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The Center for Public Policy and the Social Sciences

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# THE EFFECTS OF CHANGING DIVORCE, CHILD SUPPORT, AND PARENTAL RIGHTS LAWS

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Presented to the New Hampshire House of Representatives  
Children and Family Law Committee

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## **EXECUTIVE SUMMARY**

This report provides the New Hampshire House of Representatives' Children and Family Law Committee with an evaluation of the effects of RSA 461-A (Parental Rights and Responsibilities Act of 2005), RSA 458-C (Child Support Guidelines 2011), and amendments to RSA 461-A (loss of public funds for Guardians ad Litem). The analysis employs academic literature, expert interviews in New Hampshire, quantitative analysis of New Hampshire and national data, and comparable case studies. Our analysis provides a range of perspectives on the effects that these three laws have on New Hampshire families and on the adversarial nature of divorces involving minor children in New Hampshire. The literature review establishes that mediation is more effective than litigation and that parenting plans promote better outcomes for children and families. The data from 18 expert interviews establishes that within New Hampshire, the main tenets of RSA 461-A and RSA 458-C have decreased the adversarial nature of divorce while the loss of Guardian ad Litem (GAL) funding has increased the adversarial nature of divorce. Most experts interviewed recommended that parenting plans should be easier to adjust, there should be a formula for families with shared residential responsibilities, and the Guardian ad Litem fund should be reinstated. Our quantitative analysis suggests that Guardian ad Litem funding removal has had a disproportionate effect on low-income families in their accessibility of GALs. We do not find compelling evidence that RSA 461-A and RSA 458-C impacted youth and parental health measures. However, this could be driven by limitations in quantitative data availability. The case studies show that child support guidelines based on the Income Shares Model can cause an extra financial burden for custodial parents, especially for low-income families. A detailed analysis of the Guardian ad Litem programs in North Carolina and Florida suggests that the removal of funding for such programs hinders, and adding funding helps, to protect the interests of a state's children. This report and its findings provide a framework for the assessment of the success and failure of these divorce law changes in New Hampshire, and may help to inform future revisions to these laws.

## **1. INTRODUCTION**

According to the 2014 American Community Survey (ACS), 12.2 percent of the New Hampshire population 15 years and older is divorced, which is higher than the national average of 11.0 percent.<sup>1</sup> Divorce proceedings differ depending upon, among other things, if the divorcing couple has minor children. Since this study evaluates the effects of three new divorce guidelines passed into law in New Hampshire addressing parental rights laws and child support, this paper focuses on divorce with minor children.

The first of these laws, the Parental Rights and Responsibilities Act of 2005 (RSA 461-A), aims to support and encourage parents to have equitable participation in the upbringing of their children.<sup>2</sup> The Parental Rights and Responsibilities Act establishes a Parenting Plan that parents must develop and file before their divorce is finalized. The law codifies the "best interest" of a child by listing 12 factors that help courts determine rights and responsibilities for each parent. Courts are also given the power to order mediation between parents if they think that it will decrease conflict and is in the best



interest of the children. This Act also clarifies the roles of a Guardian ad Litem (GAL) and establishes rules for the repayment of a Guardian ad Litem or mediator.

The second of these laws, the Child Support Guidelines (RSA 458-C), passed in 2011, aims to create a uniform system that sets child support payments for each parent.<sup>3</sup> This law was intended to decrease economic conflicts between parents and standardize the expected child support based on the net income of parents and the number of children.

The third focus, an amendment passed in 2011 to RSA 461-A, cut the Guardian ad Litem fund for parenting cases.<sup>4</sup> To reflect this change, the Parental Rights and Responsibilities Act was amended to end the requirement for courts to pay for a Guardian ad Litem if the parents cannot afford one.

## **2. REVIEW OF ACADEMIC LITERATURE ON MEDIATION AND PARENTING PLANS**

This section provides background research on the efficacy of mediation and parenting plans. Specifically, the academic literature review examines mediation, a growing alternative to litigation, and shows it to be more effective in settlement rates, time and cost efficiency, and post divorce success than litigation. The academic literature also focuses on parenting plans that ensure the best interests of children by encouraging joint custody among parents, thus improving child outcomes, partly due to the greater involvement of fathers.

### *2.1 Mediation*

Mediation has grown in use over the past few decades as an avenue for potentially overcoming parts of the adversarial nature of divorce proceedings. As the rate of divorce was increasing in the industrialized world, the traditional methods for settling divorce disputes, mostly litigation or attorney negotiations, were increasingly viewed as unnecessarily adversarial, with potentially negative consequences for parents and children.<sup>5</sup> Mediation is viewed as an alternative that might help in “reducing conflict, improving communication and coparental cooperation, producing better agreements in less time and expense, enhancing psychological adjustment for parents and children, and leading to more compliance with agreements.”<sup>6</sup> These benefits of mediation were one of the aims of RSA 461-A, which is why the law strongly encourages it for parties getting a divorce in New Hampshire. Mediation is more effective than litigation on dimensions such as settlement rates, efficiency, compliance rates, client satisfaction, and parental cooperation and communication.<sup>7</sup>

#### *2.1.1 Settlement Rates*

Several studies of the different types of mediation (court-based, community-based, private mediation, custody mediation, comprehensive divorce mediation, mandatory mediation, and voluntary mediation) demonstrate that an agreement is reached in divorce mediation 50 to 85 percent of the time.<sup>8</sup> Higher rates of agreement are reported in comprehensive divorce mediation in comparison to only custody mediation. There is no



distinct relationship reported between the settlement rate and the number or length of mediation sessions.

### *2.1.2 Time and Cost Efficiency*

Mediation is more time and cost efficient than litigation, both for divorcing parents and for the court system. Randomized controlled trials in custody disputes showed that parents who were assigned to participate in mediation resolved their disputes in half the time and at a lower cost than parents who proceeded with litigation.<sup>9</sup> California, which mandates custody mediation, reports its “number of custody trials has been reduced to fewer than two percent of those parents disputing child issues, saving court, administrative, and judicial time and expense.”<sup>10</sup> The amount of child support paid by each parent, however, does not differ between the mediation or litigation process.

### *2.1.3 Post-Divorce Success*

Mediation has shown successful results post divorce in parent satisfaction and parental compliance. Client satisfaction was reported to be between 60 to 85 percent for divorce mediation in several countries.<sup>11</sup> Cases where mediation produced an agreement had a higher client satisfaction rate than those cases that did not result in an agreement. However, even in the cases unable to reach an agreement, client satisfaction was between 40 and 60 percent. Both men and women report that mediation produced higher levels of having their rights protected in comparison to litigation.<sup>12</sup> Studies also report higher compliance rates for visitation, child support, spousal support, and property division from mediation agreements in comparison to adversarial processes.<sup>13</sup>

Mediation improves the ability of parents to parent effectively. It results in more joint legal custody in comparison to adversarial processes.<sup>14</sup> Mediation tends to be effective because it encourages cooperation between parents and urges them to develop a businesslike relationship to co-parent effectively. Since the process of mediation makes parents more aware of their emotions and those of their children, parents are more likely to understand how their reactions can affect their children.<sup>15</sup> In a randomized trial assigning parents to custody mediation or litigation, parents who went through mediation had less conflict one year after the settlement. Nine years later, those same parents had better communication about the children and the noncustodial parent was more involved in decisions relating to the children.<sup>16</sup> Parents who go through mediation rely on each other more for childcare, are more supportive to the other parent in their parenting roles, and have an increased understanding of their children’s needs compared to those involved in litigation.<sup>17</sup> While there was no immediate difference in the psychological well-being of children whose parents went through mediation versus an adversarial settlement, in the long run (twelve years later), mediation led to long-term benefits for children, especially in their relationship with their noncustodial parent, and between parents.<sup>18</sup> Children whose parents went through mediation saw their noncustodial parent one time a week or more at a rate higher than that for litigation or the national average

In the academic literature and outcome studies of mediation, mediation is successful in getting parents to reach a settlement, is time and cost effective, and leads to benefits post



divorce for both parents and children. Mediation is found to reduce the adversarial nature of divorce and benefits children and their relationships with their custodial and noncustodial parent after the divorce. All things considered, mediation reduces the adversarial nature of divorce both nationally, as seen in the academic literature review, and, as documented in Sections 3 and 4, in New Hampshire as well.

## *2.2 Parenting Plans*

### *2.2.1 Pre-Parenting Plan Era*

As divorce was rising in the 1960s, courts were the primary agents tasked with determining the living arrangements for children after their parents' divorce. Based on prevailing cultural and societal norms, the common arrangement was for mothers to be the primary caretaker and for fathers to be the noncustodial parent. The visiting pattern became spending every other weekend with the noncustodial parent and was favored because it was easy to follow and did not require any investigation by the court or psychologists. However, divorce and child development research have found that the traditional weekend visit pattern does not meet the psychosocial or emotional needs of children.<sup>19</sup> Young children, who have poor memory and time awareness, do not have the capacity to understand why they suddenly have a decrease in contact with one parent.<sup>20</sup> Older children respond with feelings of dissatisfaction, longing, deprivation, depression, and anxiety.<sup>21</sup> The noncustodial parent, usually the father, also felt dissatisfaction and anger with their new limited parental role.<sup>22</sup>

### *2.2.2 Change in Conventional Beliefs and the Emergence of Parenting Plans*

Through the 1980s and 1990s, several studies impacted conventional thinking and prompted the creation of parenting plans. In contrast to the belief that infants only form a relationship with their mother, evidence showed that infants formed attachments to both parents, even though infants spent less time with their fathers.<sup>23</sup> Once it became evident that children were attached to both parents, parenting plans emerged in the 1990s. The first parenting plans consisted of multiple options of time-sharing between parents, but eventually evolved into a comprehensive workbook format that decides decision-making rights and who addresses education, medical needs, extracurricular activities, religion, and scheduling, among other things.<sup>24</sup> Several states now require a parenting plan, based on recommendations from the American Law Institute's Principles on the Law of Family Dissolution, to be completed before a divorce or a joint custody order is granted.<sup>25</sup>

### *2.2.3 Parenting Plan Outcomes*

Parenting plans have encouraged joint custody among parents, prompted greater involvement of fathers, and have improved child outcome measures. One of the key provisions of parenting plans, including New Hampshire's, is covering residency and decision-making rights. This has prompted joint-custody agreements among parents and in return has been beneficial for children. A meta-analysis, based on responses from parents, teachers, and clinicians, showed that children in joint custody arrangements were better adjusted emotionally and behaviorally than children in sole custody arrangements.<sup>26</sup> Moreover, children who were in a joint custody agreement were just as



well adjusted as children whose parents were still together and married.<sup>27</sup> Several studies indicate the “quality of continued relationships with the parents—both parents—is crucial” and that “the better (richer, deeper, and more secure) the parent-child relationships, the better the children’s adjustment, whether or not the parents live together.”<sup>28</sup>

The superiority of joint custody arrangements is believed to be largely due to the involvement of fathers. Studies have found that children’s well-being improved if their relationship with their father was positive, if the father was an “active parent,” and if the contact between the child and father was frequent. Higher levels of paternal involvement have been associated with better grades, fewer suspensions, and lower dropout rates. Data from the National Longitudinal Study of Youth shows father involvement is associated with better adjustment in adolescents and mediated the effects of divorce or single parenthood on the adolescent’s behavior. Noncustodial parental involvement is associated with less delinquency overall, especially in adolescents already involved with irresponsible behaviors, such as a lower likelihood to start smoking. Since active paternal involvement leads to better child adjustment, “post-divorce arrangements should specifically seek to maximize positive and meaningful paternal involvement rather than simply allow minimal levels of visitation.”<sup>29</sup>

Several other aspects of parenting plans are associated with better child outcome measures. A longitudinal study looking at participants from the Collaborative Divorce Project assessed associations between parenting plan features, specifically the occurrence of overnight visits, the number of caregivers, and schedule consistency, with child outcomes. Children who spent time overnight at their noncustodial parent’s house had fewer social and attention problems. Girls had less withdrawn behavior, while there was no significant relationship in boys. Older children exhibited fewer problem behaviors, while there was not a significant relationship in younger children. Children with a greater number of caregivers also had fewer social and attention problems. However, it was reported that they had a higher association with sleep problems. Girls were shown to have fewer internalizing problems as the number of caregivers increased, while boys experienced more internalizing problems. Having a consistent schedule was associated with children having fewer social problems.<sup>30</sup>

While individual circumstances need to be looked at when creating a parenting plan, children tend to benefit from maintaining a meaningful relationship with both parents. Overall, parenting plans are beneficial because they encourage joint custody, increase father involvement, and improve child outcomes.

