

2021

## Charts 2020: Family Law in the Fifty States, D.C., and Puerto Rico, Part 1

Family Law Quarterly

# **Charts 2020:**

## **Family Law in the Fifty States, D.C., and Puerto Rico, Part 1**

### Editors' Introduction to *Charts 2020, Part 1*

*Charts 2020: Family Law in the Fifty States, D.C., and Puerto Rico, Part 1* provides information about family law statutes in these jurisdictions during the year 2020. *Family Law Quarterly (FLQ)* has long featured such charts, which were created and edited by Professor Linda Elrod, formerly *FLQ* Editor in Chief and now *FLQ* Editor Emeritus; former *FLQ* Editor in Chief Kendra Huard Fershee; student editors from Washburn University School of Law and West Virginia University School of Law; and other contributors, establishing a wonderful resource for practitioners, researchers, policymakers, and scholars. New York Law School (NYLS) became the academic home for the *FLQ* beginning in the 2020–21 academic year, and this is the first year that NYLS has completed work on the charts. Congratulations to all NYLS 2020–21 student Editors for their work on the 2020 charts and to all NYLS Editorial Board members for their leadership and support of this project. Individual student contributors for 2020 are recognized with each chart.

As family law is an everchanging field, we have updated some of the charts and we have also developed several new ones. In prior years, the *FLQ* “Year in Review” featured charts on Alimony/Spousal Support Factors, Custody Criteria, Child Support Guidelines, Grounds for Divorce and Residency Requirements, Property Division, and Third-Party Visitation. Going forward, the Year in Review will feature eight charts. Four of these are included in this issue; the remaining charts will be published in a future issue, and all eight charts will be published together in 2022.

The topics are as follows:

- Current Issue (Vol. 54, Issue No. 4)
  - Chart 1: Divorce and Alimony/Maintenance
  - Chart 2: Child Custody
  - Chart 3: “Nonparent” Custody and Visitation
  - Chart 4: Child Representation in Child Welfare Proceedings
- Future Issues
  - Chart 5: Divorce and Property Division
  - Chart 6: Child Support
  - Chart 7: Parentage
  - Chart 8: Domestic Violence

In all eight charts, the information will highlight the considerable variation among the states and/or recent state legislative reforms. For example, the Divorce and Alimony/Maintenance Chart and the Divorce and Property Division Chart will track consideration of domestic violence or other forms of “noneconomic fault” as a factor when determining alimony or property division. The Child Custody Chart and the “Nonparent” Custody and Visitation Chart will capture some changes to custody and visitation laws influenced by the Uniform Parentage Act (2017), the Uniform Nonparent Custody and Visitation Act (2018), or other initiatives. In future years, information will be included about state legislative changes that impact the information provided for each state in the Chart. To underscore some of these issues and provide additional details, we have added a “Notes” column to the Charts. The Notes column includes some statutory text excerpts, as well as some information about recent state legislation.

We have created a “key” for each chart to define the terms used in each column; each key also provides a sense of what is captured in its corresponding chart and what is *not* captured. The keys also reference several secondary sources consulted by the Editors to supplement their own review of the statutory texts. Thank you to *FLQ* Managing Editor Lisa V. Comforty for her guidance in shaping the final keys and revised charts.

It is our hope that we see many iterations of these charts in coming years as a result of different policy and advocacy efforts to provide equity for all individuals, children, and families. We welcome your feedback on the charts, and we thank you for your readership.

Sincerely,  
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### Key to Chart 1: Divorce and Alimony/Maintenance Statutes in 2020

“Chart 1: Divorce and Alimony/Maintenance Statutes in 2020” combines components of *FLQ*’s latest charts on related topics, “Chart 4: Grounds for Divorce and Residence Requirements,” 53 FAM. L.Q. 371 (2020), and “Chart 1: Alimony/Spousal Support Factors,” *id.* at 354. Definitions of the terms used in this new Chart 1 are provided below. Please note that the term “alimony” refers to post-divorce payments from one spouse to another that are based on income and distinct from any property division award. The states differ in their use of the terms; for example, while some states use the term “alimony,” other states use “spousal support” or “maintenance.” The information in this Chart is based primarily on the text of the state statutes.

1. **“No-Fault” Divorce Only** identifies states that are “true no-fault” divorce states. In these states, the only type of divorce allowed is one due to irreconcilable differences or irretrievable breakdown of the marriage (or, in some states, incapacity), without “fault” being ascribed to either party. While all states allow for some form of “no-fault” divorce, some states also permit a party to assert “fault” grounds for divorce such as adultery or cruel and inhuman treatment.
2. **Durational Residency Requirements** looks to the length of time the state requires a party to be a resident prior to filing divorce papers. States differ in the length of time required. In some states, the length of time may also vary depending on the parties’ circumstances.
3. **Alimony: Noneconomic Fault a Statutory Factor** looks to whether the state’s statute specifically provides for consideration of noneconomic fault when determining whether to award alimony or how much. “Noneconomic” fault means fault other than economic conduct such as wasting or dissipation of assets. Examples of noneconomic fault considered by some states include domestic violence and adultery. Some states broadly authorize consideration of fault; some states specify adultery or domestic violence; and some state laws do not specifically mention fault at all, or they state that alimony should be determined “without regard to marital misconduct” (similar to the Uniform (Model) Marriage and Divorce Act of 1973). Some details concerning consideration of fault are included in the Notes column. This Alimony column generally does not capture “catch-all” provisions in alimony statutes that do not specifically mention fault, although some state courts have interpreted these provisions to encompass fault in some circumstances.
4. **Alimony: Statutory Guideline Formula for Determining Amount** looks to whether the state’s statute includes a mathematical formula for calculating the amount of alimony or maintenance (similar to child support guidelines). Several states have adopted guideline formulas, but both the formulas and the weight they are given vary by state. Some states also have guidelines for calculating duration, but these guidelines are not included in the chart.
5. **Notes** provide further detail about some of the statutes listed in the chart. Asterisks (\*, \*\*, or \*\*\*) show the connection between the category, the statute, and the information provided.

Chart 1 and this Key were prepared by the *FLQ* student editorial staff at New York Law School. Contributors from the 2020–21 academic year include Junior Editors Fatin Assaf, Andrew Cohen, and Julia Porzio; Senior Editor Alexis Dairman; Executive Law-in-50 Editor Shelby Arenson; and Professor Lisa F. Grumet. All Chart determinations were based on review of the statutory text and annotations. In addition to the statutes and the 2019 *FLQ* charts, the editors also reviewed secondary sources that included Kirsten Gallacher, *Fault-Based Alimony in No-Fault Divorce*, 22 J. CONTEMP. LEGAL ISSUES 79 (2014–15), and J. Thomas Oldham, *An Overview of the Rules in the USA Regarding the Award of Post-Divorce Spousal Support in 2019*, 41 HOUS. J. INT’L L. 525 (2019).

Chart 1: Divorce and Alimony/Maintenance Statutes in 2020

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>Alabama</b> ALA. CODE §§ 30-2-1, 30-2-5, 30-2-51, 30-2-52*, 30-2-57*	No	6 months	Yes*	No	**[M]isconduct” of a spouse may be considered when determining whether to award alimony or the amount.
<b>Alaska</b> ALASKA STAT. §§ 25.24.010, 25.24.050, 25.24.090, 25.24.160*, 25.24.200	No	Unspecified	Yes*	No	*Statutory factors include “the conduct of the parties.”
<b>Arizona</b> ARIZ. REV. STAT. §§ 25-312, 25-319**, 25-903*	No*	90 days	Yes**	No	*Arizona recognizes covenant marriages with different grounds for divorce that can be found at § 25-903. **Statutory factors include “[a]ll actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim.”
<b>Arkansas</b> ARK. CODE ANN. § 9-11-808*, 9-12-301, 9-12-307, 9-12-312	No*	60 days	No	No	*Arkansas recognizes covenant marriages with different grounds for divorce that can be found at § 9-11-808.
<b>California</b> CAL. FAM CODE §§ 2310, 2320, 4320*, 4324*, 4324.5*, 4325*	Yes	6 months	Yes*	No	*Statutory factors include “[a]ll documented evidence of any history of domestic violence . . . between the parties or perpetrated by either party against either party’s child.” Certain convictions result in a bar to or presumption against spousal support.
<b>Colorado</b> COLO. REV. STAT. §§ 14-10-106, 14-10-114*	Yes	91 days	No	Yes*	*Statute requires consideration of listed factors and of “advisory guidelines” based on the parties’ incomes and the length of the marriage.

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

<b>Statute(s)</b>	<b>“No-Fault” Divorce Only</b>	<b>Durational Residency Requirements</b>	<b>Alimony: Noneconomic Fault a Statutory Factor</b>	<b>Alimony: Statutory Guideline Formula for Determining Amount</b>	<b>Notes</b>
<b>Connecticut</b> CONN. GEN. STAT. § 46b-40, 46b-44*, 46b-82**	No	12 months*	Yes**	No	*Doesn’t apply in listed circumstances. **Statutory factors include “the causes for the annulment, dissolution of the marriage or legal separation.”
<b>Delaware</b> DEL. CODE ANN. tit. 13, §§ 1504, 1505, 1512	Yes	6 months	No	No	
<b>District of Columbia</b> D.C. CODE §§ 16-902, 16-904, 16-913*	Yes	6 months	Yes*	No	*Statutory factors include the “circumstances which contributed to the estrangement of the parties.”
<b>Florida</b> FLA. STAT. §§ 61.08*, 61.021, 61.052	Yes	6 months	Yes*	No	*“The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.” Statutory factors include “[a]ny other factor necessary to do equity and justice between the parties.”
<b>Georgia</b> GA. CODE ANN. §§ 19-5-2, 19-5-3, 19-6-1*, 19-6-5	No	6 months	Yes*	No	*“A party shall not be entitled to alimony if it is established by a preponderance of the evidence that the separation between the parties was caused by that party’s adultery or desertion. In all cases in which alimony is sought, the court shall receive evidence of the factual cause of the separation even though one or both of the parties may also seek a divorce, regardless of the grounds upon which a divorce is sought or granted by the court.”

