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Seen, Heard, and Represented:

A Policymaker's Guide to Counsel for Kids



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Children in court need lawyers of their own.
We're working to make sure they have them.

ABOUT THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Founded in 1977, the National Association of Counsel for Children (NACC) is a non-profit professional membership and legal advocacy organization. NACC advances children's and parents' rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience. NACC envisions a society where every child, parent, and family is well-supported in their community and has equitable access to justice through culturally responsive, client-centered legal representation.

A NOTE ON TERMINOLOGY

THIS PAPER WILL USE THE FOLLOWING TERMS UNLESS CITING A SOURCE THAT USES ALTERNATIVE TERMS:

CHILD/YOUTH : *A person who has either 1) not reached the age of legal majority or 2) who has reached the age of legal majority but remains under the jurisdiction of the dependency court under extended foster care. Within this document, the terms "child" and "youth" are used to mean the same thing.*

CHILDREN'S ATTORNEY : *Used interchangeably with terms: "counsel for kids," "client-directed attorney," and "legal counsel," these terms describe a legal professional, duly licensed by a bar association or state supreme court, who advocates for the child or youth's expressed wishes. The attorney owes the same duties of professional responsibility (ex. loyalty, confidentiality, etc.) to the child client as would be due to an adult client. Expressed interest representation involves active client counseling and investigation. This model may also be described as "stated interest" or "client-directed" legal representation.*

CHILD PROTECTION SYSTEM (CPS) : *A government agency within a state that is responsible for investigating reports of suspected child abuse or neglect; providing services to families in the safety and care of their children; arranging for children to live with relatives or with foster families when deemed necessary; and arranging for reunification, adoption, or other permanent family connections for children and youth leaving foster care. This entity may also be identified as the Child Welfare System, Foster Care System, or the Family Regulation System.*

DEPENDENCY COURT : *An arm of the judicial branch that oversees neglect, abuse, termination of parental rights, and often related court proceedings such as guardianship, adoption, paternity, and custody actions. Jurisdictions may use differing terms such as "child protection," "abuse & neglect," "family court," or "juvenile court."*

GUARDIAN AD LITEM (GAL) ATTORNEY : *A legal professional, duly licensed by a bar association or state supreme court appointed by the court to advocate for the child or youth's best interest, based upon the GAL's own assessment after conducting an independent investigation.*

JUVENILE LEGAL SYSTEM : *The primary court system that responds to minor children and youth charged with violations of law. This entity may also be identified as the Juvenile Justice System.*

LAY ADVOCATE VOLUNTEER / GUARDIAN AD LITEM (GAL) VOLUNTEER / COURT APPOINTED SPECIAL ADVOCATE

(CASA) VOLUNTEER : *An individual appointed by the court to make recommendations informed by their assessment of the child or youth's best interest. Lay advocates typically serve in a volunteer capacity and are not licensed to give legal advice or otherwise engage in the practice of law. In some jurisdictions, the lay advocate volunteer is known as a Guardian ad litem or Court Appointed Special Advocate and is overseen by a court-approved CASA program.*

NACC ADVISORY COUNCIL MEMBER : *The National Advisory Council on Children's Legal Representation guides NACC's work. Members of the Advisory Council are young professionals with lived expertise in the child welfare system. They advise the Board of Directors, provide guidance to staff, and help the organization pursue its mission. Visit <https://nacccchildlaw.org/national-advisory-council-on-childrens-legal-representation/> for more information.*

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Executive Summary

Separating children from their family and placing them in foster care is traumatic, life-altering, and potentially unsafe.¹ They are removed from all that is familiar to them — their families, homes, schools, neighborhoods, places of worship, and extracurricular activities. When will they be able to return home safely? Who can they visit while in foster care? Where will they go to learn, worship, or play? Will they live with family members or in an institution? Who will meet their basic needs? Who will listen to them? Judges must make these and other complex, life-altering decisions in child protection court proceedings. But who is responsible for ensuring enforcement of children's legal rights in court?

In child protection court proceedings, attorneys typically represent the child protection agency and parents.² As recognized parties to the case, the child protection agency and parents present and challenge evidence through their attorneys. The same is not always true for children — the very person whose needs and interests are at the heart of the case. While the majority of states guarantee legal representation for all children involved in child protection court proceedings, *thirteen states still do not.*^{3,4}

Although children in the juvenile legal system are guaranteed due process and the right to legal counsel under the United States Constitution,⁵ similarly situated children in foster care are not yet afforded the same Constitutional protections of their civil rights. Currently, no federal statute or court ruling requires counsel for kids in child protection proceedings. Notwithstanding this gap, there is growing national consensus that children should be entitled to legal representation at all stages of a child protection proceeding.⁶

Children's attorneys use skilled advocacy to protect their client's legal rights. They protect a child's right to be with their families by challenging removals based on insufficient evidence. They hold the government accountable for intervention into family life and its corresponding obligations to make reasonable efforts to reunify families or find another safe, permanent home for a child. Children's attorneys advocate for child safety during foster placement, urge appropriate assessment of needs and service provision, promote kinship placements and frequent sibling visitation, prevent unnecessary placement in restrictive institutional environments, reduce frivolous placement changes and school moves, and insist upon timely exits from foster care.

1 Shanta Trivedi, *The Harm of Child Removal*, 43 NYU REV. L. & SOC. CHANGE 623, 624 (2019), https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2087&context=all_fac.

2 Legal representation is not guaranteed to parents or the child protection agency in some jurisdictions.

3 *Right to Counsel Map*, COUNSEL FOR KIDS, <https://counselforkids.org/right-to-counsel-map/> (last visited September 29, 2022).

4 States included in the 13 do not guarantee legal representation for *all* children in *all* stages of the child protection court proceeding.

5 *In re Gault*, 387 U.S. 1 (1967).