### **3. EXPERT INTERVIEWS**

The qualitative portion of this study consists of interviews we conducted with experts who have been involved in divorce proceedings before and after the laws studied were changed. Interviews were conducted with four groups of experts—Family Law Attorneys, Judges from the New Hampshire Circuit Court Family Law Division, New Hampshire Guardians ad Litem, and psychologists and social workers. Experts in each of



these groups were asked questions about the two statutes and provided general comments on divorce proceedings in New Hampshire. Overall we interviewed 18 people: six in the attorney group, six in the judge/marital master group, four in the GAL group, and two in the psychologist/social worker group.

### *3.1 RSA 461-A (Parental Rights and Responsibilities Act of 2005)*

Across the four expert groups, there was a general consensus that RSA 461-A is a well-written statute that has helped to reduce the adversarial nature of divorce cases in New Hampshire significantly.

It was frequently mentioned that the adversarial nature commonly found in family law cases is rooted in the fact that two parties with a long-standing relationship are experiencing an extremely emotional event and it is up to the legal system to help them make significant life decisions.<sup>31</sup> Many attorneys referenced that this aspect makes family law unique within the legal system, since other types of law typically involve disputes between parties who are strangers or in a professional relationship.<sup>32</sup> The removal of the term “custody” in divorce proceedings, mediation, parenting plans, and the Child Impact Seminar have also contributed to the process of divorce cases becoming more collaborative.

#### *3.1.1 Removal of the Term “Custody” and other Linguistic Changes*

The traditional model of divorce proceedings was based on a litigation model where the two parties would fight against each other over children and assets. The use of the term “custody” is an example of how the divorce statutes encouraged the traditional model. When the term “custody” is used for children, it encourages parents to treat their children as a “possession like a car or boat,” as one attorney mentioned.<sup>33</sup> This mindset often stems from parents seeing custody battles as a way to prove who is the better parent. The word “custody” was so divisive that one lawyer mentioned parties would be able to agree on everything with the exception of who would get the custody title.<sup>34</sup>

RSA 461-A has been successful in transitioning the divorce process in New Hampshire from a litigious model to a more collaborative model. Most experts mentioned the removal of the term “custody” as one of the main reasons for this change. The removal of “custody” allowed for parties to see parenting as more of a responsibility they share with each other.<sup>35</sup> As one judge said, “parents come to the proceedings as co-parents. We encourage co-parenting to [help them] understand that they need to do things together and that their children will do well if they manage conflict together.”<sup>36</sup> Though the removal of the term “custody” has emphasized the importance of collaboration, some parties going through divorce still abide by the custody mindset. Some parents attempt to limit the responsibilities of the other parent when devising the parenting plan or the parents fight over the “primary residential responsibility” title in plan.<sup>37</sup>



An additional linguistic change in divorce cases that has contributed to a more collaborative model, although not part of RSA 461-A, is the change in the naming of cases. One judge mentioned that cases are no longer titled “Mother v. Father like you have in a criminal cases [...] [but now it is] John and Mary.”<sup>38</sup> Most on the bench mentioned that has had some influence in changing the tone of the cases because it emphasizes parents to work in collaboration with each other rather than in opposition.

### 3.1.2 Mediation

Court ordered mediation is another portion of RSA 461-A that has helped decrease the adversarial nature of divorce cases in New Hampshire according to most of the experts interviewed. Mediation helps decrease the adversarial nature of divorce since it allows for the two parties involved to make decisions for their families in a collaborative way, unlike the litigious model which encourages the two parties to be adversaries and leaves most of the decisions to be decided by the court. One interviewee commented that “the extent that parents are able to resolve their own cases, the kids are better off” due to their familiarity with their family situation.<sup>39</sup>

Prior to RSA 461-A, mediation between two parties going through divorce became more common, but the court only required it if the parties could privately fund it.<sup>40</sup> RSA 461-A made it such that the court could provide a mediator for those who could not afford it.

An additional advantage to the option of court-ordered mediation is that it allows for pro se divorce cases (those without legal representation) to have someone involved in the legal process who can provide some direction for the parties. Though mediators do not provide legal advice, they are useful in writing down the parties’ points of agreements and helping to craft the language for the parenting plan.<sup>41</sup>

Mediation additionally has had an impact on decreasing the amount of contested hearings the Family Law division deals with since most cases settle earlier than in the litigious model and require less court time. One judge mentioned that a “majority of cases [in his region] get settled through mediation” and that “80-85 percent of cases are resolved through mediation.”<sup>42</sup> Cases that go through litigation rather than mediation are more likely to be reopened years later, which causes a backlog in the courts. One caveat is that cases that are settled through mediation right before the deadline to go to court are typically not as successful.<sup>43</sup>

One criticism of mediation is that it is scheduled during the First Appearance session, which is the first interaction both parties have with the court after filing for divorce. Some experts consider this too early in the process because the parties may not have thought through their divorce case or potential points of agreement. One attorney recommended that the parties, particularly those with legal representation, should narrow down the issues they agree on and go to the mediator to discuss points of disagreement.<sup>44</sup> This is something that some of the judges did not necessarily agree with since the parties would have typically tried to figure out these differences before filing for divorce and if



not, mediation is a good place for them to start. Another possible downside is that it might not immediately be known that mediation is not well suited for the parties and that it would be in everyone's best interest to go straight to trial, skipping the mediation process. This is a claim that some judges also question since two parties might not know if they are suited for mediation unless they give it a try.

In addition to mediation, one judge recommended that the courts should use neutral evaluations, which is a process similar to mediation but instead of having a mediator the judge meets with the uncooperative parents in an informal setting.<sup>45</sup> This method of dealing with high conflict families is useful since it allows for them to "hear that a judge is less likely to allow something [...] [making] it easier for them to understand that pursuing particular things is probably fruitless."<sup>46</sup> Ideally, the process of neutral evaluations could be included in an amendment to the RSA 461-A statute.

### *3.1.3 Parenting Plans*

The parenting plan statute of RSA 461-A has contributed to the decrease in the adversarial nature of divorce cases in two ways: it provides a list of responsibilities for parents to share in the midst of a divorce and helps parents determine how decisions related to children will be made within the context of the family's new situation.<sup>47</sup> Outlining the responsibilities and decision-making mechanisms in language that encourages co-parenting frames the discussions over the course of the divorce case in a more collaborative way.

In decades prior to RSA 461-A, the typical parenting situation in a divorce would involve the mother having custody of the children and the father having reasonable visitation.<sup>48</sup> The problem that arose with this model was that families found it difficult to agree on specifics, such as holidays, or make adjustments when needed. Once divorce cases required a parenting plan, parents were forced to not only think about how to distribute assets, but also how to distribute time and responsibilities between parents.<sup>49</sup> The law made it such that there would be an expectation for both parents to have significant involvement in their children's lives.

The parenting plan is also useful in addressing how decision-making will go with the family's new situation following the divorce. Parenting plans are meant to encourage parents to share the major decisions in their child's life as if they had joint legal custody. Some things that are decided in advance are education and religious upbringing. By sorting out how decisions will be made, it is the hope that the parents will be able to address potential disputes, such as if one parent would like a child to be on a particular medication (i.e., ADHD medication) while the other parent does not.<sup>50</sup> These advantages of parenting plans have helped decrease the re-litigation of divorce cases. Since parenting plans create a default structure for raising children, if the parents are not communicating well, the parenting plan specifies the guidelines to be followed.<sup>51</sup> It was the hope of those who wrote the bill that the parenting plan would be a peaceful way of figuring out parenting responsibilities, and for the most part it appears to have served this purpose.



A major issue people face when dealing with parenting plans is the difficulty of modifying it once the decision has been finalized.<sup>52</sup> RSA 461-A purposefully made it difficult for parents to frequently change their parenting plans, to ensure stability in the schedule of the children. However, the parenting plan is written to operate on what makes sense during the time of the agreement.<sup>53</sup> What tends to occur is one parent moves, the schedule of a parent or child changes, or the mental or substance abuse situation of a parent improves, making it difficult for families to operate along terms previously agreed upon. This especially hurts low-income families, where parents typically do not have consistent jobs with consistent schedules.<sup>54</sup> The rigidity of the modification statute is such that one parent might have to speak badly about the other in order to get a modification which can increase the adversarial nature of the divorce, even if the modification is sought for something as simple as a change in circumstances. To address this issue, it has been recommended that “modification should be on a best interest standard if the parent seeking the modification can prove that there has been a substantial change in circumstances since the time the last order was issued.”<sup>55</sup> If the statute could remedy this issue, it could potentially decrease the number of motions in court that can clog up the Family Law division, and could help low-income families.

One final issue to note is that just like parenting plans are written in a user-friendly way, the court system has also made it easier to navigate the legal process through documents published online and easy-to-follow court procedures. This attempts to lessen the intimidating environment of the Family Law division, which reduces the adversarial environment in divorce cases.<sup>56</sup> The First Appearance session, which is when the judge first meets both parties in court, also reduces the adversarial nature of divorce since both parties are walked through the court process, giving families a better sense of how to navigate the system.<sup>57</sup>

#### *3.1.4 Child Impact Seminar*

The Child Impact Seminar portion of RSA 461-A has had some impact in decreasing the adversarial nature of divorce cases. Experts provided a mixed assessment of the Child Impact Seminar, ranging from it having some influence in changing the attitude of parents going through divorce to having no impact at all. The goal of the Child Impact Seminar is to show parents how the adversarial attitudes toward each other can cause their children to suffer. It emphasizes a big picture message on the need for parents to work together to keep their children out of their disputes.<sup>58</sup> It is also advantageous that both parents have heard the same message, regardless of whether they attended the seminar at the same location.

An issue regarding Child Impact Seminars is that its impact can depend on the how receptive the parents are to its message.<sup>59</sup> Sometimes when one of the parents attended the seminar while the other did not, one would point out that the other is not following what was said in the seminar.<sup>60</sup> It may also be more difficult for some parents to be receptive to the Child Impact Seminar because not all the information is relevant to them.<sup>61</sup> This is due to the fact that the seminar is structured for parents of children from



all ages from infants to teenagers. An additional observation made by the experts is that in highly contentious cases, the parents are less likely to be receptive to the seminar.<sup>62</sup>

One suggestion made by a Guardian ad Litem is to conduct Child Impact Seminars in a way that impresses the impact that divorce has on children rather than just saying it.<sup>63</sup> This can be done through demonstrating the effects that it can have on children and to emphasize the emotional impact of divorce. This is dependent on the way those leading the seminar deliver the message. An additional suggestion is for seminars to cater to specific needs of families, for example having separate seminars geared toward parents with young children and one for those with teenagers.

