

**UNIFORM REPRESENTATION OF CHILDREN  
IN ABUSE, NEGLECT, AND CUSTODY  
PROCEEDINGS ACT\***

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**UNIFORM REPRESENTATION OF CHILDREN  
IN ABUSE, NEGLECT, AND CUSTODY  
PROCEEDINGS ACT**

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# **UNIFORM REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT, AND CUSTODY PROCEEDINGS ACT**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Abuse or neglect proceeding” means a court proceeding under [cite state statute] for protection of a child from abuse or neglect or a court proceeding under [cite state statute] in which termination of parental rights is at issue.

(2) “Best interests attorney” means an attorney who provides legal representation for a child to protect the child’s best interests without being bound by the child’s directives or objectives.

(3) “Child’s attorney” means an attorney who provides legal representation for a child.

(4) “Court-appointed advisor” means an individual, not functioning as an attorney, appointed to assist the court in determining the best interests of a child.

(5) “Custody proceeding” means a court proceeding other than an abuse or neglect proceeding in which legal or physical custody of, access to, or visitation or parenting time with a child is at issue. The term does not include a proceeding initiated against a child for [adjudication of delinquency or status offense under [cite statute]].

(6) “Developmental level” means the ability to understand and communicate, taking into account such factors as age, mental capacity, level of education, cultural background, and degree of language acquisition.

**SECTION 3. APPLICABILITY AND RELATIONSHIP TO OTHER LAW.**

(a) This [act] applies to an abuse or neglect or custody proceeding [pending on or] commenced on or after [the effective date of this [act]].

(b) This [act] does not affect children’s rights or standing under law other than this [act] or give standing or party status not provided under law other than this [act].

**SECTION 4. MANDATORY APPOINTMENT IN ABUSE OR NEGLECT PROCEEDING.**

(a) In an abuse or neglect proceeding, the court shall appoint either a child's attorney or a best interests attorney. The appointment must be made as soon as practicable to ensure adequate representation of the child and, in any event, before the first court hearing that may substantially affect the interests of the child.

(b) In determining whether to appoint a child's attorney or a best interests attorney, the court may consider such factors as the child's age and developmental level, any desire for an attorney expressed by the child, whether the child has expressed objectives in the proceeding, and the value of an independent advocate for the child's best interests.

(c) The court may appoint one attorney to represent siblings if there is no conflict of interest, even if the attorney serves in different capacities with respect to two or more siblings.

(d) Neither the child nor a representative of the child, whether or not appointed by the court, may waive representation of the child under this section or Section 5.

**SECTION 5. APPOINTMENT OF COURT-APPOINTED ADVISOR IN ABUSE OR NEGLECT PROCEEDING.**

**Alternative A**

(a) In an abuse or neglect proceeding:

(1) if the court does not appoint a best interests attorney, the court shall appoint a court-appointed advisor before the first court hearing that may substantially affect the interests of the child; or

(2) if the court appoints a best interests attorney, the court may appoint a court-appointed advisor if the court determines that a court-appointed advisor is necessary to assist the court in determining the best interests of the child.

(b) In determining whether a court-appointed advisor is necessary under subsection (a)(2), the court shall consider such factors as the court's need for information and assistance, the value of a court-appointed advisor's expertise, and any request by the best interests attorney for the appointment of a court-appointed advisor.

(c) If the court determines to make an appointment under subsection (a)(2), the court

shall make the appointment as soon as practicable.

#### **Alternative B**

(a) In an abuse or neglect proceeding, whether the court appoints a child's attorney or a best interests attorney, the court may appoint a court-appointed advisor if the court determines that a court-appointed advisor is necessary to assist the court in determining the child's best interests.

(b) In determining whether a court-appointed advisor is necessary under subsection (a), the court shall consider such factors as the court's need for information and assistance, the value of a court-appointed advisor's expertise, and any request by the child's attorney or best interests attorney for the appointment of a court-appointed advisor.

(c) If the court determines to make an appointment under subsection (a), the court shall make the appointment as soon as practicable.

#### **End of Alternatives**

***Legislative Note:** States that want to mandate a court-appointed advisor when a best interests attorney has not been appointed under Section 4 should adopt Alternative A of this section. States wanting to leave the matter to judicial discretion should adopt Alternative B.*

### **SECTION 6. DISCRETIONARY APPOINTMENT IN CUSTODY PROCEEDING.**

(a) In a custody proceeding, the court, on its own or on motion, may appoint either a child's attorney or a best interests attorney. Whether or not the court appoints an attorney, the court may appoint a court-appointed advisor. An appointment may be made at any stage of the proceeding and the order of appointment must designate the role of the appointee.

