian ad litem or public defender are being fulfilled.

Responses to the evaluation



I support the continuation of an autonomous system that includes volunteer advocates and legal counsel to serve the best interest of each child who comes under the purview of the State. I also would echo the recommendation for creation of an oversight committee to assess the effectiveness of the child representation system statewide.

—Butch Otter, Governor



In contemplating future models of GAL advocacy, consideration should be given to both the quality of services provided and the long-term health and sustainability of Idaho's CASA programs.

—Sara Thomas, Administrative Director
Idaho Supreme Court



The funding allocated by the legislature does not fully support the costs to serve even these children [under the age of 12], leaving the financial burden to local districts and making expansion to serving all victims age 0–18 even more challenging.

—Board of Directors
First Judicial District CASA Program



CASA

The expectation from CASA stakeholders in Idaho is that the programs serve 100% of the children in child protection. Without the advanced coordination of all parties and resources, this is an impossible expectation.

—Eric Glouser, Board President
Family Advocates, Fourth Judicial District

I feel very strongly that our state and programs can benefit from more training and education, as well as understanding and implementing the six core skills of effective advocates.

—Jared Marchand, Executive Director
Sixth Judicial District CASA Program

As a key stakeholder within the child protection system, we...look forward to engaging with policy makers and other child protection stakeholders on how to improve the quality of the child representation system statewide.

—Natasha Lattin, State Director
Idaho Court Appointed Special Advocate Association



C.L. "BUTCH" OTTER
GOVERNOR

January 31, 2018

Rakesh Mohan, Director
Office of Performance Evaluations
954 W. Jefferson St.
Boise, ID 83702

Dear Director Mohan,

Thank you for the opportunity to respond to the report on *Child Representation* in the State of Idaho.

While you address many issues regarding effective representation for children in State custody, the statement on page 2* of the report is particularly pertinent: "When the state steps into a family situation with the assertion that parents or guardians lack the capacity to provide a minimally sufficient level of care, the state then assumes the responsibility of the parent. ... Court-appointed representation is an essential safeguard to ensure that the state is fulfilling its parental obligation."

This underscores the essential nature of strong representation for children who enter the State system. Those without a voice of their own need an unbiased representative to advocate for their needs and to provide balance to a system that is heavily weighted on the side of parents and the State system.

I support continuation of an autonomous system that includes volunteer advocates and legal counsel to serve the best interests of each child who comes under the purview of the State. I also would echo the recommendation for creation of an oversight committee to assess the effectiveness of the child representation system statewide.

Thank you again for your efforts to provide foundational information as we continue to research best practices for serving the needs of Idaho's children.

As Always – Idaho, "Esto Perpetua"

C.L. "Butch" Otter
Governor of Idaho

CLO/tp

THE STATE OF IDAHO
SUPREME COURT



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February 1, 2018

Rakesh Mohan, Director
Office of Performance Evaluations
954 W. Jefferson Street, Ste. 202
Boise, ID 93720-0055

Dear Mr. Mohan,

Thank you for the opportunity to comment on the Office of Performance Evaluation's (OPE) report on *Child Representation in Idaho*. I appreciate the hard work that your staff has put into researching this incredibly important issue.

Idaho's CASA Programs should be commended for their incredible dedication to the children they serve. It is remarkable that the Programs provide some level of service to an estimated 80% of children who are subject to a child protection case in Idaho. The report correctly identifies many of the significant challenges associated with providing adequate representation for these children. In addition, it does well to highlight the organizational and legal complexities that define this system and compound these challenges.

In considering different types of representation for children, the report acknowledges but does not fully appreciate the implications of the distinct roles of attorneys and layperson Guardians ad Litem (GALs) in Idaho's child protection system. The type of information presented to the court, and therefore considered by a judge in rendering a decision, depends in part on whether the child is represented by an attorney or served by a GAL.

To illustrate, if a child is being served by a GAL and during the course of his/her investigation, the GAL learns that the child is being abused, he/she is mandated to report that information to the court pursuant to I.C. § 16-1605(1). On the other hand, if that same child were represented by an attorney, and the attorney learned that the child is being abused, he/she would be prohibited from sharing that information with the court unless the child provides informed consent for that disclosure pursuant to the Idaho Rules of Professional Conduct (IRPC 1.6) and the Idaho Rules of Evidence (IRE 502). This scenario highlights the critical distinction between legal representation and GAL advocacy, a distinction that must be accounted for as part of this analysis.