### 3.2 RSA 458-C (*Child Support Guidelines*)

RSA 458-C has helped decrease the adversarial nature of divorce cases since there is less contention over how much a parent should pay for child support. The child support guidelines standardized the way to pay for child support in New Hampshire, making it easier for parties to agree on the amount of financial contribution. This has made it such that when there is a dispute over child support, one party needs to prove to the other why they should be the exception to the guideline.<sup>64</sup> Having guidelines also makes it such that the parties involved in a divorce case do not feel that they are a good or bad parent based on the amount of child support they must pay.<sup>65</sup> An additional advantage to the statute is the ease of adjusting the child support agreement due to employment and salary changes.<sup>66</sup>

The main problem that attorneys find with RSA 458-C is that there is not a special formula for those with shared residential responsibilities.<sup>67</sup> Arguments arise when the amount one parent pays in child support is not reflective of the amount of time he or she spends with the children. As a result, one parent may pay a lot in child support while he or she spends almost an equal amount of time with the children as the other parent does. Attorneys do attempt to use the deviation factors in the statute to get around this, but it still becomes a point of contention.<sup>68</sup> Many of the judges do not share this view on RSA 458-C because it should be dependent on the “obligations of the other parent” rather than the amounts of time parents spend with the children.<sup>69</sup> It would be valuable for this committee to look into this issue of a formula for shared residential responsibilities. An additional issue to evaluate is how the court is to determine what constitutes as income for self-employed individuals who pay child support.<sup>70</sup>

### 3.3 Amendment of RSA 461-A in 2011 (*Loss of Guardian ad Litem funding*)

Among the expert groups interviewed, there was a general consensus that the amendment to RSA 461-A in 2011, which led to the loss of public funds for Guardians ad Litem (GAL), has increased the adversarial nature of divorce in New Hampshire. The loss of funding for GALs has created a situation where courts no longer have their “eyes and ears” to look into the living arrangements of families going through divorce.<sup>71</sup> Though experts have various recommendations on how to address this issue, most would like for the GAL fund to receive funding again in some form, particularly since pro se cases were



affected the most by the amendment, thus most negatively affecting low-income parents and children.<sup>72</sup>

### *3.3.1 Loss of Public Funds for Guardians ad Litem in New Hampshire*

Prior to 2011, judges and marital masters typically appointed a Guardian ad Litem whenever they felt they needed a third party to investigate the best interests of children. This typically occurred in cases when there was high conflict, substance abuse, or mental health issues within the family. The GAL would provide recommendations to the court about how the judge can look out for the best interests of the children, which can be helpful since a good GAL can help “turn the temperature down on divorce cases.”<sup>73</sup> The recommendation is made after the GAL makes home visits to observe the children with their parents and interviews relevant parties such as teachers, counselors, and mental health workers.<sup>74</sup> The work of GALs makes it easier and quicker for judges to make a decision in divorce cases.

Due to the important, yet costly nature of GAL work, a fund was created that would allow for judges and marital masters to appoint a GAL for cases in which the parties would not be able to afford one. This fund lasted until 2011, when every state agency made budget cuts, and the judicial system ended the GAL fund for marital cases (although they continued one for those involving domestic violence or the termination of parental rights, generally cases of abuse or neglect, which are rare).<sup>75</sup> Some experts have said that the costs were too high due to waste by GALs in which some would charge for excessive hours, while others claim that cuts arose because the state was not aggressive enough in maintaining the fund.<sup>76</sup> In the end, judges and marital masters could only appoint a GAL if the parties could afford to privately pay for it. The change in statute also restricted the GALs to charge only \$60 per hour with a cap of \$1,000 per case.

### *3.3.2 Impact of the Loss of Guardian ad Litem Fund*

With the loss of public funds for GALs came a decrease in the number of GAL appointments made by judges [for quantitative data on this point, see Section 4.1.2]. The types of cases most affected by the loss of public funds were those with low-income families, typically pro se parties.<sup>77</sup> Prior to 2011, many of the pro se cases would have at least a GAL who would provide additional legal support to both the judges and the families involved in divorce cases. Following the loss of GAL funding and the decrease in GAL appointments, it was up to the parties in pro se cases to provide relevant evidence to the judge, which could be excessive or have missing pieces. One judge mentioned that “it can be more difficult to get information from parties and the hearing can take longer without a report because you have lots of people testify about lots of different views about what happened.”<sup>78</sup> This has led to an increase in the use of expert witnesses during divorce cases since GALs are not available to collect information from the experts.<sup>79</sup> As a result, the lack of a GAL could potentially end up slowing down divorce cases for pro se parties since they do not know the best way to educate the judge on their case. One issue to note is that having GALs involved in these types of cases does not always guarantee a quicker proceeding, since GALs may spend extra time collecting additional information



that ultimately has little impact on the final decision.<sup>80</sup> As a result, these pro se cases without a GAL result in a backlog in the Family Law division courts since there is not a GAL to help streamline the process for the judge. The backlog in the Family Law division also affects the cases of those with higher incomes since they need to wait in line behind the cases of lower income families.<sup>81</sup> Most of the judges interviewed believed that this backlog is primarily due to the large caseload and understaffed bench of courts, and only in part due to loss of funds for GALs.<sup>82</sup> Additionally, some of these pro se cases without a GAL end up returning to the legal system since their cases were not properly conducted.

In some cases, GALs are appointed even though the judge knows that one of the parties will not be able to pay for their share of the GAL fee. This puts a burden on the GAL since he or she not only needs to collect information, but also needs to act as a bill collector.<sup>83</sup> In situations in which GALs have difficulty receiving payment from the parties, they are able to negotiate long-term payment plans with the parties. Some of these payment plans extend past the conclusion of the case, so some parties may decide not to complete the payments. If the parties are unable to use a payment plan or pay the initial retainer, the GAL files a motion with the court and cannot proceed with the investigation, which delays the case in the court system.<sup>84</sup>

Not only has the decrease in GAL funding hurt New Hampshire families going through divorce, but it has also negatively impacted those employed as GALs in New Hampshire. This has led to a decrease in the number of GALs in the state since many of them are not able to financially support themselves due to the lack of court appointments or clients not paying for most of their bill [for quantitative data on this point, see Section 4.1.2]. Those who were interviewed mentioned that all of this occurred following the 2011 cut of the GAL fund. One of the GALs interviewed noted that she was pushed to do more work as an attorney due to the 2011 cuts.<sup>85</sup> Another GAL mentioned how his caseload went from a consistent 30 cases per year from 2007 through 2009 to just over 20 cases in 2013 and 14 cases in 2014.<sup>86</sup> Over half of his caseloads before 2011 were publically funded while today none are. A third GAL interviewed reported that her income as a GAL in 2015 is a third of what it was in 2010.<sup>87</sup> There are many GALs throughout the state who have found themselves in similar situations, leading them to end their private practices. As a result, there are fewer GALs to act in the best interests of children whose parents are going through divorce.

Importantly, many experts interviewed noted that the funding has primarily been cut for those who need GAL services the most. Low-income families are more likely to face major problems such as substance abuse and mental health issues since they do not have the resources, such as health insurance or money for counseling, to address these problems.<sup>88</sup> It is typically cases that involve substance abuse and mental health issues that most require a GAL.<sup>89</sup> The absence of GALs, particularly in these cases, has gotten the courts to rely on the Department of Health and Human Services Division of Children, Youth and Families (DCYF) to get information about what is going on in particular



cases. More often than not it is the parents in these parenting cases who contact DCYF about particular issues so it can be documented for the court. One expert mentioned that “the Department of Health and Human Services caseload has gone up and [...] a certain number of those cases is because the parents are in the middle of a parenting fight or divorce case and they make allegations against one another and there is no one out there to look into [...] since they do not have a GAL to go over and do it.”<sup>90</sup> This shift from court funded GALs looking into parental allegations to DCYF is something that the legislature should look into. In the absence of GALs, a case can go from one highly contentious crisis to another, forcing the judge to act as a third parent.<sup>91</sup> One judge even noted that “once a month I probably have a case where I say boy I wish I had a Guardian (GAL) that I could take to look at this for me [...] [since] it would make a difference to me if I know one thing or another.”<sup>92</sup> The increasing drug problem in New Hampshire has made the need for GALs in these cases more pressing. At the end of the day, children get caught in the middle of these difficult situations without a trained person to advocate for them in court.<sup>93</sup>

### *3.3.3 Potential Ways to Address the loss of Guardian ad Litem funding*

Most of the experts interviewed mentioned that the best way to address the issues caused by the loss of public funds for GALs would be to reinstate the fund, even if there is a modest cap on the amount of hours that GALs can bill per case. Reinstating the fund would allow for there to be an advocate for the children of low-income families who need it the most and would speed up the process for judges so they would be able to manage their large caseloads while moving through divorce cases more quickly.<sup>94</sup> An additional option for addressing the GAL issue is allowing for the state to pay for GALs but in a targeted fashion. One example is that the state can pay for GALs in cases where one of the parties involved has a substance abuse or mental health issue.<sup>95</sup> This would increase the number of cases that can have a GAL while making the fund affordable for the state. An additional option to explore is the creation of a system for family certified GALs similar to CASA GALs which supervises volunteers to serve as GALs in termination of parental rights cases. The volunteers can be largely drawn from the growing number of retired attorneys in the state and members from organizations such as the New Hampshire Bar Association, which may cost less than a full reinstatement of the GAL fund. A final recommendation made was for the fund to be reinstated but for judges to appoint GALs with strict guidelines to investigate a particular matter that the court needs to look into.<sup>96</sup> This would prevent GALs from obtaining information that the judge may not necessarily need for his or her ruling.

## **4. QUANTITATIVE ANALYSIS**

We employ quantitative data from the Guardian ad Litem Board of New Hampshire, the Behavioral Risk Factor Surveillance System, and Youth Risk Behavior Surveillance System to examine the effects of RSA 461-A, RSA 458-C and Guardian ad Litem funding removal on parental and youth outcomes. Our findings suggest that Guardian ad Litem funding removal has disproportionately affected lower income families. There has



been a decrease in both access to Family Certified GALs and the physical health of parents who were divorced in New Hampshire and surveyed after the implementation of these laws. However, relative to states similar to New Hampshire, we do not find any significant differences for changes in teen pregnancy rates or youth who reported feeling sad or hopeless or contemplating suicide. Our results could potentially be understated given that we could not focus on youth whose parents got divorced, just youth overall, given the nature of the data.