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

<b>Statute(s)</b>	<b>“No-Fault” Divorce Only</b>	<b>Durational Residency Requirements</b>	<b>Alimony: Noneconomic Fault a Statutory Factor</b>	<b>Alimony: Statutory Guideline Formula for Determining Amount</b>	<b>Notes</b>
<b>Hawaii</b> HAW. REV. STAT. §§ 580-1, 580-41, 580-47	Yes	6 months	No	No	
<b>Idaho</b> IDAHO CODE §§ 32-603, 32-701, 32-705*	No	6 weeks	Yes*	No	*Statutory factors include “[t]he fault of either party.”
<b>Illinois</b> 750 ILL. COMP. STAT. 5/401, 5/504*	Yes	90 days	No	Yes*	*If the court determines maintenance is appropriate and “[i]f the combined gross annual income of the parties is less than \$500,000 and the payor has no obligation to pay child support or maintenance or both from a prior relationship,” the court must apply statutory guidelines (based on the parties’ incomes) to determine amount (and duration) “unless the court makes a finding that the application of the guidelines would be inappropriate.”
<b>Indiana</b> IND. CODE §§ 31-15-2-3, 31-15-2-6, 31-15-7-2	No	6 months	No	No	
<b>Iowa</b> IOWA CODE §§ 598.17*, 598.21A, 598.5	Yes	1 year*	No	No	*Doesn’t apply if “the respondent is a resident of this state and is served by personal service.”
<b>Kansas</b> KAN. STAT. ANN. §§ 23-2701, 23-2703, 23-2902	No	60 days	No	No	
<b>Kentucky</b> KY. REV. STAT. ANN. §§ 403.140, 403.170, 403.200	Yes	180 days	No	No	

Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>Louisiana</b> LA. CIV. CODE ANN. arts. 103, 103.1, 112; LA. CODE CIV. PROC. ANN. art. 10	No*	Unspecified**	Yes***	No	*Louisiana recognizes covenant marriages with different grounds for divorce. <i>See</i> LA. STAT. ANN. § 9:272. **One party must be domiciled in the state at the time of filing; rebuttable presumption of domicile “if a spouse has established and maintained a residence in a parish of this state for a period of six months.” ***Spouse may be eligible when the spouse “has not been at fault prior to the filing of a petition for divorce . . . .” Statutory factors include “[t]he existence, effect, and duration of any act of domestic abuse committed by the other spouse upon the claimant or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of domestic violence.”
<b>Maine</b> ME. STAT. tit. 19-A, §§ 901, 902, 951-A	No	6 months*	No	No	*Time unspecified in some listed circumstances (including if plaintiff is a resident and the parties were married in the state).
<b>Maryland</b> MD. CODE ANN., FAM. LAW §§ 7-101*, 7-103, 11-106**	No	6 months*	Yes**	No	Applies “[i]f the grounds for the divorce occurred outside this State.” **Statutory factors include “the circumstances that contributed to the estrangement of the parties.”
<b>Massachusetts</b> MASS. GEN. LAWS ch. 208, §§ 1, 2, 4*, 5*, 53**	No	1 year*	No	Yes**	*Does not apply in all circumstances. **“Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient’s need or 30 to 35 per cent of the difference between the parties’ gross incomes established at the time of the order being issued.”

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>Michigan</b> MICH. COMP. LAWS §§ 552.6, 552.9, 552.13	Yes	180 days	No	No	
<b>Minnesota</b> MINN. STAT. §§ 518.06, 518.07, 518.552	Yes	180 days	No	No	
<b>Mississippi</b> MISS. CODE ANN. §§ 93-5-1, 93-5-2, 93-5-5, 93-5-23*	No	6 months	Yes*	No	*Statute refers to “the circumstances of the parties and the nature of the case.” In <i>Armstrong v. Armstrong</i> , 618 So. 2d 1278 (Miss. 1993), the Mississippi Supreme Court set forth factors for courts to consider, including “fault or misconduct.”
<b>Missouri</b> MO. REV. STAT. §§ 452.305, 452.335*	Yes	90 days	Yes*	No	Statutory factors include “[t]he conduct of the parties during the marriage.”
<b>Montana</b> MONT. CODE ANN. §§ 40-4-104, 40-4-203	Yes	90 days	No	No	
<b>Nebraska</b> NEB. REV. STAT. §§ 42-349*, 42-353, 42-361, 42-365	Yes	1 year*	No	No	*Exception if “the marriage was solemnized in this state and either party has resided in this state from the time of marriage to filing the complaint.”
<b>Nevada</b> NEV. REV. STAT. §§ 125.010, 125.020*, 125.150	Yes	6 weeks*	No	No	*Exception if “the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein.”

Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>New Hampshire</b> N.H. REV. STAT. ANN. §§ 458:5*, 458:7, 458:7-a, 458:19-a**/****	No	1 year*	Yes**	Yes***	*Exceptions “[w]here both parties were domiciled in the state when the action was commenced,” or “the plaintiff was so domiciled and the defendant was personally served with process within the state.” **Factors considered in adjusting formula amount include “[t]he conduct of either party during the marriage, including abuse . . . or fault . . .” ***“The amount of a term alimony order shall be the lesser of the payee’s reasonable need, or a formula based on 30 percent of the difference between the parties’ gross incomes at the time the order is created, unless the court finds that justice requires an adjustment” or there is an agreement of the parties.
<b>New Jersey</b> N.J. STAT. ANN. §§ 2A:34-2, 2A:34-10*, 2A:34-23**	No	1 year*	Yes**	No	*Exception for divorce based on adultery. ** Alimony awards are prohibited for persons convicted of certain violent crimes under specified circumstances; and “[n]othing in this subsection shall be construed to limit the authority of the court to deny alimony for other bad acts.”
<b>New Mexico</b> N.M. STAT. ANN. §§ 40-4-1, 40-4-2, 40-4-5, 40-4-7	No	6 months	No	No	

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>New York</b> N.Y. DOM. REL. LAW §§ 170, 230*, 236**/**	No	1 or 2 years*	Yes**	Yes***	*Required period depends on the circumstances; time not specified if “[t]he cause occurred in the state and both parties are residents thereof at the time of the commencement of the action.” **Statutory factors include “whether either party has committed an act or acts of domestic violence . . . against the other party and the nature, extent, duration and impact of such act or acts.” ***“The court shall order the post-divorce maintenance guideline obligation up to the income cap . . . unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate” based on consideration of statutory factors. The guideline amount is based on a formula that considers the parties’ incomes and whether child support will be paid (and by whom).
<b>North Carolina</b> N.C. GEN. STAT. §§ 50-5.1, 50-6, 50-7, 50-8, 50-16.3A*	No	6 months	Yes*	No	*Statutory factors include “[t]he marital misconduct of either of the spouses.”
<b>North Dakota</b> N.D. CENT. CODE §§ 14-05-03, 14-05-17, 14-05-24.1	No	6 months	Yes*	No	Courts consider factors from the “ <i>Ruff-Fischer</i> guidelines,” which include “conduct of the parties during the marriage.” <i>See, e.g.,</i> Sims v. Sims, 943 N.W.2d 804 (N.D. 2020).
<b>Ohio</b> OHIO REV. CODE ANN. §§ 3105.01, 3105.03, 3105.18, 3105.61–.63	No	6 months	No	No	
<b>Oklahoma</b> OKLA. STAT. tit. 43, §§ 101, 102, 121, 134	No	6 months	No	No	

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>Oregon</b> OR. REV. STAT. §§ 107.015, 107.025, 107.036, 107.075, 107.105, 107.485	Yes	6 months	No	No	
<b>Pennsylvania</b> 23 PA. CONS. STAT. §§ 3104, 3301, 3701*	No	6 months	Yes*	No	Statutory factors include “[t]he marital misconduct of either of the parties during the marriage”
<b>Puerto Rico</b> P.R. LAWS ANN. tit. 31, §§ 321, 331*, 385	No	1 year*	No	No	*Exception if “the grounds on which the suit is based on have been committed in Puerto Rico, or while one of the parties to the marriage resided here.”
<b>Rhode Island</b> R.I. GEN. LAWS §§ 15-5-1, 15-5-2, 15-5-3, 15-5-3.1, 15-5-12, 15-5-16*	No	1 year	Yes*	No	*Statutory factors include “[t]he conduct of the parties during the marriage.”
<b>South Carolina</b> S.C. CODE. ANN. §§ 20-3-10, 20-3-30*, 20-3-130**	No	1 year*	Yes**	No	*Exception: “when both parties are residents of the State when the action is commenced, the plaintiff must have resided in this State only three months prior to commencement of the action.” ** Statutory factors include “marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage.”

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>South Dakota</b> S.D. CODIFIED LAWS §§ 25-4-2, 25-4-17.2, 25-4-30*, 25-4-41	No	Unspecified*	No**	No	*The plaintiff must “be a resident of this state, or be stationed in this state while a member of the armed services” when the action is commenced. **Not specified in statute, but judicial factors include “fault.” <i>See, e.g., Taylor v. Taylor</i> , 928 N.W.2d 458 (S.D. 2019).
<b>Tennessee</b> TENN. CODE ANN. §§ 36-4-101, 36-4-103, 36-4-104*, 36-5-121**	No	6 months*	Yes**	No	*Or “if the acts complained of were committed while the plaintiff was a bona fide resident of this state.” **Statutory factors include “[t]he relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so.”
<b>Texas</b> TEX. FAM. CODE ANN. §§ 6.001–6.007, 6.301, 8.051–.052*, 8.054–.055**	No	6 months	Yes*	Yes**	*Statutory factors include “marital misconduct, including adultery and cruel treatment, by either spouse during the marriage,” and “any history or pattern of family violence.” Family violence conviction is also considered when determining eligibility for maintenance. **“A court may not order maintenance that requires an obligor to pay monthly more than the lesser of: (1) \$5,000; or (2) 20 percent of the spouse’s average monthly gross income.”
<b>Utah</b> UTAH CODE ANN. §§ 30-3-1, 30-3-5*	No	3 months	Yes*	No	**The court may consider the fault of the parties in determining whether to award alimony and the terms of the alimony.”

Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>Vermont</b> VT. STAT. ANN. tit. 15, §§ 551, 592*, 752**	No	6 months*	No	Yes	*6 months for filing a complaint; one year required (for either party) for a divorce to be granted. ** Statutory guidelines (considering difference between the parties’ gross incomes and the length of the marriage) are one factor for the court to consider when determining maintenance amount.
<b>Virginia</b> VA. CODE ANN. §§ 20-91, 20-97, 20-107.1*	No	6 months	Yes*	No	*“The court, in determining whether to award support and maintenance for a spouse, shall consider the circumstances and factors which contributed to the dissolution of the marriage, specifically including adultery and any other ground for divorce . . . .”
<b>Washington</b> WASH. REV. CODE §§ 26.09.030*, 26.09.090	Yes	Unspecified*	No	No	*One of the parties needs to be a “resident of this state” or a member of the armed forces stationed in the state.
<b>West Virginia</b> W. VA. CODE §§ 48-5-105, 48-5-201 to 48-5-209, 48-6-301, 48-8-104	No	1 year*	Yes**	No	*One year not required if the marriage was in the state and “one of the parties is an actual bona fide resident of this State at the time of commencement of the action, without regard to the length of time residency has continued.” **“In determining whether spousal support is to be awarded, or in determining the amount . . . the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of the fault or misconduct as a contributing factor to the deterioration of the marital relationship.”

**Chart 1: Divorce and Alimony/Maintenance Statutes in 2020, continued**

Statute(s)	“No-Fault” Divorce Only	Durational Residency Requirements	Alimony: Noneconomic Fault a Statutory Factor	Alimony: Statutory Guideline Formula for Determining Amount	Notes
<b>Wisconsin</b> Wis. STAT. §§ 767.56, 767.301, 767.315	Yes	6 months	No	No	
<b>Wyoming</b> WYO. STAT. ANN. §§ 20-2-104, 20-2-107, 20-2-114	Yes	60 days*	No	No	*Exception if “the marriage was solemnized in this state and one of the parties has resided in this state from the time of the marriage until the filing of the complaint.”

## Key to Chart 2: Child Custody Statutes in 2020

“Chart 2: Child Custody Statutes in 2020” explores factors that are considered when determining child custody. The content is based solely on statutory text and not on case law. Definitions of the terms used are provided below. While this Chart uses the term “custody,” the language used by states varies; for example, a state may use “shared decision-making” instead of joint legal custody, or “parenting time” instead of physical custody. Changes from the previous chart format include specific consideration of statutory presumptions relating to joint legal custody or domestic violence, and a new column for statutes that specifically provide for more than two individuals to be recognized as parents.

1. **Statutory List of “Best Interest” Factors** concerns whether the state has a statutory list of factors that courts may (or must) consider when determining the child’s best interests for the purposes of legal and/or physical custody determinations. For some states, the factors have mostly been developed through judicial opinions.
2. **Joint Legal Custody Presumption** tracks whether or not a state has a statutory presumption favoring joint legal custody. Parents have joint legal custody when the parents share in making decisions for their child(ren), including, but not limited to, decisions concerning education, medical care, legal matters, and religious upbringing. This column does not address presumptions relating to physical or residential custody or any other presumptions, although some states that have joint legal custody presumptions may have other presumptions as well. Some states have exceptions to the presumption or conditions for the presumption to apply that are not listed in the Chart. If the presumption only applies when the parties consent, this is indicated in the Notes column of the Chart.
3. **Domestic Violence Presumption** captures whether a state’s statute includes a presumption that an award of legal and/or physical custody to a person who perpetrated domestic violence is detrimental to the child(ren) or against the best interests of the child. The definition of domestic violence for this purpose, the level of proof required for the presumption to apply, and whether or how the presumption may be rebutted vary by state; these variations are not included in the Chart. States with a “no” on the Chart generally do consider domestic violence as a factor when making legal and/or physical custody determinations but do not have a presumption against a custody award.
4. **More Than Two Parents Statute** looks to whether a state statute explicitly discusses the possibility that more than two individuals can be legally recognized as “parents” for the child. For example, it might address whether a particular state has enacted applicable language from the Uniform Parentage Act (2017). It does not address court decisions interpreting statutes to authorize more than two parents.
5. **Notes** provide further detail about some of the statutes listed in the Chart. Asterisks (\*, \*\*, or \*\*\*) show the connection between the category, the statute, and the information provided.

Chart 2 and this Key were prepared by the *FLQ* student editorial staff at New York Law School. Contributors from the 2020–21 academic year include Junior Editors Natalie Alvarez, Megan Brandon, and April Pacis; Senior Editor Lisa-Marie Ortiz; Executive Law-in-50 Editor Shelby Arenson; and Professor Lisa F. Grumet. All Chart determinations were based on review of the statutory text and annotations. In addition to the statutes and the most recent *FLQ* Charts (see 53 *FAM. L.Q.* 354–394 (2020)), the editors reviewed secondary sources that included Jay Folberg, Maureen McKnight, & Ruby Udell Grad, *Joint Custody Statutes*, 2 *CHILD CUSTODY AND VISITATION LAW AND PRACTICE* app. 13.05 (Matthew Bender & Company, Inc./Lexis 2020); Isabell Scott & Nancy McKenna, *Analysis of Domestic Violence and Custody Laws*, *DOMESTIC VIOLENCE PRACTICE AND PROCEDURE* app. 3A (Thomson Reuters/Westlaw 2020); and Colleen M. Quinn, *Mom, Mommy & Daddy and Daddy, Dad & Mommy: Assisted Reproductive Technologies & the Evolving Legal Recognition of Tri-Parenting*, 31 *J. AM. ACAD. MATRIM. LAW.* 175 (2018).

**Chart 2: Child Custody Statutes in 2020**

<b>Statute(s)</b>	<b>Statutory List of “Best Interest” Factors</b>	<b>Joint Legal Custody Presumption</b>	<b>Domestic Violence Presumption</b>	<b>More Than Two Parents Statute</b>	<b>Notes</b>
<b>Alabama</b> ALA. CODE §§ 30-3-1, 30-3-131, 30-3-133, 30-3-152*/**	Yes*	Yes**	Yes	No	*Factors are specified for determining whether joint custody is in the child’s best interests. **Presumption applies only if both parents request joint custody.
<b>Alaska</b> ALASKA STAT. §§ 25.20.060, 25.24.150	Yes	No	Yes	No	
<b>Arizona</b> ARIZ. REV. STAT. §§ 25-403, 25-403.01, 25-403.02, 25-403.03	Yes	No	Yes	No	
<b>Arkansas</b> ARK. CODE ANN. § 9-13-101	No	No	Yes	No	
<b>California</b> CAL. FAM CODE §§ 3011, 3040, 3044, 3080*, 7612	Yes	Yes*	Yes	Yes	*Presumption applies when the parties agree to joint custody.
<b>Colorado</b> COLO. REV. STAT. § 14-10-124	Yes	No	Yes	No	
<b>Connecticut</b> CONN. GEN. STAT. § 46b-56	Yes	Yes*	No	No	*Presumption applies when the parties agree to joint custody.
<b>Delaware</b> DEL. CODE. ANN. tit. 13, §§ 722, 705A	Yes	No	Yes	No	

**Chart 2: Child Custody Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Statutory List of “Best Interest” Factors</b>	<b>Joint Legal Custody Presumption</b>	<b>Domestic Violence Presumption</b>	<b>More Than Two Parents Statute</b>	<b>Notes</b>
<b>District of Columbia</b> D.C. CODE § 16-914	Yes	Yes	Yes	No	
<b>Florida</b> FLA. STAT. § 61.13	Yes	No	Yes	No	
<b>Georgia</b> GA. CODE ANN. §§ 19-9-3, 19-9-7	Yes	No	No	No	
<b>Hawaii</b> HAW. REV. STAT. §§ 571-46, 571-46.1	Yes	No	Yes	No	
<b>Idaho</b> IDAHO CODE §§ 32-717, 32-717b	Yes	Yes	Yes	No	
<b>Illinois</b> 750 ILL. COMP. STAT. 5/602.5, 5/602.7	Yes	No	No	No	
<b>Indiana</b> IND. CODE §§ 31-17-2-8, 31-17-2-13, 31-17-2-15	Yes	No	No	No	
<b>Iowa</b> IOWA CODE § 598.41	Yes	No	Yes	No	
<b>Kansas</b> KAN. STAT. ANN. §§ 23-3203, 23-3204, 23-3206	Yes	No	No	No	

**Chart 2: Child Custody Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Statutory List of “Best Interest” Factors</b>	<b>Joint Legal Custody Presumption</b>	<b>Domestic Violence Presumption</b>	<b>More Than Two Parents Statute</b>	<b>Notes</b>
<b>Kentucky</b> KY. REV. STAT. ANN. §§ 403.270, 403.315	Yes	Yes	No	No	
<b>Louisiana</b> LA. CIV. CODE ANN. arts. 131, 132, 134; LA. STAT. ANN. §§ 9:335, 9:364	Yes	No	Yes	No	
<b>Maine</b> ME. STAT. tit. 19-A, §§ 1653, 1851, 1853	Yes	No	No	Yes	
<b>Maryland</b> MD. CODE ANN., FAM. LAW §§ 5-203, 9-101.1	No	No	No	No	
<b>Massachusetts</b> MASS. GEN. LAWS ch. 208, §§ 31, 31A	No	No	Yes	No	
<b>Michigan</b> MICH. COMP. LAWS §§ 722.23, 722.25, 722.26a, 722.27a	Yes	No	No	No	
<b>Minnesota</b> MINN. STAT. §§ 518.17*, 518.175, 518.179	Yes	Yes*	Yes	No	*Presumption applies if joint custody requested by “either or both parties.”
<b>Mississippi</b> MISS. CODE ANN. § 93-5-24*	No	Yes*	Yes	No	*Presumption applies when the parents agree to joint custody.

