



AMERICAN BAR ASSOCIATION

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**Testimony Before the
House Judiciary Committee
of the
Washington State Legislature
Regarding House Bill 3048, Providing for
Child Representation in the Court Process
Presented by Andrea Khoury
on Behalf of the
American Bar Association**

January 25, 2008

Good morning. My name is Andrea Khoury and I am the Project Director of the *Bar-Youth Empowerment Project* of the American Bar Association's Center on Children and the Law and Commission on Youth at Risk. It is a pleasure to be here and I thank you for the opportunity to provide testimony. The American Bar Association is the world's largest voluntary professional organization, with a membership of over 400,000 lawyers, judges and law students worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law in the world. I appear today at the request of ABA President William Neukom. We commend Representative Lantz and the House Judiciary Committee for holding this hearing today and taking a look at what needs to be done to ensure that our most vulnerable children and youth are afforded legal representation when they have been abused, abandoned or neglected.

The *Bar-Youth Empowerment Project*, in partnership with Casey Family Programs and the Eckerd Foundation, is dedicated to improving outcomes for youth transitioning out of foster care. One component of this mission is to ensure that children and youths' legal rights are protected when they are in the dependency court system. The Bar-Youth Empowerment Project aims to achieve this goal by advocating that states and jurisdictions guarantee these children appropriate and competent legal representation.

The American Bar Association has long recognized that children and youth need and deserve legal representation in dependency court proceedings. In 1996, the Association as a whole approved the Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases. These ABA standards state that "*All children subject to court proceedings involving allegations of child abuse and neglect should have*

legal representation as long as the court jurisdiction continues.” In 2005, the Association unanimously passed policy that calls upon Congress, the States, and territories to ensure that “all dependent youth . . . be on equal footing with other parties in the dependency proceeding and have the right to quality legal representation, not simply an appointed lay guardian ad litem or lay volunteer advocate with no legal training, acting on their behalf in this court process.” In addition, the National Association of Counsel for Children, the largest nationwide membership entity for attorneys who practice in the child welfare field agrees.

Children and youths’ need for competent legal representation complements the important role of guardians ad litem (GAL) or court appointed special advocates (CASA). GALs and CASAs are appointed to help protect a child's best interests in respect to the services and interventions affecting them, whereas the appointment of an attorney for the child would ensure the creation and maintenance of an attorney-client relationship and the continuation of a legal advocacy obligation throughout the course of a child's involvement in the dependency court process. Lawyers use their professional training to identify, analyze and resolve legal issues and questions. As officers of the court, lawyers are uniquely qualified to file legal briefs and appeals, and examine and cross-examine witnesses. Lawyers are also able to establish and maintain an attorney-client relationship, allowing children and youth to share confidential communications on case matters, developing a level of trust they can depend on with sensitive issues relating to abuse and neglect. For each of these reasons, legal representation, *in addition to* a GAL or CASA, is the most effective means of protecting the legal rights of our most vulnerable children and youth.

To date, 35 of 50 states and the District of Columbia mandate legal representation for children in dependency cases. In addition, federal law, the Child Abuse Prevention and Treatment Act (CAPTA), requires representation of children in all abuse and neglect proceedings. However, unfortunately, the abused and neglected children and youth of Washington State are often not afforded an attorney, GAL or CASA. They are not provided this level of protection because of a lack of resources or a “good cause” exception. Contrary to the practices in the majority of states, Washington does not mandate legal representation, consider the child a party to all proceedings, or guarantee a child’s right to representation on appeal. While the child welfare agency is represented by the Attorney General’s office, and parents are represented by appointed public defenders, the subjects of dependency court proceedings in Washington state, those who have the most at stake and whose lives are most uprooted are given no voice, no opportunity to have their interests shared, defended or advocated.

In fact, according to the *Report on a Child’s Right to Counsel*, published by First Star in 2007, Washington ranked among the *five worst* states in its legislative framework for protecting abused and neglected children’s legal interests because it did not routinely provide them legal representation in their court proceedings. Based upon end of 2005 data, Washington State was among only six states with foster care populations over 10,000 that did not statutorily assure all foster children the right to court-appointed legal representation (the others being Florida, Indiana, Missouri, Ohio, and Oregon).

Children and youth in dependency court proceedings are often taken from their parents, their siblings and extended families, their schools, and everything that is familiar to them. Children and youth deserve a voice when important and sometimes life-altering

decisions are being made about them. They deserve to have their opinions heard, valued and considered. They have interests that are often distinct or are opposed to those of the state and their parents in dependency proceedings and deserve to be represented separately. Committee members, the *only* way we can assure that this vulnerable population's legal rights are protected, their interests heard and their desires expressed is if they are afforded a right to counsel.

In closing, I want to thank the Committee again for the opportunity to testify this morning. We commend the Committee for bringing attention to this important issue and urge you to move forward on steps like House Bill 3048 to provide legal protection to children in dependency proceedings.