

D R A F T
FOR APPROVAL

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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WITHOUT PREFATORY NOTE OR COMMENTS

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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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**AMENDMENTS TO 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~~ legal representative” means an attorney ~~who provides~~ appointed by the court to provide legal services to represent the best interests of a child, rather than to provide legal representation for the child. ~~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” the child.~~

(3) “Best interests advocate” means an individual, not functioning as an attorney, appointed ~~to assist by~~ by the court in determining to advocate for the best interests of a child.

~~(4) “Child’s attorney” means an attorney who provides legal representation for 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 filed by a governmental entity or initiated against a child for [adjudication of delinquency or status offense under [cite state

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.

Legislative Note: *States that want to limit the appointment of a best interests legal representative to custody proceedings and do not want to authorize the appointment of a best interests legal representative in abuse or neglect proceedings, as provided in the Legislative Note to Section 4, should insert the phrase “in a custody proceeding” in subsection (2) following the word “court.”*

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.

Alternative A

(a) In an abuse or neglect proceeding, the court shall appoint either a child’s attorney or a best interests ~~attorney~~ legal representative. 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~~ legal representative, the court may consider such factors as the child’s age and developmental level,

1 any desire for an attorney expressed by the child, whether the child has expressed objectives in
2 the proceeding, and the value of an independent ~~advocate~~ representative for the child's best
3 interests.

4 (c) If, after meeting with the child, a child's attorney determines that the child is
5 incapable of directing legal representation because of inability to communicate or to exercise
6 reasoned judgment, the attorney shall notify the court as soon as practicable and request
7 redesignation under Section 9(d) or that the court replace the child's attorney with a best interests
8 legal representative. If a best interests legal representative determines at any time that the child
9 should be represented by a child's attorney, the representative may request redesignation under
10 Section 9(c).

11 **Alternative B**

12 (a) In an abuse or neglect proceeding, the court shall appoint a child's attorney for every
13 child capable of directing legal representation. If a child is incapable of directing legal
14 representation, the court shall appoint a best interests legal representative. The initial
15 appointment must be made as soon as practicable and, in any event, before the first court hearing
16 that may substantially affect the interests of the child.

17 (b) In making an appointment under subsection (a), the court shall presume that a child
18 who is an infant or preverbal is incapable of directing legal representation. In all other cases, the
19 court shall appoint a child's attorney. If, after meeting with the child, a child's attorney
20 determines that the child is incapable of directing legal representation because of inability to
21 communicate or to exercise reasoned judgment, the attorney shall notify the court as soon as
22 practicable and request redesignation under Section 9(d) or that the court replace the child's

1 attorney with a best interests legal representative.

2 **End of Alternatives**

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

5 ~~[(d)]~~[(e)] Neither ~~the~~ a child nor a representative of the child, whether or not appointed
6 by the court, may waive the right to representation of the child under this section or Section 5.

7 **Legislative Note:** *States that do not want to authorize the appointment of a best interests legal*
8 *representative in abuse or neglect proceedings should enact Alternative B and reword the first*
9 *sentence of subsection (a) as follows: "The court shall appoint a child's attorney for every child*
10 *who is the subject of an abuse or neglect proceeding." In addition, such states should delete the*
11 *word "initial" from the second sentence of subsection (a), all of subsection (b), and the words*
12 *following "interest" in subsection (c).*

13
14 *If a state chooses Alternative A, the last two subsections will be lettered "(d)" and "(e)".*
15 *If a state chooses Alternative B, the last two subsections will be lettered "(c)" and "(d)".*
16

17 **SECTION 5. APPOINTMENT OF ~~COURT-APPOINTED ADVISOR~~ BEST**
18 **INTERESTS ADVOCATE IN ABUSE OR NEGLECT PROCEEDING.**

19 **Alternative A**

20 (a) In an abuse or neglect proceeding:

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

24 (2) if the court appoints a best interests ~~attorney~~ legal representative, the court
25 may appoint a ~~court-appointed advisor~~ best interests advocate if the court determines that a ~~court-~~
26 ~~appointed advisor~~ best interests advocate is necessary to assist the court in determining the best

1 interests of the child.

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

7 (c) If the court determines to make an appointment under subsection (a)(2), the court
8 shall make the appointment as soon as practicable.

