

A NATIONAL SURVEY ON A PARENT’S RIGHT TO COUNSEL IN STATE-INITIATED DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES

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Introduction¹

In *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment does not automatically confer the right to counsel to indigent parents facing the termination of their parental rights. *Id.* at 31-32. Instead, the Court determined that trial courts had the responsibility of determining, on a case by case basis, whether the facts of the particular case created a federal constitution right to counsel. *Id.* The Court, however, did note that “a wise public policy . . . may require that higher standards be adopted than those minimally tolerable under the Constitution” and that “[i]nformed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but in dependency and neglect proceedings as well.” *Id.* at 33-34.

Since the *Lassiter* decision, states have responded to the provision of legal counsel to indigent parents in various ways. This survey is an attempt to begin to capture the current state of a parent’s right to counsel across the country in proceedings where the state is the adverse party (**this survey does not address privately-initiated dependency or termination/adoption proceedings**). As the survey documents, in 40 states plus D.C., parents have an absolute and unqualified statutory right to counsel after the state’s initiation of child protection proceedings against them, in another 4 states the right is qualified in some way, in 5 states it is left to the judge’s discretion, and in 1 state there is no provision for appointment of counsel. In 45 states plus D.C., parents have an absolute statutory right to counsel in state-initiated termination of parental rights hearings, while in the remaining 5 states it is left to the judge’s discretion or there is only a right in certain circumstances. In a number of states, the right is both statutory and constitutional. However, in states where the right is solely statutory, the absence of constitutional protection has affected the availability of ineffective assistance of counsel claims, *see, e.g., In re N.D.O.*, 115 P.3d 223 (Nev. 2005), and the standard of appellate review when counsel has been erroneously denied. *See, e.g., In re McBride*, 2008 Mich. App. LEXIS 1458 (Mich. Ct. App. 2008).

This survey is just the first step in documenting the inadequacies in the legal services provided to indigent parents. Even in states in which a strong statutory right exists, many problems exist as it relates to attorney compensation, training requirements, waiver, and the timing of appointments, among other issues.² In a number of jurisdictions, practice varies by county. These and other issues affecting parent representation must be explored.³ Without quality representation for parents, there is a high likelihood that erroneous decisions will be made on crucial issues affecting families.

¹ John Pollock would like to thank Jeannie Rose Field, who volunteered her time to help him double-check the information in this chart.

² *See, e.g.,* ABA CENTER ON CHILDREN AND THE LAW, LEGAL REPRESENTATION FOR PARENTS IN CHILD WELFARE PROCEEDINGS: A PERFORMANCE-BASED ANALYSIS OF MICHIGAN PRACTICE (2009) available at http://www.abanet.org/child/parentrepresentation/michigan_parent_representation_report.pdf.

³ The ABA has initiated a national project to improve the representation of parents in the child welfare system. More information about the project can be found at <http://www.abanet.org/child/parentrepresentation/home.html>.

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<u>State</u>	<u>Stage</u>	<u>State Due Process Right ?</u>	<u>Statutory/Rule- Based Appointment Mechanism</u>	<u>App’t Required?</u>	<u>If Discretionary, What is Practice on the Ground?</u>
<u>Alabama</u>	Dependency	Unclear. <i>Morgan v. Lauderdale County Dept. of Pensions & Sec.</i> , 494 So. 2d 649, 651 (Ala. Civ. App. 1986) (finding no right, but unclear as to whether state or federal constitution was being addressed).	Ala. Code § 12-15-305(b)	Yes.	
	Termination	Yes. <i>K.P.B. v. D.C.A.</i> , 685 So.2d 750 (Ala. Civ. App. 1996) (construing <i>Ex parte Shuttleworth</i> , 410 So.2d 896 (Ala. 1981), as case interpreting state constitution and therefore unaffected by <i>Lassiter</i>).	Ala. Code § 12-15-305(b)	Yes.	
<u>Alaska</u>	Dependency	Maybe. <i>Flores v. Flores</i> , 598 P.2d 893 (Alaska 1979) (finding right to counsel in private custody proceeding where opponent represented by state-funded legal aid, and quoting with approval language from <i>Cleaver v. Wilcox</i> , 499 F.2d 940 (9 th	AK R CINA Rule 12	Yes.	

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		Cir. 1974) (Cal), a dependency proceeding, which held that due process requires state to appoint counsel whenever parent “faces a substantial possibility of the loss of custody or of prolonged separation from a child.”)			
	Termination	Yes. <i>V.F. v. State</i> , 666 P.2d 42 (Alaska 1983).	AK R CINA Rule 12; AS § 25.23.180(h)	Yes.	
<u>Arizona</u>	Dependency	Possibly. <i>AZ State Dept of PW v Barlow</i> , 296 P.2d 298 (Ariz. 1956) (finding right to retained counsel); <i>In re Pima County Juvenile Action J-64016</i> , 619 P.2d 1073, 1075 (Ariz. App. 1980) (relying on <i>Barlow</i> to find due process right in dependency).	A.R.S. § 8-221(B)	Probably. Previously, A.R.S. § 8-225(B) provided a clear right to counsel. But it was recodified as A.R.S. § 8-221(B), and in 2010 the language was changed to say the court shall appoint counsel in situations when the parent is “entitled to counsel”. However, in <i>Daniel Y. v. Arizona Dept. of Economic Sec.</i> , 77 P.3d 55, 58 (Ariz. App. 2003), the court said that § 8-221 provides an absolute	