(b) In determining whether an appointment is appropriate, the court shall consider the circumstances and needs of the child, the court's need for information and assistance, the financial burden on the parties and the cost of available alternatives for resolving the issues in the proceeding, and any factors indicating a particularized need for representation, including:

- (1) any desire for a representative expressed by the child;
- (2) any inappropriate adult influence on or manipulation of the child;
- (3) the likelihood that the child will be called as a witness or be questioned by the court in chambers and the need to minimize harm to the child from the processes of litigation;

- (4) any level of acrimony that indicates a lack of objectivity of the parties regarding the needs of the child;
- (5) any interference, or threatened interference, with custody, access, visitation, or parenting time, including abduction or risk of abduction of the child;
- (6) the likelihood of a geographic relocation of the child that could substantially reduce the child's time with:
- (A) a parent,
  - (B) a sibling, or
  - (C) other individual with whom the child has a close relationship;
- (7) any conduct by a party or an individual with whom a party associates that raises serious concerns for the safety of the child during periods of custody, visitation, or parenting time with that party;
- (8) any special physical, educational, or mental-health needs of the child that require investigation or advocacy; and
- (9) any dispute as to paternity.

(c) If the court determines to make an appointment under subsection (a), in determining whether a child's attorney, best interests attorney, or court appointed advisor is appropriate, the court shall consider such factors as the child's age and developmental level, any desire for an attorney expressed by the child, whether the child has expressed objectives in the proceeding, the value of an independent advocate for the child's best interests, and the value of a court-appointed advisor's expertise.

**SECTION 7. QUALIFICATIONS OF CHILD'S ATTORNEY OR BEST INTERESTS ATTORNEY.** The court may appoint as a child's attorney or best interests attorney only an individual who is qualified through training or experience in the type of proceeding in which the appointment is made [, according to standards established by [insert reference to source of standards]].

***Legislative Note:** States that adopt training standards and standards of practice for children's attorneys and best interests attorneys should insert a reference to the state laws, court rules, or administrative guidelines containing those standards in the bracketed portion of this section.*



## **SECTION 8. COURT-APPOINTED ADVISOR: QUALIFICATIONS AND LIMITATIONS.**

(a) The court may appoint as court-appointed advisor only an individual who is qualified through training or experience in the type of proceeding in which the appointment is made [, according to standards established by [insert reference to standards]].

(b) An attorney appointed as court-appointed advisor may take only those actions that may be taken by a court-appointed advisor who is not an attorney.

(c) The appointment of a court-appointed advisor does not create a professional relationship between the advisor and the child unless such a relationship is expressly established in the order of appointment.

***Legislative Note:** States that adopt training standards and standards of practice for court-appointed advisors should insert a reference to the state laws, court rules, or administrative guidelines containing those standards in the bracketed portion of this section.*

## **SECTION 9. ORDER OF APPOINTMENT.**

(a) Subject to subsection (b), an order of appointment of a child's attorney, best interests attorney, or court-appointed advisor must be in a record, identify the individual who will act in that capacity, and clearly set forth the terms of the appointment, including the grounds for the appointment, rights of access as provided under Section 15, and applicable terms of compensation. In a custody proceeding, the order of appointment shall also specify the duration of the appointment.

(b) In the order of appointment under subsection (a), the court may identify a private organization or governmental program through which a child's attorney, best interests attorney, or court-appointed advisor will be provided. The organization or program shall designate an individual who will act in that capacity and submit to the court the name of the individual as soon as practicable, at which time the court shall amend the order of appointment to identify the designated individual.

(c) If appropriate in light of information not available to the court at the time of the original appointment or changed circumstances, the court may modify the order of appointment to:

(1) redesignate as a child's attorney an individual originally appointed as a best interests attorney;

(2) add the appointment of a child's attorney if the original or amended appointment was a best interests attorney; or

(3) add the appointment of a best interests attorney if the original or amended appointment was a child's attorney.

#### **SECTION 10. DURATION OF APPOINTMENT.**

(a) In an abuse or neglect proceeding, unless otherwise provided by a court order, an appointment of a child's attorney, best interests attorney, or court-appointed advisor continues in effect until the individual is discharged by court order at the conclusion of the proceeding.

(b) In a custody proceeding, an appointment of a child's attorney, best interests attorney, or court-appointed advisor continues in effect only for the term provided in the order of appointment or any subsequent order.