9 **Alternative B**

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

14 (b) In determining whether a ~~court-appointed advisor~~ best interests advocate is necessary
15 under subsection (a), the court shall consider such factors as the court's need for information and
16 assistance, the ~~value of a court-appointed advisor's expertise~~ circumstances and needs of the
17 child, the value of a best interests advocate's expertise and experience, and any request ~~by the~~
18 ~~child's attorney or best interests attorney~~ for the appointment of ~~court-appointed advisor~~ best
19 interests advocate.

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

22 **End of Alternatives**

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

5
6 *States that do not want to authorize the appointment of a best interests legal*
7 *representative in abuse or neglect proceedings as provided in the Legislative Note to Section 4*
8 *should eliminate references to the best interests legal representative in each Alternative in this*
9 *Section. Within that group, those states wanting to mandate a best interests advocate in all*
10 *cases, should adopt the following version of Alternative A: “In an abuse or neglect proceeding,*
11 *the court shall appoint a best interests advocate before the first court hearing that may*
12 *substantially affect the interests of the child.” For those states wanting to leave the appointment*
13 *of a best interests advocate to judicial discretion, subsection (a) of Alternative B should read:*
14 *“In an abuse or neglect proceeding, the court may appoint a best interests advocate if the court*
15 *determines that a best interests advocate is necessary to assist the court in determining the*
16 *child’s best interests.” Subsections (b) and (c) should remain as written in Alternative B.*
17

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

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

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

29 (1) any desire for ~~a representative~~ representation or participation expressed by the
30 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) another individual with whom the child has a close relationship;

(7) any conduct by a party or an individual with whom a party associates which 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 of the child.

(c) If the court determines to make an appointment under subsection (a), in ~~determining~~ deciding whether a child's attorney, best interests ~~attorney~~ legal representative, or ~~court-~~ appointed advisor best interests advocate is appropriate, the court shall consider the circumstances and needs of the child, including 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~~ representative for the child's best interests, and the value of a ~~court-appointed advisor~~ best interests advocate's expertise and experience.

SECTION 7. QUALIFICATIONS OF CHILD'S ATTORNEY OR BEST INTERESTS ~~ATTORNEY~~ LEGAL REPRESENTATIVE. The court may appoint as a child's attorney or best interests ~~attorney~~ legal representative 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~~ legal representatives should include the bracketed portion of this section and insert a reference to the state laws, court rules, or administrative guidelines containing those standards.*

SECTION 8. ~~COURT-APPOINTED ADVISOR; QUALIFICATIONS AND OF BEST INTERESTS ADVOCATE; LIMITATIONS.~~

(a) The court may appoint as ~~court-appointed advisor~~ a best interests advocate 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~~ a best interests advocate may take only those actions that may be taken by a ~~court-appointed advisor~~ best interests advocate who is not an attorney.

(c) The appointment of a ~~court-appointed advisor~~ best interests advocate does not create a professional relationship between the ~~advisor~~ advocate and the child unless such a relationship

1 is expressly established in the order of appointment.

2 **Legislative Note:** *States that adopt training standards and standards of practice ~~court-~~*
3 *~~appointed advisors~~ best interests advocates should include the bracketed portion of this section*
4 *and insert a reference to the state laws, court rules, or administrative guidelines containing*
5 *those standards.*
6

7 **SECTION 9. ~~ORDER OF APPOINTMENT~~ ORDER.**

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

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

20 (c) If appropriate in light of information not available to the court at the time of the
21 original appointment, ~~or changed circumstances, or a request by an appointed representative,~~ the
22 court may modify ~~the~~ an order of appointment to:

23 (1) redesignate as a child's attorney an individual originally appointed as a best
24 interests ~~attorney~~ legal representative;

1 (2) add the appointment of a child’s attorney if the original or amended
2 appointment was a best interests ~~attorney~~ legal representative; or

3 (3) add the appointment of a best interests ~~attorney~~ legal representative if the
4 original or amended appointment was a child’s attorney.

5 (d) Upon request by a child’s attorney under Section [4(c)][4(b)], the court may modify
6 an appointment order to redesignate as a best interests legal representative an individual
7 originally appointed as a child’s attorney, unless redesignation would compromise the
8 confidentiality of communications between the child and the child’s attorney, or the court may
9 replace the child’s attorney with a best interests legal representative.

10 **Legislative Note:** States that choose Alternative A of Section 4 should choose “4(c)” of the
11 bracketed alternatives in subsection (d). States that choose Alternative B of Section 4 should
12 choose “4(b)” of the bracketed alternatives in subsection (d).