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				right to counsel in dependency proceedings.	
	Termination	Yes. <i>AZ State Dept of PW v Barlow</i> , 296 P.2d 298 (Ariz. 1956) (not specifying which constitution it relied upon); <i>Denise H. v. Arizona Dept. of Economic Sec.</i> , 972 P.2d 241 (Ariz. Ct. App. 1998) (saying that “[a]n indigent parent against whom a petition has been filed has the right to appointed counsel, but that right is afforded by statute ... and the due process clause”, and citing to <i>Barlow</i>).	A.R.S. § 8-221(B).	Yes. Although the statute states that the court shall appoint counsel “if a juvenile, parent or guardian is found to be indigent and entitled to counsel,” and although it does not define “entitled to counsel”, cases construe the statute as <i>actually</i> entitling parents to counsel. See, e.g., <i>Christy A. v. AZ Dept. of Economic Sec.</i> , 173 P.3d 463 (Ariz. Ct. App. 2007) (“For termination adjudication hearings, indigent parents have a right to appointed counsel pursuant to A.R.S. § 8-221(B) . . .”).	

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<u>Arkansas</u>	Dependency	Case-by-case. <i>Bearden v. Arkansas Dept. of Human Services</i> , 42 S.W.3d 397 (Ark. 2001) (but unclear if court was addressing state constitution).	A.C.A. § 9-27-316(h)	Yes.	
	Termination	Case-by-case. <i>Bearden v. Arkansas Dep’t of Human Servs.</i> , 42 S.W.3d 397 (Ark. 2001) (but unclear if court was addressing state constitution).	A.C.A § 9-27-316(h)	Yes.	
<u>California</u>	Dependency	Case-by-case. <i>In re Ronald R.</i> , 37 Cal. App. 4th 1186, 1196 (Cal. App. 1995) (“In post- <i>Lassiter</i> dependency cases in California, it appears settled that whether a due process right to counsel existed at the lower court hearing depends on whether the presence of counsel would have made a ‘determinative difference’ in the outcome of the	Cal. Wel. & Inst. Code § 317(a)(1) & (b)	Qualified: right attaches if state seeks out-of-home placement.	According to Joanne Brown, JD., MSW National Child Welfare Resource Center on Legal and Judicial Issues, ABA Center on Children and the Law, counsel is always appointed when a petition is filed.

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		proceeding”).			
	Termination	Unclear. Compare <i>In re Christina P.</i> , 220 Cal. Rptr. 525 (1985) (finding no right), with <i>In re Jay</i> , 197 Cal. Rptr. 672 (Cal. Ct. App. 1983) (finding right).	Cal. Fam. Code § 7862; Cal Wel. & Inst. Code § 366.26(f)	Yes.	
<u>Colorado</u>	Dependency	No case on point.	C.R.S. § 19-3-202	Yes.	
	Termination	Case-by-case. <i>C.S. v. People</i> , 83 P.3d 627 (Colo. 2004) (but unclear if court was addressing state constitution).	C.R.S. § 19-3-602	Yes.	
<u>Connecticut</u>	Dependency	No case on point.	Conn. Gen. Stat. § 46b-135(b)	Yes.	
	Termination	Unknown. <i>In re Jonathan M.</i> , 764 A.2d 739 (Conn. 2001) (court says in dicta that there is not automatic due process right to counsel, but notes that petitioner did not argue for separate state	Conn. Gen. Stat. § 45a-717(b)	Yes.	

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		constitutional analysis).			
<u>Delaware</u>	Dependency	Case-by-case. <i>Watson v. DFS</i> , 813 A.2d 1101 (Del. 2002).	De. R. Fam. Ct. RCP 206	No, the court may appoint. Until 2015, the rule required appointment. See <i>Hughes v. Division of Family Services</i> , 836 A.2d 498, 509 (Del. Supr. 2003). But 2015 amendment requires court to consider <i>Lassiter</i> factors.	
	Termination	Case-by-case. <i>Matter of Carolyn S.S.</i> , 498 A.2d 1095 (Del. Supr. 1984); <i>but see Brown v. Division of Fam. Servs.</i> , 803 A.2d 948 (Del. 2002) (suggesting court may overturn <i>In re Carolyn S.S.</i> and find Delaware Constitution <i>mandates</i> appointment of counsel in TPR if the issue is presented in a future case, “if . . . the Family Court ever declines to appoint counsel for an indigent parent in a	De. R. Fam. Ct. RCP 206	No, the court may appoint. TPR is just a stage of the dependency proceeding. See <i>Brown v. Division of Family Services</i> , 803 A.2d 948 (Del. Supr. 2002). 2015 amendment to Rule 206 requires court to consider <i>Lassiter</i> factors.	

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		termination proceeding.”).			
<u>District of Columbia</u>	Dependency	No case on point.	D.C. Code § 16-2304(b)(1); D.C. SCR-Neglect & Abuse Rule 42(a)	Yes.	
	Termination	No case on point.	D.C. Code § 16-2304(b)(1)	Yes.	
<u>Florida</u>	Dependency	Yes, but only if dependency proceedings could lead to criminal abuse charges. <i>In the Interest of D.B. and D.S.</i> , 385 So. 2d 83 (Fla. 1980); <i>S.B. v. Dep’t of Child. & Fam.</i> , 851 So. 2d 689, 692 (Fla. 2003).	Fla. Stat. § 39.013(1)	Yes.	
	Termination	Yes. <i>In re J.B.</i> , 170 So. 3d 780, 789-790 (Fla. 2015)	Fla. Stat. § 39.807	Yes.	
<u>Georgia</u>	Dependency	No. <i>In the Interest of A.M.R.</i> , 495 S.E.2d 615 (Ga. C. App. 1998) (not a dependency case, but states that while statutes provide for a right to counsel “at all stages of any	O.C.G.A. § 15-11-160	Yes.	

