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STATE OF WASHINGTON

Case No. 48299-1-II

COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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In Re the Dependency of S.K.P.

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**AMICI CURIAE BRIEF OF LEGAL COUNSEL FOR YOUTH AND  
CHILDREN AND OF TEAMCHILD**

IN SUPPORT OF APPELLANT

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## I. INTRODUCTION

Dependency proceedings affect the physical and fundamental liberties of all children who enter state custody at shelter care. Only an attorney with sufficient training bound by strict standards can protect the important rights of dependent children.

## II. IDENTITIES AND INTERESTS OF *AMICI*

The identity and interests of TeamChild and Legal Counsel for Youth and Children (“LCYC”) are set forth in their Motion to File *Amicus Curiae* Brief, filed herewith.

## III. STATEMENT OF THE CASE

*Amici* adopt the Child’s statement of the case. The record shows here that she, like all children who enter state custody through a shelter care proceeding, would have benefitted from an attorney to safeguard her rights and interests.

## IV. ARGUMENT

### A. CHILDREN’S ATTORNEYS ENSURE THE COURT AND PARTIES CONSIDER A CHILD’S POSITION, ENGAGE A CHILD IN PROCEEDINGS, EXPLAIN A CHILD’S LEGAL RIGHTS TO HIM OR HER, HELP A CHILD CONSIDER THE CONSEQUENCES OF DIFFERENT DECISIONS, AND SAFEGUARD A CHILD’S RIGHTS.

#### 1. Dependency Attorneys Already Advocate for Some Children in Washington State.

Attorneys already advocate for children in dependencies in many jurisdictions across Washington State. King County automatically appoints counsel for all children ages 12 and over in dependency cases. King County LJuCR 2.3. The Child and Youth Advocacy Clinic at the University of Washington School of Law (“CAYAC”) conducted a statewide survey of children’s access to justice in Washington dependency courts and found that Franklin and Benton counties automatically appoint for children ages 8 and over.<sup>1</sup> All Washington dependency courts must appoint counsel for children who have been legally free for six months, regardless how young. RCW 13.34.100(6). This is because,

The legislature recognizes that some children may remain in foster care following the termination of the parent and child relationship. These children have legal rights . . . and no other party represents their legal interests. The legislature finds that providing attorneys for children following the termination of the parent and child relationship is fundamental to protecting the child’s legal rights and to accelerate permanency.

Washington Session Laws of 2014 ch. 108, § 1.

If the court, state, and volunteer Court Appointed Special Advocate (“CASA”) or Guardian ad Litem (“GAL”) cannot safeguard a child’s rights in a *post-termination* dependency as well as an attorney, they

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<sup>1</sup> LeVezu, A. *Defending Our Children: A Child’s Access to Justice in Washington State, 2016 Status Report*, Children and Youth Advocacy Clinic at the University of Washington, 9 (2016), <https://www.law.washington.edu/Clinics/Child/Projects/DefendingOurChildrenAugust2016.pdf>

cannot safeguard a child's rights any better *before* the child has lost his or her parents. Courts make decisions about children's physical liberty and fundamental rights at virtually every hearing. Attorneys help children navigate a complex process in order to safeguard those rights, from the initial shelter care hearing to dismissal of the case.

In 2015, LCYC collected data for its open and closed cases to determine the types of advocacy and outcomes its clients were experiencing and published an Impact Report.<sup>2</sup> It found the vast majority of all open cases required legal advocacy, in and out of court, in the areas of placement, family visits, education, and services for the child.<sup>3</sup> It also commonly provided advocacy on issues of permanency planning, timely permanency, and removing barriers for adoption of a legally free child. LCYC, *supra* note 2. The children needed attorneys to assert their rights on these issues, because no other party argued on their behalf.

## **2. Attorneys Help Children Navigate the Shelter Care Process and Protect their Physical Liberty Right to Placement, Association, and Maintaining Familial Relationships.**

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<sup>2</sup> LCYC, *Impact Report* (2015), <http://static1.squarespace.com/static/533dcf7ce4b0f92a7a64292e/t/565d4b9fe4b022b64cac5bd0/1448954783192/Legal+Counsel+for+Youth+and+Children+Impact+Report.++Dated+December+1%2C+2015.pdf>

<sup>3</sup> Forty-two percent (42%) of motions filed by LCYC attorneys on behalf of children related directly to placement, requesting that children be placed with their parents, family, or known community members. Twenty-seven percent (27%) of the motions involved family visitation. *Supra* note 2.