Chart 2: Child Custody Statutes in 2020 (continued)

Statute(s)	Statutory List of “Best Interest” Factors	Joint Legal Custody Presumption	Domestic Violence Presumption	More Than Two Parents Statute	Notes
<b>Missouri</b> Mo. REV. STAT. § 452.375	Yes	No	No	No	
<b>Montana</b> MONT. CODE ANN. §§ 40-4-212, 40-4-234	Yes	No	No	No	
<b>Nebraska</b> NEB. REV. STAT. §§ 42-364, 43-2923, 43-2929, 43-2932*	Yes	No	Yes*	No	*Doesn’t say “presumption,” but burden shifts to parent to prove “that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.”
<b>Nevada</b> NEV. REV. STAT. §§ 125c.0015, 125c.002, 125c.0025, 125c.003, 125c.0035	Yes	Yes	Yes	No	
<b>New Hampshire</b> N.H. REV. STAT. ANN. §§ 461-A:5, 461-A:6	Yes	Yes	No	No	
<b>New Jersey</b> N.J. STAT. ANN. §§ 9:2-4, 9:2-4a	Yes	No	No	No	
<b>New Mexico</b> N.M. STAT. ANN. §§ 40-4-9, 40-4-9.1	Yes	Yes	No	No	
<b>New York</b> N.Y. DOM. REL. LAW §§ 70, 240; N.Y. FAM. CT. ACT § 651	No	No	No	No	

**Chart 2: Child Custody Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Statutory List of “Best Interest” Factors</b>	<b>Joint Legal Custody Presumption</b>	<b>Domestic Violence Presumption</b>	<b>More Than Two Parents Statute</b>	<b>Notes</b>
<b>North Carolina</b> N.C. GEN. STAT. §§ 50-13.2, 50B-3	No	No	No	No	
<b>North Dakota</b> N.D. CENT. CODE §§ 14-09-06.2, 14-09-29, 14-09-31	Yes	No	Yes	No	
<b>Ohio</b> OHIO REV. CODE ANN. § 3109.04	Yes	No	No	No	
<b>Oklahoma</b> OKLA. STAT. tit. 43, §§ 109, 109.3, 110.1, 112, 112.2, 112.5	No	No	Yes	No	
<b>Oregon</b> OR. REV. STAT. §§ 107.105, 107.137, 107.169, 109.119	Yes	No	Yes	Yes	
<b>Pennsylvania</b> 23 PA. CONS. STAT. §§ 5323, 5327, 5328, 5329	Yes	No	No	No	
<b>Puerto Rico</b> P.R. LAWS ANN. tit. 31, § 383; tit. 32, §§ 3181, 3182, 3185, 3186, 3187	Yes	No	No	No	

**Chart 2: Child Custody Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Statutory List of “Best Interest” Factors</b>	<b>Joint Legal Custody Presumption</b>	<b>Domestic Violence Presumption</b>	<b>More Than Two Parents Statute</b>	<b>Notes</b>
<b>Rhode Island</b> R.I. GEN. LAWS § 15-5-16, 15-8.1-206, 15-8.1-501	No	No	No	No*	*New legislation enacted in 2020, effective 1/1/21. R.I. enacted UPA(2017). 2020 R.I. Laws ch. 20-60 (20-H 7541), 2020 R.I. Laws ch. 20-59 (20-S 2136)
<b>South Carolina</b> S.C. CODE ANN. §§ 63-15-40, 63-15-60, 63-15-230, 63-15-240	Yes	No	No	No	
<b>South Dakota</b> S.D. CODIFIED LAWS §§ 25-4-45, 25-4-45.5, 25-4A-21, 25-4A-22, 25-4A-24*, 25-4A-26, 25-5-7.1	Yes*	No	Yes	No	*Factors are listed for consideration on request for joint physical custody.
<b>Tennessee</b> TENN. CODE ANN. §§ 36-6-101*, 36-6-106, 36-6-406, 36-6-407	Yes	Yes*	No	No	*Applies if the parents agree to joint custody.
<b>Texas</b> TEX. FAM. CODE ANN. §§ 153.002, 153.004, 153.005, 153.131, 153.134*	Yes*	Yes	Yes	No	*Factors are listed for court-ordered joint conservatorship.
<b>Utah</b> UTAH CODE ANN. §§ 30-3-10, 30-3-10.2, 30-3-10.10, 30-3-34	Yes	Yes	No	No	
<b>Vermont</b> VT. STAT. ANN. tit. 15, §§ 206, 665, 665a	Yes	No	No	Yes	

**Chart 2: Child Custody Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Statutory List of “Best Interest” Factors</b>	<b>Joint Legal Custody Presumption</b>	<b>Domestic Violence Presumption</b>	<b>More Than Two Parents Statute</b>	<b>Notes</b>
<b>Virginia</b> VA. CODE ANN. §§ 20-124.2, 20-124.3	Yes	No	No	No	
<b>Washington</b> WASH. REV. CODE §§ 26.09.184, 26.09.187, 26.09.191*, 26.10.160, 26.26A.460	No	No	Yes*	Yes	*Does not use word “presumption,” but “[t]he permanent parenting plan shall not require mutual decision-making . . . if it is found that a parent has engaged in . . . (c) a history of acts of domestic violence . . .”
<b>West Virginia</b> W. VA. CODE §§ 48-9-102, 48-9-206, 48-9-207*, 48-9-209**	Yes	Yes*	Yes**	No	*Presumption applies “[i]f each of the child’s legal parents has been exercising a reasonable share of parenting functions for the child.” **Doesn’t use word “presumption,” but if a parent is found to have committed domestic violence, that parent “has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.”
<b>Wisconsin</b> WIS. STAT. § 767.41	Yes	Yes	Yes	No	
<b>Wyoming</b> WYO. STAT. ANN. § 20-2-201	Yes	No	No	No	

### Key to Chart 3: “Nonparent” Custody and Visitation Statutes in 2020

“Chart 3: ‘Nonparent’ Custody and Visitation Statutes in 2020” captures state statutes that specifically provide for “nonparents” or third parties to petition for custody and/or visitation. Changes from the prior version of this chart, which was titled “Third-Party Visitation” (*see* 53 FAM. L.Q. 387–394 (2020)), include omission of some details about third-party visitation and addition of information about third-party custody. The term “nonparent” is based on the Uniform Nonparent Custody and Visitation Act (UNCVA). The UNCVA defines “nonparent” as “an individual other than a parent of the child. The term includes a grandparent, sibling, or stepparent of the child.” The UNCVA defines “parent” as “an individual recognized as a parent under law of this state . . . .” While this Chart 3 uses the terms “custody” and “visitation,” the language used by states varies (for example, a state may use terms such as “decision-making,” “conservatorship,” “parenting time,” “access,” or “contact”). The Chart generally does *not* capture laws that specifically concern (1) procedures for being recognized as a “de facto parent”; (2) child welfare proceedings, or kinship foster care; (3) adoption, or post-adoption visitation; (4) military or deployed parents (such as the Uniform Deployed Parents Custody and Visitation Act); or (5) guardianship.

The information in Chart 3 is based solely on statutory text and not on case law. If a state’s courts have addressed circumstances for awarding third-party custody or visitation, but these circumstances are not specifically discussed in the state’s statute, this information is generally not included in the Chart. The law in this area has evolved over time in light of demographic and societal changes and the Supreme Court’s decision in *Troxel v. Granville*, 530 U.S. 57 (2000). *See also* Jeff Atkinson & Barbara Atwood, *Moving Beyond Troxel: The Uniform Nonparent Custody and Visitation Act*, 52 FAM. L.Q. 479 (2018).

The focus of Chart 3 is on who can seek custody and visitation, and not on the circumstances when a petition can be filed or the standard for granting custody or visitation to a nonparent. The definitions for each chart column are included for reference below.

1. **Visitation: “Nonparent” Relatives Listed** indicates whether the state’s statutes specifically discuss the possibility of nonparent relatives being granted visitation with the child. Relatives commonly identified in state custody statutes include grandparents, great-grandparents, siblings, and stepparents. The relatives identified in the state’s laws are listed in the chart.
2. **Visitation: Other “Nonparents” in Statute** indicates whether the state’s statutes specifically discuss the possibility of third parties who are not relatives of the child being granted visitation based on their relationship with the child. Additional details are included in the “Notes” column.
3. **Custody: “Nonparent” Relatives Listed** indicates whether the state’s statutes specifically discuss the possibility of nonparent relatives being awarded custody of the child. Relatives commonly identified in state custody statutes include grandparents, great-grandparents, and stepparents. The relatives identified in the state’s laws are listed in the chart.
4. **Custody: Other “Nonparents” in Statute** indicates whether the state’s statutes specifically discuss the possibility of third parties who are not relatives of the child being awarded custody based on their relationship with the child. Additional details are included in the “Notes” column.
5. **Notes** provide further detail about some of the statutes listed in the chart. Asterisks (\*, \*\*, or \*\*\*) show the connection between the category, the statute, and the information provided.

Chart 3 and this Key were prepared by the *FLQ* student editorial staff at New York Law School. Contributors to this Chart from the 2020–21 academic year include Junior Editors Lawrence Reichman, Alana Reid, and Victoria Wilton; Senior Editor Mathew Fontanez; Executive Law-in-50 Editor Shelby Arenson; and Professor Lisa F. Grumet. All Chart determinations were based on review of the statutory text and annotations. In addition to the statutes and the previous year’s charts (*see* 53 FAM. L.Q. 353–394 (2020)), the editors reviewed secondary sources including Jeff Atkinson & Barbara Atwood, *Moving Beyond Troxel: The Uniform Nonparent Custody and Visitation Act*, 52 FAM. L.Q. 479 (2018); Jeff Atkinson, *Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children*, 47 FAM. L.Q. 1 (2013); and Josh Gupta-Kagan, *Children, Kin and Court: Designing Third Party Custody Policy to Protect Children, Third Parties and Parents*, 12 N.Y.U. J. LEGIS. & PUB. POL’Y 43 (2008–09).

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020**  
 This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Alabama</b> ALA. CODE §§ 30-3-4.2, 30-3-150	Grandparents	—	—	—	
<b>Alaska</b> ALASKA STAT. §§ 25.20.060, 25.20.065, 25.24.150*/**	Grandparents	Yes*	Not specified	Yes**	*Custody order may include “an order that provides for visitation by a grandparent or other person if that is in the best interests of the child.” **Statute includes possibility of awarding custody to a “suitable third person” when “the court finds that both parents have a history of perpetrating domestic violence. . . .”
<b>Arizona</b> ARIZ .REV. STAT. §§ 25-402, 25-409*	Grandparents, great- grandparents	Yes*	Not specified	Yes*	*Statute discusses circumstances when “a person other than a legal parent” may obtain custody (“legal decision-making authority or placement of the child”) or visitation with a child.
<b>Arkansas</b> ARK. CODE ANN. § 9-13-101, 9-13-102, 9-13-103, 9-13-107, 9-13-108	Siblings, grandparents, great- grandparents	—	Grandparents	—	
<b>California</b> CAL. FAM CODE §§ 3040, 3041, 3101, 3102, 3103, 3104, 3105	Grandparents, great- grandparents, siblings, aunts and uncles, stepparents, former legal guardians*	—	Not specified	Yes*	*Statute provides that the “order of preference” for granting custody, if custody is not awarded to a parent, is “to the person or persons in whose home the child has been living in a wholesome and stable environment” or “to any other person or persons deemed by the court to be suitable. . . .”