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		[termination] proceedings”, no constitutional rights are involved.)			
	Termination	No. <i>In the Interest of A.M.R.</i> , 495 S.E.2d 615 (Ga. C. App. 1998).	O.C.G.A. § 15-11-262	Yes.	
<u>Hawaii</u>	Dependency	Yes. <i>In re T.M.</i> , 319 P.3d 338 (Haw. 2014).	HI ST § 587A-17(a)	Yes. The statute says the court “may appoint an attorney”. However, counsel is constitutionally required.	
	Termination	Yes. <i>In re T.M.</i> , 319 P.3d 338 (Haw. 2014)	HI ST § 587A-17(a)	Yes. The statute says the court “may appoint an attorney”. However, counsel is constitutionally required.	
<u>Idaho</u>	Dependency	No case on point , but court in <i>Hughen v. Highland Estates</i> , 48 P.3d 1238 (Idaho 2002) made it fairly clear that <i>Lassiter</i> applies to all civil cases in Idaho.	Id. R. Juv. Rule 37(d)	Yes.	
	Termination	Unknown. <i>State v. Doe</i> , 850 P.2d 211 (Idaho Ct. App 1993) (“The question of what due process protections apply in a proceeding to terminate a parent’s right to	I.C. § 16-2009	Yes.	

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		the . . . control of the children has been addressed in Idaho by statute.”)			
<u>Illinois</u>	Dependency	No case on point.	705 ILCS 405/1-5(1)	Yes.	
	Termination	Unknown. <i>In re K.L.P. v. R.P.</i> , 763 N.E.2d 741 (Ill. 2002) (addressing only federal due process requirements).	705 ILCS 405/1-5(1)	Yes.	
<u>Indiana</u>	Dependency	No, at least under federal constitution. <i>In re LB</i> , 889 N.E.2d 326 (Ind. App. 2008) (only addressing federal constitution); <i>EP v Marion County</i> , 653 N.E.2d 1026 (Ind. App. 1995) (same); <i>In re MM</i> , 733 N.E.2d 6 (Ind. App. 2000) (same).	Ind. Code § 31-34-4-6	Yes.	
	Termination	Unknown. <i>Keen v. Marion County Dep’t of Pub. Welfare</i> , 523 N.E.2d 452 (Ind. App 1988) (addressing only federal constitution).	Ind. Code § 31-32-4-3	Yes.	

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<u>Iowa</u>	Dependency	No case on point.	Iowa Code § 232.89(1)	Yes.	
	Termination	Unknown. <i>In re EJC</i> , 731 N.W.2d 402 (Iowa App. 2007) (addressing only federal constitution).	Iowa Code § 232.113	Yes.	
<u>Kansas</u>	Dependency	Case-by-case test. <i>In re Cooper</i> , 631 P.2d 632 (Kan. 1981).	Kan. Stat. Ann. § 38-2205(b)	Yes.	
	Termination	Unclear, but probably case-by-case. <i>In re Cooper</i> , 631 P.2d 632 (Kan. 1981) (holding 1 month after <i>Lassiter</i> decision that RTC exists whenever parent, “unable to present his or her case properly, faces a substantial possibility of loss of custody and permanent severance of parental rights of or prolonged separation from the child”, but citing to 9th Circuit precedent that found categorical right to counsel).	Kan. Stat. Ann. § 38-2205(b)	Yes.	

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<u>Kentucky</u>	Dependency	No case on point.	KRS 620.100(1)(b)	Qualified: right attaches where, after a temporary removal hearing, the judge determines that further proceedings are required.	
	Termination	Unknown. <i>A.P. v Com.</i> , 270 S.W.3d 418 (Ky. Ct. App. 2008) (noting legislature passed statute, obviating need for constitutional analysis)	KRS 625.080(3)	Yes.	
<u>Louisiana</u>	Dependency	No. Compare <i>In Interest of Howard</i> , 382 So.2d 194 (La. Ct. App. 1980) (2 nd Circuit) (finding constitutional right to counsel) with <i>State in Interest of C.V. v. T.V.</i> , 499 So.2d 159 (La. App. 1986) (2 nd Circuit) (suggesting that 2 nd Circuit has likely switched to case-by-case approach). See also <i>In re Driscoll</i> , 410 So. 2d 255, 257-58 (La. Ct. App. 1982) (4 th Circuit) (disagreeing with <i>Howard</i> , taking case-	La. Ch.C. Art. 608	Yes.	

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		by-case approach, and noting recent <i>Lassiter</i> decision).			
	Termination	Unknown. <i>State in Interest of Johnson</i> , 475 So.2d 340 (La. 1985) (applying <i>Lassiter</i> to find right to counsel in instant case, but not addressing state constitution).	La. Ch. C Art 1016	Yes.	
<u>Maine</u>	Dependency	Yes. <i>Danforth v State Dept</i> , 303 A.2d 794 (Me. 1973); <i>In re T.B.</i> , 65 A.3d 1282, 1285 (Me. 2013).	22 M.R.S. § 4005(2)	Yes, "except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders."	
	Termination	Yes. <i>In re Kafia M.</i> , 742 A.2d 919, 927 n.5 (Me. 1999), cites <i>Danforth v State Dept</i> , 303 A.2d 794 (Me. 1973) with approval as a case that established a due process right to counsel in TPR cases, even though <i>Kafia</i> was ostensibly about	Me. Rev. Stat. Ann tit. 22, § 4005(2) (entitling parents to counsel in child protection proceedings); <i>In re Kafia M.</i> , 742 A.2d 919, 927 n.5 (Me. 1999) (interpreting	Yes.	