6 *See, e.g., Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 84 FORDHAM L. REV. 1301 (1996); AM. BAR ASS'N, STANDARDS FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1998), https://www.americanbar.org/content/dam/aba/administrative/child_law/repstandwhole.pdf; NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE (1998), <https://nacchidlaw.box.com/s/uat201td2fzypw1ugi0k1maf3fqt3e>; *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 6 NEV. L.J. 592 (2016) UNIV. REPRESENTATION OF CHILD. IN ABUSE, NEGLECT, & CUSTODY PROCS. ACT (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2008), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b57f1eb9-6411-e6f9-e46d-338cc78c68db&forceDialog=0>; CONF. OF CHIEF JUSTS. & CONF. OF STATE CT. ADM'RS, RESOLUTION 3 IN SUPPORT OF CHILD WELFARE ATTORNEY SPECIALTY CERTIFICATION PROGRAM (2008), https://ccj.ncsc.org/_data/assets/pdf_file/0021/23664/07302008-in-support-of-child-welfare-attorney-specialty-certification-program.pdf; MODEL ACT GOVERNING THE REPRESENTATION OF CHILD. IN ABUSE, NEGLECT, & DEPENDENCY PROCS. (AM. BAR ASS'N 2011), https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf; SOPHIE GATOWSKI ET AL., NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, ENHANCED RESOURCE GUIDELINES (2016), <https://www.ncjfcj.org/wp-content/uploads/2016/05/NCJFCJ-Enhanced-Resource-Guidelines-05-2016.pdf>; *History*, THE FAM. JUST. INITIATIVE <https://familyjusticeinitiative.org/about/history/> (last visited July 1, 2022); CHILD'S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-17-02, HIGH-QUALITY LEGAL REPRESENTATION FOR ALL PARTIES IN CHILD WELFARE PROCEEDINGS (2017), <https://www.acf.hhs.gov/cb/policy-guidance/im-17-02>; CONF. OF STATE CT. ADM'RS, CHILD WELFARE POLICY STATEMENT (2017), https://ccj.ncsc.org/_data/assets/pdf_file/0014/23432/child-welfare-final-aug2-17.pdf; CHILD'S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-19-03, ENGAGING, EMPOWERING, AND UTILIZING FAMILY AND YOUTH VOICE (2019), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1903.pdf>; NAT'L ASS'N OF COUNSEL FOR CHILD., RECOMMENDATIONS FOR LEGAL REPRESENTATION OF CHILDREN AND YOUTH IN NEGLECT AND ABUSE PROCEEDINGS (2021), <https://nacchidlaw.app.box.com/s/vsg6w9g218je6jrut3ae0zt2fvgltsn>.

Children cannot represent themselves in court. Children’s attorneys improve the quality of court proceedings by amplifying the child’s voice and perspective for the court’s consideration. When children are not appointed attorneys, judges make determinations about a child’s best interest with incomplete information. Principles of equity and fairness require that youth at the center of a child protection case have their voices heard — just like every other party to the case.

High-quality legal representation not only improves individual cases, but also entire child protection systems. Children’s attorneys shine light on and bring accountability to the child protection agency’s policies, case planning, and service provision. Children’s attorneys also confront systemic inequities resulting from agency policies that have a disparate impact on Black and Indigenous youth⁷ and LGBTQIA+ youth. Children’s legal representation can also improve systems by decreasing unnecessary time spent in foster care.⁸ Even a slight reduction in the number of days a child spends in costly foster care results in substantial cost savings to state governments.⁹ The positive ripple effects continue: as attorneys achieve more timely exits for their clients, a myriad of societal costs related to children languishing in foster care are avoided.¹⁰ According to a Jim Casey Youth Opportunities Initiative report, the national cost of children aging out of foster care without proper supports is nearly 8 billion dollars a year.¹¹

Children’s attorneys are necessary for fair court hearings, judicial economy, and improved outcomes. They advise clients of their rights, educate them about the legal process, inform them of their legal options, and counsel their decision making. They amplify youth voice, ensure the provision of notice and opportunity to be heard in court proceedings, hold government agencies accountable, and enforce children’s legal rights throughout all stages of a child protection proceeding. **NO OTHER PERSON INVOLVED IN A CHILD PROTECTION PROCEEDING CAN FULFILL THAT ROLE FOR THE CHILD.**

Court Appointed Special Advocate (CASA) or Guardians *ad litem* (GAL) volunteers are distinctly different from children’s attorneys. A volunteer and attorney can be appointed to the same child and execute their complementary duties simultaneously.¹² Only attorneys are specially trained in the law and trial skills, authorized to provide legal advice, and able to enforce the legal rights of a child.

Ensuring high-quality lawyering is as critical as establishing the right to counsel itself. Implementing legislation must ensure plans to provide high-quality legal services through centralized law offices that establish reasonable caseload limits, require initial and ongoing training requirements, and provide appropriate oversight and supervision. Policymakers should ensure counsel for kids legislative proposals consider and leverage the diverse array of federal funds available to support counsel for kids, including but not limited to Title IV-E of the Social Security Act.¹³

7 In limited instances, other racial disparities are apparent in state child protection systems. For example, in California, Hispanic or Latino children make up 52% of the population, but 59% of maltreatment victims (CHILD TRENDS, STATE LEVEL DATA FOR UNDERSTANDING CHILD WELFARE IN THE UNITED STATES (2022), <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>).

8 ANDREW E. ZINN & JACK SLOWRIVER, CHAPIN HALL AT UNIV. OF CHICAGO, EXPEDITING PERMANENCY: LEGAL REPRESENTATION FOR FOSTER CHILDREN IN PALM BEACH COUNTY (2008), <https://www.issue4lab.org/resources/1070/1070.pdf>.

9 Expert Report of Prof. Donald N. Duquette at 23, Nicole K. *ex rel.* Linda R. v. Stigdon, No. 1:19-cv-01521, 2020 WL 1042619 (S.D. Ind. Mar. 3, 2020), https://securerervercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/12/IN-FINAL-Expert_Report_of_Donald_Duquette-1-1.pdf.

10 JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF: COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE (2013), <https://www.aecf.org/m/resource/doc/JCYOI-CostAvoidance-2013.pdf>.

11 *Id.*

12 NAT’L ASS’N OF COUNSEL FOR CHILD, THE COMPLEMENTARY ROLES OF ATTY’S AND CASA/GAL VOLUNTEERS FOR CHILD ADVOCACY (2021), https://securerervercdn.net/50.62.198.124/zmc.c18.myftpupload.com/wp-content/uploads/2022/04/Counsel-for-Kids-CASA_GAL-Complementary-Roles-r4.pdf.

13 81B: Title IV-E, Administrative Functions/Costs, Allowable Costs – Foster Care Maintenance Payments Program, in CHILD WELFARE POLICY MANUAL AT Q. 30 (2018) [hereinafter 81B: Title IV-E], https://www.aclf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36.

Only when children experiencing foster care are seen, heard, and represented can they experience true access to justice and fairness in processes that have long-term impact on their lives. Legislators must act swiftly to ensure that no child's legal rights are ignored, overlooked, or forgotten.