At the initial shelter care hearing, held within 72 hours after the state files a petition, the court decides (a) whether a child may safely remain with a parent, (b) whether a child may live with a relative or other known suitable adult, (c) whether a child must live in foster care, (d) whether the child must participate in any services as a condition of placement, and (e) what sort of contact a child may have with parents and siblings. RCW 13.34.065. Courts may consider hearsay evidence at a shelter care hearing in order in order to make an efficient decision about a child's immediate safety needs based on the information at hand. Id.

Dependency attorneys meet with a child at that first hearing; explain what is often a scary process using developmentally appropriate techniques to explain challenging concepts; answer a child's most pressing questions; and ascertain what position if any a child wishes to take on each issue, discussing potential consequences a child may not have considered. RPC 2.1. Attorneys gather information from a child and contact adults who can testify as witnesses, provide shelter to a child who cannot return home safely, provide supervision and transportation for family visits, or transportation to the current school while a child is out of home.

A child who has been removed from the home has a right to preferential placement with a relative or known suitable adult. RCW 13.34.130. If a social worker was unable to investigate relative or suitable



adult caregivers, the state typically proposes foster care and tells the court it will continue to investigate relatives. There is no CASA assigned before the initial hearing, and assignment after the initial hearing depends on the CASA program's capacity. A parent may be arguing for return home and so will not propose other potential caregivers. Often only the child can offer this information, which may help the court keep the child out of foster care and closer to a parent.

Attorneys help children decide how to present information and whether or not to testify at the shelter care hearing. In *amici's* experience, children can shed light on what is actually happening in a home, whether they feel and are in fact safe, and which people in their lives they could live with if their parents are not safe. If children do not have someone willing to present their position and proffer their evidence, the court typically does not receive all of the information necessary to make the right placement decision.<sup>4</sup>

When the court removes children from their home, those children have a right to maximum contact with parents and siblings. RCW

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<sup>4</sup> An *amicus* client was one of five siblings who contested placement with the assistance of counsel. Parties agreed no parent was available, but the state objected to the children's preferred caregiver, an adult sibling. Four children testified about the importance of staying together, residing in their family home and engaging with their local church and in cultural celebrations. The court placed the entire sibling group with the adult sibling, ordering support services for the family. The case was later dismissed following successful reunification with the mother. The children never spent a day in foster care.

13.34.136(2)(b)(ii). In practice, however, the state has very few contracts to transport children to visits and to supervise visits when that is necessary, and it must follow lengthy, bureaucratic processes to approve lay people to transport or supervise. If a child proffers a community member who can take on this role, the court may approve that person and provide for more visitation at the first hearing, so children do not have to wait a week or more to see a parent.

If a child decides to testify, the attorney must prepare the child and ensure the testimony is elicited in a manner that will “safeguard the child’s emotional well-being and legal interests.” Standard 5.5.<sup>5</sup> The attorney helps the child prepare for the experience by discussing likely areas of conversation and advising him or her of other legal rights implicated by testifying, such as the Fifth Amendment right against self-incrimination, which typically arises in cases involving alleged sexual contact between siblings. During the hearing, the attorney may present issues, which the child is unwilling to vocalize herself but wants the court to know, by teasing information out of documents or other witnesses the child identified or else making offers of proof to the court. Similarly, a child

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<sup>5</sup> Statewide Children’s Representation Workgroup, *Standards of Practice for Children’s Attorneys in Washington State*, available: [http://www.naccchildlaw.org/resource/resmgr/news\\_items/meaningful\\_legal\\_representat.pdf](http://www.naccchildlaw.org/resource/resmgr/news_items/meaningful_legal_representat.pdf) (last visited August 14, 2016).

may report a position to the attorney that she does not want shared but for which she wants the attorney to advocate in more subtle ways.