As the Legislature considers the recommendations in the report and contemplates policy changes in this area, I would offer the following additional observations:

1. While I understand the reasons for defining representation broadly to include both legal representation and GAL advocacy, the report conflates the two in places, making it difficult to assess the accuracy of some parts of the analysis and the feasibility of some of the recommendations.
2. The report relies heavily on the Michigan Law School's Quality Improvement Center's (CIQ) model to frame the analysis. While this model may be a useful conceptual tool, the implementation of such a model in a specific jurisdiction requires careful consideration of a number of factors specific to that jurisdiction, including state law, funding, accountability structures, and available resources. The suitability of this model for Idaho depends in part upon the ethical obligations of attorneys under Idaho law and the philosophy of legal representation underlying those obligations.

In this regard, special attention should be given to the provisions of I.C. § 16-1614 and the intent of the Legislature in amending that statute in 2013. As written, this statute provides a tiered approach to ensure that all children who are subject to a child protection case are either represented by counsel or served by a GAL who is represented by counsel and who is obligated to fulfill all duties outlined in I.C. § 16-1633. The statute also provides the court flexibility to appoint the type of service, either representation or advocacy, that is most appropriate for a given child in a given case.

3. In contemplating future models of GAL advocacy, consideration should be given to both the quality of services provided and the long-term health and sustainability of Idaho's CASA programs. Attention should be given to the problems associated with allowing CASA program staff to serve as GALs, many of which are identified in Chapter 4 of the report. This practice is inconsistent with *National CASA Standards* and is not contemplated under the Child Protective Act (CPA). Experience has shown that when staff serve as GALs, they are unable to attend to other important and necessary responsibilities such as budget preparation, accounting, supervision, and volunteer recruitment, training, and support. In addition, because of these other responsibilities, staff are typically unable to provide the level of GAL service required under § I.C. 16-1633 and according to best practice standards. GAL services provided by staff often take the form of a practice known as "monitoring," a reduced level of service that does not comport with the CPA. For these reasons, the *Standards* specify that program staff should serve as GALs only in "exceptional times...on a limited and time specific basis."¹

As an aside, it is worth noting that the definition of GAL representation used throughout this report includes representation by staff, without regard to the level of service provided. As a result, the rates of GAL representation reported are arguably inflated.

¹ National Standards for local CASA/GAL Standards. 2012. P. 51. Available at http://nc.casaforchildren.org/files/public/community/programs/Standards-QA/Local_CASA_Program_Standards_April_2012.pdf

4. We greatly appreciate that the report highlights the inherent challenges associated with having multiple entities coordinate and oversee the various activities relating to child representation. As the grant administrator for Idaho's CASA programs, the Idaho Supreme Court has had to navigate many of those challenges and would welcome additional policy guidance from the Legislature in regards to roles and responsibilities.

Thank you again for the opportunity to provide written comment on this report. The Judiciary looks forward to collaborating with Idaho's CASA programs, the other branches of government, and other interested stakeholders in considering solutions to the challenges highlighted in this study in order to improve advocacy and representation for Idaho's abused and neglected children. Please do not hesitate to contact me with any questions about this letter.

Sincerely,



Sara Thomas
Administrative Director of the Courts
Idaho Supreme Court



February 1, 2018

Dear Senators and Representatives of Idaho,

We are grateful for the opportunity to participate in and review the Office of Performance Evaluations 2018 report on "Child Representation in Idaho" that, in part, detailed the statewide CASA (Court Appointed Special Advocates) network.

The First Judicial District CASA Program covers the five northern counties of Idaho and serves roughly 400 local victims of child abuse, neglect and abandonment each year. Each of these children and youth fell under the purview of the Child Protection Act (CPA) and were court-appointed a CASA Advocate.

Notably, while the First Judicial District CASA program served nearly all children and youth court-appointed to our program, our district is one of several that systematically focuses on children age 11 and under. This arose due to a shortage of program funding to support enough advocates to serve all children (0-11) and youth (12-18) under the purview of the CPA. Last fall, our Board made a directive to work towards serving ALL children and youth in our district by the end of 2018. Our district has worked pro-actively to put systems in place to support this increase in abuse and neglect victims served by our program.

However, funding remains our number one challenge. We would like to draw attention to the fact that Idaho's Child Protection Act section 16-1614 requires court-appointment representation for all children and youth in child abuse and neglect cases, specifically a guardian ad litem for children under the age of 12. Yet, the funding allocated by the legislature does not fully support the costs to serve even these children, leaving the financial burden to local districts and making expansion to serving all victims age 0-18 even more challenging.