#### **SECTION 11. COMMON DUTIES OF CHILD'S ATTORNEY AND BEST INTERESTS ATTORNEY.**

##### **Alternative A**

(a) A child's attorney or best interests attorney shall participate in the proceeding to the full extent necessary to represent the child.

(b) The duties of a child's attorney or best interests attorney include:

(1) meeting with the child and ascertaining, in a manner appropriate to the child's developmental level, the child's needs, circumstances, and views;

(2) consulting with any court-appointed advisor for the child;

(3) investigating the facts relevant to the proceeding to the extent the attorney considers appropriate, including interviewing persons with significant knowledge of the child's history and condition and reviewing copies of relevant records;

(4) providing advice and counsel to the child;

(5) informing the child of the status of the proceeding and the opportunity to participate and, if appropriate, facilitating the child's participation in the proceeding;

(6) reviewing and accepting or declining to accept any proposed stipulation for an

order affecting the child and explaining to the court the basis for any opposition;

(7) taking action the attorney considers appropriate to expedite the proceeding and the resolution of contested issues; and

(8) when the attorney considers appropriate, encouraging settlement and the use of alternative forms of dispute resolution and participating in such processes to the extent permitted under the law of this state.

(c) When the court has appointed both a child's attorney and a best interests attorney for a child under Section 9(c), the court and the attorneys shall confer on how the attorneys will perform their duties under this Act.

#### **Alternative B**

The common duties of the child's attorney and best interests attorney are set forth in [insert reference to court rule or administrative guideline].

#### **End of Alternatives**

***Legislative Note:** In states where the duties of attorneys can be prescribed only by court rule or administrative guideline and not by legislative act, the duties listed in Section 11 should be adopted by the appropriate measure and identified in the bracketed portion of this section under Alternative B.*

### **SECTION 12. SEPARATE DUTIES OF CHILD'S ATTORNEY.**

(a) A child's attorney owes to the child the duties imposed by the law of this state in an attorney-client relationship.

#### **Alternative A**

(b) A child's attorney shall explain the nature of the attorney-client relationship to the child, including the requirements of confidentiality.

(c) Subject to subsections (d) and (e), once a child has formed an attorney-client relationship with a child's attorney, the attorney shall advocate any objectives of representation expressed by the child unless they are prohibited by law or without factual foundation.

(d) If a child's attorney determines that the child lacks the capacity or refuses to direct the attorney with respect to a particular issue, the attorney shall:

(1) present to the court a position that the attorney determines will serve the

child's best interests if the position is not inconsistent with the child's expressed objectives;

(2) take no position as to the issue in question; or

(3) request appointment of a best interests attorney or court-appointed advisor.

(e) If, despite appropriate legal counseling, the child expresses objectives of representation that the child's attorney reasonably believes would place the child at risk of substantial harm, the attorney shall:

(1) request the appointment of a court-appointed advisor, if a court-appointed advisor has not been appointed;

(2) withdraw from representation and request the appointment of a best interests attorney; or

(3) continue the representation and request the appointment of a best interests attorney.

(f) The child's attorney shall not disclose the reasons for requesting a court-appointed advisor or best interests attorney under subsection (e) except as permitted by [insert reference to this state's rules of professional conduct].

#### **Alternative B**

(b) The separate duties of a child's attorney are set forth in [insert reference to court rule or administrative guideline containing the duties].

#### **End of Alternatives**

***Legislative Note:*** *In states where the duties of attorneys can be prescribed only by court rule or administrative guideline and not by legislative act, the duties listed in Alternative A should be adopted by the appropriate measure and identified in the bracketed portion of this section under Alternative B.*

### **SECTION 13. SEPARATE DUTIES OF BEST INTERESTS ATTORNEY.**

(a) A best interests attorney shall advocate for a resolution of the proceeding consistent with the best interests of the child based on the facts relevant to the proceeding and according to criteria established by law related to the purposes of the proceeding.

#### **Alternative A**

(b) A best interests attorney, in a manner appropriate to the child's developmental level,

shall:

- (1) explain the role of the best interests attorney to the child; and
- (2) inform the child that, in providing assistance to the court, the attorney may use information that the child gives to the attorney.

(c) If the child desires, the best interests attorney shall present any expressed objectives of the child in the proceeding to the court by a method that is appropriate in light of the purpose of the proceeding and the impact on the child.

(d) A best interests attorney is not bound by the child's expressed objectives but shall consider the child's objectives, the reasons underlying those objectives, and the child's developmental level, in determining what to advocate.