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		abuse/neglect. See also <i>In re T.B.</i> , 65 A.3d 1282, 1285 (Me. 2013)	§ 4005(2) to require appt of counsel in TPR proceedings)		
<u>Maryland</u>	Dependency	No case on point.	MD Code, Courts and Judicial Proceedings, § 3-813	Yes.	
	Termination	Unanswered. <i>In re Alijah Q.</i> , 7 A.3d 106 (Md. App. 2010) (noting <i>Lassiter</i> suggested “wise policy” might lead to broader protection of rights by states, and pointing to Maryland statutory enactment of RTC).	Md. Crim. Proc. § 16-204(b)(1)(vi)	Yes.	
<u>Massachusetts</u>	Dependency	Yes. <i>Guardianship of V.V.</i> , No. 11739 (Mass. 2015).	M.G.L.A. 119 § 29; <i>In re Hilary</i> , 880 N.E.2d 343, 345, 346 (Mass. 2008) (applying § 29 to dependency).	Yes.	
	Termination	Yes. <i>In re Hilary</i> , 880 N.E.2d 343, 348 n.13 (Mass. 2008)	M.G.L.A. 119 § 29	Yes.	

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<i>State</i>	<i>Stage</i>	<i>State Due Process Right ?</i>	<i>Statutory/Rule-Based Appointment Mechanism</i>	<i>App’t Required?</i>	<i>If Discretionary, What is Practice on the Ground?</i>
<u>Michigan</u>	Dependency	No. <i>In re Perry</i> , 385 N.W.2d 287 (Mich. Ct. App. 1986)	MCR 3.915(B); MCL 712A.17c(4)	Yes.	
	Termination	Unclear. <i>In re Trowbridge</i> , 401 N.W.2d 65 (1986) (relying on <i>Reist v. Bay Circuit Judge</i> , 241 N.W.2d 55 (Mich. 1976), which found state constitutional right but which was nonbinding plurality decision)	MCR 3.977(I)(1); MCR. 3.915(B); MCL §712A.17c	Yes.	
<u>Minnesota</u>	Dependency	No. <i>In re Welfare of S.A.W.</i> , 2009 WL 2998116 (Minn. App. 2009)	Minn. Stat. § 260C.163 subdiv. (3)(b)	Discretionary. Minn. Stat. § 260C.163 subdiv. (3)(b) specifies that “The court shall appoint counsel to represent the ... parents or guardian in any case in which it feels that such an appointment is appropriate”.	According to Judith Nord, Staff Attorney and Manager, Children’s Justice Initiative, State Court Administrator’s Office-Court Services Division, courts will typically appoint counsel for financially eligible custodial parents.
	Termination	No case on point. <i>In re Welfare of Children of S.L.C.</i> , 2007 WL 3256867 (Minn. Ct. App. 2007) (unpublished) (noting <i>Lassiter</i> found no right to	Minn. Stat. § 260C.163 subdiv. 3(b); Minn. Stat. § 260C.176 subdiv. 3(7)	Qualified (see above).	According to Judith Nord, Staff Attorney and Manager, Children’s Justice Initiative, State Court Administrator’s Office-Court Services Division, both custodial and noncustodial parents who are parties

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		counsel and that Minnesota had chosen to pass statutory right, but not exploring issue further).			are typically appointed counsel. See also <i>In re Welfare of J.B.</i> , 782 N.W.2d 535 (Minn. 2010) (citing to § 260C.163 for proposition that “Minnesota law guarantees the right of parties to be represented by counsel in juvenile protection proceedings” (emphasis added)
<u>Mississippi</u>	Dependency	No case on point.	Miss. Code §§ 43-21-201(2)	No.	Discretionary appointment statute was just passed in 2016. It has no funding attached to it.
	Termination	No. <i>J.C.N.F. v. Stone County Dep’t of Human Servs.</i> , 996 So.2d 762 (Miss. 2008); <i>Blakeney v. McRee</i> , 188 So. 3d 1154 (Miss. 2016)	Miss. Code 93-15-113(b)	No.	Discretionary appointment statute was just passed in 2016. It has no funding attached to it.
<u>Missouri</u>	Dependency	No case on point.	V.A.M.S. 211.211(4)	No. Only appoint if indigent, request made, and court determines that “a full and fair hearing requires appointment of counsel for the custodian.”	According to Lori-Burns-Bucklew, Of Counsel, Pro Bono Program, Shook, Hardy & Bacon, Kansas City, MO, counsel is commonly appointed, but not in every circuit.
	Termination	Unknown. <i>In the interest of B.L.E. v. Elmore</i> , 723 S.W.2d 917 (Mo. Ct. App. 1987) (addressing only	V.A.M.S. 211.462(2)	Yes.	