Our youth is Idaho's most important asset. We urge the legislature to address this juxtaposition between CPA legislation and funding and make funding for all CPA abuse and neglect victims age 0-18 a top priority.

As a key stakeholder within the child protection system, we appreciate the depth of the review provided by the OPE report and look forward to engaging with policy makers and other child protection stakeholders to improve the quality of the child representation system in Idaho.

Regards,

The Board of Directors of the First Judicial District CASA Program



January 31, 2018

Joint Legislative Oversight Committee

RE: Idaho's Office of Performance Evaluation Report on Child Representation

Committee Members,

FAMILY advocates

Family Advocates works to strengthen families and keep kids safe by empowering everyday people to protect and enrich the lives of youth.

Family Advocates would like to extend our thanks to the Office of Performance Evaluations for their research efforts. The endeavor is complex and we appreciate their patience and thoughtful line of inquiry. Family Advocates supports OPE's recommendation for coordination amongst all stakeholders and would like to add the request for adequate funding for programs to meet the statutory intent that all children involved in child protection cases be represented by a volunteer advocate.

Family Advocates would also like to thank the legislature for the increase in funding that allowed us to conduct outreach efforts that brought 161 potential volunteers to our CASA program, 27 of whom have already graduated and signed into a case.

Board of Directors:

Eric Glouser, **President**

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4th Judicial District Goals

- Family Advocates is a volunteer-operated CASA Program and our goal is to have 100% of child protection cases be investigated by both a volunteer Guardian ad Litem and an attorney. We will work towards this goal by building capacity to serve children under 12 years of age and expand to youth 12-18 years old.
- In order to meet our goal of 100% of children under 12 represented, we would need to retain 100% of our current Guardians and recruit and train an additional 266 volunteer advocates.
- If we are to meet our goal of 100% of children represented, we would need to retain 100% of our attorneys and recruit an additional 79 pro-bono attorneys. We have set an aggressive goal of 50 attorneys recruited in 2018, 5 who have joined since July 1, 2017.

4th Judicial District Challenges

- Ada County has required our CASA Program to have both a pro-bono attorney and a Guardian ad Litem available in order to accept a child protection case.
- No financial or educational support exists for our 71 pro-bono attorneys – none of whom specialize in child protection. Family Advocates is developing an attorney education program and Volunteer Attorney Handbook to provide consistent information to the (required) volunteer attorneys.
- Family Advocates is expected to recruit, screen, and develop a process to train volunteer interpreters for our child(ren) and families that speak other languages. We currently have 0 volunteer interpreters.

4th Judicial District Financial Barriers

- With the addition of 266 new Guardians, we would require 9 additional staff members (Advocate Coordinators) to support volunteers in accordance with National CASA Standards. This would require, a minimum increase of \$365,400 be added to our CASA Program Budget annually.
- Family Advocates would like to point out the significant cost savings pro-bono attorneys provide to Ada County, which is not reflected in OPE's report. In fiscal year 2017, our attorneys donated over \$302,000 in pro-bono services.

With the addition of our attorney in-kind hours, our CASA Program's financial breakdown in 2017 is more accurately reported here;

State Grant (\$108,000)—17% of CASA Budget

Other Fundraising (\$230,000)—35% of CASA Budget

In-Kind Hours & Supplies (\$317,000)—48% of CASA Budget

Additional Concerns Identified in OPE Report

No Representation

- The primary concern of Family Advocates is the 32% of children statewide that received no representation from any party. An independent investigation, preferably provided by both an attorney and Guardian, has proven to increase the level of trust and improve communication on behalf of the child(ren)'s case.

No Appointment

- Family Advocates requested the data, which is discussed in Chapter 2 Pg. 5-7*, and performed a simultaneous review of the children and youth selected in the sample. In the list reviewed, totaling 355 children and youth, we found that our CASA Program was not notified, and therefore not appointed to 144 or 40% of the children in the sample group in the 4th Judicial District. Without proper notification our CASA Program is unable to meet expectations as outlined by Idaho Code.

The expectation from CASA stakeholders in Idaho is that the programs serve 100% of the children in child protection. Without the advanced coordination of all parties and resources, this is an impossible expectation. Family Advocates believes that;

- All children, regardless of their age, should have access to both a volunteer Guardian ad Litem as well as an attorney on their cases.
- Respectful stakeholder communication is key to child protection cases and, therefore, the families impacted.
- Consistent statewide guidance, with participation from CASA Programs, will increase the level of transparency and CASA Program effectiveness.