(e) A best interests attorney may not disclose or be compelled to disclose information relating to the representation of the child except as permitted by [insert reference to this state's rules of professional conduct], but the attorney may use such information, including communications received from the child in confidence, for the purpose of performing the duties of a best interests attorney without disclosing that the child was the source of the information.

#### **Alternative B**

(b) The separate duties of the best interests attorney are set forth in [insert reference to rule of court or administrative guideline].

#### **End of Alternatives**

***Legislative Note:*** *In states where the duties of attorneys can be prescribed only by court rule or administrative guideline and not by legislative act, the duties listed in Alternative A should be adopted by the appropriate measure and identified in this section in the bracketed portion of Alternative B.*

**SECTION 14. DUTIES OF COURT-APPOINTED ADVISOR.** A court-appointed advisor shall:

- (1) within a reasonable time after the appointment:
  - (A) meet with the child and, in a manner appropriate to the child's developmental level:

- (i) explain the role of the court-appointed advisor, and

- (ii) ascertain the child's needs, circumstances, and views;
- (B) investigate the facts relevant to the proceeding to the extent the advisor considers appropriate, including interviewing persons with significant knowledge of the child's history and condition;
- (C) obtain and review copies of relevant records relating to the child to the extent the advisor considers appropriate; and
- (D) consult with the child's attorney or the best interests attorney, if any, regarding the issues in the proceeding;
- (2) determine, in a manner appropriate to the child's developmental level, the child's expressed objectives in the proceeding;
- (3) present the child's expressed objectives to the court, if the child desires, by report or other submission;
- (4) consider the child's expressed objectives in the proceeding without being bound by them;
- (5) maintain the confidentiality of information relating to the proceeding except as necessary to perform the duties of court-appointed advisor or as may be specifically provided by law of this state other than this [act];
- (6) if appropriate, present recommendations to the court regarding the child's best interests and the bases of those recommendations;
- (7) provide to the parties and to any attorney for the child copies of any report or other document submitted to the court by the advisor;
- (8) when the advisor considers appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted under the law of this state; and
- (9) perform any specific task directed by the court consistent with the role of court-appointed advisor.

## **SECTION 15. ACCESS TO CHILD AND INFORMATION RELATING TO CHILD.**

- (a) Subject to subsections (b) and (c), when the court makes an appointment under this

[act], it shall issue an order, with notice to all parties, authorizing the individual appointed to have access to:

(1) the child; and

(2) confidential information regarding the child, including the child's educational, medical, and mental health records, any agency or court files involving allegations of abuse or neglect of the child, any delinquency records involving the child, and other information relevant to the issues in the proceeding.

(b) A child's record that is privileged or confidential under law other than this [act] may be released to an individual appointed under this [act] only in accordance with that law, including any requirements in that law for notice and opportunity to object to release of records.

Information that is privileged under the attorney-client relationship may not be disclosed except as otherwise permitted by law of this state other than this [act].

(c) An order issued pursuant to subsection (a) must require that a child's attorney, best interests attorney, or court-appointed advisor maintain the confidentiality of information released except as necessary for the resolution of the issues in the proceeding, and the court may impose any other condition or limitation on an order of access which is required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding.

(d) The custodian of any record regarding the child shall provide access to the record to an individual authorized access by order issued pursuant to subsection (a).

#### **Alternative A**

(e) Subject to subsection (b), an order issued pursuant to subsection (a) takes effect upon issuance.

#### **Alternative B**

(e) An order issued pursuant to subsection (a)(1) takes effect upon issuance. Except as otherwise provided in subsection (g), an order issued pursuant to subsection (a)(2) does not take effect until [10] days after notice of the order has been sent to all parties. The notice must inform the individual to whom it is sent that any objection to the release of records must be filed with the court by a specified date.

(f) If no objection to an order issued pursuant to subsection (a)(2) is filed with the court

by the date specified in the notice, the order takes effect the day after the specified date. If an objection is filed with the court, the court shall conduct a hearing on a priority basis. Any appeal from the court's order granting or denying access must be processed in accordance with [expedited appellate procedures in other civil cases].

(g) Subject to subsection (b), if the court finds that immediate access to a specific record is necessary to protect the child from harm, the court shall specify the record in the order issued pursuant to subsection (a)(2) and, as to that record, the order takes effect upon issuance.