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		federal constitution); <i>In Interest of B.M.P.</i> , 704 S.W.2d 237 (Mo. Ct. App. 1986) (same).			
Montana	Dependency	Case-by-case. <i>In re A.F.-C.</i> , 37 P.3d 724, 730 (Mont. 2001) (decision of whether to appoint counsel “must be determined in view of all of the circumstances”).	Mt. St. § 41-3-425	Yes.	
	Termination	Yes. <i>In re A.S.A.</i> , 852 P.2d 127 (Mont. 1993).	Mt. St. § 41-3-425	Yes.	
Nebraska	Dependency	Case-by-case. <i>In re Interest of R.R.</i> , 475 N.W.2d 518 (Neb. 1991) (while due process mandates counsel in TPR hearings, it is decided on a case by case basis in other situations, such as dependency).	Ne. Stat. § 43-279.01	Yes.	
	Termination	Yes. <i>In re Interest of R.R.</i> , 475 N.W.2d 518 (Neb. 1991); <i>State v. Caha (In Interest of Friesz)</i> , 208 N.W.2d 259 (Neb. 1973).	Ne. Stat. § 43-279.01	Yes.	

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<u>Nevada</u>	Dependency	No. <i>Kidwell v. Department of Human Resources</i> , 953 P.2d 1 (Nev. 1999), <i>overruled on other grounds</i> , <i>In re Termination of Parental Rights as to N.J.</i> , 8 P.3d 126 (Nev. 2000).	Nev. Rev. Stat. Ann. § 432B.420(1)	No. The court “may appoint”.	According to Kathy O’Leary, Chief Deputy Public Defender for Washoe County, Washoe County is one of the two largest counties in the state, and counsel is appointed in over 95% of cases in that county after the 72-hour protective custody hearing.
	Termination	No. <i>Letesheia O. v. State (In re N.D.O.)</i> , 115 P.3d 223 (Nev. 2005).	Nev. Rev. Stat. Ann. § 128.100(2)	No. The court “may appoint”.	According to Kathy O’Leary, Chief Deputy Public Defender for Washoe County, Washoe County is one of the two largest counties in the state, and counsel is appointed regularly in these proceedings.
<u>New Hampshire</u>	Dependency	Case-by-case. <i>In re C.M.</i> , 48 A.3d 942 (N.H. 2012). It is worth noting, though, that <i>C.M.</i> is a plurality opinion, so this issue could be revisited.	Yes. N.H. Stat. 169-C:10, II(a).	Yes.	
	Termination	No case on point.	N.H. Rev. Stat. § 170-C:10	Yes.	
<u>New Jersey</u>	Dependency	Yes. <i>New Jersey Div. of Youth and Family Services v. E.B.</i> , 644 A.2d 1093 (N.J. 1994).	N.J. Stat. 9:6-8.43	Yes. Despite the fact that the statute says the litigant “may apply for an attorney through the Office of the Public	

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				Defender” (as opposed to the TPR statute that says the court “shall appoint” the PD), there is no significance to this language difference and there is a right to counsel in dependency, according to James Lewis of the New Jersey PD’s Office.	
	Termination	Yes. <i>New Jersey Div. of Youth & Fam. Svcs. v. B.R.</i> , 929 A.2d 1034 (N.J. 2007).	N.J. Stat. § 30:4C-15.4 (if parent indigent and requests counsel, “the court shall appoint the Office of the Public Defender to represent the parent.”)	Yes.	
<u>New Mexico</u>	Dependency	Unknown. <i>State of N.M. ex rel. CYFD v. Amanda M.</i> , 144 P.3d 137 (N.M. Ct. App. 2006) (noting the right to counsel/effective assistance of counsel as statutory and declining to address whether	N.M. Children's Ct. Rule 10-314; NMSA § 32A-4-10(B)	Yes.	

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		the right to effective assistance of counsel is also constitutionally protected).			
	Termination	Unknown. <i>State of N.M. ex rel. CYFD v. Amanda M.</i> , 144 P.3d 137 (N.M. Ct. App. 2006) (noting the right as statutory); see also <i>State ex rel. Children, Youth & Families Dept. v. Tammy S.</i> , 126 N.M. 664 (N.M. Ct. App. 1998); <i>Matter of Termination of Parental Rights of James W.H.</i> , 115 N.M. 256 (N.M. Ct. Ap. 1993) (noting the statutory right to counsel but drawing on constitutional concerns to determine whether counsel was effective).	NMSA 1978, § 32A-5- 16(E); N.M. Children's Ct. Rule 10-314.	Yes.	
New York	Dependency	Yes. <i>In re Ella B.</i> , 285 N.E.2d 288 (N.Y. 1972) (relying on both state and federal constitutional grounds); <i>In re Evan F.</i> , 815 N.Y.S.2d 697 (N.Y. App.	McKinney's Family Court Act § 262(a)(4)	Yes.	

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		Div. 2006) (relying on <i>Ella B</i>).			
	Termination	Probably. <i>In re Ella B.</i> , 285 N.E.2d 288 (N.Y. 1972) (relying on both state and federal constitutional grounds; involved dependency but court says that “an indigent parent, faced with the loss of a child’s society ... is entitled to the assistance of counsel”); <i>In re Meko M.</i> , 272 A.D.2d 953, 954 (N.Y. App. Div. 2000) (stating that “A parent facing removal of a child from his or her home has a fundamental right to an attorney”, and citing to <i>In re Ella B</i>)	McKinney's Family Court Act § 262	Yes.	
<u>North Carolina</u>	Dependency	Unknown. <i>In re Bikman</i> , 587 S.E.2d 681 (N.C. Ct. App. 2003) (“As parents thus have a statutory right to	N.C. Gen. Stat. § 7B-602(a); N.C. Gen. Stat. Ann. § 7A-451(a)(12)	Yes.	