Child protection systems are under constant scrutiny. The media, the public, and the families impacted by these systems rightfully demand reform. Guaranteeing counsel for kids is a key strategy in redesigning systems to better serve children and families and align with nationally recognized best practices.

This policy paper provides vital information to aid legislators and other stakeholders in achieving and implementing counsel for kids policy reform. Only when children experiencing foster care are seen, heard, and represented can they experience true access to justice and fairness in processes that have long-term impact on their lives. Legislators must act swiftly to ensure that no child's legal rights are ignored, overlooked, or forgotten.

In October 2021, the National Association of Counsel for Children launched the Counsel for Kids Campaign¹⁴ to galvanize and support stakeholders in thirteen target states around legislative reform efforts to secure children's right to counsel. Recent state legislative proposals show a trend toward expanding children's right to counsel in child protection proceedings.¹⁵ As the movement to expand children's rights gains momentum, policymakers frequently seek information to support new legislation: relevant research, law and policy of neighboring states, and best practices to ensure provision of high-quality legal services. This policy paper provides legislators and legislative staff with information and guidance on:

- the evolution of children's legal right to counsel;
- the value of centering lived experience in all policy decisions related to children's attorneys;
- the role of the children's attorney in individual and systemic advocacy;
- empirical research demonstrating the positive impact of children's attorneys;
- associated cost-savings available to state governments;
- models of legal services delivery systems;
- potential funding opportunities; and
- strategies to ensure high-quality legal service delivery.

¹⁴ COUNSEL FOR KIDS WEBSITE, <https://www.counselforkids.org> (last visited September 29, 2022).

¹⁵ S.B. 148, 68th Leg. Reg. Sess. (Mon. 2023); S.B. 1391, 55th Leg., Reg. Sess. (Ariz. 2021); H.B. 1219, 67th Leg., Reg. Sess. (Wash. 2021); H.B. 1035, 67th Leg. Assemb., Reg. Sess. (N.D. 2021); H.B. 22-1038, 73d Gen. Assemb., Reg. Sess. (Colo. 2022).

I Introduction

Displaced from home, school, and important relationships, children experiencing foster care are profoundly affected by government interventions and judicial decisions. In 13 states¹⁶ the one person at the center of a child protection case — the person who the government can physically remove from their family and take into custody — is also the one person who does not get their own attorney. Navigating the child protection system is complicated no matter how old you are. Children require an attorney to ensure fair legal procedures, protect their legal rights, and amplify their voices in the complex legal proceedings that deeply impact their lives. One unrepresented child is one too many.

Where am I going to live?

When can I see Mom and Dad?

Who will make sure my little sister has a night light in her room?

Can I still play soccer?

Will I still eat at Nana's house on Sunday?



II Why Kids Need High-Quality Counsel

a. A Brief History of Counsel for Kids

There is an access to justice gap for children in child protection systems. Children involved in the juvenile legal system have been guaranteed the right to legal counsel since 1967.¹⁷ In the case of *In re Gault*, the United States Supreme Court recognized an indisputable civil right to effective assistance of counsel and to fair and equal treatment in the enforcement and protection of laws for children accused of delinquent acts.¹⁸ Though children involved in the child protection system are often subject to similar restrictions of liberty as children accused of delinquent acts (including a limited right to association with family, temporary placement in hotels,¹⁹ CPS administrative offices,²⁰ group homes, institutions,²¹ or locked psychiatric facilities,²² and, at times, even physical confinement²³) the Supreme Court has not yet considered whether they too have a right to legal counsel. Given the similar liberty interests at stake, the Gault analysis should apply equally to children in custody of the government and subject to child protection proceedings.^{24,25}

The United States Congress recognized the importance of children's legal representation shortly after the *Gault* decision. In 1974, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) to provide funding to states for

¹⁶ *Right to Counsel Map*, *supra* note 3.

¹⁷ *In re Gault*, *supra* note 5.

¹⁸ GAULT CTR., CAUSE OF ACTION: FULFILLING THE PROMISES OF GAULT (2022), <https://njdc.info/wp-content/uploads/Cause-of-Action.pdf>.

¹⁹ Heidi Paxson, *Foster Care Crisis: Hundreds of Foster Kids in South Georgia Placed in Hotels*, WALB NEWS (JUNE 8, 2022), <https://www.walb.com/2022/06/08/foster-care-crisis-hundreds-foster-kids-south-georgia-placed-hotels/>.

²⁰ Avery Travis, *Report: Texas Foster Children Spend Average of 18 Nights Sleeping in CPS Offices, Hotels*, KXAN (NOV. 19, 2021), <https://www.kxan.com/investigations/report-texas-foster-children-spend-average-of-18-nights-sleeping-in-cps-offices-hotels/>; Maya T. Prabhu, *Foster Children Housed in Child Welfare Offices; Officials Work to End Practice*, ATLANTA JOURNAL-CONSTITUTION (JUNE 20, 2022), <https://www.ajc.com/politics/foster-children-housed-in-child-welfare-offices-officials-work-to-end-practice/YCMAHV7YFFFPDPTJEHQYVPGI/>.

²¹ SARAH FATHALLAH, & SARAH SULLIVAN, *AWAY FROM HOME: YOUTH EXPERIENCES OF INSTITUTIONAL PLACEMENTS IN FOSTER CARE*, THINK OF US (2021), https://assets.website-files.com/60a6942819ce8053cef40947/60f6b1eb474362514093f96_Away%20From%20Home%20-%20Report.pdf.

²² J. Curtis McMillen, et al., *A Crisis of Credibility: Professionals' Concerns About the Psychiatric Care Provided to Clients of the Child Welfare System*, *Adm Policy Ment Health* (Oct. 26, 2006), 34(3):203-212, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3394428/>.