#### *4.1 Changes in Guardians ad Litem Due to Funding Removal*

The following categories and definitions are used in the analysis that follows:

Certified Guardian ad Litem: Received general training and one court-specific training from the New Hampshire Guardian ad Litem Board.<sup>97</sup>

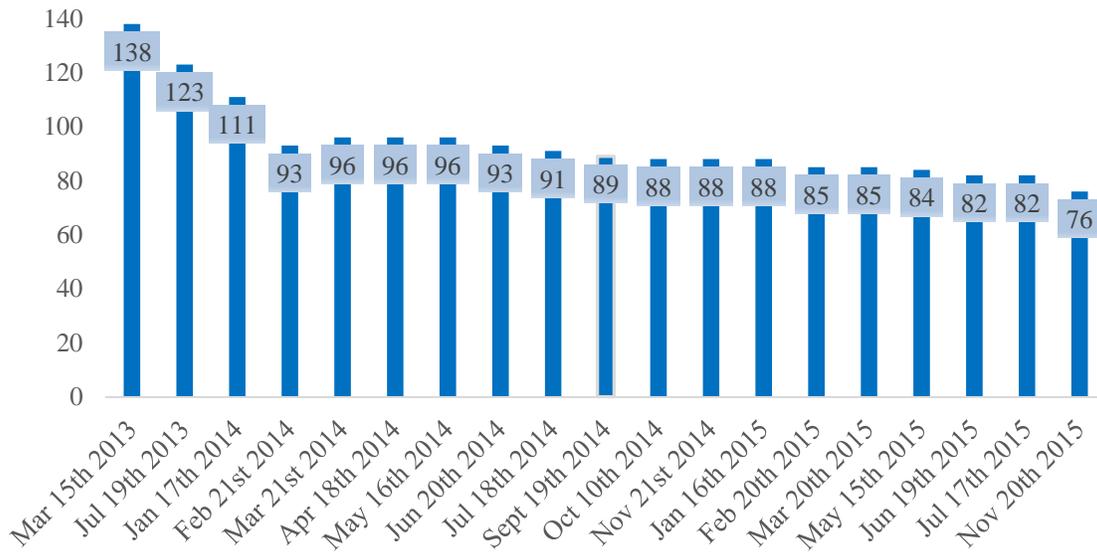
Family Certified Guardian ad Litem: Received all training from the New Hampshire Guardian ad Litem Board to specifically serve as a Guardian ad Litem for family court cases.<sup>98</sup>

##### *4.1.1 Overview of Guardian ad Litem Data*

The available data suggest that the removal of Guardian ad Litem funding has impacted both the number of Certified Guardians ad Litem in New Hampshire and the number of appointments Certified Guardians ad Litem hold. The data on Guardians ad Litem was collected and provided by the Guardian ad Litem Board of New Hampshire. The available data are observations from 2012-2015 for Certified GALs, from 2014-2015 for Family Certified GALs, and from 2012-2015 for Family Certified GAL appointments. There is no information about the number of Guardians ad Litem or their appointments before the funding removal. Although we can only partially assess the impact of GAL funding removal, assuming that both the downward trends are due in part to funding removal, we would expect our results to be understated.

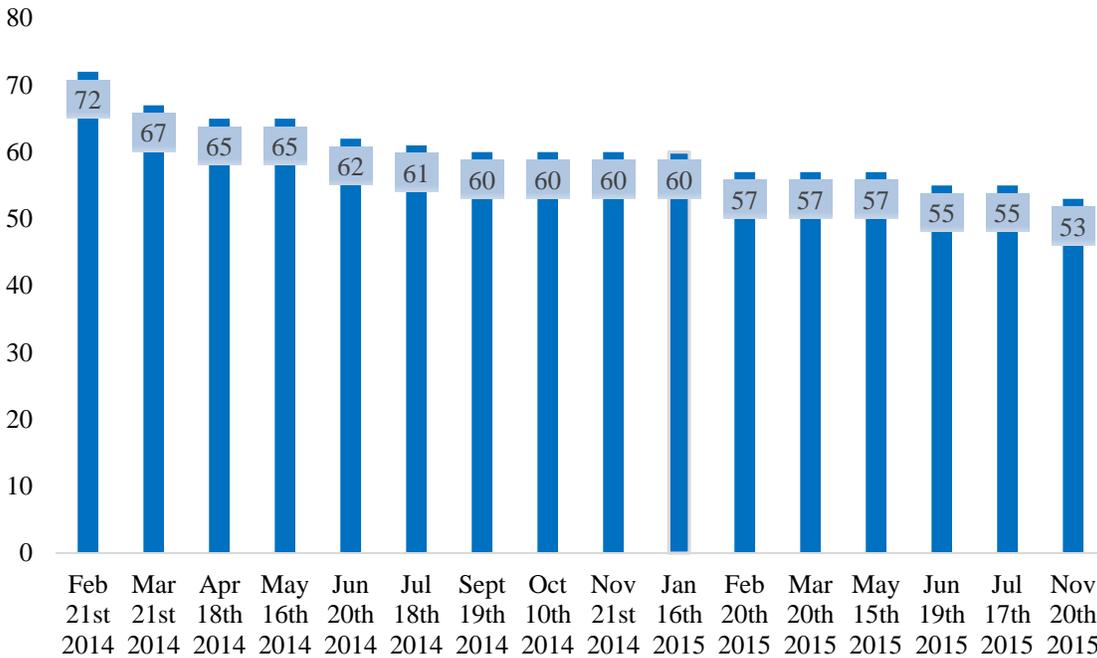
##### *4.1.2 Analysis*

From March 2013 to November 2015, New Hampshire lost 62 Certified Guardians ad Litem, a decrease of over 44 percent (Figure 1).



**Figure 1: Total Certified GALs (2013-2015)**

From February 2014 to November 2015, New Hampshire lost 19 Family Certified GALs, a decrease of over 26 percent (Figure 2).



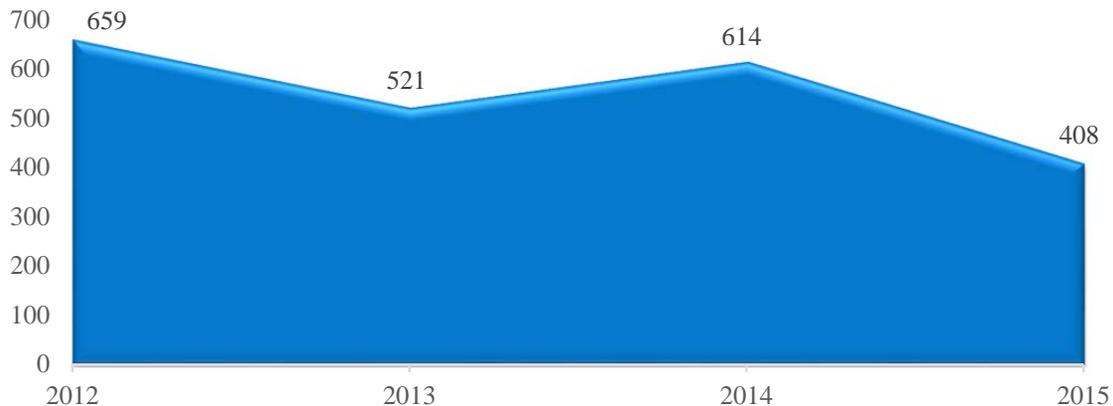
**Figure 2: Total Family Certified GALs (2014-2015)**

Over the same time period of February 2014 to November 2015, the total number of Certified GALs experienced an 18 percent decrease. That the number of Family Certified GALs is decreasing at a faster rate than Certified GALs during this time period suggests



that Family Division court cases have been disproportionately affected by GAL funding removal.

The number of Family Certified GAL appointments has also decreased over time from 2012 to 2015 by over 38 percent (see Figure 3).



**Figure 3: Family Certified GAL Appointments (2012-2015)**

Overall, both the number of Certified Guardians ad Litem and the appointments held by Guardians ad Litem have decreased over time following the funding removal.

## 4.2 Youth Outcomes

### 4.2.1 Overview of Youth Outcomes Data

To assess effects of the legal changes on New Hampshire youth, we draw on data from the Centers for Disease Control and Prevention (CDC), which provide data on teen pregnancy rates and conducts the Youth Risk Behavior Surveillance System (YRBSS). The YRBSS is a biennial survey that looks at risky behavior among high school students. We identified several youth outcomes that could be associated with the implementation of RSA 461-A. In particular, we would expect that if RSA 461-A was successful in reducing the adversarial nature of divorce and “[promoting] the best interest of the child,” certain risky behaviors among youth in New Hampshire could be reduced. The limitation of this dataset is that it does not identify respondents’ current parental situation. While we cannot look at subsets of respondents whose parents divorced in New Hampshire, any significant changes in these reported youth outcomes could be linked to RSA 461-A. We identify comparable states in our analysis by selecting states with similar funding for public education, divorce rates, percentage of population that is white, and high school graduation rates, all of which are important characteristics that are potentially related to changes in youth outcomes and changes in divorce and family laws.

Studies have shown that girls whose parents divorce or whose father leaves the home in their early years have a higher chance of becoming pregnant in their adolescence.<sup>99</sup> In examining how the teen pregnancy rate has changed in New Hampshire, we took data from the CDC from 1995-2012 and examined the birth rates for teenage girls aged 15-19.



We took the annual birth rates from 1995-2005 and averaged them together for each state to see what the average birth rates were for states pre-implementation of RSA 461-A. Since RSA 461-A was enacted on October 1, 2005, near the end of 2005, we included 2005 in the pre-implementation average. We then took the annual birth rates from 2006-2013 and averaged them together for each state to see what the average birth rates were for states post-implementation of RSA 461-A. We also selected narrower bounds—one year pre and post implementation of the law. We carried out this same procedure for examining both RSA 458-C and GAL funding removal and their potential impacts on teen pregnancies.

#### 4.2.2 Analysis

We compared the pre and post difference for each state to show the potential effect of RSA 461-A on New Hampshire and compared this to other states to see if teen pregnancy rates changed differently (see Figure 4).

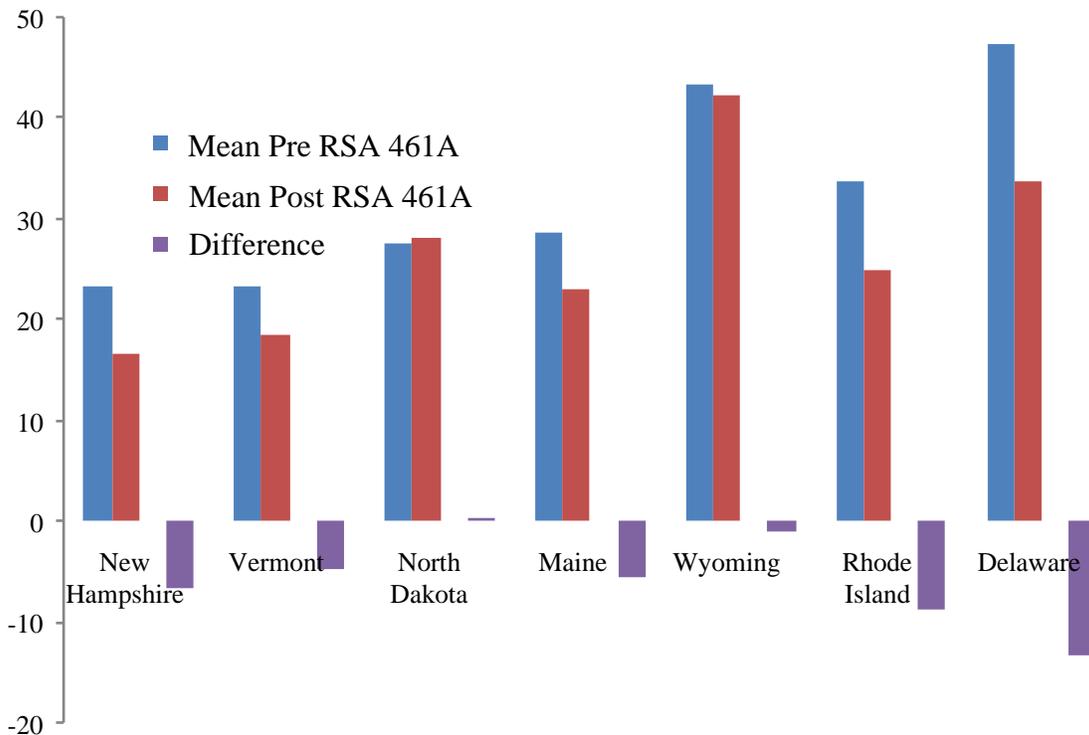


Figure 4: Birth Rates for Teenagers Aged 15-19, by State (1995-2012)

While teen pregnancy decreased in New Hampshire, it also decreased by similar percentages in comparable states. From this data, we do not see clear evidence that RSA 461-A had any long-term impact on teen birth rates in New Hampshire.