13
14 States that do not want to authorize the appointment of a best interests legal
15 representative in abuse or neglect proceedings as provided in the Legislative Note to Section 4
16 should insert as a limitation the phrase “In a custody proceeding,” at the beginning of
17 subsection (c) and delete subsection (d).
18

19 **SECTION 10. DURATION OF APPOINTMENT.**

20 (a) In an abuse or neglect proceeding, unless otherwise provided by a court order, an
21 appointment of a child’s attorney, best interests ~~attorney~~ legal representative, or ~~court-appointed~~
22 ~~advisor~~ best interests advocate continues in effect until the individual is discharged by court
23 order at the conclusion of the proceeding.

24 (b) In a custody proceeding, an appointment of a child’s attorney, best interests ~~attorney~~
25 legal representative, or ~~court-appointed advisor~~ best interests advocate continues in effect only
26 for the duration provided in the order of appointment or any subsequent order.

1 **Legislative Note:** States that do not want to authorize the appointment of a best interests legal
2 **representative in an abuse or neglect proceeding should delete “best interests legal**
3 **representative” from subsection (a).**
4

5 **SECTION 11. ~~COMMON DUTIES OF CHILD’S ATTORNEY AND BEST~~**
6 **~~INTERESTS ATTORNEY.~~**

7 **~~Alternative A~~**

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

10 (b) ~~The duties of a child’s attorney or best interests attorney include:~~

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

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

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

17 (4) ~~providing advice and counsel to the child;~~

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

20 (6) ~~reviewing and accepting or declining to accept any proposed stipulation for an~~
21 ~~order affecting the child and explaining to the court the basis for any opposition;~~

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

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

4 ~~(c) When the court has appointed both a child's attorney attorney for a child under~~
5 ~~Section 9(c), the court and the attorneys shall confer to determine how the attorneys will perform~~
6 ~~their common duties under this [act].~~

7 **Alternative B**

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

10 **End of Alternatives**

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

16 **SECTION ~~12~~ 11. SEPARATE DUTIES OF CHILD'S ATTORNEY.**

17 (a) A child's attorney owes to the child the ~~duties imposed by the law of this state in an~~
18 ~~attorney-client relationship~~ same duties of undivided loyalty, confidentiality, and competent
19 representation as are due an adult client.

20 **Alternative A**

21 (b) A child's attorney shall participate in the proceeding to the full extent necessary to
22 represent the child.

23 ~~(b)~~(c) A child's attorney, in a manner appropriate to the child's developmental level,
24 shall explain the nature of the attorney-client relationship to the child, including the requirements

1 of confidentiality.

2 (d) The duties of a child's attorney include:

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

5 (2) consulting with any best interests legal representative or best interests
6 advocate appointed in the proceeding;

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

10 (4) providing advice and counsel to the child;

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

13 (6) reviewing and accepting or declining to accept any proposed stipulation for an
14 order affecting the child and explaining to the court the basis for any opposition;

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

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

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

(d)(f) If a child's attorney ~~determines~~ reasonably believes 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 the appointment of a best interests ~~attorney~~ advocate or court-appointed advisor a best interests legal representative if one has not been appointed.

~~(e)~~(g) 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~~ best interests advocate, if a ~~court-appointed advisor~~ best interests advocate has not been appointed;

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

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

(f)(h) The child's attorney may not disclose the reasons for requesting a court-appointed ~~adviser~~ best interests legal representative or best interests ~~attorney~~ advocate under subsection (e)(g) 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].

1 **End of Alternatives**

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

6
7 *States that do not want to authorize the appointment of a best interests legal*
8 *representative in abuse or neglect proceedings as provided in the Legislative Note to Section 4*
9 *should insert as a limitation the phrase “, in a custody proceeding,” after the word “or” in*
10 *subsection (f)(3), after the word “and” in subsections (g)(2), and after the word “and” in*
11 *subsection (g)(3).*

12
13 *States that prefer to track the language of the rules of professional conduct rather than*
14 *adopt the more detailed implementing guidelines of this Section to set forth the obligations of a*
15 *child’s attorney when faced with a client of diminished capacity should delete subsections (f) and*
16 *(g) and substitute the applicable provisions from the state’s rules. Such states that have adopted*
17 *the Model Rules of Professional Conduct should substitute the following language drawn from*
18 *Rule 1.14 for subsections (f) and (g):*