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		counsel in juvenile abuse, neglect, and dependency cases under North Carolina law, the constitutional analysis relied on in the briefs of petitioner and the guardian ad litem for respondent's children is of no consequence to the outcome of this case.”)			
	Termination	Case-by-case. <i>In re Clark</i> , 281 S.E. 2d 47 (N.C. 1981) (prior statute not requiring appointment of counsel did not violate state constitution; cases decided before statutory right to counsel in effect must be decided on case by case basis, using fundamental fairness test).	N.C. Gen. Stat. § 7B-1101.1; N.C. Gen. Stat. Ann. § 7A-451(a)(15)	Yes.	
North Dakota	Dependency	No case on point.	N.D. Cent. Code § 27-20-26(1)	Yes, but no right at the "informal adjustment" phase	
	Termination	No case on point. <i>In re Adoption of K.A.S.</i> , 499 N.W.2d 558 (N.D. 1993)	N.D. Cent. Code, § 27-20-45(5); N.D. Cent. Code § 27-	Yes.	

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		(noting that the state due process clause is often broader than the federal provision but declining to decide whether it is in this instance, since court found equal protection violation).	20-26		
<u>Ohio</u>	Dependency	No. <i>In re Miller</i> , 465 N.E.2d 397 (Ohio 1984).	RC § 2151.352; OH ST JUV P. Rule 4	Yes.	
	Termination	Yes. <i>State ex rel. Heller v. Miller</i> , 399 N.E.2d 66 (Ohio 1980) (based on both due process and equal protection); <i>In re Walling</i> , 2005 WL 736665 (Ohio Ct. App. 2005) (unpublished) (citing <i>Heller</i>); <i>In re Baby Girl Baxter</i> , 479 N.E.2d 257, 260 (Ohio 1985) (stating that “[T]his court has held that the state must appoint counsel for indigent parents at parental termination	RC § 2151.352; OH ST JUV P. Rule 4	Yes.	

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		proceedings”).			
Oklahoma	Dependency	Unclear. Compare <i>Matter of FKC</i> , 609 P.2d 774 (1980) (finding right to counsel in “dependency and neglect proceedings” based on prior holding in <i>In re Chad S.</i> , 580 P.2d 983, 984-985 (Okla. 1978)) with <i>Matter of Delaney</i> , 617 P.2d 886 (Okla. 1980) (finding no right to counsel for “deprived-status proceedings”).	10A Okl. St. Ann. § 1-4-306(A)(1)(a); 10 Okl. St. Ann. § 24(A)(1)	Yes.	
	Termination	Yes. <i>In re D.D.F.</i> , 801 P.2d 703 (Okla. 1990).	10A Okl. St. Ann. § 1-4-306(A)(1)(a); 10 Okl. St. Ann. §24(A)(1). See also <i>Matter of Chad S.</i> , 580 P.2d 983 (Okla. 1978) (interpreting 10 Okl. St. Ann. § 24 and statute later	Yes.	

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			renumbered as 10A Okl. St. Ann. § 1-4-306 as requiring counsel to be appointed in a termination proceeding)).		
<u>Oregon</u>	Dependency	Case by case basis. <i>State ex rel. Juvenile Dep’t of Multnomah County v. Grannis</i> , 680 P.2d 660 (Or. 1984) (discussing factors to consider and how they differ between termination and dependency case).	ORS § 419B.205(1)	No. Counsel appointed “whenever the nature of the proceedings and due process so require ... In deciding whether to appoint counsel under this section, the court shall consider the following factors: (a) The duration and degree of invasiveness of the interference with the parent-child relationship that possibly could result from the proceeding; (b) The complexity of the issues and evidence; (c) The nature of allegations and evidence contested by the parent or legal guardian; and (d) The effect the facts found or the disposition in the proceeding may have on	According to the Office of Public Defense Services in Salem, OR, counsel is routinely appointed in dependency proceedings.

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				later proceedings or events, including but not limited to termination of parental rights or criminal proceedings.”	
	Termination	Case by case basis. <i>State ex rel. Juvenile Dept. of Multnomah County v. Geist</i> , 796 P.2d 1193 (Or. 1990).	ORS § 419B.518	Yes.	
<u>Pennsylvania</u>	Dependency	No case on point.	42 Pa CSA § 6337	Yes.	
	Termination	Maybe. <i>In re Adoption of R.I.</i> , 312 A.2d 601 (Pa. 1973) stated there was such a right, but it preceded <i>Lassiter</i> and has been cast into some doubt. See <i>In re Adoption of T.M.F.</i> , 573 A.2d 1035, 1040 (Pa. Super. Ct. 1990) (Beck, J., concurring) (“ <i>Lassiter</i> has undermined <i>Adoption of R.I.</i> , at least insofar as <i>Adoption of R.I.</i> 's broad right to counsel holding was based on the federal due process clause. It is unclear,	23 Pa CSA § 2313 (Adoption Act, which is used for state-initiated TPRs based on abuse/neglect); 42 Pa CSA § 6337	Yes.	