When observing one-year pre and post implementation of RSA 461-A, we do not find teen birth rates that are significantly different than other comparable states (see Figure 5 in Appendix A).

This suggests that there is unlikely a relationship between the implementation of RSA 461-A and changes in teen pregnancy rates.

We find a similar pattern for the impact of RSA 458-C on teen pregnancy rates in New Hampshire (see Figure 6 in Appendix A).

The data suggests that New Hampshire's teen pregnancy rates post-implementation of RSA 458-C are in line with other states, suggesting that RSA 458-C did not have a noticeable impact on teen pregnancy rates.

Again, when selecting narrower bounds to assess the possible impact of RSA 458-C, we find that New Hampshire does not vary significantly from comparable states, which suggests that RSA 458-C did not have a significant impact on teen pregnancy rates (see Figure 7 in Appendix A).

We also looked at the impact of Guardian ad Litem funding removal and its potential impact on teen pregnancy rates and found that the teen pregnancy rates changed in ways similar to comparable states, suggesting that New Hampshire teen pregnancy was not significantly impacted by GAL funding removal (see Figure 8 in Appendix A).

We also narrowed the time span of examining the potential impact of Guardian ad Litem funding removal on teen pregnancy to one year before and after the implementation of the law. We also find that New Hampshire's teen pregnancy rate changes are not significantly different compared to other states (see Figure 9 in Appendix A).

We examined data from the YRBSS from 2003-2013 to compare the average changes in youth outcomes potentially due to the implementation of RSA 461-A. We compare changes within New Hampshire to similar states to explore whether the implementation of RSA 461-A creates trends among high school students who reported feeling sad or hopeless or have contemplated suicide in the past 12 months. Earlier YRBSS datasets did not have consistent data on New Hampshire outcomes of interest and thus could not be used. For each outcome, there was no significant difference between New Hampshire relative to most of the comparable states (see Figure 10 and Figure 11 in Appendix A).

While students' mental health has improved since the implementation of RSA 461-A, it is important to note that these changes in New Hampshire look similar to comparable states, and so it seems unlikely that these trends are connected to RSA 461-A. However, based on our extensive interviews we believe that our quantitative results are likely understated. RSA 461-A has helped create conditions that reduce the adversarial nature of divorce. It is possible that if we had data on high school students who reported that their parents were divorced and compared them to high students overall, we could see a more



significant reduction in feeling sad or hopeless or contemplating suicide for high school students whose parents were divorced post RSA 461-A.

### 4.3 Parental Outcomes

#### 4.3.1 Overview of Parental Outcomes Data

The CDC conducts the Behavioral Risk Factor Surveillance System (BRFSS), an annual nationally representative survey that gathers data on adult respondents' health outcomes. Our analysis uses data from 1995-2015 and finds statistically significant results on changes on physical and mental health. In our analysis, we account for an individual's age, gender, race, income, employment status, and educational attainment. These variables are important because they are likely correlated with the chance of someone getting divorced and are also likely correlated with mental and physical outcomes we are observing. We also account for both time invariant and time variant characteristics of every state and years, using state, year, and state-year fixed effects. This helps account for additional factors that can affect divorce and mental/physical health outcomes of respondents that we do not directly measure. We test whether that RSA 461-A, RSA 458-C and GAL funding removal have effects on mental and physical health.<sup>100</sup>

One limitation of our data is that respondents who identify being divorced did not necessarily get divorced under the time period of the laws in question. Specifically, when asked marital status, respondents indicate whether they are married, divorced, widowed etc. but do not identify if they were going through divorce proceedings in the survey year. The statistical models we run look at years 1995-2015, which is the full range of time that data is available for physical and mental health outcomes for New Hampshire. We also run models three years before and after the implementation of RSA 461-A, RSA 458-C, and GAL funding removal, two years before and after implementation, and one year before and after implementation. We also look at the impact of respondents who reported their income as \$30,000 or less to see if these laws had differential effects on lower-income parents.

#### 4.3.2 Analysis

The question we examined from the BRFSS regarding physical health was:

*Now thinking about your physical health, which includes physical illness and injury, for how many days during the past 30 days was your physical health not good?*

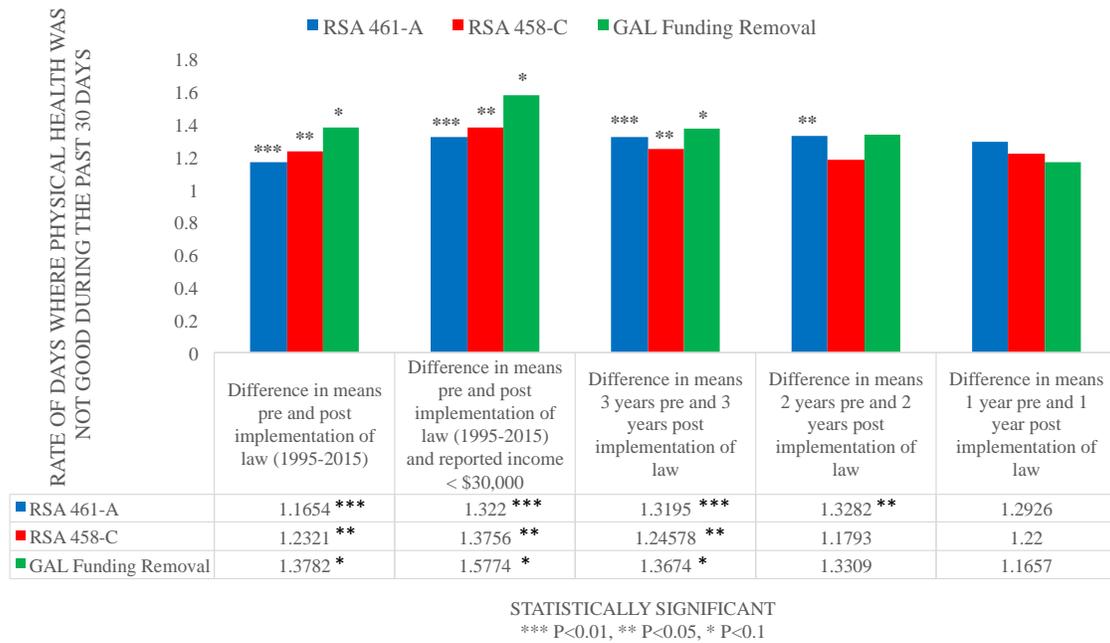


Figure 12: Changes in Reported Physical Health of Divorcees in New Hampshire with Children

The question we examined from the BRFSS regarding physical health was:  
*Now thinking about your mental health, which includes stress, depression, and problems with emotions, for how many days during the past 30 days was your mental health not good?*

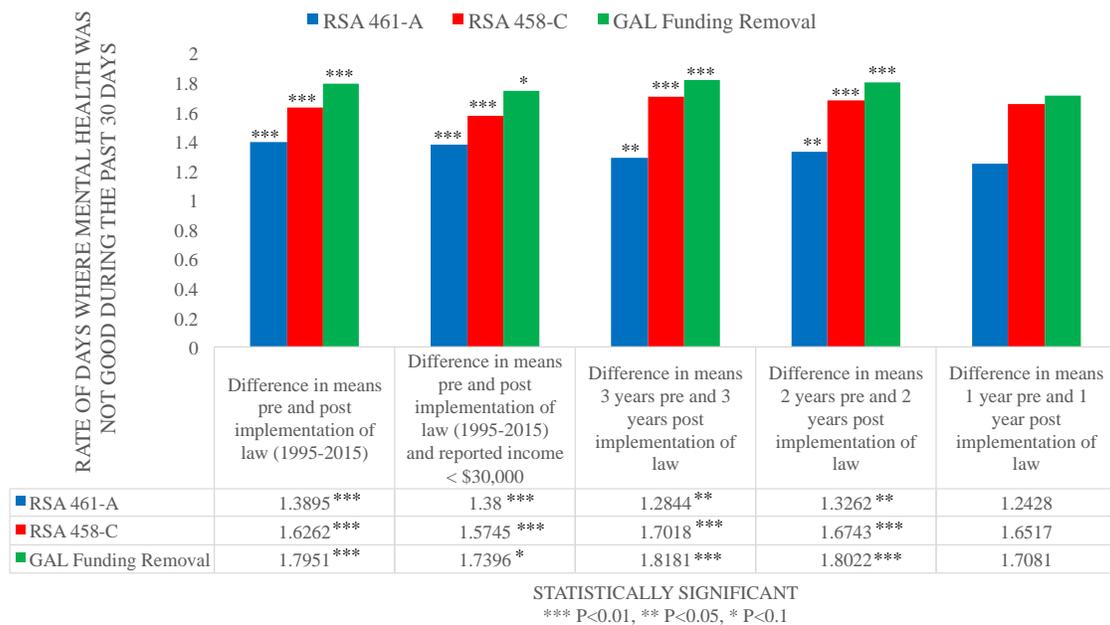


Figure 13: Changes in Reported Mental Health of Divorcees in New Hampshire with Children

In Figures 12 and 13, any result greater than one can be interpreted as an expected increase in the rate of days physical and mental health, respectively, were not good.



Conversely, any result less than one can be interpreted as an expected decrease in the rate of days physical and mental health, respectively, were not good. This is assuming that the variables we accounted for are held constant (gender, income, educational attainment, state and time variant and invariant characteristics, etc.).

Based on our extensive interviews, we expect negative effects for both RSA 461-A and RSA 458-C (results less than one) and a positive effect for GAL funding removal (results greater than one). This would mean that RSA 461-A and RSA 458-C led to better physical and mental health among divorcees in New Hampshire with children, but GAL funding removal led to worsened physical and mental health among divorcees in New Hampshire with children. However, the results above do not match the evidence from the interviews.

The reported rate of days of poor physical health among divorcees in New Hampshire with children is greater than one for all three laws (see Figure 12). We similarly find the reported rate of days of poor mental health among divorcees in New Hampshire with children is also greater from all three laws (see Figure 13). The main issue with the BRFSS data as noted above is that those who responded to the survey didn't specify the year they were divorced. It is plausible that the majority of respondents that are observed in each analysis were actually divorced prior to the implementation of these three laws and thus wouldn't be affected by the laws in the same way.

It should be noted that results from analysis of data closer to the implementation of the law (one year before and after the implementation of the law) are no longer statistically significant. This could be due to the fact that the more data examined, the more likely it is to get statistically significant results. Another plausible explanation is that the proportion of respondents after the implementation of the laws are likely to be primarily made up of people who were divorced prior to the implementation of the laws. Therefore, respondents who were divorced prior to the implementation of the laws are attenuating the impact of the laws.

The fact that our model is likely capturing primarily those divorced in New Hampshire prior to the implementation of the laws of focus is significant because we could be picking up a secular trend that our model was not able to fully capture. New Hampshire is a state with a significant portion of the population that is white and non-Hispanic, and the rates of self-reported physical and mental health among white non-Hispanic Americans between 1993-2013 (which covers the majority of the timeframe we are analyzing) have declined over time.<sup>101</sup> This could mean that our model is primarily identifying a group who is likely to have worsened physical and mental health over time for reasons not accounted for in our model. Assuming that the interviews were accurate in establishing the effects of these three laws, the results of the analysis lends some support to the idea that those who were divorced prior to RSA 461-A and RSA 458-C may have already had worsened physical and mental health in absence of the laws.