19
20 *“(f) If a child’s attorney reasonably believes that the child has diminished capacity, is at*
21 *risk of substantial physical, financial or other harm unless action is taken, and cannot*
22 *adequately act in the child’s own interest, the attorney may take reasonably necessary protective*
23 *action, including consulting with individuals or entities that have the ability to take action to*
24 *protect the child, and may:*

25
26 *(1) present to the court a position that the attorney determines will serve the*
27 *child’s legal interests;*

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

29 *(3) request the appointment of a best interests advocate or a best interests legal*
30 *representative.”*
31

32 **SECTION 12. SEPARATE DUTIES OF CHILD’S ATTORNEY BEST**
33 **INTERESTS LEGAL REPRESENTATIVE.**

34 (a) A best interests ~~attorney~~ legal representative shall represent and advocate for a
35 ~~resolution of the proceeding consistent with the best interests of the child based on the facts~~
36 ~~relevant to the proceeding and according to criteria established by law related to the purposes of~~

1 the proceeding. The appointment of a best interests legal representative does not create an
2 attorney-client relationship between the representative and the child, and, in determining what to
3 advocate, a best interests legal representative is not bound by the child's expressed objectives or
4 directives.

5 **Alternative A**

6 (b) A best interests ~~attorney~~ legal representative, in a manner appropriate to the child's
7 developmental level, shall:

8 (1) explain the role of ~~the best interests attorney~~ representative to the child; and

9 (2) inform the child that, in providing assistance to the court, the ~~attorney~~
10 representative may use information that the child gives to the ~~attorney~~ representative.

11 (c) The duties of a best interests legal representative include:

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

14 (2) consulting with any child's attorney or best interests advocate appointed in the
15 proceeding;

16 (3) investigating the facts relevant to the proceeding to the extent the
17 representative considers appropriate, including interviewing persons with significant knowledge
18 of the child's history and condition, initiating and responding to discovery, and reviewing copies
19 of relevant records;

20 (4) presenting evidence and examining witnesses;

21 (5) in the absence of the appointment of a child's attorney:

22 (A) informing the child of the status of the proceeding and the opportunity

1 to participate and, if appropriate, facilitating the child's participation in the proceeding, and

2 (B) explaining to the child any action taken by the court and the reason for
3 the action;

4 (6) If if the child desires, the best interests attorney shall present presenting any
5 expressed objectives of the child in the proceeding to the court by a method that is appropriate in
6 light of the purpose of the proceeding and the impact on the child;

7 (7) reviewing and accepting or declining to accept any proposed stipulation for an
8 order affecting the child and explaining to the court the basis for any opposition;

9 (8) taking action the representative considers appropriate to expedite the
10 proceeding and the resolution of contested issues; and

11 (9) if the representative considers appropriate, encouraging settlement and the use
12 of alternative forms of dispute resolution and participating in such process to the extent permitted
13 under the law of this state.

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

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

1 **Alternative B**

2 (b) The separate duties of a best interests ~~attorney~~ legal representative are set forth in
3 [insert reference to rule of court or administrative guideline].

4 **End of Alternatives**

5 ***Legislative Note:** In states where the duties of attorneys can be prescribed only by court rule or*
6 *administrative guideline and not by legislative act, the duties listed in Alternative A should be*
7 *adopted by the appropriate measure and identified in this section in the bracketed portion of*
8 *Alternative B.*
9

10 **SECTION ~~14~~ 13. DUTIES OF ~~COURT-APPOINTED ADVISOR~~ BEST**
11 **INTERESTS ADVOCATE.** A ~~court-appointed advisor~~ best interests advocate shall:

- 12 (1) within a reasonable time after the appointment:
- 13 (A) meet with the child and, in a manner appropriate to the child’s developmental
14 level:
- 15 (i) explain the role of the ~~court-appointed advisor~~ advocate; and
- 16 (ii) ascertain the child’s needs, circumstances, and views;
- 17 (B) investigate the facts relevant to the proceeding to the extent the ~~advisor~~
18 advocate considers appropriate, including interviewing persons with significant knowledge of the
19 child’s history and condition;
- 20 (C) obtain and review copies of relevant records relating to the child to the extent
21 the ~~advisor~~ advocate considers appropriate; and
- 22 (D) consult with ~~the~~ any child’s attorney or ~~the~~ best interests ~~attorney, if any,~~
23 ~~regarding the issues~~ legal representative appointed in the proceeding;
- 24 (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~~ best interests advocate or as may be specifically provided by law of this state other than this [act];