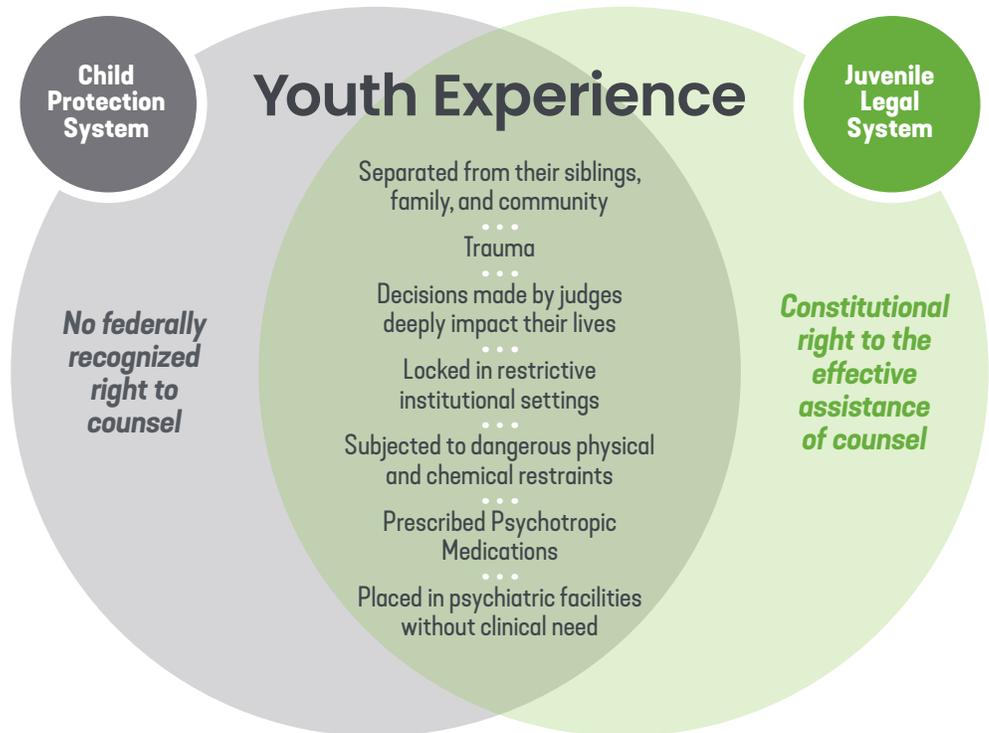
²³ Lashonda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 *Fam. Ct. Rev.* 605, 607 (2009), <https://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2009.01277.x>. See also Patrick Smith, *Illinois is Routinely Housing Words of the State in Chicago's Jails for Kids*, WBEZ CHICAGO (JUNE 7, 2022), <https://www.wbez.org/stories/illinois-dcfs-housing-kids-in-chicagos-juvenile-jail/64305b5d-eea2-4c08-915e-639e759b08d7> (Illinois children forced to remain behind bars due to lack of child welfare placement options).

²⁴ Several state and district courts have acknowledged that children are constitutionally entitled to representation in neglect, abuse or permanency court proceedings. See *Roe v. Conn.*, 417 F. Supp. 769, 780 (M.D. Ala. 1976); *Matter of T.M.H.*, 613 P.2d 468, 470-471 (Okla. 1980); *In re Jamie T.T.*, 191 A.D.2d 132, 135 (N.Y. App. Div. 1993); *In re Guardianship of S.A.W.*, 856 P.2d 286, 289 n.9 (Okla. 1993); *Kenny A. ex rel. Winn v. Perdue*, 356 F.Supp. 2d 1353, 1360 (N.D. Ga. 2005) [finding that children have "fundamental liberty interests at stake in deprivation and TPR proceedings" including an interest in their own "safety, health, and well-being" and an "interest in maintaining the integrity of the family unit and in having a relationship with [their] biological parents."].

²⁵ Under the Indian Child Protection Act (ICWA), 25 U.S.C. §§ 1901-1963, children have a discretionary right to appointed counsel, and where there is no state provision authorizing payment, the federal government will pay reasonable attorney fees and expenses. ICWA is silent as to the model of legal representation for children.

∞ The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it... The President's Crime Commission has recently recommended that, in order to assure 'procedural justice for the child,' it is necessary that 'Counsel... be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.' ∞

IN RE GAULT, 387 U.S. 1 (1967)



"prevention, assessment, investigation, prosecution, and treatment activities."²⁶ To receive CAPTA funds, states must, among other things, require the appointment of a guardian *ad litem* (GAL) for children in child protection cases.²⁷ At the time CAPTA was passed, legislative history demonstrates that Congress envisioned lawyers serving as guardians *ad litem*,²⁸ however, in 1996 CAPTA was amended to permit either an attorney or a lay advocate to advocate for a child's best interest in court.²⁹

Even without a federal mandate, thirty-seven states go beyond CAPTA's requirement by requiring lawyers to represent children involved with the child protection system.^{30,31} This widespread practice "is rooted in the reality that judicial proceedings are complex and that all parties, especially children, need an attorney to protect and advance their interests in court, provide legal counsel and help children understand the process and feel empowered."³²

Time and time again, the federal government and esteemed national organizations, including the American Bar Association and the National Council of Juvenile

26 CHILD WELFARE INFO. GATEWAY, ABOUT CAPTA: A LEGISLATIVE HISTORY (2019), <https://www.childprotection.gov/pubs/factsheets/about/>.

27 The Child Abuse and Prevention Treatment Act, 42 U.S.C. §§ 5101-5115, <https://www.acf.hhs.gov/sites/default/files/documents/cb/capta.pdf>.

28 For example, during subcommittee hearings, Brian Fraser, a staff attorney with the National Center for the Prevention and Treatment of Child Abuse and Neglect, recommended attorney appointment in cases of child abuse, analogizing children's rights in these cases to *In re Gault*, 387 U.S. 1 (1967). *Child Abuse Prevention Act, 1973: Hearings before the S. Subcomm. on Child. & Youth, 93rd Cong. 249 (1973)* [statement of Brian Fraser, Staff Atty, Nat'l Ctr. for the Prevention & Treatment of Child Abuse & Neglect], <https://files.eric.ed.gov/fulltext/ED081507.pdf>. Dr. Henry Kempe, Chairman of the Department of Pediatrics at the University of Colorado Medical Center, testified similarly that the assistance of counsel for children in dependency cases is necessary to "cope with the problems of the law, to make a skilled inquiry into the facts, and to insist on the regularity of the proceeding." *Child Abuse Prevention Act, 1973: Hearings before the S. Subcomm. on Child. & Youth, 93rd Cong. 202 (1973)* [statement of Dr. Henry Kempe, Chairman, Dept of Pediatrics, Univ. of Colo. Medical Ctr.]. The Congressional record also includes a copy of the Colorado Children's Code, which used the term "guardian ad litem" to describe lawyers appointed to represent children in abuse and neglect cases. *Child Abuse Prevention Act, 1973: Hearings Before the S. Subcomm. on Child. & Youth, 93rd Cong. 523 (1973)* (Appendix II).