### **End of Alternatives**

## **SECTION 16. PARTICIPATION IN PROCEEDING.**

(a) A child's attorney, best interests attorney, or court-appointed advisor appointed under this [act] is entitled to:

(1) receive a copy of each pleading or other record filed with the court in the proceeding;

(2) receive notice of and attend each hearing in the proceeding [and participate in any appeal that may be filed in the proceeding]; and

(3) participate in any case staffing or case management conference regarding the child in an abuse or neglect proceeding.

(b) A child's attorney, best interests attorney, or court-appointed advisor appointed under this [act] may not engage in ex parte contact with the court except as authorized by law other than this [act].

(c) A court-appointed advisor may not take any action that may be taken only by a licensed attorney, including making opening and closing statements, examining witnesses in court, and engaging in discovery other than as a witness.

(d) The court, a child's attorney, or a best interests attorney may compel any court-appointed advisor for a child to attend a trial or hearing relating to the child and to testify as necessary for the proper disposition of the proceeding.

(e) The court shall ensure that any court-appointed advisor for a child has an opportunity to testify or, if present at the hearing and available for cross-examination, submit a report setting forth:



- (1) the advisor's recommendations regarding the best interests of the child; and
- (2) the reasons for the advisor's recommendations.

(f) A party may call any court-appointed advisor for the child as a witness for the purpose of cross-examination regarding the advisor's report even if the advisor is not listed as a witness by a party.

[(g) In a jury trial, disclosure to the jury of the contents of a court-appointed advisor's report is subject to this state's rules of evidence.]

#### **SECTION 17. ATTORNEY WORK PRODUCT AND TESTIMONY.**

[(a)] Except as authorized by [insert reference to this state's rules of professional conduct] or court rule, a child's attorney or best interests attorney may not:

- (1) be compelled to produce the attorney's work product developed during the appointment;
- (2) be required to disclose the source of information obtained as a result of the appointment;
- (3) introduce into evidence a report prepared by the attorney; or
- (4) testify in court.

[(b) Subsection (a) does not alter the duty of an attorney to report child abuse or neglect under [insert reference to applicable state law]].

***Legislative Note:*** *Those states that impose a duty on attorneys to report child abuse or neglect should enact subsection (b) to ensure that the reporting duty is not affected by this section's protection of attorney work product.*

#### **SECTION 18. CHILD'S RIGHT OF ACTION.**

(a) Only the child has a right of action for money damages against a child's attorney, best interest attorney, or court-appointed advisor for inaction or action taken in the capacity of child's attorney, best interests attorney, or court-appointed advisor.

(b) Subject to subsection (a), a [best interests attorney or] court-appointed advisor appointed pursuant to this [act] is not liable for money damages because of inaction or action taken in the capacity of [best interests attorney or] court-appointed advisor unless the inaction or action taken constituted willful misconduct or gross negligence.

## **SECTION 19. FEES AND EXPENSES IN ABUSE OR NEGLECT PROCEEDING.**

(a) In an abuse or neglect proceeding, an individual appointed pursuant to this [act], other than a volunteer, is entitled to reasonable and timely fees and expenses in an amount set by the court to be paid from [authorized public funds].

(b) To receive payment under this section, the payee must complete and submit to the court a written claim for payment, whether interim or final, justifying the fees and expenses charged.

(c) If the court, after hearing, determines that a party whose conduct gave rise to a finding of abuse or neglect is able to defray all or part of the fees and expenses set pursuant to subsection (a), the court shall enter a judgment in favor of [the state, state agency, or political subdivision] against the party in an amount the court determines is reasonable.

## **SECTION 20. FEES AND EXPENSES IN CUSTODY PROCEEDING.**

(a) In a custody proceeding, an individual appointed pursuant to this [act], other than a volunteer, is entitled to reasonable and timely fees and expenses in an amount set by the court by reference to the reasonable and customary fees and expenses for similar services in the jurisdiction.

(b) The court may:

(1) allocate fees and expenses among the parties;

(2) order a deposit to be made into an account designated by the court for the use and benefit of the individual appointed under this [act]; and

(3) before the final hearing, order an amount in addition to the amount ordered deposited under paragraph (2) to be paid into the account.

(c) To receive payment under this section, the payee must complete and submit to the court a written claim for payment, whether interim or final, justifying the fees and expenses charged.

(d) [Except as otherwise authorized by [insert reference to state law authorizing payment of fees or expenses], a] [A] court may not award fees or expenses under this section against the state, a state agency, or a political subdivision of the state.

## **SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In**

applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 22. REPEALS.** The following acts and parts of acts are repealed:

(1) .....

(2) .....

(3) .....]

**SECTION 23. EFFECTIVE DATE.** This [act] takes effect on \_\_\_\_\_.