## 5. CASE STUDIES OF COMPARABLE STATUTORY CHANGES

The following section provides an in-depth analysis of a subset of states comparable to New Hampshire that have taken actions similar to the three legal changes we are studying. Specifically, we review the outcome of 2001 revisions to Maine's Child Support Guidelines, published in 2012, which are similar to New Hampshire's, and share the Children and Family Law Committee's concerns with disparate impacts on high and low-income residents. Custodial parents are shown to face a greater economic burden than noncustodial parents, with low-income families facing a more severe burden. We also review two North Carolina studies of its Guardian ad Litem program, published in 1997 and 1999, after the program's funding was cut in 1995. They reveal that the lack of funding hurts the GAL volunteer program, which judges, GAL attorneys, and children rely upon. Next, we look at Florida's Guardian ad Litem program and explain that an increase of funding for this program increased its ability to represent and protect the rights of children.

### *5.1 Child Support Guidelines in Maine: Review and Recommendations*

Following a Federal order (45 C.F.R. §302.56(h)) that required each state to have Child Support rules, Maine established Child Support Guidelines in 2001.<sup>102</sup> Like in New Hampshire, Maine's Child Support Guidelines established a formula that reflects the amount of income a parent needs to give in child support. Maine is also a comparable state to New Hampshire because of its demographics: both have disproportionately large middle-aged populations, a higher than average median age, and a mostly Caucasian population.<sup>103</sup> Maine and New Hampshire follow the Income Shares Model, which establishes the amount of child support payment based on the idea that a child should receive the same proportion of parental income that they would have if the parents still lived in the same household.<sup>104</sup> The income of both parents is considered, as well as the number of children, when determining the amount of financial support. In Maine, the child support guideline is updated regularly and determines the monetary amount a parent must pay per child, per week, based on the Parents' Combined Annual Gross Income.<sup>105</sup>

In 2012, the Cutler Institute for Health and Social Policy at the University of Southern Maine reviewed the child support guidelines in Maine at the request of the Maine Department of Health and Human Services and its Division of Support and Enforcement Recovery (DSER).<sup>106</sup> After evaluating DSER case records, the current guidelines and policies, economic data, surveys, interviews, and stakeholder input, a list of findings and recommendations was released. These findings revealed that custodial parents face a higher economic burden in child support than noncustodial parents, and this difference is even greater in low-income families.

Among the most relevant findings for Maine and also New Hampshire was that the Income Shares Model has created economic disparity between custodial and noncustodial parents, especially affecting low-income families.<sup>107</sup> Although the Income Shares Model determines child support payment based on the income of the parents, when economic status is taken as a function of household size (the number of people living under one roof), the custodial parent has a smaller income because he or she is accounting for two



people or more (parent and their children), while the noncustodial parent accounts for only one person (parent). Therefore, even when the custodial and noncustodial parents start with equal incomes, the custodial parent still has a lower household income as a percentage of the federal poverty level before child support is paid in comparison to that of the noncustodial parent.<sup>108</sup> The more children a custodial parent has, the lower their household income as a percentage of federal poverty level after child support is paid in comparison to that of the noncustodial parent.

This income disparity between the custodial and noncustodial parent only increases when the custodial and noncustodial parents have unequal incomes. In Maine, the average income split is 30:70 between the custodial parent and noncustodial parent, respectively.<sup>109</sup> For parents who make a combined income of \$37,060 (\$11,118 custodial income, \$25,942 noncustodial income), the household income as a percentage of the federal poverty level before child support of the custodial parent ranges from three times smaller to five times smaller than that of the noncustodial parent.<sup>110</sup> After child support is paid, the household income of the custodial parent as a percentage of the federal poverty level still tends to be two times less than that of the noncustodial parent.<sup>111</sup> Accordingly, in Maine, lower-income custodial parents and their children are hurt by the income disparity caused by the Income Shares Model.

Maine, like New Hampshire, also has a Self Support Reserve clause stating that if the noncustodial parent has an annual income below the federal poverty level, their maximum child support payment can only be 10 percent of their income, regardless of the combined annual gross income of both parents.<sup>112</sup> In cases where the noncustodial parent qualifies for the Self Support Reserve clause, the majority of financial responsibility falls on the custodial parent. This financial burden is heavier when both parents are low income. This is because the custodial parent still has to take care of the child, and without getting additional money or support from the noncustodial parent, the Self Support Reserve can keep the custodial parent and child in poverty. This is especially true if the custodial parent does not receive help from Temporary Assistance for Needy Families (TANF). TANF is a federal program through the Department of Health and Human Services that provides cash aid to help needy American families to become self-sufficient.<sup>113</sup>

The higher the combined gross income of parents when incomes are at or below the federal poverty line, the lower the noncustodial parent pays in child support in comparison to the custodial parent. The higher number of children, the lower the noncustodial parent pays in child support in comparison to the custodial parent.

Overall, Maine's current child income guidelines place a disparate burden on custodial parents, according to the Cutler Institute for Health and Social Policy's analysis of child support calculations. This holds true for parents with equal and unequal incomes, and is especially harmful for lower income families. Lower income families are also shown to pay a higher percentage of their income in child support than higher income families, which perpetuates the poverty of the custodial parent and child in lower income families.



### *5.2 North Carolina Guardians ad Litem: Funding Cuts and Consequences*

In North Carolina, the Office of Guardian ad Litem was established in 1983 through the passage of G.S. 7A-586, and following an amendment in 1995, an attorney was required to represent a child through the dispositional phase of proceedings and after if deemed necessary by the General Assembly.<sup>114</sup> This case study examines North Carolina's Guardian ad Litem program after the North Carolina General Assembly authorized budget cuts of \$505,263 and \$490,623 in 1995-96 and 1996-97, respectively.<sup>115</sup> New Hampshire is among the few other states that have cut funding for a Guardian ad Litem program, making the comparison with North Carolina particularly instructive. Moreover, even fewer states have thoroughly evaluated the consequences of such funding cuts.

Prompted by the Guardian ad Litem program budget cuts, the North Carolina General Assembly asked the Legislative Research Commission (LRC) to evaluate the state's Guardian ad Litem Program, thus forming the LRC Guardian ad Litem (GAL) Study Committee.<sup>116</sup> Meeting throughout 1996 to conduct their review, the LRC GAL Study Committee's evaluation was based on presentations on the role of the Department of Social Services (DSS) in abuse and neglect cases, presentations on GAL Program Staffing, Organizational Structure, and Volunteer Training, and three case studies involving children who received services from DSS, GAL, and Court Appointed Special Advocate (CASA) programs – nonprofit organizations for volunteer Guardian ad Litem programs – in other states.<sup>117</sup> The review also included survey results from 79 district court judges, 70 county DSS attorneys, 116 GAL volunteers, and 40 GAL attorneys, addressing reliance on the GAL program, GAL performance, GAL training, value and necessity, and the effects of the budget reductions.<sup>118</sup> GAL attorneys and volunteers differ in that GAL attorneys are North Carolina board-certified lawyers that represent a child in the courtroom, while GAL volunteers are community advocates who work alongside a GAL attorney to investigate and determine the needs of children.<sup>119</sup> North Carolina's GAL attorneys are similar to GALs in New Hampshire whose program funding was cut.

#### *5.2.1 Assessments of the NC GAL Budget Cuts*

The LRC GAL Study released its findings and recommendations to the North Carolina General Assembly in 1997. The majority of its analysis focused on the necessity of Guardians ad Litem. The use of Guardians ad Litem, the committee argued, is an avenue to empower and advocate for a child in the court process through the dispositional phase of proceedings.<sup>120</sup> In general, a Guardian ad Litem's role was to explore various resources and services that could assist and serve the best needs of a child in the judicial decision making process. While the recommendations of the Guardian ad Litem were not legally binding, the Committee found that courts often follow Guardian ad Litem recommendations, and so these actors, it argued, serve as powerful and effective advocates for children in divorce proceedings in North Carolina.

One way the Administrative Office of the Courts, the administrative agency of the GAL program, adjusted to the 1995 budget cuts was to cap GAL attorney fees and limit the use of GAL services, including that of GAL volunteers.<sup>121</sup> Therefore, with the budget cuts, the recruitment of volunteers and training drastically decreased.<sup>122</sup> These cuts were



viewed as highly problematic given that, based on the surveys sent to the district court judges, GAL attorneys and volunteers, DSS personnel, and county attorneys, the Committee found that the GAL services were necessary to protect the interests of dependent children. Ninety-six percent of the judges surveyed stated that it was necessary to have GAL services and relied on their recommendations heavily in cases.<sup>123</sup> The judges stated they were more dependent on GAL volunteers than DSS workers, GAL attorneys, and DSS attorneys. Moreover, children are best assisted when both a GAL volunteer and a GAL attorney are involved. Thus, the budget cuts that led to a decrease in the recruitment and training of GAL volunteers had the potential to negatively affect the information given to the judges, the aid given to GAL attorneys, and the assistance provided to children.

The General Assembly, through the 1995 budget cuts, also limited the length the GAL program was involved in the representation of a child to two years, unless extended by court. Judges were against this, believing that GAL services are more important in later stages, such as during the dispositional phase, periodic reviews, and termination of parental rights proceedings.<sup>124</sup> While most cases take less than two years, judges still ranked the helpfulness of GAL services higher in the termination of parental rights stage than in the initial adjudicatory process.<sup>125</sup>

### *5.2.2 Proposed Options to Realize Budget Cuts*

The Administrative Office of the Courts proposed the cuts be realized through reducing GAL services to dependent children and children over the age of 13.<sup>126</sup> Judges, however, disagreed strongly with this recommendation. All judges responded that GAL services were necessary for children older than 13 and 84 percent believed GAL services were also necessary for dependent children.<sup>127</sup>

Instead, the LRC GAL committee suggested that costs of the GAL program could be decreased through improvements of efficiency in program administration and in the court process. In FY 1996-1997, 73 percent of the GAL Program budget paid for staff, 18 percent went to legal services, and nine percent went to general administration. Since there have been no long-term negative effects of a 28 percent decrease in the budget of legal services decreased since FY 1993-1994, the committee proposed getting more volunteers to fulfill administrative roles within the GAL Program and further decrease these costs.<sup>128</sup> Another suggestion to improve the efficiency of the current GAL services staff was to train less experienced GAL attorneys with litigation manuals. The committee also recommended setting aside money for the recruitment and training needed for the volunteer program.

### *5.2.3 Overall Effects of GAL Funding Cuts in NC*

The 1997 report stated that the reductions of funding for the GAL program would “jeopardize the program's ability to sufficiently and adequately secure counsel to represent all of the abused and neglected children entitled to representation under State



law.”<sup>129</sup> This statement was substantiated in 1999, when evaluations noted that “reductions in State funding for GAL attorney services have seriously undermined the Program’s ability to retain experienced attorneys to represent GAL children.”<sup>130</sup> Both reports conclude that the state should continue to protect dependent children through the Guardians ad Litem program and should make sure sufficient funds are given to the GAL program so that the state can carry out its duties and responsibilities to the children of North Carolina.

### *5.3 Increase in Florida Guardian ad Litem Funding and Continued Success*

In the early 2000s, the Florida Legislature began increasing the budget of the Florida Guardian ad Litem Program. A majority of this budget was used to increase the non-attorney staff, in order to serve more children. In 2014, Five Points Technology Group reviewed the Florida GAL Program, specifically looking at its non-attorney staff, seeking ways to improve the efficiency and effectiveness of the program. Below are the findings relevant to New Hampshire, specifically the effects of an increased budget for the GAL program.

#### *5.3.1 Understanding Florida’s Guardian ad Litem Program and Structure*

Florida first starting appointing Guardians ad Litem in 1975, after the Florida Legislature passed legislation that gave courts the authorization, but not requirement, to appoint GALs.<sup>131</sup> In 1980, the Florida Legislature gave the Office of State Courts Administrator \$200,000 to create a pilot program using volunteers as GALs, making Florida the first state to use general revenue funds to establish a state volunteer GAL program.<sup>132</sup> By 1990, every judicial circuit in Florida had a volunteer GAL program. At this same time, paid staff was also being added to the GAL program, including attorneys and staff advocates.