29 The Child Abuse Prevention and Treatment Act Amendments of 1996, Pub. L. No. 104-235, 110 Stat. 3063.

30 *Right to Counsel Map*, *supra* note 3.

31 The U.S. Department of Health and Human Services Adoption 2002 Guidelines explain that children's attorneys "advocating the child's wishes and preferences could be seen as in the child's best interest, serving the child's best interests, and helping the court to better arrive at overall decisions that are best for the child." See DONALD N. DUQUETTE & MARK HARDIN, CHILD'S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., ADOPTION 2002: GUIDELINES FOR PUBLIC POLICY AND STATE LEGISLATION GOVERNING PERMANENCE FOR CHILDREN 163 (1999), <https://babel.hathitrust.org/cgi/pt?id=umn.31951d019557391&view=1up&seq=69>.

32 CHILD'S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. 17-02, HIGH-QUALITY LEGAL REPRESENTATION FOR ALL PARTIES IN CHILD PROTECTION PROCEEDINGS (2017), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>

and Family Court Judges, have affirmed the importance of counsel for children in dependency proceedings as best practice.³³ In 2017, the U.S. Children’s Bureau issued written guidance encouraging state courts, child protection agencies, administrative offices of the courts, and Court Improvement Programs to collaborate to ensure children receive high-quality legal representation at all stages of a child protection proceeding.³⁴ In the National Association of Counsel for Children’s *2021 Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*,³⁵ NACC further recognized high-quality legal representation for children and youth in all stages of a child protection proceeding as a best practice associated with increased fairness and improved outcomes. Despite these consistent recommendations, there remains an urgent need for reform at the state and federal level to ensure that all children involved in the child protection system are guaranteed legal representation.³⁶

b. What is Legal Representation for a Child?

The attorney-client relationship is the foundation of effective legal representation and the gateway for children and youth to access their legal rights. Legal representation begins when an attorney is appointed or retained to represent a child, usually at the same time the child protection agency files a petition alleging abuse or neglect with the court or in advance of the first court hearing in the matter, whichever is earlier. Appointment in advance of the first court hearing allows the attorney time to meet the client, conduct an initial investigation, and prepare for meaningful participation in the first hearing. Children’s attorneys must “as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”³⁷ This requires at least monthly³⁸ contact and intentional communication tailored to the client’s individual circumstances. Attorneys for children, just as attorneys for adults, owe their clients professional duties including competence, diligence, loyalty, zealous advocacy, and communication.³⁹

Hallmarks of a meaningful attorney-client relationship are robust client counseling, legal advice, and provision of a confidential space to discuss complex, emotional, and potentially lasting decisions. As a licensed legal professional, the attorney determines the legal strategies necessary to achieve the litigation goals.⁴⁰ Children and youth have a right to make informed and counseled choices

33 See, e.g., *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301 (1996); AM. BAR ASS’N, STANDARDS FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996), https://www.americanbar.org/content/dam/aba/administrative/child_law/repstandwhole.pdf; NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, CHILD ABUSE AND NEGLECT CASES: REPRESENTATION AS A CRITICAL COMPONENT OF EFFECTIVE PRACTICE (1998), <https://naccchildlaw.box.com/s/uot201td2fzypwluqli0k1mof3fakt3e>; DUQUETTE & HARDIN, *supra* note 31; *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham*, 6 NEV. L.J. 592 (2016) UNIF. REPRESENTATION OF CHILD. IN ABUSE, NEGLECT, & CUSTODY PROCS. ACT (NAT’L CONF. OF COMM’RS ON UNIF. STATE L. 2006), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b57f1eb9-64f1-e6f9-e46d-338cc78c68db&forceDialog=0>; CONF. OF CHIEF JUSTS. & CONF. OF STATE CT. ADM’RS, RESOLUTION 3 IN SUPPORT OF CHILD WELFARE ATTORNEY SPECIALTY CERTIFICATION PROGRAM (2008), https://ccj.ncsc.org/_data/assets/pdf_file/0021/23664/07302008-in-support-of-child-welfare-attorney-specialty-certification-program.pdf; MODEL ACT GOVERNING THE REPRESENTATION OF CHILD. IN ABUSE, NEGLECT, & DEPENDENCY PROCS. (AM. BAR ASS’N 2011), https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf; SOPHIE GATOWSKI ET AL., NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, ENHANCED RESOURCE GUIDELINES (2016), <https://www.ncjfcj.org/wp-content/uploads/2016/05/NCJFCJ-Enhanced-Resource-Guidelines-05-2016.pdf>; *History*, THE FAM. JUST. INITIATIVE <https://familyjusticeinitiative.org/about/history/> (last visited July 1, 2022); CHILD’S BUREAU U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-1M-17-02, HIGH-QUALITY LEGAL REPRESENTATION FOR ALL PARTIES IN CHILD WELFARE PROCEEDINGS (2017), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>; CONF. OF STATE CT. ADM’RS, CHILD WELFARE POLICY STATEMENT (2017), https://ccj.ncsc.org/_data/assets/pdf_file/0014/23432/child-welfare-final-aug2-17.pdf; CHILD’S BUREAU U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-1M-19-03, ENGAGING, EMPOWERING, AND UTILIZING FAMILY AND YOUTH VOICE (2019), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1903.pdf>; NAT’L ASS’N OF COUNSEL FOR CHILD., RECOMMENDATIONS FOR LEGAL REPRESENTATION OF CHILDREN AND YOUTH IN NEGLECT AND ABUSE PROCEEDINGS (2021), <https://www.naccchildlaw.org/page/StandardsOfPractice>.

34 CHILD’S BUREAU *supra* note 32.

35 NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 33.

36 CAPTA Reauthorization Act of 2021, S. 1927, 117th Cong. (2021), <https://www.congress.gov/bills/117/congress%20senate/bills/1927/text>. See also *Right to Counsel Map*, *supra* note 3.

37 MODEL RULES OF PRO. CONDUCT R. 1.14 (AM. BAR ASS’N 1983).

38 NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 33.

39 MODEL RULES OF PRO. CONDUCT (AM. BAR ASS’N 1983).

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

40 This paper does not include a discussion of varying models of representation and the associated variation in the allocation of authority between client and lawyer to determine the objectives of the representation. For a discussion of models of representation, see NACC’s *Recommendations*, NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 33. <https://counselforkids.org/wp-content/uploads/2023/08/Models-of-Representation-2023-Poster-Map-1.png>.