After the hearing, an attorney will advise the child about the contents of the court order, including any recommendations or orders from the court to participate in services and remain in placement (for which an older child may be found in contempt and held in a secure facility if violated), answer any questions, and determine whether the child wishes to exercise her right to seek revision in jurisdictions where commissioners preside over hearings.

Parties have an opportunity after an initial shelter care hearing to conduct a more thorough investigation of the family to determine whether the initial allegations would support an actual dependency and what the child's needs are in fact. In *amici's* experience, a finding of shelter care at that initial hearing often determines whether or not a dependency is later established.<sup>6</sup> It determines whether a child moves among multiple state placements or maintains stability with no time in foster care.<sup>7</sup> Often, the

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<sup>6</sup> Twenty-two percent (22%) of all children LCYC represented at initial shelter care hearings were never found dependent. LCYC, *supra* note 2.

<sup>7</sup> LCYC found that children with attorneys at the first hearing were more likely than children without counsel to reside with parents, relatives, or other caring adults they know throughout their dependencies. LCYC, *supra*, note 2. Forty-eight percent (48%) of all children LCYC represented at the first hearing never spent a night in foster care, compared with 28% for those children appointed attorneys sometime after the initial shelter care hearing and 21% for those children without an attorney until after termination of parental rights. *Id.*

initial hearing sets the course for the first several months, if not the duration, of the dependency case.<sup>8</sup> LCYC data shows that, the earlier the court assigns a child's attorney, the more likely the child will reside in his or her community and remain out of foster care.<sup>9</sup> LCYC, *supra*, note 2.

### **3. Attorneys Involve Children in the Dependency Trial and at Disposition.**

During a dependency trial or disposition hearing, the court must make placement and visitation decisions anew, with more information and the rules of evidence in effect. RCW 13.34.110. When a child has an attorney, the child has an opportunity to participate in pre-trial negotiations, file motions to resolve the case in a way that supports and protects her rights, call and examine witnesses at trial, receive counsel about testifying, and present her position to the court so it can make a fully informed decision about her placement and contact with family. The attorney must follow the child's direction and be "careful not to usurp the child's authority to decide and direct efforts to achieve the case goals

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<sup>8</sup> One 15 year-old client suffered physical abuse by her father and gave birth to her own child. At the initial shelter care hearing, her attorney obtained an order for the client to keep the baby while both of them lived in a foster home. Within three months, the baby's dependency case was dismissed. Within nine months, the client returned home to her mother with no dependency established after her attorney helped her alter her immigration status.

<sup>9</sup> Conversely, a 2004 Caliber Associates Evaluation of CASA Representation found that having a CASA increased the likelihood of out of home care by 71%. Caliber Associates, *Evaluation of CASA representation*, Fairfax, VA: Caliber Associates (2004), <http://www.nccpr.org/reports/casa.pdf>

consistent with RPC 1.2 and 1.4.” Standard 1.1(4) and (6). In contrast, a volunteer CASA or GAL is appointed to represent the best interests of a child and may or may not ask for the child’s stated position. RCW 13.34.105(b), (f).<sup>10</sup> For preverbal and nonverbal children, attorneys must advance the child’s legal rights by looking at the underlying laws of the proceeding and by understanding and representing the child’s unique needs and preferences. Standard 1.1(7). A child’s legal right to maintain family connections is no less of a right merely because it fails to align with a CASA’s or GAL’s recommendations.

If the child chooses not to attend the trial, the child has an attorney who can independently explain what happened both factually and legally. RPC 1.4. An attorney must review and explain pleadings and court orders with a child. Standard 1. It is not a CASA’s or GAL’s role to summarize or paraphrase pleadings and court orders, explain the legal implications of these documents, or give legal advice, because a CASA or GAL does not provide legal representation to the child. RCW 2.48.180. This is a role in