Currently, the Florida GAL program includes Guardian ad Litem (GAL), Child’s Best Interest Attorneys (CBI), and Child Advocacy Coordinators (CAC). The GAL is a volunteer that advocates for the best interests of the child and is “to oversee the care, health, and medical treatment of the child [and] to advise the court regarding any change in the status of the child.”<sup>133</sup> Unlike other states that differentiate between a GAL volunteer and a GAL attorney, Florida calls its volunteers GALs. The board-certified attorney who represents the best interests of the child in circuit dependency court or appellate courts is the CBI. Also unlike several states, the CBI in Florida does not have a direct relationship with the child. Instead, the GAL proves vital in relaying information to the CBI for judicial proceedings. CACs act as administrative staff, assisting GALs, monitoring cases, and occasionally serving as a GAL if no volunteer is available. As a whole, the GAL team is responsible for conducting an investigation, providing proper resources for the child, advocating for the child, and monitoring the case.<sup>134</sup>

#### *5.3.2 Funding Changes and Outcomes*

The Florida GAL program sought to increase the number of volunteers in the program to serve all children who need help. In 2006, Florida’s Legislature appropriated \$7 million in funds to the GAL program, which resulted in increasing the number of GALs to 5,413, the largest number in the program’s history.<sup>135</sup> This increase of 1,929 volunteers from



fiscal year 2005-2006 enabled Florida to represent 55 percent of children who needed a GAL, up from 49.5 percent in 2004.<sup>136</sup> In 2008, however, the Florida Legislature decreased the program budget by four percent and then another 3.2 percent, leading to a reduction in staff and, correspondingly, the number of children able to be served. Funding began increasing again in 2013, as the state started realizing its goal to represent 100 percent of children in Florida. The increase in funding for the Florida GAL program has directly translated into an increase in GALs and an increase in children being served. The number of children represented in 2014 was 75.75 percent, and based on the Long Range Program Plan, the state will represent 100 percent of children by FY2017-2018.<sup>137</sup>

The Florida GAL program has been credited with “saving the state money and achieving excellent results” and “streamlining efficiencies to focus on commitment to children.”<sup>138</sup> The program has increased efficiency by moving toward increased accountability, transparency, and professionalism.<sup>139</sup> Florida’s Blue Ribbon Panel on Child Protection concludes that the Florida GAL program is one “that costs the least and benefits the most” and is “an indispensable intermediary between the child and the court.”<sup>140</sup> Although Florida’s GAL program is unique in that volunteers handle the majority of the casework and attorneys do not directly interact with the children, the increase in budget still demonstrates a direct benefit to the number of children who can be assisted by a GAL.

## **6. CONCLUSION**

Overall, we find that RSA 461-A and RSA 458-C have likely decreased the adversarial nature of divorce in New Hampshire, benefitting parents and children, while the loss of Guardian ad Litem funding has likely made the divorce process more difficult for some New Hampshire families that would have previously had access to GAL services.

Through the interviews of 18 New Hampshire family law experts, we found that RSA 461-A, by removing the language of “custody,” encouraging mediation, and requiring parenting plans and the Child Impact Seminar have improved outcomes for families and children. These experts also state that RSA 458-C, the Child Support Guidelines, have contributed to the decrease in the adversarial nature of divorce in most cases. Lastly, the loss of Guardian ad Litem funding in RSA 461-A has negatively impacted New Hampshire families going through divorce, particularly low-income families who typically represent themselves in divorce cases.

Using data from the New Hampshire Guardian ad Litem board, we found that GAL funding removal may have had a disproportionate effect on Family Division court cases. GAL funding removal decreased the number of both Certified GALs and Family Certified GALs and their number of appointments. When examining youth outcomes from YRBSS data, we do not find compelling evidence that RSA 461-A, RSA 458-C, or GAL funding removal had an impact on teen pregnancy rates, feelings of sadness or depression, and suicidal ideation in New Hampshire when compared to similar states. From BRFSS data, we also do not find a compelling link between changes in these



respective laws and changes in physical and mental health among divorced parents in New Hampshire. However, it is important to note that these data on youth and parent outcomes had important limitations, which made it more difficult to isolate the impact of the changes in RSA 461-A, RSA 458-C, and GAL funding removal.

The case study of Maine shows that custodial parents face a disproportionate financial burden, one that is even greater in low-income families. The negative impact of GAL funding loss can be seen in the North Carolina case study, where the loss led to a decrease in GAL volunteer training, which lessened the amount of assistance provided to judges, attorneys, and most importantly, children. Meanwhile, in Florida where there was an increase in GAL funding, the state will soon be able to represent and advocate for 100 percent of children in need due to an increase in GAL volunteers.

Our research suggests that additional modification of these laws may be beneficial to reduce the adversarial nature of divorce proceedings in New Hampshire. When it comes to RSA 461-A, the majority of interviewees found that the modification statutes, specifically with parenting plans, could be amended so that if the family's circumstances change, the incentive for both parties to disparage each other might be minimized. For RSA 458-C, additional discourse on whether there should be special guidelines for parents who share an equal amount of rights and responsibilities of their children may be constructive. Finally, when addressing the loss of GAL funding, most experts believed that such funding should be reinstated, both in order to provide adequate representation for New Hampshire children going through divorce, and to make it easier for judges to receive necessary information about parents and children, particularly in pro se cases. The use of volunteer GALs is also a potential option to explore since the number of retired attorneys is rising due to New Hampshire's aging population.



**APPENDICES**

APPENDIX A Figures from Section 4.2 Youth Outcomes

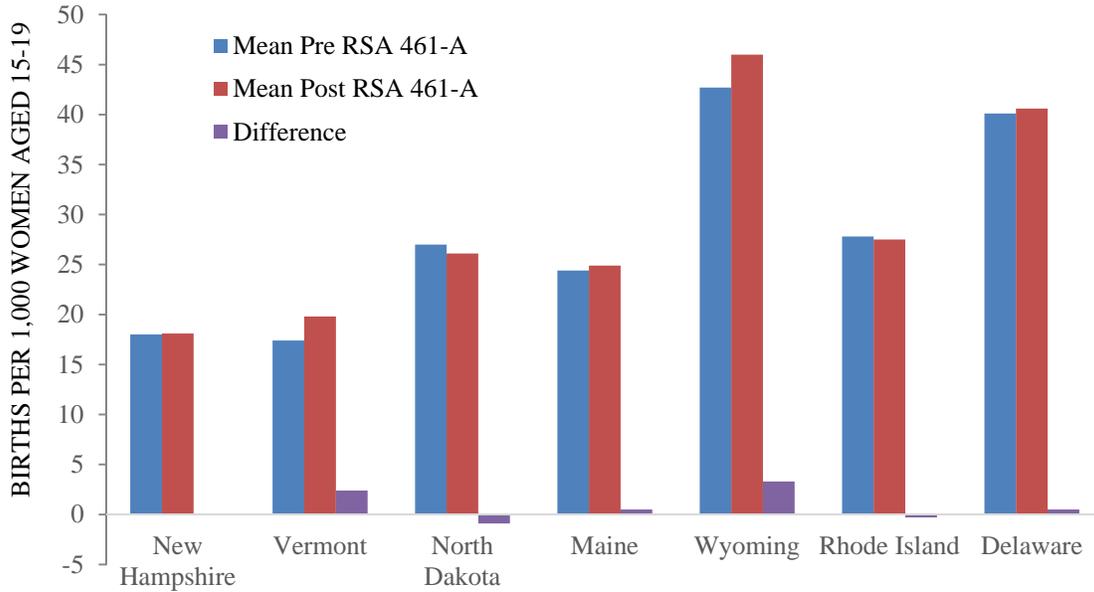


Figure 5: Birth Rates for Teenagers Aged 15-19, by State (2005-2006)

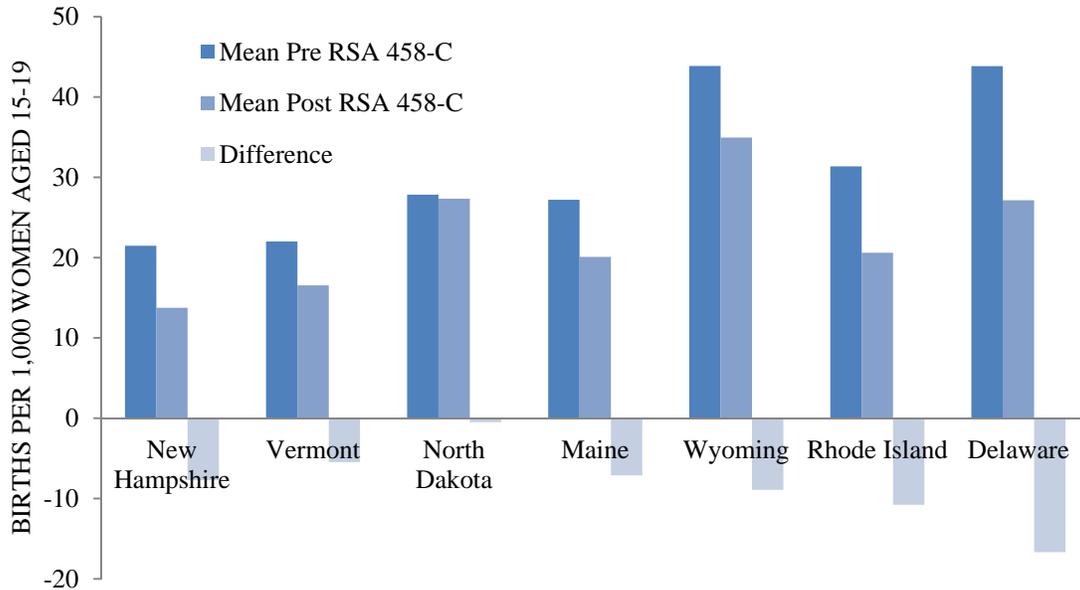


Figure 6: Birth Rates for Teenagers Aged 15-19, by State (1995-2012)

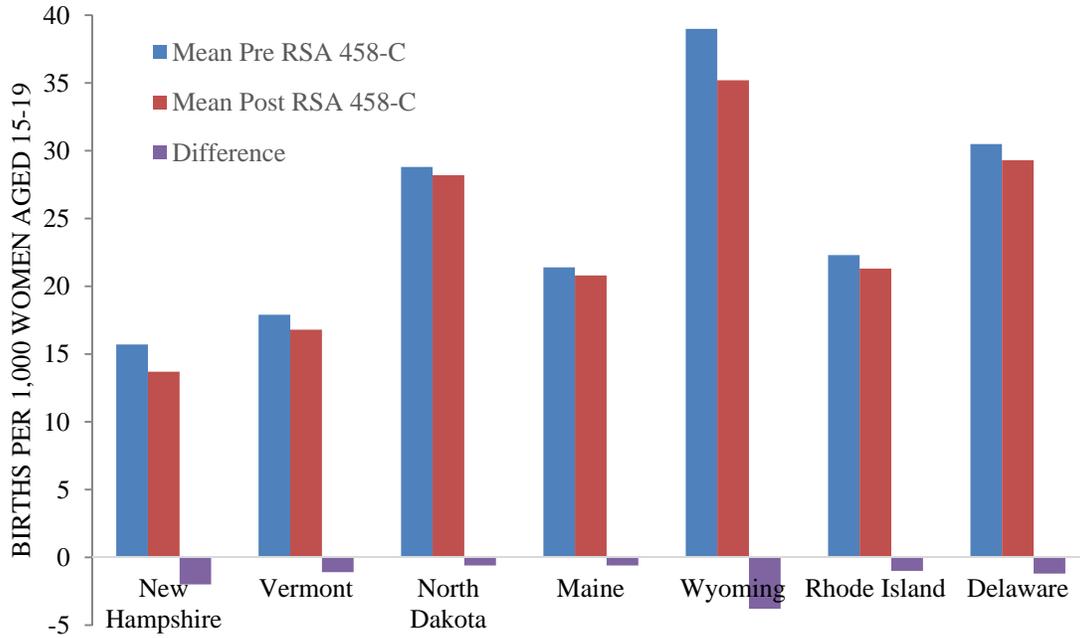


Figure 7: Birth Rates for Teenagers Aged 15-19, by State (2010-2011)