(6) if the advocate considers appropriate and subject to the requirements of Section 15(e), present recommendations to the court by testimony, written report, or both, regarding the child's best interests and the bases of those recommendations;

(7) provide to the parties and to any child's attorney for the child or best interests legal representative copies of any report or other document submitted to the court by the ~~advisor~~ advocate; and

(8) ~~when~~ if the advisor advocate 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~~ 14. 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~~ legal representative, or ~~court-appointed advisor~~ best interests advocate maintain the confidentiality of information released, except as necessary for the resolution of the issues in the proceeding. 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

1 issuance.

2 **Alternative B**

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

8 (f) If no objection to an order issued pursuant to subsection (a)(2) is filed with the court
9 by the date specified in the notice, the order takes effect the day after the specified date. If an
10 objection is filed with the court, the court shall conduct a hearing on a priority basis. Any appeal
11 from the court's order granting or denying access must be processed in accordance with [insert
12 reference to expedited appellate procedures in other civil cases].

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

16 **End of Alternatives**

17 **SECTION ~~16~~ 15. PARTICIPATION IN PROCEEDING.**

18 (a) A child's attorney, best interests ~~attorney~~, legal representative ~~court-appointed~~
19 ~~advisor~~ best interests advocate appointed under this [act] is entitled to:

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

22 (2) receive notice of and ~~attend~~ participate in each hearing in the proceeding [and

1 participate and receive copies of all records in any appeal that may be filed in the proceeding];
2 and

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

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

8 (c) A ~~court-appointed advisor~~ best interests advocate, whether or not licensed as an
9 attorney, may not take any action that may be taken only by an attorney licensed in this state,
10 including making opening and closing statements, examining witnesses in court, and engaging in
11 discovery other than as a witness.

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

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

18 (1) ~~the advisor's~~ recommendations regarding the best interests of the child; and

19 (2) the reasons for the ~~advisor's~~ recommendations.

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

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

3 **SECTION ~~17~~ 16. ATTORNEY WORK PRODUCT AND TESTIMONY.**

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

6 (1) be compelled to produce the attorney's or legal representative's work product
7 developed during the appointment;

8 (2) be required to disclose the source of information obtained as a result of the
9 appointment;

10 (3) introduce into evidence a report prepared by the attorney or legal
11 representative; or

12 (4) testify in court.

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

15 ***Legislative Note:*** *Those states that impose a duty on attorneys to report child abuse or neglect*
16 *should enact subsection (b) to ensure that the reporting duty is not affected by this section's*
17 *protection of attorney work product.*
18

19 **SECTION ~~18~~ 17. CHILD'S RIGHT OF ACTION.**

20 (a) Only the child has a right of action for money damages against a child's attorney, best
21 interests ~~attorney~~ legal representative, or ~~court-appointed advisor~~ best interests advocate for
22 inaction or action taken in the capacity of child's attorney, best interests ~~attorney, or court-~~
23 ~~appointed advisor~~ legal representative, or best interests advocate.

1 (b) A ~~[best interests attorney or] court-appointed advisor~~ best interests legal
2 representative or best interests advocate appointed pursuant to this [act] is not liable for money
3 damages because of inaction or action taken in the capacity of ~~[best interests attorney or] court-~~
4 ~~appointed advisor~~ best interests legal representative or best interests advocate unless the inaction
5 or action taken constituted willful misconduct or gross negligence.

6 **SECTION ~~19~~ 18. FEES AND EXPENSES IN ABUSE OR NEGLECT**
7 **PROCEEDING.**

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

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

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

18 **SECTION ~~20~~ 19. FEES AND EXPENSES IN CUSTODY PROCEEDING.**

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

(b) The court may do one or more of the following:

(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 individual 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~~ 20. 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~~ 21. REPEALS. The following acts and parts of acts are repealed:

(1)

(2)

(3)

~~**SECTION 23. CONFORMING AMENDMENTS.** The following acts or parts of acts are amended to conform to the terminology used in this Act:~~

.....

1 ***Legislative Note:*** *Statutes that refer to children’s representatives by terminology different from*
2 *that used in this act may need to be amended to conform to the terminology used in this act.*

3 **SECTION ~~24~~ 22. EFFECTIVE DATE.** This [act] takes effect on _____.