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**  
 This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Colorado</b> COLO. REV. STAT. §§ 14-10-123*, 14-10-123.3, 19-1-117	Grandparents, great- grandparents	—	Grandparents	Yes*	*Addresses circumstances when “a person other than a parent” may petition for “allocation of parental responsibilities.”
<b>Connecticut</b> CONN. GEN. STAT. §§ 46b-56**/**, 46b-56-b**, 46b-57**/**, 46b-59*	Grandparents, great- grandparents	Yes*	Not specified**	Yes**	*Statutes discuss circumstances for visitation with grandparents or other “third part[ies]” or “any person” with a “parent-like relationship.” **Statute discusses circumstances when custody may be awarded to a “third party” or “nonparent.”
<b>Delaware</b> DEL. CODE ANN. tit. 13, §§ 722, 733**, 2410*, 2412	Grandparents, aunts, uncles, adult siblings	Yes*	Stepparents**	—	* “[A]ny adult person” may petition for visitation based on a showing of “a substantial and positive prior relationship with the child.” ** Stepparent custody provision applies “upon the death or disability of the custodial or primary placement parent.”
<b>District of Columbia</b> D.C. CODE §§ 16-831.01 to 16-831.13*	—	—	Not specified*	Yes*	* Statute lists requirements for a “third party” to petition for custody.

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**

This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<p><b>Florida</b> FLA. STAT. §§ 39.01**, 751.01 to 751.05**/**, 752.001, 752.011</p>	<p>Grandparents, great-grandparents</p>	<p>—</p>	<p>Extended family*</p>	<p>Yes**</p>	<p>*Temporary or “concurrent” custody may be sought by an “extended family member” in specific circumstances. “Extended family member” is defined as “a person who is: (a) A relative of a minor child within the third degree by blood or marriage to the parent; (b) The stepparent of a minor child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding . . . involving one or both of the child’s parents as an adverse party; or (c) An individual who qualifies as ‘fictive kin’ . . . .” **“Fictive kin” is defined as “a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child.”</p>
<p><b>Georgia</b> GA. CODE ANN. §§ 19-7-1, 19-7-3*</p>	<p>Grandparents*, great-grandparents, siblings</p>	<p>—</p>	<p>Grandparents, great-grandparents, aunts, uncles, great aunts, great uncles, siblings, or adoptive parents</p>	<p>—</p>	<p>*One provision concerning grandparent visitation found unconstitutional in <i>Patten v. Ardis</i>, 816 S.E.2d 633 (Ga. 2018).</p>

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**  
 This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Hawaii</b> HAW. REV. STAT. §§ 571-46**/**, 571-46.3***	Grandparents, siblings	Yes*	Not specified**	Yes**	*Statute provides that visitation may be awarded to “any person interested in the welfare of the child . . . .” **Statute states that custody may be awarded to persons other than parents, including a “de facto” custodian, but does not specifically identify relatives. ***One grandparent visitation statute held unconstitutional in <i>Doe v. Doe</i> , 172 P.3d 1067 (Haw. 2007).
<b>Idaho</b> IDAHO CODE §§ 32-717, 32-719, 32-1703*, 32-1704	Grandparents, great- grandparents	—	Grandparents, de facto custodians*	—	*“De facto custodian” is defined as “an individual who: (a) Is related to a child within the third degree of consanguinity; and (b) Either individually or together with a copetitioner has been the primary caretaker and primary financial supporter of such child [and such child] has resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent for a period of: (i) Six (6) months or more if the child is under three (3) years of age; or (ii) One (1) year or more if the child is three (3) years of age or older.”
<b>Illinois</b> 750 ILL. COMP. STAT. 5/601.2*, 5/602.5, 5/602.9	Grandparents, great- grandparents siblings, stepparents	—	Stepparents, grandparents*	Yes*	*Statute lists circumstances when “a person other than a parent,” a stepparent, or a grandparent may petition for “allocation of parental responsibilities.”
<b>Indiana</b> IND. CODE §§ 31-17-2-8, 31-17-2-8.5*, 31-17-5-1, 31-17-5-2	Grandparents	—	Not specified*	Yes*	*Statute discusses circumstances when a “de facto custodian” may be considered for custody.

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**

This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Iowa</b> IOWA CODE §§ 598.41, 600C.1	Grandparents, great- grandparents	—	—	—	
<b>Kansas</b> KAN. STAT. ANN. §§ 23-3203, 23-3207*, 23-3208, 23-3301	Grandparents, stepparents	—	*Grandparents, aunts, uncles, adult siblings	Yes*	*Statute discusses circumstances for awarding “temporary residency” of a child to “a grandparent, aunt, uncle or adult sibling, or, another person or agency . . . .”
<b>Kentucky</b> KY. REV. STAT. ANN. §§ 403.270, 403.320, 405.020, 405.021*	Grandparents*; any relative who “was previously granted temporary custody” in a dependency/ abuse/neglect proceeding	--	**De facto custodians	**Yes	*A portion of the grandparent visitation statute was found unconstitutional in <i>Pinto v. Robison</i> , 607 S.W.3d 669 (Ky. 2020). **“De facto custodian” is defined as “a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. . . .”
<b>Louisiana</b> LA. CIV. CODE ANN. arts. 133**, 136*; LA. STAT. ANN. § 9:344*	Grandparents, siblings, “any other relative,” stepparents, step- grandparents*	—	Not specified**	Yes**	*Circumstances for granting visitation to different relatives are listed in the statutes. **“If an award of joint custody or of sole custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.”

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**  
 This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Maine</b> ME. STAT. tit. 19-A, §§ 1653/**, 1802, 1803	Grandparents, great- grandparents	Yes*	Not specified**	Yes**	*“The court may award reasonable rights of contact with a minor child to a 3rd person.” **“The court may award parental rights and responsibilities with respect to the child to a 3rd person, a suitable society or institution for the care and protection of children or the department, upon a finding that awarding parental rights and responsibilities to either or both parents will place the child in jeopardy as defined in [child protection statute].”
<b>Maryland</b> MD. CODE ANN., FAM. LAW § 9-102	Grandparents	—	—	—	
<b>Massachusetts</b> MASS. GEN. LAWS ch. 119, § 39D; ch. 208, § 28*; ch. 209C § 10*	Grandparents	—	Not specified*	Yes*	*Statutes mention the possibility of awarding custody to a “third person” [ch. 208, § 28] or “a person who is not a parent of the child” [ch. 209C § 10].
<b>Michigan</b> MICH. COMP. LAWS §§ 722.25, 722.26b*, 722.26c*, 722.27b	Grandparents	—	Not specified*	Yes*	*Statutes specify circumstances for a guardian or limited guardian or a “third person” to seek custody.

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**

This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Minnesota</b> MINN. STAT. §§ 257C.01-.07***, 257C.08*, 518.1752	Grandparents, great- grandparents*	Yes*/**	Not specified; de facto custodian/ interested third party***	De facto custodian/ interested third party***	*Portion of statute found unconstitutional in <i>SooHoo v. Johnson</i> , 731 N.W.2d 815 (Minn. 2007). **“If an unmarried minor has resided in a household with a person, other than a foster parent, for two years or more and no longer resides with the person, the person may petition the district court for an order granting the person reasonable visitation rights to the child during the child’s minority.” ***Definitions and procedures for a “de facto custodian” or “interested third party” to seek custody and for “custody consent decrees” with third parties are set forth at §§ 257C.01–257C.07.
<b>Mississippi</b> MISS. CODE ANN. §§ 93-5-24*, 93-16-1 to 93-16-7	Grandparents	—	Grandparents*	Yes*	**“If custody is awarded to a suitable third person, it shall not be until the natural grandparents of the child have been excluded and such person shall not allow access to a violent parent except as ordered by the court.”
<b>Missouri</b> MO. REV. STAT. §§ 452.375*, 452.402	Grandparents	Yes*	Unspecified*	Yes*	*Statute describes circumstances for granting “third-party” custody or visitation, “[w]hen the court finds that each parent is unfit, unsuitable, or unable to be a custodian, or the welfare of the child requires, and it is in the best interests of the child . . . .”
<b>Montana</b> MONT. CODE ANN. §§ 40-4-211**, 40-4-228**, 40-6-601 to -602*, 40-9-102 to -103, 40-9-202	Grandparents, great- grandparents	Yes	Grandparents, great- grandparents, “caretaker relative”**	Yes**	*Statute defines “caretaker relative” and outlines procedures for seeking continued custody. **Statute describes circumstances when a nonparent who meets the criteria for a “child-parent relationship” with a child may be awarded a “parental interest in a child. . . .”