Attorney-Client Relationship Case Study **FACT PATTERN:** May, June, and August are 9-year-old triplets who are placed in foster care after being removed from the custody of their parents. They have always lived in the same home. They have always shared the same room. When they are brought into care, they are immediately sent to separate placements more than two hours apart. June and August are placed together while May is placed separately.



Attorney Meeting

The siblings all confide in their attorney that they wish to be placed together.



Investigation

The attorney conducts an independent investigation. She interviews her clients in their respective placements, the parents with their legal counsel present, and key relatives that live nearby. Some relatives are able to serve as placement, though unwilling to take all three children. The attorney discusses with the social worker her findings and the identities of relatives not included in the initial agency diligent search for relatives.



Counseling

The attorney discusses the potential relative placements with her clients. She explains that even if placed with relatives they may not be placed together but will have more frequent opportunities for visitation with their siblings and parents.



Counseled Position

After hearing the advice, the siblings agree that being placed closer together with relatives is better than their current situation.



Legal Advocacy

The attorney discusses the separate placements of the children in a meeting with the parents, parent's attorneys and DSS attorneys. They come to agreement. The triplets feel empowered and heard. The result is that they are placed in two different homes in the same neighborhood. They are provided frequent visitation by their relative caregivers and the opportunity to talk on the phone and video chat to stay connected.

so that they are well-positioned to be involved in all decisions impacting their lives. **RENDERING PRUDENT LEGAL ADVICE TO THE CHILD OR YOUTH IS ONE OF THE MOST VALUABLE FUNCTIONS OF AN ATTORNEY, WHICH NO OTHER PERSON ASSIGNED TO THE CASE CAN PROVIDE.**

Children's legal representation is a specialized area of practice that requires initial and ongoing training. National and state-specific resources⁴¹ are readily available to help an attorney excel in this practice area. NACC publishes *Child Welfare Law and Practice*, also known as "The Red Book," that serves as a day-to-day guide for child welfare advocates across the country, offering in-depth analysis and instruction on a wide variety of topics in the field of child welfare law. Attorneys can participate in comprehensive online Red Book training courses to enhance their knowledge of core dependency competency areas. Additionally, NACC is accredited by the American Bar Association to certify attorneys as Child Welfare Law Specialists; a professional achievement that signifies an attorney's specialized knowledge, skill, and verified expertise in the field of child welfare law.

c. Individual Case Impact

From the moment the government places a child in foster care, their right to be with their family, their safety, and their well-being are all at stake and subject to agency policies and judicial decisions. Attorneys improve case outcomes, enhance information provided to the judicial officer, amplify the voice of the child at the center of the case, and use their professional skills to promote fairness and advance a child's legal interests.

Children experience substantial loss when they are placed in foster care — separated from their parents, siblings, and other family members, their neighborhoods, their schools, their places of worship, and their extracurricular activities. These familiar aspects of their lives are replaced with unfamiliar people, places, and things. The act of separating a child from their family may cause them to experience grief and trauma that has life-long impact. In a statement from the American Academy of Pediatrics (AAP) opposing the separation of children and parents at the U.S.-Mexico border, AAP President Colleen Kraft writes, "[...]highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress — known as toxic stress — can carry lifelong consequences for children."⁴²

Once separation from family has occurred, the foster care experience itself can also have a damaging effect on a child. Contrary to its purpose, foster care may actually subject children to harms including separation from siblings, placement instability,⁴³ unnecessary stays in group homes or institutions, frequent school changes, and more. Furthermore, foster care does not guarantee child safety and well-being. "In fact, [...]the weight of social scientific evidence suggests that children who are removed from their homes based on allegations of abuse or neglect often face more abuse and neglect in foster care. This is anathema to a system whose stated goal is child safety."⁴⁴

⁴¹ CHILD WELFARE INFO. GATEWAY, COURT IMPROVEMENT PROGRAM <https://www.childwelfare.gov/topics/systemwide/courts/reform/cip/> (last visited Nov. 11, 2022).

⁴² AMERICAN ACADEMY OF PEDIATRICS, AAP STATEMENT OPPOSING SEPARATION OF CHILDREN AND PARENTS AT THE BORDER(2018), <https://www.aap.org/en/news-room/news-releases/aap/2018/aap-statement-opposing-separation-of-children-and-parents-at-the-border/>.

⁴³ In foster care children can be moved from one foster home (group home or institution) to another for a variety of reasons.

⁴⁴ Shanta Trivedi, *supra* note 1.

“It would have been helpful if my rights as a child were explained to me... I did not believe that I had any say in what happened to me, which was not true.”

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While the government should ensure a child is placed in appropriate and safe living conditions in family-like settings,⁴⁵ states often utilize drastic alternatives like emergency shelters, hotels,⁴⁶ institutions,⁴⁷ and even Child Protective Services offices⁴⁸ instead of family foster homes for youth.⁴⁹ Older youth and those with disabilities face the most frequent overuse of institutional settings.⁵⁰ These facilities often lack proper oversight for their health and safety practices,⁵¹ have poorly trained staff, use restraints and seclusion practices that are physically and psychology harmful to children, dispense harsh punishments, and house children mismatched for the level of care.⁵² Youth who have experienced institutional environments report a lack of meaningful relationships necessary for social development, additional harm and abuse, a lost sense of normalcy, and feelings of imprisonment.⁵³

The foster care experience involves risk of harm, complicated agency and judicial processes, uncertainty about the future, and little transparency. A child experiencing foster care must have an advocate on their side who challenges agency decisions and brings the priority issues of safety and well-being to the court’s attention on their behalf. **A CHILDREN’S ATTORNEY APTLY GUIDES YOUTH THROUGH COMPLEX COURT PROCEEDINGS OFTEN LACED WITH EMOTIONAL TURMOIL,⁵⁴ PROVIDING THEM WITH AN ADVOCATE AND ADVISOR WHO CAN RELIABLY ADVANCE THEIR INTERESTS.**

i. Improving Outcomes

Research on children’s legal representation confirms that children’s attorneys generate measurably improved outcomes for children in foster care.⁵⁵ A 2008 study by the Chapin Hall Center for Children at the University of Chicago found that children represented by attorneys in Palm Beach County had “significantly higher rates of exit to permanency” than children without access to legal counsel, while not decreasing rates of reunification.⁵⁶ They also benefited from more individualized case plans and more court status hearings to oversee that plan.⁵⁷

Between 2009 and 2016, the U.S. Children’s Bureau sponsored the Quality Improvement Center on the Representation of Children in the Child Protection System

45 See CHILD’S RTS., FAMILIES OVER FACILITIES ENDING THE USE OF HARMFUL AND UNNECESSARY INSTITUTIONS AND OTHER GROUP FACILITIES IN CHILD WELFARE SYSTEMS (2021), https://secure.childrensrights.org/site/SSurvey?ACTION_REQUIRED=URL_ACTION_USER_REQUESTS&SURVEY_ID=2180 (“The overall rate of maltreatment of children while in foster care custody — which includes harms from abuse, neglect, or negligent supervision — is significantly higher for children placed in institutions and other group facilities than for children placed in family settings. (citation omitted) The physical abuse rates in residential care facilities in one study was almost double that of family foster care and triple that of the general population of adolescents of the same age. (citation omitted).”)