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		however, whether <i>Adoption of R.I.</i> was decided solely on federal grounds”); <i>Corra v. Coll</i> , 451 A.2d 480, 485 n.7 (Pa. Super. 1982) (“Although the [<i>R.I.</i>] court based its opinion on the due process clause, and cited federal law, it is unclear whether its final disposition was on state or federal grounds.”) <i>See also In re Adoption of L.J.B.</i> , 995 A.2d 1182 (Pa. 2010) (remanding to trial court to determine if mother in TPR case is “eligible” for appointed counsel, and citing <i>R.I.</i>)			
<u>Rhode Island</u>	Dependency	No case on point.	RI Gen. Laws §§ 40-11-7.1(b)(4), 14-1-31, 40-11-14; RI R. Juv. P. Rule 15(c)(4)	Yes. RI Gen. Laws 40-11-7.1(b)(4) and RI R. Juv. P. Rule 15, which govern ex parte dependency hearings, say the court shall appoint counsel for such hearing. As to full hearings, RI Gen. Laws 14-1-31 (within the “Delinquent and	

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				Dependent Children” chapter) says parents are entitled to the services of the PD. R.I. Gen. Laws § 40-11-14 (within “Abused and Neglected Children”) says the court “may, at the request of that person, and in its discretion, appoint the public defender, or other council, to represent the person.” But this language does not actually make the appointment of counsel discretionary: according to Jim Queenan, Chief of the Parental Rights Division of the Rhode Island Public Defenders, the “discretion” language was added in an inartfully drafted 1982 amendment whose sole purpose was to allow the court to choose to appoint private counsel instead of the public defender, not to choose whether to appoint at all.	

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	Termination	No. <i>In re Bryce T.</i> , 764 A.2d 718 (R.I. 2001) (“Despite the lack of a constitutional mandate”, R.I. statutes, specifically Rule 18(c), provide for appointed counsel in TPR cases).	RI R. Juv. P. Rule 18	Yes.	
South Carolina	Dependency	No. <i>Broom v. Jennifer J.</i> , 742 S.E.2d 382, 387 (S.C. 2013) (stating that in earlier case, court ‘declined to ‘join the majority of states which hold that due process requires the appointment of counsel for indigents in all termination of parental rights cases.’”)	S.C. Code Ann. § 63-7-1620(3)	Yes.	
	Termination	Case by case basis. <i>So. Carolina Dep’t of Soc. Serv. v. Vanderhorst</i> , 340 S.E.2d 149 (S.C. 1986) (noting that court “do[es] not join the majority of states which hold that due process requires	S.C. Code Ann. § 63-7-2560	Yes.	

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<i>State</i>	<i>Stage</i>	<i>State Due Process Right ?</i>	<i>Statutory/Rule-Based Appointment Mechanism</i>	<i>App’t Required?</i>	<i>If Discretionary, What is Practice on the Ground?</i>
		appointment of counsel for indigents in all termination of parental rights cases”, but cautioning that, under its interpretation of <i>Lassiter</i> , “cases in which appointment of counsel is not required should be the exception”).			
<u>South Dakota</u>	Dependency	No case on point. <i>But see People ex rel. S.D. Dep’t of Soc. Servs.</i> , 691 N.W.2d 586 (2004) (Gilbertson, C.J., concurring) (suggesting no right to counsel exists except where there is threat to physical liberty).	S.D. Codified Laws § 26-7A-31	Yes.	
	Termination	No case on point. See note above relating to dependency.	S.D. Codified Laws § 26-7A-31	Yes.	
<u>Tennessee</u>	Dependency	Unknown. <i>State ex rel. T.H. by H.H. v. Min</i> 802 S.W.2d 625 (Tenn. Ct. App 1990) (stating that “the United States Supreme Court’s decision in <i>Lassiter</i> still represents the law in a case	Tenn. Code § 37-1-126(a)(2)(B); Tn. Sup. Ct. Rule 13(d)(2)(B)	Yes.	

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		involving an indigent parent's right to counsel in a proceeding affecting parental rights”, suggesting decision was only about federal constitution).			
	Termination	Unclear. <i>Lyon v King</i> , 2008 WL 490657 (Tenn. Ct. App. 2008) (unpublished) stated that “[t]he entitlement to appointed counsel in a parental termination action is controlled by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Tennessee Constitution”, but provided no authority for this statement and went on to rely upon the court rule.	Tenn. Code § 37-1-126(a)(2)(B); Tn. Sup. Ct. Rule 13(d)(2)(B); Tn. R. Juv. P. R. 39(e)(2)	Yes. In fact, the trial judge presiding has an affirmative duty to determine if a party who appears unrepresented may be eligible for appointed counsel. See <i>Lyon v. King</i> .	
Texas	Dependency	No case on point.	Tex. Fam. Code § 107.013(a), (b)	Qualified: right is triggered where state seeks temporary managing conservator sought for child.	According to the Travis County Office of Parent Representation, while it is not a prerequisite for dependency for the state to seek appointment of a managing conservator, in practice the

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					state does so routinely in their county.
	Termination	Unknown, as cases only address federal constitution. <i>In the Interest of J.R.P.</i> , 55 S.W.3d 147 (Tex. App. 2001); <i>Howell v. Dallas County Child Welfare Unit</i> , 710 S.W.2d 729, 735 (Tex. App. 1986).	Tex. Fam. Code §§ 107.013(a), 161.003(d)	Yes, where termination suit filed by government entity.	
<u>Utah</u>	Dependency	No case on point.	Utah Code § 78A-6-1111(1)(c)	Yes.	
	Termination	Unknown. <i>State ex rel. C.C. v. State</i> , 48 P.3d 244 (Utah Ct. App. 2002) says only that parents in TPR cases do not have the “full panoply of rights” afforded criminal defendants, but does not specifically address the right to counsel.	Utah Code § 78A-6-1111(1)(c)	Yes.	
<u>Vermont</u>	Dependency	No case on point.	Vt. Stat. Ann. tit. 33, § 5306(d)(5) (emergency care order and	No. Vt. Stat. Ann. tit. 33, § 5306 specifies that counsel “may be court-appointed in the event the parent is eligible”,	