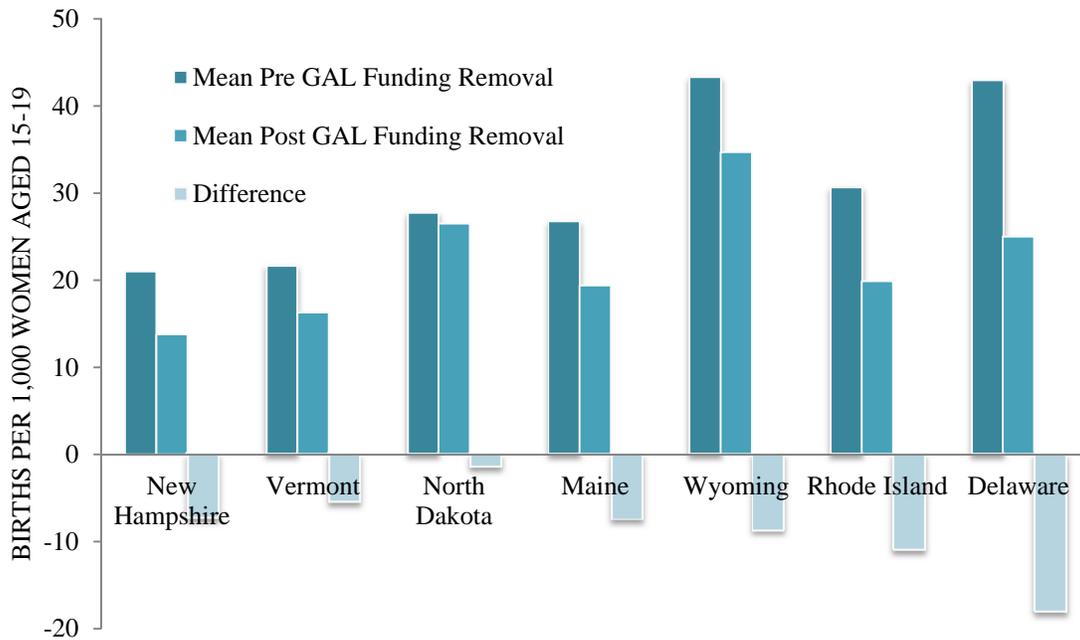


Figure 8: Birth Rates for Teenagers Aged 15-19, by State (1995-2012)

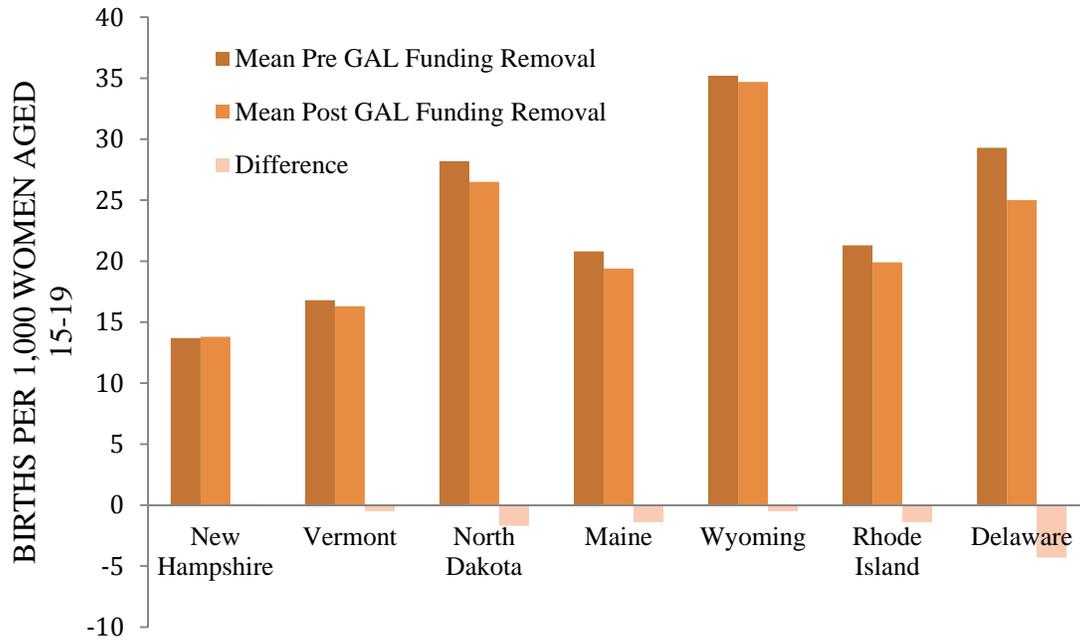


Figure 9: Birth Rates for Teenagers Aged 15-19, by State (2011-2012)

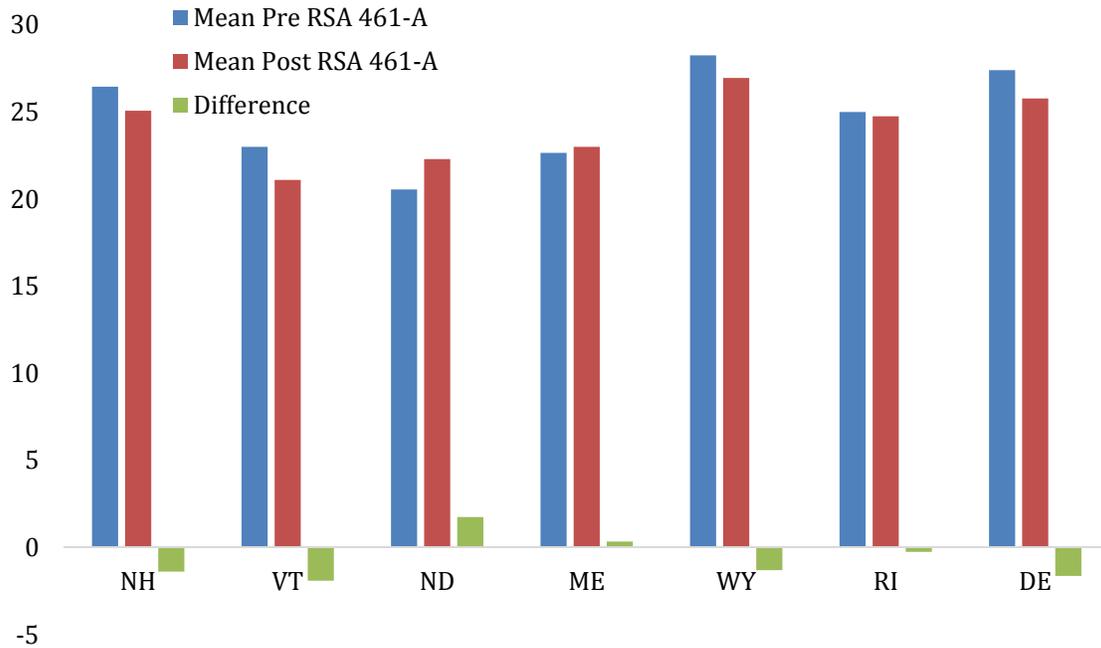
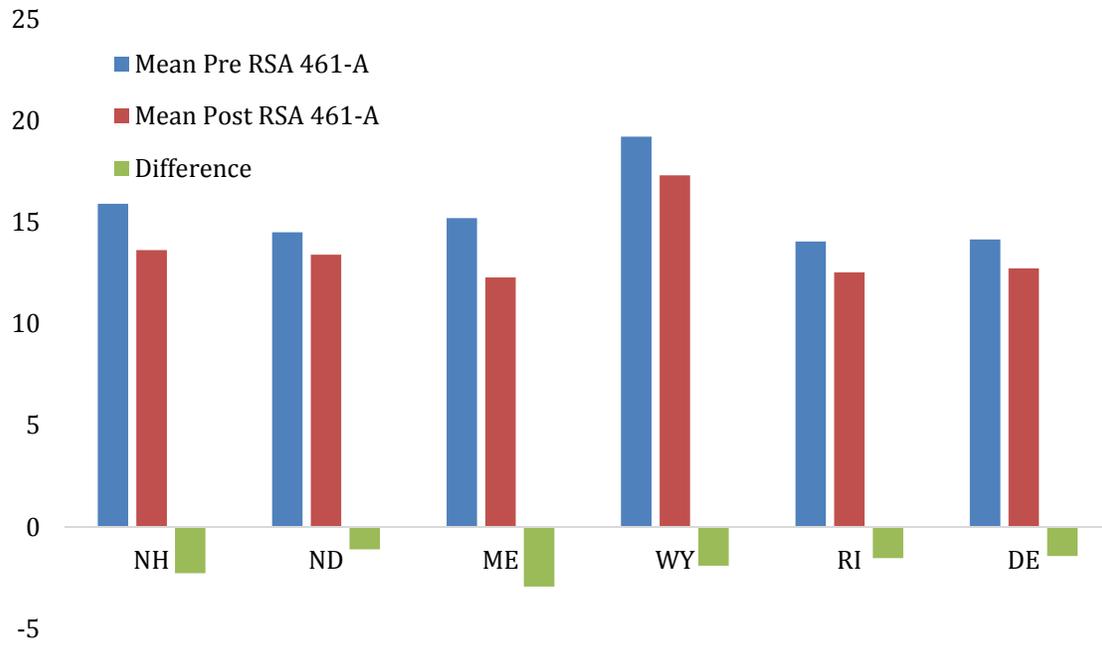


Figure 10: Total Percentage of High School Students Who Felt Sad Or Hopeless (2003-2013)



**Figure 11: Total Percentage of High School Students Who Seriously Considered Attempting Suicide (2003-2013)**



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<sup>125</sup> Ibid, F-6.

<sup>126</sup> Ibid, 8.

<sup>127</sup> Ibid, F-6.

<sup>128</sup> Ibid, C-4.

<sup>129</sup> Ibid, 6.

<sup>130</sup> Guardian ad Litem Program: Report to the 1999 General Assembly of North Carolina -- Legislative Research Commission: Committee on Guardian ad Litem Program [01/12/1999]. KFN 7506 .A3 1999 G82 (2 c.)

<sup>131</sup> *Guardian ad Litem Non-Attorney Compensation Analysis*. Report. Five Points Technology Group. (2014).

<sup>132</sup> Ibid, 11.

<sup>133</sup> Ibid, 9.

<sup>134</sup> Ibid, 8-9.

<sup>135</sup> Ibid, 6.

<sup>136</sup> *Guardian ad Litem 2006 Annual Report; Guardian ad Litem 2005 Annual Report*

<sup>137</sup> *Guardian ad Litem Non-Attorney Compensation Analysis*. Report. Five Points Technology Group. (2014), 6.

<sup>138</sup> Ibid, 7.

<sup>139</sup> Ibid, 8.

<sup>140</sup> Ibid, 12.