In response to the report, we would like to acknowledge and thank our 174 volunteers that dedicate thousands of hours to the children in our district. The team at Family Advocates thanks the Committee for recommending the study and for the Office of Performance Evaluation's in-depth look into the struggles of child representation in Idaho.

Regards,



Eric Glouser, Board President



Jaime Hansen, Executive Director

Please direct all questions to:

Jaime Hansen at Jaime@familyadvocates.org or by calling 208-345-3344 x1002.



6th Judicial District CASA

836 E. Center Street
Pocatello, ID 83201
Phone: 208-232-2272
Fax: 208-478-6978

Amanda Bartlett
Principal Evaluator
Office of Performance Evaluation
RE: Child Representation in Idaho

Dear Amanda,

I wanted to start by thanking you and your team for all the time and energy you have spent on this project. I know getting around to all seven programs and collecting years of data was a giant task to complete. I would also like to thank you and Bryon for the time you took to meet with myself, my volunteers, team members, and board members. As I am still relatively new to this position in the 6th District, the time you took to explain the evaluation process was very much appreciated by myself and my entire team.

I have read completely through the Child Representation in Idaho confidential draft, and found it to be accurate to my knowledge. I feel very strongly that our state and programs can benefit from more training and education, as well as understanding and implementing the six core skills of effective advocates. As stated in the report, no two programs in the State of Idaho are the same. I would like to point out that the 6th District program, along with the 7th and the 4th Districts, must also recruit pro-bono attorneys. I do believe that CASA Advocates, in regards to their ability to enter a child or children's lives and assess their safety, have a strong skill set. These volunteer advocates work tirelessly, often in rough conditions out of the goodness of their heart to make sure abused, neglected, and abandoned children are served.

As I read through the rest of the report and the recommendations, I found they would be very helpful for the 6th District. I feel it is very important that Volunteer Advocates be knowledgeable about services that are available in our communities. In addition to that, I found the suggestion that the Attorney and Guardian become a team instead of just working together in court, very intriguing. I didn't find anything that stood out or needed a specific response when I read through the report, it all looked very reasonable.

Again, I want to thank you for the time and effort, working so efficiently with my team and I to get this all completed.

Sincerely,

Jared Marchand
Executive Director
6th Judicial District CASA Program
Office Phone: 208-232-2272
Fax: 208-478-6987





February 1, 2018

Dear Senators and Representatives of Idaho,

Thank you for the opportunity to participate and respond to the OPE report dated January 25, 2018. The Idaho Court Appointed Special Advocate Association program (the state CASA organization) was established in 2017. The state CASA organization hired a State Director who had served previously as Sixth District CASA Board President with a strong background in business management. The Director was hired by the Idaho CASA Programs in February 2017 with the purpose of creating and developing the state CASA organization. The mission of the Idaho Court Appointed Special Advocate Association is to promote, assist and support the development, growth, volunteer recruitment, training and continuation of the seven Judicial Districts CASA/GAL programs in the state and support their mission to help ensure every abused or neglected child has a safe, permanent home and the opportunity to thrive. The Idaho Court Appointed Special Advocate Association strives to achieve this through the state CASA standards and the highly effective state organization model provided by the National Court Appointed Special Advocate Association.

The overarching purpose for the establishment of the state CASA organization is to further strengthen the defined structure of CASA/GAL programs in the state. The Child Protection Act section 16-1634 defines the "Guardian ad Litem-Rights and Powers" providing CASA advocates "all the rights of a party". Referencing the report, chapter 2, p. 2* *Idaho's Child Protective Act describes the rights, powers and duties of guardians ad litem, establishes a structure for creating a network of programs to provide services, and sets a level of expectation that programs will follow the National Court Appointed Special Advocate (CASA) model.* To that end, the Idaho Court Appointed Special Advocate Association and the seven Judicial Districts CASA/GAL programs in the state are committed to a collaborative partnership that is dedicated to providing quality advocacy to the abused and neglected children and youth in Idaho. This includes a robust recruiting effort to dramatically increase the number of volunteers, providing quality training, seeking the necessary resources to perform our mission and providing consistency throughout the CASA network while executing the core model for CASA/GAL advocacy.

As a key stakeholder within the child protection system, we appreciate the depth of the feedback provided by the OPE report and we look forward to engaging with policy makers and other child protection stakeholders on how to improve the quality of the child representation system statewide.

Thank you,

A handwritten signature in black ink, appearing to read 'Natasha Lattin'.

Natasha Lattin, State Director

Idaho Court Appointed Special Advocate Association

* OPE note: The letter refers to page 2, which is on page 23 of the report.