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<sup>10</sup> CAYAC observers found that CASAs and GALs only reported a child’s position 19% of the time. LeVezu, at 17. Even when the child’s position was relayed, CASAs and GALs only presented arguments to support the child’s position 30% of the time. *Id.* at 22. In 22% of cases, the child was not even mentioned, and the role of the advocate had a significant effect on this, with 92% of attorneys and only 77% of CASAs or GALs mentioning the child. *Id.* at 25. A 2004 report found one third of CASA volunteers never contacted the child. Caliber Associates, *Evaluation of CASA representation*, Fairfax, VA: Caliber Associates (2004), <http://www.nccpr.org/reports/casa.pdf>

which only a child's attorney can serve.<sup>11</sup>

#### **4. Children's Attorneys Safeguard Children's Rights After Dependency Is Established**

##### **a. Attorneys Protect the Child's Physical Liberty Interests**

At each hearing after a dependency finding, the court must assess whether the placement and permanent plan continue to be appropriate and will consider, upon motion of any party, whether there should be any change to placement, visitation, or services. RCW 13.34.145. Foster children are entitled to an orderly, timely, least restrictive placement. 42 U.S.C. § 675. They should not bounce from temporary bed to temporary bed, in semi-secure group-home settings. Children have the right not to be held in detention, even on a temporary or emergency basis, solely because they are foster children. RCW 13.34.060(1). If a child wants more contact with family or wants to move, an attorney will assert those rights.

In *amici's* experience, children typically know more facts to

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<sup>11</sup> One 13 year-old client was appointed an attorney for the initial shelter care hearing. His attorney helped him to secure placement with suitable adults over the state's objection and to maintain frequent contact with his father. The attorney then represented the child at the dependency trial. The child wanted to return home and his sister did not, so they elicited very different information from witnesses at trial. The state focused on the reasons it believed that the father was unfit and argued both children should remain out of his care. The father focused on his fitness. However, the children's attorneys articulated different needs for each child and presented a nuanced picture of the father's capabilities with respect to each child, forcing the court to consider different plans and services for each case. As a result, the 13 year-old was able to live with his father sooner than his sister.

present than their social workers and CASAs. Social workers change, parents are often afraid to rock the boat, and CASA volunteers may come in and out of a case or never appear.<sup>12</sup> When a child has an attorney, the attorney can advocate for the child's present needs, so the child does not languish in the system. In the experience of *amici*, the child's attorney is typically the most or only constant professional in the child's life.

Safeguarding a child's rights is no small task and requires attorneys to advocate both in and out of court. For example, dependent children are moved often, despite the fact that a child is entitled to the fewest possible placements. RCW 74.13.290; *See, Braam v. State*, 150 Wn.2d 689, (2003). Attorneys can fight for or against a child's designation as a child in need of Behavioral Rehabilitation Services ("BRS"). In *amici's* experience, a BRS designation can give children access to costly services that can stabilize placement. However, that designation can also limit the number of homes available to group-home, rather than family-like, settings. Even if the volunteer CASA's position on the issue were

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<sup>12</sup> Based on *amici's* inquiries over the years, King County CASA often has approximately 100 children waiting to be assigned a volunteer CASA. Despite federal law requiring appointment of some child advocate in dependency proceedings, CAYAC observers found that 23% of children in observed hearings had neither an attorney nor a CASA or GAL to represent them. LeVezu at 13. An additional 5% of children had a CASA or GAL who did not contribute at all to the court hearing - neither filing a report, expressing a position on any issue in court, nor presenting any new information. *Id.* This means that, effectively, 28% of children had no advocacy at all. In the observed hearings, only 22% of children were appointed an attorney. *Id.* at 14. This means a child was more likely to have no advocate at all than she was to be appointed an attorney. *Id.*

aligned with the child's, CASAs are not equipped with the legal skills and knowledge to effectively protect and advocate for the child's legal rights in critical decision meetings with the state and at court hearings. This advanced level of advocacy requires an understanding not just of the facts at hand, but of the various applicable laws, policies, administrative codes, funding streams, etc.<sup>13</sup>

**b. Children's Attorneys Safeguard the Right to Health and Safety**

Foster children have a substantive due process right to be free from unreasonable risks of harm and a right to reasonable safety. *Braam*, 150 Wn.2d at 700. To be reasonably safe, the state, as custodian and caretaker of foster children, must provide conditions and services that meet the child's basic needs. *Id.* The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and speedy resolution of the dependency proceeding. RCW 13.34.020. Children age 13 and older also have the right to consent or refuse certain treatments without parental