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**  
 This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Nebraska</b> NEB. REV. STAT. § 43-1802	Grandparents	—	—	—	
<b>Nevada</b> NEV. REV. STAT. §§ 125C.004, 125C.050*	Grandparents, great- grandparents, siblings	Yes*	Not specified	Yes	*“If the child has resided with a person with whom the child has established a meaningful relationship, the district court in the county in which the child resides also may grant to that person a reasonable right to visit the child during the child’s minority, regardless of whether the person is related to the child.”
<b>New Hampshire</b> N.H. REV. STAT. ANN. §§ 461-A:6, 461-A:13	Grandparents, stepparents	—	Grandparents, stepparents	—	
<b>New Jersey</b> N.J. STAT. ANN. §§ 9:2-7.1, 9:2-9*	Grandparents, siblings	—	Not specified	Yes*	*“[A]ny person interested in the welfare of” the child may petition for custody in very limited circumstances set forth in the statute.
<b>New Mexico</b> N.M. STAT. ANN. §§ 40-4-9.1*, 40-9-1.1, 40-9-2	Grandparents, great- grandparents	—	Unspecified*	Yes*	*“When any person other than a natural or adoptive parent seeks custody of a child, no such person shall be awarded custody absent a showing of unfitness of the natural or adoptive parent.”
<b>New York</b> N.Y. DOM. REL. LAW §§ 71, 72, 240; N.Y. FAM. CT. ACT § 651	Siblings, grandparent	—	Grandparents	—	

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**

This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>North Carolina</b> N.C. GEN. STAT. § 50-13.2*	Grandparents	—	Not specified*	Yes*	*Statute provides that “[a]n order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child.” The standard for custody awards to nonparents is addressed through case law.
<b>North Dakota</b> N.D. CENT. CODE §§ 14-09.4-01, 14-09.4-03	Grandparents, siblings, stepparents	Yes*	Grandparents, siblings, stepparents	Yes*	*North Dakota has enacted the Uniform Nonparent Custody and Visitation Act.
<b>Ohio</b> OHIO REV. CODE ANN. §§ 3109.051*, 3109.11–.12	Grandparents, relatives	Yes*	—	—	*“[A]ny other person other than a parent.”
<b>Oklahoma</b> OKLA. STAT. tit. 43, §§ 109.4, 112.5	Grandparents, great- grandparents	—	Grandparents, relatives	Yes*	*“[A]ny other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.”
<b>Oregon</b> OR. REV. STAT. § 109.119	Foster parents, stepparents, grandparents, relatives	Yes*	Foster parents, stepparents, grandparents, relatives with established relationship	Yes*	*“[A]ny person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child” may petition for custody or visitation under the circumstances described in the statute.
<b>Pennsylvania</b> 23 PA. CONS. STAT. §§ 5324*, 5325, 5327, 5328	Grandparents, great- grandparents	Yes*	Grandparents, great- grandparents	Yes*	*“A person who stands in loco parentis to the child” has standing to petition for “any form of physical custody or legal custody” subject to statutory requirements.
<b>Puerto Rico</b> P.R. LAWS ANN. tit. 31, § 591a	Grandparents, uncles, aunts	—	—	—	

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**  
 This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Rhode Island</b> R.I. GEN. LAWS §§ 15-5-24.1 to 24.4	Grandparents, siblings	—	—	—	
<b>South Carolina</b> S.C. CODE ANN. §§ 63-3-530, 63-15-60*	Grandparents	Yes*	Not specified*	Yes*	*Statute sets forth circumstances for a “de facto custodian” to be awarded custody or visitation.
<b>South Dakota</b> S.D. CODIFIED LAWS § 25-4-52	Grandparents	—	—	—	
<b>Tennessee</b> TENN. CODE ANN. §§ 36-6-106, 36-6-301, 36-6-302, 36-6-303, 36-6-306, 36-6-307	Grandparents, stepparents	—	—	—	
<b>Texas</b> TEX. FAM. CODE ANN. §§ 102.003*, 102.004, 102.0045, 153.371–.377**, 153.432, 153.433	Grandparents, siblings	—	Grandparents; relative within third degree by consanguinity	Yes*/**	*Standing for “a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition.” **Section concerning “appointment of nonparent as conservator.”
<b>Utah</b> UTAH CODE ANN. §§ 30-5-2, 30-5a-102, 30-5a-103	Grandparents, siblings, aunts, uncles, stepparents	—	Grandparents, siblings, aunts, uncles, stepparents	—	
<b>Vermont</b> VT. STAT. ANN. tit. 15, §§ 1011–13	Grandparents	—	—	—	

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**

This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Virginia</b> VA. CODE ANN. §§ 20-124.1*, 124.2*	Grandparents, step- grandparents, stepparents, blood relatives and family members	Yes*	Grandparents, step- grandparents, stepparents, blood relatives and family members	Yes*	*Statute addresses when custody or visitation may be granted to a “person with a legitimate interest.” ““Person with a legitimate interest” shall be broadly construed and includes, but is not limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. . . .”
<b>Washington</b> WASH. REV. CODE §§ 11.130.185*, 11.130.190*, 11.130.235*, 26.11.010, 26.11.020, 26.11.040	Grandparents, stepparents, extended family members (“blood relatives” and stepsiblings)	—	—	—*	*In 2020, the Washington legislature repealed Chapter 26.10 of the Domestic Relations Law, Nonparental Actions for Child Custody, effective January 1, 2021. Laws 2020, ch. 312, § 905. The repeal with respect to already pending actions was temporarily suspended by the governor on December 30, 2020, through an emergency proclamation during the COVID-19 pandemic. In 2019 and 2020 Washington enacted and then amended the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, which authorizes appointment of a guardian when “[t]here is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions . . . .”
<b>West Virginia</b> W. VA. CODE §§ 48-10-101 to 48-10-901	Grandparents	—	—	—	

**Chart 3: “Nonparent” Custody and Visitation Statutes in 2020 (continued)**This Chart does *not* track laws concerning “de facto parents” or kinship foster care.

Statute(s)	Visitation: “Nonparent” Relatives Listed	Visitation: Other “Nonparents” in statute	Custody: “Nonparent” Relatives Listed	Custody: Other “Nonparents” in statute	Notes
<b>Wisconsin</b> Wis. STAT. §§ 48.02, 767.41, 767.43*	Grandparents, great- grandparents, stepparents	Yes*	Grandparents, stepparents, siblings, in- laws, cousins, aunts, uncles, other**	—	*Statute discusses visitation for listed relatives and for a “person who has maintained a relationship similar to a parent-child relationship with the child . . . .” **Statute discusses circumstances for transferring custody to a “relative” and defines relative.
<b>Wyoming</b> WYO. STAT. ANN. §§ 20-7-101, 20-7-102*	Grandparents	Yes*	—	—	*A person who “has been the primary caregiver for the child for a period of” at least 6 months in the previous 18 months may petition for reasonable visitation rights.

## Key to Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020

“Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020” is a new chart for the *Family Law Quarterly*. It explores the nature and role of individuals appointed in child welfare proceedings to represent children or to advise the court. Some states require that attorneys be appointed for children in child welfare proceedings, while for other states, attorney appointment may be discretionary. Some states require appointment of both an attorney and a guardian ad litem (GAL), while other states may require one or the other. When an attorney is appointed, some states require that the attorney primarily advocate the child’s preference (at least for children who are old enough to express a preference), while other states require that the attorney function more as a GAL.

The content of Chart 4 is based solely on the text of state statutes or court rules and not on case law. The focus is on child welfare/abuse and neglect proceedings, and not on custody or other proceedings where attorneys or GALs may be appointed. The definitions of the terms used are provided below.

1. **Attorney Appointed** looks to whether a state statute or rule requires that the person appointed to represent the child or the child’s interests in child welfare proceedings be an attorney or permits the court to exercise discretion. Some states require appointment of an attorney for the child. Some states require appointment of a GAL and require that the GAL be an attorney. For some states, appointment of an attorney is discretionary.
2. **Attorney’s Primary Role** looks to whether the primary role of a court-appointed advocate is to generally advocate the child’s preference, to serve as a GAL and advocate for the child’s best interests as determined by the attorney, or something else. An attorney who advocates for the child’s preference may still “substitute judgment” or advocate for the child’s best interests in some circumstances (for example, if the child is an infant or otherwise is unable to express a preference). For the purposes of this Chart, “AFC” (or Attorney for the Child) means that the primary role is to advocate the child’s wishes, although there may be exceptions under the state’s laws or rules. If an attorney’s role depends on the appointment (that is, if an attorney may be appointed as an AFC or as a GAL) or the attorney may serve as both AFC and GAL, this information is generally included in the Chart.
3. **Attorney and Separate GAL Required** indicates whether a state generally requires appointment of both an attorney and a GAL. It does *not* include states in which appointing both an attorney and a GAL is in the court’s discretion.
4. **CASA Role** concerns whether the role of a Court Appointed Special Advocate (CASA) or the creation of a CASA program is specifically included in the state’s statutes and/or court rules.
5. **Notes** provide further detail about some of the statutes listed in the Chart. Asterisks (\*, \*\* or \*\*\*) show the connection between the category, the statute, and the information provided.

Chart 4 and this Key were prepared by the *FLQ* student editorial staff at New York Law School. Contributors from the 2020–21 academic year include Junior Editors Vlad Goldfarb and Natalie Gutierrez; Senior Editor Jessica Awad; Executive Law-in-50 Editor Shelby Arenson; and Professor Lisa F. Grumet. Thank you also to Professor Hayley Pine for her guidance and recommendations concerning the final Chart columns and Key. In addition to the statutes and applicable court rules, the editors reviewed secondary sources including CHILD WELFARE INFORMATION GATEWAY, REPRESENTATION OF CHILDREN IN CHILD ABUSE AND NEGLECT PROCEEDINGS (2017), <https://www.childwelfare.gov/pubPDFs/represent.pdf>; FIRST STAR INST. & CHILDREN’S ADVOCACY INST., UNIV. OF SAN DIEGO SCH. OF LAW, A CHILD’S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED & NEGLECTED CHILDREN (4th ed. 2019), <http://www.caichildlaw.org/Misc/RTC4.pdf>; Suparna Malempati, *Beyond Paternalism: The Role of Counsel for Children in Abuse and Neglect Proceedings*, 11 U.N.H. L. REV. 97 (2013); and Victoria Sexton, *Wait, Who Am I Representing? The Need for States to Separate the Role of Child’s Attorney and Guardian Ad Litem*, 31 GEO. J. LEGAL ETHICS 831 (2018).

Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Alabama</b> ALA. CODE §§ 12-15-304, 26-14-11	Mandatory	Best interests	No	Statutory	
<b>Alaska</b> ALASKA STAT. §§ 25.24.310, 44.21.460, 44.21.470, 47.10.050; Child in Need of Aid R. 11, 12	Discretionary	AFC when child's attorney appointed	No	Statutory	
<b>Arizona</b> ARIZ. REV. STAT. § 8-221; ARIZ. JUV. CT. R. P. 40.1*	Mandatory for some proceedings/discretionary for others	AFC or GAL, depending on appointment*	No	Statutory	*"Attorneys appointed for children shall make clear to children and their caregivers whether their appointment is as a guardian ad litem or as an attorney and the ethical obligations associated with their role."
<b>Arkansas</b> ARK. CODE ANN. § 9-27-316	Mandatory	GAL/Best interests	No	Statutory	
<b>California</b> CAL. WELF. & INST. CODE §§ 102, 317, 326.5, 356.5; CAL. R. CT. 5.660, 5.662	Discretionary	Best interests	No	Statutory/court rules	
<b>Colorado</b> COLO. REV. STAT. §§ 19-1-111, 19-1-111.5, 19-1-206, 19-1-208, 19-3-203	Mandatory	Best interests/GAL	No	Statutory	

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Connecticut</b> CONN. GEN. STAT. §§ 46b-129-a*, 46b-129c	Mandatory	AFC	In some circumstances*	Statutory	*"If the court, based on evidence before it, or counsel for the child, determines that the child cannot adequately act in his or her own best interests and the child's wishes, as determined by counsel, if followed, could lead to substantial physical, financial or other harm to the child unless protective action is taken, counsel may request and the court may order that a separate guardian ad litem be assigned for the child, in which case the court shall either appoint a guardian ad litem to serve on a voluntary basis or notify the office of Chief Public Defender who shall assign a separate guardian ad litem for the child."
<b>Delaware</b> DEL. CODE ANN. tit. 13, § 2504; tit. 29, §§ 9007A*, 9010A	Mandatory in some circumstances	Best interests of the child*	No	Statutory	*"If the attorney concludes that the child's wishes conflict with his or her position or the position of the Court Appointed Special Advocate volunteer, if one is appointed, he or she will make the child's wishes known to the court, and notify the court of the conflict so the court can determine if a conflict exists. If the court determines a conflict exists, the court shall determine how to remedy the conflict such that the child's best interests and wishes are represented."
<b>District of Columbia</b> D.C. CODE §§ 16-2304, 16-2372	Mandatory	GAL/best interests of the child	No	Statutory	
<b>Florida</b> FLA. STAT. §§ 39.01305*, 39.4085; FLA. R. JUV. P. 8.215, 8.217	Discretionary for most children*	Child's "legal interests"	No	Statutory	*Mandatory for children with certain special needs.
<b>Georgia</b> GA. CODE ANN. §§ 15-11-103 to -106, 15-11-262	Mandatory	AFC	Yes*	Statutory	*Yes if the GAL is not an attorney, or if "there is conflict of interest between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem."

Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Hawaii</b> HAW. REV. STAT. §§ 587A-4, 587A-16	Discretionary	Best interests if appointed as GAL; child's legal advocate if appointed in this role	No	Statutory	
<b>Idaho</b> IDAHO CODE §§ 16-1614*, 16-1632, 16-1633	Discretionary*	AFC or represent GAL/best interests (age-dependent)*	No	Statutory	*For children under 12, attorney represents the child's court-appointed GAL unless a GAL is not available, in which case counsel is appointed for the child. For child 12 or older, the court "[s]hall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or (b) Where appointment of counsel is not practicable or not appropriate, may appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel."
<b>Illinois</b> 750 ILL. COMP. STAT. 405/1-5*, 405/2-17, 405/2-17.1	Discretionary*	GAL/best interests or AFC, depending on appointment*	No	Statutory	*Attorney serves as or represents GAL, but could be appointed for child. 405/1-5: "if a guardian ad litem has been appointed for the minor under Section 2-17 of this Act and the guardian ad litem is a licensed attorney at law of this State, or in the event that a court appointed special advocate has been appointed as guardian ad litem and counsel has been appointed to represent the court appointed special advocate, the court may not require the appointment of counsel to represent the minor unless the court finds that the minor's interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor."
<b>Indiana</b> IND. CODE §§ 31-9-2-50; 31-32-3-1, 3-3, 3-4, 3-5, 3-6	Discretionary	Best interests of the child	No	Statutory	

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Iowa</b> IOWA CODE §§ 232.2, 232.71C, 232.89*	Mandatory	AFC	In some circumstances*	Statutory	*2. Upon the filing of a petition, the court shall appoint counsel and a guardian ad litem for the child identified in the petition as a party to the proceedings. . . . 4. The same person may serve both as the child's counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interest of the child as guardian ad litem . . . .”
<b>Kansas</b> KAN. STAT. ANN. §§ 38-2205*, 38-2206	Mandatory	GAL/best interests or AFC*	No	Statutory	*“[T]he court shall appoint an attorney to serve as guardian ad litem for a child who is the subject of proceedings under this code. . . . When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the guardian ad litem shall inform the court of the disagreement. The guardian ad litem or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. . . .”
<b>Kentucky</b> KY. REV. STAT. ANN. §§ 620.100, 620.505, 620.525; KY. FAM. R. PRAC. & P. 35 & App. D Standard 3	Mandatory	GAL/best interests	No	Statutory	
<b>Louisiana</b> LA. CHILD. CODE ANN. arts. 424.1, 424.3, 551, 607; LA. R. SUP. CT. XXXIII	Mandatory	AFC	No	Statutory	

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Maine</b> ME. STAT. tit. 4, §§ 1501, 1554, 1556; tit. 22, § 4005*; ME. R. GUARDIANS AD LITEM 2, 4, 5*	Discretionary	GAL/Best interest*	No	Statutory	*A GAL is required and may be an attorney. "If the guardian ad litem is an attorney, she or he shall be deemed to act as a guardian ad litem rather than as an attorney . . . ." [Rule 5(g)] However, "[t]he guardian ad litem or the child may request the court to appoint legal counsel for the child." [tit. 22, § 4005(1)(F)]
<b>Maryland</b> MD. CTS. & JUD. PROC. §§ 3-813, 3-830; MD. R. tit. 11 app. (Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings)	Mandatory	AFC	No	Statutory	
<b>Massachusetts</b> MASS. GEN. LAWS ch. 119, § 29; MASS. R. SUP. JUD. CT. 3:10; Committee for Public Counsel Services Assigned Counsel Manual	Mandatory	AFC	No	—	

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Michigan</b> MICH. COMP. LAWS §§ 712A.13a, 712A.17d*, 722.630; MICH. CT. R. 3.917	Mandatory	GAL/best interests of the child; court could also appoint AFC*	No	Court rules	*“If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child’s interests as identified by the child are inconsistent with the lawyer-guardian ad litem’s determination of the child’s best interests, the lawyer-guardian ad litem shall communicate the child’s position to the court. If the court considers the appointment appropriate considering the child’s age and maturity and the nature of the inconsistency between the child’s and the lawyer-guardian ad litem’s identification of the child’s interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child’s lawyer-guardian ad litem.”
<b>Minnesota</b> MINN. STAT. § 260C.163; MINN. CT. R. JUV. PROT. P. 36.02, 37.01, 37.04	Mandatory for age 10 and older; otherwise discretionary	AFC for age 10 and older	Yes when child is 10 or older; otherwise no	—	
<b>Mississippi</b> MISS. CODE ANN. §§ 43-21-121*, 43-21-201; MISS. R. YOUTH CT. PRAC. 13	Mandatory	AFC	Yes when GAL is not attorney*	Statutory	*“The court, including a county court serving as a youth court, may appoint either a suitable attorney or a suitable layman as guardian ad litem. In cases where the court appoints a layman as guardian ad litem, the court shall also appoint an attorney to represent the child.”

Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Missouri</b> Mo. REV. STAT. § 210.160; Mo. SUP. CT. R. 110.04, 115.02, & app. C, Standards with Comments for Guardians ad Litem in Juvenile and Family Court Division Matters, Standard 1.0, 3.0	Mandatory	GAL/best interests of the child or AFC *	In some circum- stances*	Statutory & court rule	*The court is required to appoint a GAL, who must be an attorney. In some circumstances the court must also appoint an attorney for the child.
<b>Montana</b> MONT. CODE ANN. §§ 41-3-112**, 41-3-425*	Discretionary*	Depends on appointment; GAL if appointed as GAL**	No*	Statutory	** (3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth." An attorney is required when a GAL is not appointed.
<b>Nebraska</b> NEB. REV. STAT. §§ 43-272*, 43-272.01, 43-3701 to -3720; NEB. UNIF. CNTY. CT. R. PRAC. & P. 6-1468**	Mandatory	GAL and AFC ("dual role"); child's legal interests if separate counsel appointed*/**	In some circumstances**	Statutory	*"The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel." **"If the court exercises its statutory authority to appoint separate legal counsel, such counsel shall represent the juvenile's legal interests. The guardian ad litem shall continue to advocate and protect the juvenile's social and best interests as defined under the Nebraska Juvenile Code."
<b>Nevada</b> NEV. REV. STAT. §§ 128.100, 432B.420, 432B.500, 432B.505	Mandatory	AFC	Yes	Statutory	

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Attorney Appointed</b>	<b>Attorney's Primary Role</b>	<b>Attorney and Separate GAL Required</b>	<b>CASA Role</b>	<b>Notes</b>
<b>New Hampshire</b> N.H. REV. STAT. ANN. §§ 169-C:10, 490-C:6; N.H. CIR. CT. FAM. DIV. R. 4.5	Discretionary	GAL or AFC (depending on appointment)*	No	Statutory & court rules	*An attorney may be appointed as a GAL “[i]f a CASA or other approved program guardian ad litem is unavailable for appointment.” “[W]here the child’s expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem, the court may appoint an attorney to represent the interests of the child.”
<b>New Jersey</b> N.J. STAT. ANN. §§ 2A:4A-92, 9:6-8.21, 9-6:8.23, 30:4C-15.4; N.J. R. CT. 5:8C	Mandatory	AFC	No	Statutory & court rules	
<b>New Mexico</b> N.M. STAT. ANN. §§ 32A-1-4, 32A-1-7, 32A-1-7.1, 32A-4-10; N.M. CHILD. CT. R. 10-164, 10-313	Mandatory	AFC for age 14 and older; GAL/best interests for under 14	No	Statutory & court rules	
<b>New York</b> N.Y. FAM. CT. ACT §§ 241, 242, 249, 1016, 1090; N.Y. JUD. LAW §§ 212, 849-L, 849-M; N.Y. R. CHIEF JUDGE 7.2, 44.1	Mandatory	AFC	No	Statutory & court rules	
<b>North Carolina</b> N.C. GEN. STAT. §§ 7B-601, 7B-1108, 7B-1200 to -1201; N.C. JUD. BRANCH GUARDIAN AD LITEM (GAL) ATTORNEY MANUAL, §§ 8.6, 12.1–12.10	Mandatory*	GAL/best interests	Yes if the GAL is not an attorney*	Statutory	*“In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile’s legal rights throughout the proceeding.”

Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>North Dakota</b> N.D. CENT. CODE §§ 27-20-26*, 50-25.1-08**	Mandatory in some circumstances*	GAL/best interests or AFC depending on appointment	In some circumstance**	No	*"Except as otherwise provided in this section, a party who is indigent and unable to employ legal counsel is entitled to counsel at public expense at proceedings commenced under section 27-20-30.1, and at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. . . . Counsel must be provided for a child who is under the age of eighteen years and is not represented by the child's parent, guardian, or custodian at custodial, post-petition, and informal adjustment stages of proceedings under this chapter. If the interests of two or more parties conflict, separate counsel must be provided for each of them." **"The court, in every case involving an abused or neglected child which results in a judicial proceeding, shall appoint a guardian ad litem for the child in those proceedings."
<b>Ohio</b> OHIO REV. CODE ANN. §§ 2151.281, 2151.352; OHIO R. SUPERINTENDENCE CTS. 48.02, 48.03, 48.04; OHIO R. Juv. P. 4	Mandatory	AFC and/or GAL/best interests*	Yes in case of conflict*	Statutory & court rules	**"(1) A court shall appoint a separate attorney to represent a child in abuse, neglect, dependency, unruly, and delinquency cases in which the wishes of the child differ from the recommendations of the guardian ad litem. (2) If an attorney who has been appointed to serve as both guardian ad litem and attorney for the child or any other party believes that a conflict exists in the dual appointment, the attorney or party shall immediately notify the court in writing . . . and request a separate appointment of a guardian ad litem and attorney for the child. The court shall make such additional appointment or appointments or order or orders to remedy the conflict. The court may also make such appointment or appointments on its own motion."

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

<b>Statute(s)</b>	<b>Attorney Appointed</b>	<b>Attorney's Primary Role</b>	<b>Attorney and Separate GAL Required</b>	<b>CASA Role</b>	<b>Notes</b>
<b>Oklahoma</b> OKLA. STAT. tit. 10A, §§ 1-1-105, 1-4-306, 1-8-102	Mandatory	AFC	Yes if requested by the child or the child's attorney	Statutory	
<b>Oregon</b> OR. REV. STAT. §§ 184.489, 184.492, 419B.112, 419B.195*	Mandatory only when requested*	"Counsel to represent the child"	No	Statutory	*"Whenever requested to do so, the court shall appoint counsel to represent the child or ward in a case filed pursuant to ORS 419B.100."
<b>Pennsylvania</b> 42 PA. CONS. STAT. §§ 2313, 6311*, 6342; PA. R. JUV. CT. P. 1151, 1154, 1158, 1800**	Mandatory	GAL/best interests and/or AFC (depending on appointment)*/**	Yes in the case of a conflict of interest**	Statutory & court rules	*GAL must be an attorney. **"The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provide that there is not a conflict of interest for the guardian <i>ad litem</i> in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rules 1151 and 1154, which allows for appointment of separate legal counsel and a guardian <i>ad litem</i> when the guardian <i>ad litem</i> determines there is a conflict of interest between the child's legal interest and best interest."
<b>Puerto Rico</b> P.R. LAWS ANN. tit. 8, §§ 447a, 447y	Discretionary	Best interests	No	—	
<b>Rhode Island</b> R.I. GEN. LAWS § 40-11-7.1, 40-11-14*; R.I. R. JUV. P. 19, 24; R.I. Fam. Ct. Admin. Order 2019-03*	Mandatory*	GAL/best interests	No	Statutory	*Statute requires appointment of a GAL. Court rules require that the GAL be an attorney.

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>South Carolina</b> S.C. CODE. ANN. §§ 63-7-1620*, 63-7-2560**, 63-11-500, 63-11-510, 63-11-530	Mandatory in some cases; otherwise discretionary (GAL is required)*/**	GAL/best interests or AFC*	Counsel for the GAL may be required*/**	Statutory	*”In all child abuse and neglect proceedings: (1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to Section 63-11-530(C). (2) The family court may appoint legal counsel for the child.” **In termination of parental rights cases, “A child subject to any judicial proceeding under this article must be appointed a guardian ad litem by the family court. If a guardian ad litem who is not an attorney finds that appointment of counsel is necessary to protect the rights and interests of the child, an attorney must be appointed. If the guardian ad litem is an attorney, the judge must determine on a case-by-case basis whether counsel is required for the guardian ad litem. However, counsel must be appointed for a guardian ad litem who is not an attorney in any case that is contested.”
<b>South Dakota</b> S.D. CODIFIED LAWS §§ 16-2-50 to -54, 26-8A-18, 26-8A-20*	Mandatory	Best interests	In some circumstances*	Statutory	*”If a child has been adjudicated an abused or neglected child and is removed from the child’s home with the child’s parents, guardian or custodian, the court shall appoint a guardian ad litem or a special advocate to represent the best interests of the child and to assist the child’s attorney.”

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<p><b>Tennessee</b>  TENN. CODE ANN.  §§ 37-1-126, 37-1-149, TENN. SUP. CT. R. 13, 40**/**</p>	<p>Mandatory</p>	<p>GAL/best interests and/or AFC*</p>	<p>GAL to request second attorney in case of conflict**</p>	<p>Statutory</p>	<p>*A GAL is required, who must be an attorney. "The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem."  **When the GAL determines there is a conflict between the child's preference and the child's best interest, "the guardian ad litem shall pursue one of the following options:  (i) Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child's position while the other lawyer advocates for the child's best interest.  (ii) Request that the court appoint another lawyer to represent the child in advocating the child's position, and then advocate the position that the guardian ad litem believes serves the best interests of the child." However, the Rule also discusses how to proceed when "the court has refused to provide a separate lawyer for the child . . . ."</p>
<p><b>Texas</b>  TEX. FAM. CODE ANN.  §§ 107.001, 107.004, 107.008, 107.011, 107.012*, 107.0125, 107.031, 264.601–.614</p>	<p>Mandatory for some proceedings</p>	<p>AFC (unless appointed as GAL)</p>	<p>Yes unless attorney appointed in both roles</p>	<p>Statutory</p>	<p>**"In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full adversary hearing, to ensure adequate representation of the child."</p>
<p><b>Utah</b>  UTAH CODE ANN.  §§ 78A-6-317, 78A-6-902, 78A-6-1111</p>	<p>Mandatory</p>	<p>GAL/best interests</p>	<p>No</p>	<p>Statutory</p>	

Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Vermont</b> VT. STAT. ANN. tit. 33, § 5112, VT. R. FAM. PROCS. 6; Vt. Sup. Ct. Admin. Order No. 32	Mandatory	AFC	Yes	—	
<b>Virginia</b> VA. CODE ANN. §§ 9.1-153, 16.1-266*, 16.1-266.1, VA. S. CT. R. 8.6	Mandatory	GAL/ "Child's legitimate interests"; separate counsel for the child may be appointed in the court's discretion*	No	Statutory	*"A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.  E. In those cases described in subsections A, B, C and D, which in the discretion of the court require counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult party in addition to the representation provided in those subsections, a discreet and competent attorney-at-law may be appointed by the court as counsel or a guardian ad litem."
<b>Washington</b> WASH. REV. CODE §§ 13.34.100*, 26.12.175	Discretionary for most proceedings; notification of right to request counsel required for children 12 and older*	AFC if appointed in that role; otherwise, GAL	No	Statutory	*"[T]he department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request an attorney and shall ask the child whether he or she wishes to have an attorney. The department or supervising agency and the child's guardian ad litem shall notify the child and make this inquiry immediately after: (i) The date of the child's twelfth birthday; (ii) Assignment of a case involving a child age twelve or older . . . ."

**Chart 4: Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)**

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<p><b>West Virginia</b>                      W. VA. CODE §§ 49-3-102, 49-4-601*, 49-4-604**;                      W.V. R. P. CHILD ABUSE &amp; NEGLECT PROCS. 3, 18a, 52 &amp; app. A*/**</p>	<p>Mandatory</p>	<p>AFC and/or GAL/best interests*</p>	<p>Yes in the case of a conflict of interest**</p>	<p>Statutory &amp; court rules</p>	<p>*The Guidelines for Children's Guardians <i>Ad Litem</i> in Child Abuse and Neglect Cases provide: "The GAL in a child abuse and neglect case has a dual role, both as an attorney, and to represent the best interests of the child. A GAL has broad discretion in determining what is necessary to protect the best interests of a child."                      **"Conflicts of interest commonly arising in abuse and neglect proceedings include the following: 1. A GAL determines that there is a conflict of interest in performing both roles as GAL and the child's attorney. In such instance, the lawyer should continue to represent the child as the child's attorney and withdraw as GAL. The lawyer should simultaneously ask the court to appoint a new GAL to represent the best interests of the child. A mere disagreement regarding the best interests of the child does not in itself constitute a basis for withdrawing as counsel."</p>
<p><b>Wisconsin</b>                      Wis. STAT. § 48.23*, 48.235**/***, 48.236; Wis. S. Ct. R. 20:4.5</p>	<p>Mandatory*/**</p>	<p>GAL/best interests and/or AFC, depending on appointment***</p>	<p>No***</p>	<p>Statutory</p>	<p>**"Guardians ad litem or counsel for abused or neglected children. The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13(3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. . . ."                      **GAL must be an attorney.                      ***"If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of that person, the guardian ad litem shall so inform the court and the court may appoint counsel to represent that person."</p>

**Chart 4:** *Child Representation in Child Welfare Proceedings Statutes in 2020 (continued)*

Statute(s)	Attorney Appointed	Attorney's Primary Role	Attorney and Separate GAL Required	CASA Role	Notes
<b>Wyoming</b> WYO. STAT. ANN. §§ 14-2-312, 14-3-211, 14-3-416*; WY. R. P. JUV. CT. 8	Mandatory	GAL/best interests	In some circumstances*	Court rules	*"The court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Any attorney representing a child under this section shall also serve as the child's guardian ad litem unless a guardian ad litem has been appointed by the court. The attorney or guardian ad litem shall be charged with representation of the child's best interest."