46 *Foster Care Crisis*, *supra* note 19

47 SARAH FATHALLAH, & SARAH SULLIVAN, *supra* note 21. (Frequently youth reported that their child welfare workers placed them in institutions by default not because it was the best placement to meet their needs but because of the unreliable inventory of foster homes.)

48 *Report*, *supra* note 20.

49 *Kenny A.*, *supra* note 24.

50 SARAH FATHALLAH, & SARAH SULLIVAN, *supra* note 21 (While institutional placements are generally considered placements of last resort pursued only after many prior unsuccessful placements, some youth indicated that an institution was their very first placement.)

51 Christopher O’Donnell, *Eckerd Connects Loses Child Welfare Contract in Pinellas, Pasco*, TAMPA BAY TIMES (NOV. 4, 2021), <https://www.tampabay.com/news/2021/11/01/eckerd-connects-loses-child-welfare-contract-in-pinellas-pasco/#:~:text=The%20Clearwater%20nonprofit%20says%20it,million%20Hillsborough%20contract%20in%202022.&text=CLEARWATER%20%E2%80%94%20Eckerd%20Connects%20will%20no,Tampa%20Bay%20region%20next%20year.>

52 SARAH FATHALLAH, & SARAH SULLIVAN, *supra* note 21 (Children can be improperly placed in institutional settings that provide clinical services they do not need or that subject them to further trauma without meaningful pathways to address their existing trauma.)

53 *Id.*

54 Shanta Trivedi, *supra* note 1 (Children, particularly younger children, are especially susceptible to trauma and psychological harm caused by separation from a parent, even for a brief and temporary timeframe).

55 See, e.g., BRITANY ORLEBEKE ET AL., CHAPIN HALL AT UNIV. OF CHICAGO, EVALUATION OF THE OIC-CHILDREP BEST PRACTICES MODEL TRAINING FOR ATTORNEYS REPRESENTING CHILDREN IN THE CHILD WELFARE SYSTEM (2016), <http://www.improvechildrep.org/Portals/0/OIC-ChildRep%20Chapin%20Hall%20Evaluation%20Exec%20Summary.pdf>. See also RYAN COOPER ET AL., LEGAL AID IN CHILD WELFARE: EVIDENCE FROM A RANDOMIZED TRIAL OF MI ABOGADO (2022), <https://mitsloan.mit.edu/shared/ods/documents?PublicationDocumentID=9580> (A recent evaluation of the legal aid provided to children in foster care by The Abogado Program in Chile found that when compared to the control group, the treatment group receiving multi-disciplinary legal representation spent less time in out-of-home care without a decline in child safety and experienced improved outcomes including a reduction in criminal justice involvement and some evidence of improved school attendance. These results show that the legal representation intervention can have a substantial effect on speeding children through the system toward the goal of achieving a return to a permanent family and yield cost savings for both the costs of out-of-home care and related societal costs (i.e. criminal justice involvement)).

56 ANDREW E. ZINN & JACK SLOWRIVER, *supra* note 8.

57 *Id.*

“We’re seeing more and more that anytime there’s an opportunity to include more perspectives, those opportunities should be taken, the fuller the picture that can be provided, the better.”

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(QIC-ChildRep).⁵⁸ The project administered a national needs assessment to examine the current state of child representation in the United States, which informed development of the QIC-Best Practice Model, a framework of attorney activities and system standards necessary to provide high-quality legal representation to children. Using this framework, the QIC-ChildRep researchers conducted the first ever, random-assignment, experimental design study on attorney behavior to evaluate the practice model. The study demonstrated that children represented by attorneys who completed the specialized training were 40% more likely to experience permanency within six months than children who were not.⁵⁹ QIC-ChildRep Director, Professor Don Duquette wrote, “...**EFFECTIVE REPRESENTATION FOR CHILDREN SHORTENS THE TIME IN FOSTER CARE. SINCE FOSTER CARE AND THE ATTENDANT GOVERNMENT COSTS IN SOCIAL SERVICES, ADMINISTRATION, AND COURT COSTS ARE SO HIGH, EVEN A MODEST REDUCTION OF TIME IN CARE RESULTS IN SUBSTANTIAL GOVERNMENT SAVINGS.**”⁶⁰

In 2021, a Washington State evaluation explored the impact of standards-based legal representation of children. Researchers found that, compared to children without attorneys, children receiving standards-based legal representation were 45% more likely to reunify with their parents, 30% less likely to experience changes in foster homes, and 65% less likely to experience unnecessary school moves.⁶¹ These results did not expand state costs and, in fact, may have yielded fiscal savings.⁶²

ii. Enhancing Information Provided to Judges

Judges routinely make life-altering decisions for children and families based on evidence presented through attorneys in court hearings. When children are without legal representation, the court may not receive pertinent information on a child and family. Appointing a children’s attorney closes this gap, ensuring the balanced presentation of evidence on behalf of each party and positioning a judge to make the best possible decisions with accurate, relevant, and complete information.

THE SEPARATE AND DISTINCT NEEDS OF CHILDREN CANNOT BE ETHICALLY AND ADEQUATELY REPRESENTED BY COUNSEL FOR ANY OTHER PARTY.⁶³ Parents need high-quality legal representation to help them navigate proceedings and advocate for their interests. Counsel for parents are duty-bound to prioritize the legal questions and requests of parents during limited court time.⁶⁴ Parent’s counsel may be unaware of or unable to ask a court for all the supports that could be beneficial for a child. For example, the role of parent’s counsel does not include first-hand investigation of all of the child’s needs (i.e. routinely visiting the foster home) or permit parent’s counsel to provide legal advice to the child.