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<sup>13</sup> One 2 year-old client was placed with indigent, immigrant grandparents at birth. The state conducted a home study of the grandparents' home in order to complete the adoption process, approve support funds for the grandparents, and dismiss the case. Unfortunately, the independent worker conducting the home study felt the grandfather was not forthcoming enough about minor, 20-year-old criminal history and refused to approve the grandparents for adoption. The state proposed to move the child across the country to another relative home. The child's attorney exposed the language barriers and cultural differences that led to the failed home study, filed for expert funding to conduct a private home study, and obtained a court order preventing the state from moving the child to a strange home.



consent, such as therapy and mental health medication. RCW 17.34.530. Children cannot rely on parents or opposing parties, who may believe they should have certain treatment, to advise them of these rights.<sup>14</sup> When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. RCW 13.34.020.<sup>15</sup>

**c. Attorneys Safeguard Children’s Education Rights.**

Education is a fundamental liberty interest necessitating legal protection and advocacy. *McCleary v. State*, 173 Wn.2d 477, 514, 269 P.3d 227, 246 (2012). The juvenile court issues orders which determine whether a child should remain in the school they attended before removal, whether the state should provide transportation to that school, whether a

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<sup>14</sup> Children in foster care are prescribed psychiatric medications at rates 2-10 times the rate of non-foster youth on Medicaid. Hughes, Karissa, *Literature Review: Psychotropic Medication and Foster Youth* for the Southern Area Consortium of Human Services, (2015), available: [https://theacademy.sdsu.edu/wp-content/uploads/2015/05/SACHS\\_Research\\_Psychotropic\\_Meds\\_2\\_26\\_15\\_rev.pdf](https://theacademy.sdsu.edu/wp-content/uploads/2015/05/SACHS_Research_Psychotropic_Meds_2_26_15_rev.pdf)

<sup>15</sup> The state moved one 15 year-old client 22 times since she entered care at the age of 10. She was discharged from an out-of-state group home after it failed to provide her with court-ordered therapy for two months, mistakenly provided her with a double-dose of psychiatric medication for months then punished her for refusing medication when it made her overly tired, restricted her diet without providing the state with medical documentation, and then criminalized her acting-out behavior. The state took months to find her a home, at one point placing her in a hotel with a social worker she did not know. The child had no CASA or parent able to advocate for her rights, and the state social worker felt hamstrung by state bureaucracy and policies. Promptly after appointment, her attorney flew to visit the child who felt alone and disillusioned, counseled her, brought the issues to the court’s attention, pressured the state to move the child, and helped her file an Ombudsman’s complaint, which resulted in the state finding her a loving and appropriate foster home immediately.

child should be held in contempt for failing to attend school, and which appoint an education liaison for the child. Still, as Appellant SKP mentions, children in foster care graduate at a lower rate than any other student group. Children's attorneys advocate for their clients' right to attend their current school, ensure they are timely enrolled, help them appeal student discipline actions, ensure alleged behavior problems at school do not negatively impact the dependency case, ensure the educational liaison appointment remains appropriate at the time of each review (especially where a child is experiencing multiple placement changes), and ensure the schools regularly review and amend their IEPs with their input. WAC 392-400, RCW 13.34.045, 20 U.S.C. § 1414.

The 2016 CAYAC report references Charlie, a 6 year-old foster child who relies on a wheelchair for mobility and has severe developmental disabilities thus:

. . . his wheelchair was missing some key pieces, including the strap that would hold Charlie's head in place. In order to prevent Charlie from falling out of the chair, his school was using duct tape to secure him. Charlie's caring foster parents had been working for over a year to get the parts replaced, and both the volunteer CASA and the social worker knew of the problem, but did not bring the issue to the court's attention. Fortunately, an attorney was appointed who understood Charlie's legal rights. . . the missing strap was replaced immediately.