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			temporary care hearing); Vt. Stat. Ann. tit. 13, § 5232(3) (petitions filed in juvenile court); VT R FAM P Rule 2(c); VT R FAM P Rule 3(a).	and Vt. Stat. Ann. tit. 13, § 5232 adds that the court shall appoint counsel when the “interests of justice so require.”, Vt. R. Fam. P. Rule 2(c) specifies that “[c]ounsel shall be assigned at the temporary care hearing or prior to the preliminary hearing,” but this is likely a reference to whatever counsel the court decides to appoint.	
	Termination	No case on point.	Vt. Stat. Ann. tit. 13, § 5232; <i>In re G.F.</i> , 923 A.2d 578 (Vt. 2007) (applying § 5232 to TPR proceeding)	No. Vt. Stat. Ann. tit. 13, § 5232 says the court shall appoint counsel when the “interests of justice so require.”	The Vermont Supreme Court has said, “Although in theory the appointment of counsel under § 5232(3) [] remains discretionary, in practice counsel are uniformly appointed to represent needy parents in termination proceedings from trial through appeal.” <i>In re S.C.</i> , --- A.3d ---, 2014 WL 92238 (Vt. 2014). Notably, parents have a right to counsel in Adoption Act terminations, as per 15A V.S.A. § 3-201.
Virginia	Dependency	No case on point.	Va. Code Ann. § 16.1-266(D); Va. Code 16.1-252(C)	Yes.	

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	Termination	No case on point.	Va. Code Ann. § 16.1-266(D)	Yes.	
<u>Washington</u>	Dependency	Unclear. <i>In re Welfare of Myricks</i> , 533 P.2d 841 (Wash. 1975) was pre- <i>Lassiter</i> case, but post- <i>Lassiter</i> cases have suggested it may still be in force. See, e.g., <i>King v. King</i> , 174 P.3d 659, 662 n.3 (Wash. 2007) (“While the federal due process underpinnings of [<i>Luscier</i> and <i>Myricks</i>] may have been	Wa. Stat. § 13.34.090(2); Wa. Stat. § 13.32A.160(1)(b) (out-of-home placement)	Yes.	

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		eroded by [<i>Lassiter</i>], since our holdings have been legislatively codified ... we need not address the continuing validity of our cases. We note that <i>Luscier</i> and <i>Myricks</i> were favorably cited more recently in our case, <i>In re Dependency of Grove ...</i> ”)			
	Termination	Unclear. <i>In re Welfare of Luscier</i> , 524 P.2d 906 (Wash. 1974) was pre- <i>Lassiter</i> case, but post- <i>Lassiter</i> cases have suggested it may still be in force. See dependency note above.	Wa. St. § 13.34.090; <i>In re Welfare of G.E.</i> , 65 P.3d 1219 (Wash. App. 2003) (applying § 13.34.090 to TPR proceeding)	Yes; in fact, “[t]he parents’ appearance triggers the court’s duty to provide counsel; no request for appointment of counsel is required.” <i>In re Welfare of JM.</i>	
West Virginia	Dependency	Probably. <i>State ex rel. Lemaster v. Oakley</i> , 203 S.E.2d 140 (W. Va. 1974) (finding right to counsel in dependency); <i>Matter of Lindsey C.</i> , 473 S.E.2d 110 (W.Va. 1995) (reaffirming	W. Va. Code § 49-4-601(f); W. Va. Code, § 29-21-2(2)	Yes.	

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		<i>Lemaster</i> at least with respect to TPR and probably for abuse/neglect as well).			
	Termination	Yes. <i>State ex rel. Lemaster v. Oakley</i> , 203 S.E.2d 140 (W.Va. 1974); <i>Matter of Lindsey C.</i> , 473 S.E.2d 110 (W.Va. 1995) (reaffirming <i>Lemaster</i> with respect to TPR).	W. Va. Code § 49-6-2(a); W. Va. Code, § 29-21-2(2)	Yes.	
<u>Wisconsin</u>	Dependency	Case-by-case. <i>Joni B. v. State</i> , 549 N.W.2d 411 (Wis. 1996); <i>Xena X. D.-C. v. Tammy L. D.</i> , 617 N.W.2d 894 (Wis. Ct. App. 2000) (“The message from <i>Joni B.</i> is that the juvenile courts of this state have the discretionary authority on a case-by-case basis to appoint counsel for a parent in a CHIPS case.”)	No statute. See <i>Xena X. D.-C. v. Tammy L. D.</i> , 617 N.W.2d 894 (Wis. Ct. App. 2000)	No.	
	Termination	Case-by-case. <i>Xena X. D.-C. v. Tammy L. D.</i> , 617 N.W.2d 894 (Wis. Ct. App. 2000) (citing <i>Piper v. Popp</i> ,	Wis. Stat. §§ 48.23, 48.42(3)(b)	Yes.	

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		482 N.W.2d 353 (Wis. 1992), as case that adopted due process test devised in <i>Lassiter</i>).			
Wyoming	Dependency	Unknown. <i>In Interest of JL</i> , 761 P.2d 985, 992 n.11 (Wyo. 1988) (declining to determine whether counsel should have been appointed for dependency stage because issue had expired, but describing law in other states).	Wyo. Stat. § 14-3-422	Yes.	
	Termination	Unknown. <i>In re CC</i> , 102 P.3d 890 (Wyo. 2004) (applying only federal constitution).	Wyo. Stat. § 14-2-318	No. The court “may appoint” in a TPR proceeding.	Because any appointed counsel is paid for by the agency filing the TPR petition (as per the statute), the PD’s office does not handle these cases, so there is no centralized place to check with as to how often counsel is appointed.