LeVezu at 26.<sup>16</sup>

### **5. Attorneys for Children Move Cases Toward Resolution.**

Dependent children have a fundamental liberty interest in permanency and speedy administration of dependency proceedings. RCW 13.34.020. By the legislature's design, the majority of court proceedings involving a legally free child require a review of progress towards the child's permanency plan. In cases, "where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal." RCW 13.34.145 (4)(b). Children's attorneys ensure that the regular and costly review hearings mandated by the legislature are not a mere formality but actually move cases toward permanency and resolution. If permanency goals have not been achieved within three years, a child may petition the court to reinstate the child's parents' parental rights. RCW 13.34.215 (1)(c), (d). The child needs an attorney to do so.

A child who is age 14 or older has the right to refuse consent to adoption. RCW 26.33.160. A child's attorney can assert this right in the

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<sup>16</sup> One *amicus* adolescent client was first appointed an attorney after residing in group homes for years and participating in very restrictive educational settings. The youth's attorney successfully argued he should move to a family home and transition into a mainstream high school. He was able to complete the behavioral goals in his IEP as a result of the stability he acquired.

dependency case to steer the permanent plan toward other options.

Children's attorneys pursue guardianship petitions to avoid the filing of termination petitions or to create permanency for legally free youth languishing in foster care.<sup>17</sup> While a proposed guardian may have standing to file a guardianship action, many caregivers are not aware of this option and there is no right to counsel at public expense in order to pursue it. The attorney for a legally free dependent child, however, may bring such an action on behalf of the child and resolve her case. RCW 13.36.030.<sup>18</sup>

#### **6. Only an Attorney Can Confidentially Counsel a Child.**

Confidentiality is the lynchpin of the attorney-client relationship. RPC 1.6. No other entity owes a duty of confidentiality to a child. In fact, most foster children understand that their social worker, CASA, GAL, therapist, and other professionals involved in their cases owe them no duty

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<sup>17</sup> A guardianship is an appropriate permanent plan and shall be established if the benefits of guardianship outweigh the potential disadvantage of adoption or of having no legal parent. RCWs 13.36.010, 13.36.040.

<sup>18</sup> One 15 year-old client, legally free since the age of seven, spent more than 12 years in foster care before receiving the benefit of legal counsel. He lived in a group home, suffered from trauma, depression and anxiety, and wanted to find a permanent home more than anything else. His attorney learned that a relative had completed the interstate approval process to become his permanent caregiver. It was undisputed that the lack of a permanent, stable home was causing his mental health symptoms. However, despite the child's repeated requests to move, his state social worker would not do the work necessary to implement this plan. The worker planned to continue temporary BRS placements indefinitely until the child's behavior improved, despite a court-ordered permanent plan of adoption and the fact that his behaviors were a result of his unstable placement. This child's attorney filed motions and a guardianship petition, subpoenaed the child's mental health provider for a contested guardianship proceeding, and ultimately negotiated an interim stay with the proposed caregiver that resulted in such drastic and positive changes in the child's health that the court finally ordered guardianship with no state objection.

of confidentiality and may be required to tell others about sensitive, private information. In the experience of *amici*, the special confidential relationship a child shares with her attorney encourages her to share information which she may otherwise not share with others in her life, e.g. sexual orientation, gender identity, desires to see estranged siblings or family members, disclosures of abuse, or disclosures about engagement in risky behaviors. Equipped with this important information, children's attorneys are better able than any other advocate to counsel children about their right to seek or reject mental health or chemical dependency treatment, their right to receive appropriate education, their Fifth Amendment right against self-incrimination, and guide children toward help in safe ways without disrupting placement, school, or relationships.<sup>19</sup>

**B. THE CURRENT DISCRETIONARY CASE-BY-CASE SYSTEM OF ATTORNEY APPOINTMENT CREATES AN UNJUST STANDARD, WHICH IS APPLIED UNEQUALLY ACROSS JURISDICTIONS AND WHICH UNFAIRLY BURDENS VULNERABLE CHILDREN.**

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<sup>19</sup> A 12 year-old client disclosed to his attorney that another youth in the home had approached him for sexual favors. The alleged perpetrator was a biological child of the foster family and the child was afraid to upset the foster parents by disclosing. The attorney was able to talk to the child, address his concerns and answer his questions about the logistics of what would happen following a report to CPS. The child was then comfortable with the attorney sharing the information with CPS and his assigned social worker to ensure a safe change in placement. Another client, 15 years-old, had been on the run off and on for several months. The state would not approve her proposed placement due to some old misdemeanors. The attorney worked confidentially with the child while she was on the run to build trust, develop a safety plan, and file a motion for placement. The attorney was able to quash the child's run warrant and obtain a court order for the child's identified placement, thereby safely bringing the child into care, re-enrolling her in school, and re-engaging her in services.

Despite the fact that cases are named for the children whose rights are most affected, the child is the only person in a dependency proceeding who does not universally have counsel to represent her position. The 2016 CAYAC report concluded that appointment of counsel varies considerably from county to county, resulting in justice based on geography. LeVezu, *supra*. In addition to the appointment of counsel for “legally free” children required by law, 12 of the 39 counties in Washington automatically appoint an attorney for a child once the child reaches a certain age (either 8 or 12, depending on the county). *Id.* at 3. The remaining 27 counties, including Pierce County, report no automatic appointment of counsel at any age, meaning those counties rely on the judge’s discretionary authority. *Id.* Unfortunately, the discretionary model does not work, as it did not work in SKP’s case.

Children who would benefit from counsel have not been able to secure counsel in many Washington counties. Our current system for appointment of counsel for non-legally-free children imputes a special knowledge to them that they realistically do not possess—we take for granted that they already know what an attorney is, that an attorney may be able to help, and how. Particularly for a child who has never been represented by counsel, the concept of “attorney” is a complex one. Many of the children *amici* represent have never had an attorney before. Most, if

not all, need to speak with an attorney before they realize they need and want one. It is equally unrealistic to expect that other professionals in a dependent child's life, in many contexts her adversaries, can independently advise her on the role and potential value of an attorney.

Even if a child articulated a desire for an attorney, there is no clear, uniform process for obtaining one. Under RCW 13.34.100(7)(c), children age 12 and over must be notified of their right to request an attorney.

However, the statute provides no guidance regarding how these requests should be made and granted. The Washington policies and practices that permit a child to request an attorney require a motion and declaration, but otherwise vary by jurisdiction. "Although some counties, such as King County, appoint attorneys based on local court rules, other counties, such as Snohomish County, rely on unwritten policies for appointment."

LeVezu at 8.

In *amici's* experience, these are often contested hearings. Foster parents and therapists often feel they cannot help children ask for an attorney due to backlash from the state. The state has said foster parents are not allowed to disclose a child's name to an attorney in order to secure counsel for that child, making it difficult for anyone to file a motion for a child's attorney. In fact, the Washington Supreme Court developed a

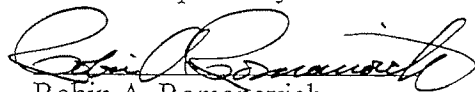
workgroup for stakeholders to decide how to help children request attorneys. The group has not been able to reach consensus on a process.

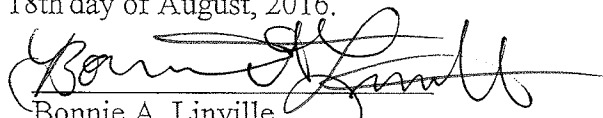
The 2016 CAYAC report found that, despite the notice requirement for children over 12, when a child had no advocate at all, the issue of appointing an attorney was only raised in approximately 4% of cases. LeVezu at 27. Worse yet, observers recorded *no* instances of an attorney being appointed for a child under the discretionary process. *Id.* at 28. Across Pierce, Snohomish, and King counties, discretionary appointment of counsel at the hearing occurred for less than 1% of children. *Id.*

#### IV. CONCLUSION

*Amici* respectfully urge the Court to hold that all children who are the subject of a dependency petition are entitled to appointment of legal counsel at the shelter care hearing and in any subsequent dependency proceeding. Children lack the ability to advocate for and are not aware of the fundamental rights at stake in their cases. Only skilled attorneys can protect those rights at each critical stage of the dependency process.

Respectfully submitted this 18th day of August, 2016.

  
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