Similarly, child protection agency attorneys represent the position of the agency, not the individual child. They must consider their advocacy goals in the context of the agency’s priorities, budget constraints, internal policies, and procedures.⁶⁵ Pol-

⁵⁸ QIC-CHILDREP, <https://www.improvechildrep.org> (last visited July 1, 2022).

⁵⁹ ORLEBEKE, ET AL., *supra* note 55.

⁶⁰ Duquette *supra* note 9 at 23.

⁶¹ WASH. STATE CTR. FOR RSCH., EVALUATION OF THE WASHINGTON STATE DEPENDENT CHILD LEGAL REPRESENTATION PROGRAM (2021), <https://securerervercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/11/DCLR-Report-2021.pdf> (Standards Based Legal Representation is Washington’s framework to provide specialized training to children’s attorneys modeled after the QIC-Best Practice Model).

⁶² *Id.* at 1, 19. (The study’s benefit-cost analysis projected a child welfare cost-savings of over 1.2 million dollars when comparing “the business-as-usual group” to the “dependent child legal representation group.” This projection is considered conservative as it did not consider potential cost savings outside of the child welfare system in educational, employment, health, or criminal justice domains).

⁶³ *Legal Representation in Child Welfare Proceedings*, AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, https://www.americanbar.org/content/dam/aba/administrative/child_law/cwrepinfographic.pdf (last visited December 6, 2022).

⁶⁴ Erik Pithal, *Children’s Constitutional Right to Counsel in Dependency Cases*, 16 TEMP. POL. & CIV. RTS. L. REV. 663 (2006), <http://improvechildrep.org/LinkClick.aspx?fileticket=w501sqSD9Tg%3D&tabid=85>.

⁶⁵ Brooke N. Silverthorn, *Agency Representation in Child Protection Proceedings*, in *CHILD WELFARE LAW AND PRACTICE* (Donald N. Duquette et al. eds., 3d ed. 2016).



Agencies, parents, tribes and sometimes even lay volunteers are appointed attorneys to represent their interests in court. What is the missing piece of the puzzle? High-quality legal representation for children and youth is necessary to advocate for their needs and preferences.

icies aimed at promoting the best outcomes for all children systemwide can sometimes differ from what would be best for one child individually. Furthermore, inherent time and resource constraints of counsel for the agency may conflict with the child’s right to have every legal option thoroughly investigated and exhausted.⁶⁶ For example, a child may have a psychiatric evaluation that recommends medication as part of the treatment plan. If the child requests an alternative to psychotropic medications, child protection agencies may oppose the request if the requested service is not covered by public insurance plans and/or offered through specific provider agencies. In response, the children’s attorney may file a motion in court to review the medication prescribed, the potential side effects, the availability of evi-



may even solicit expert witness testimony to the court if needed to advance their client’s interest.

In many states judges appoint lay advocates known as Court Appointed Special Advocate (CASA) or Guardian *ad litem* (GAL)⁶⁷ volunteers to advocate for children’s best interest.⁶⁸ These specially-trained community volunteers consider issues relevant to the best interest of the child, gather information to learn about the child and their family, engage the child through regular visits, collaborate with others to ensure necessary services are provided and prepare a written report with their recommendations.⁶⁹ Some jurisdictions may appoint counsel to represent CASA or GAL volunteers.⁷⁰ This is not independent legal representation of a child as a party to the case. The attorney for the volunteer owes professional duties of loyalty, competency, and confidentiality to the volunteer or volunteer program, not the child. When an attorney represents the volunteer CASA or GAL, the child is not the attorney’s client. When a child is left unrepresented, there is a grave risk that the judge will make rulings based on incomplete evidence which are not in the best interest of the child. **TO MAKE SOUND AND IMPARTIAL DECISIONS, THE JUDICIAL SYSTEM MUST HAVE ACCESS TO A COMPREHENSIVE FLOW OF INFORMATION THROUGH THE HIGH-QUALITY LEGAL REPRESENTATION OF ALL PARTIES.**

iii. Centering and Amplifying Youth Voice

Children experiencing foster care place high value on having meaningful input in the decisions made about their lives.⁷¹ Expressing their views and participating in the decision-making process helps youth overcome feelings of powerlessness and fear.⁷² Through the attorney-client relationship, youth gather information about

⁶⁶ See Pitchal, *supra* note 64.

⁶⁷ This should not be confused with a professional identified as Guardian *ad litem* Attorneys who unlike GAL volunteers are licensed attorneys who use legal advocacy to pursue a child’s best interest.

⁶⁸ NAT’L ASS’N OF COUNSEL FOR CHILD, STATE MODELS OF CHILDREN’S LEGAL REPRESENTATION (2021), <https://secureservercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/10/Model-of-Rep-Chart-2021.pdf>; FIRST STAR INST. & CHILD’S ADVOC. INST., A CHILD’S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED AND NEGLECTED CHILDREN (3D. ED. 2019), <http://www.caichildlaw.org/Misc/RTC4.pdf>.

⁶⁹ *The CASA/GAL Model*, NAT’L CASA/GAL ASS’N FOR CHILD., <https://nationalcasagal.org/our-work/the-casa-gal-model/> (last visited Nov. 11, 2022).

⁷⁰ See, e.g., Alaska Children in Need of Aid Rule 12.1 “Right to Counsel” <https://secureservercdn.net/50.62.198.124/zmc.c18.myftpupload.com/wp-content/uploads/2022/05/Alaska-CINA-Rules-2022.pdf>; See also Illinois Compiled Statutes, 705 Ill. Comp. Stat. Ann. 405/1-5 (1) <https://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=070504050HArt%2E-1&ActID=18636&ChapterID=50&SeqStart=100000&SeqEnd=2300000>.

⁷¹ Anna Cody, Children’s Participation Rights in Child Protection Systems: Identifying Opportunities for Implementation (Dec. 2020) (Ph.D. dissertation, Virginia Commonwealth University), <https://scholarcompass.vcu.edu/cgi/viewcontent.cgi?article=7617&context=etd>.

⁷² *Id.*

“I knew that I could establish a positive relationship with my social workers and attorneys because they gave me autonomy and opportunities to make decisions and be involved in my case.”

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their case, share their concerns, receive legal advice, and provide valuable insights about what works best for them and their family.⁷³ For example, a child experiencing safety issues in their placement can share these concerns with their attorney and receive legal counsel about options to promote their own well-being. The children’s attorney may file a motion requesting an emergency hearing and present evidence to the judge.

The children’s attorney also uses information gathered from their client to achieve timely resolution of their client’s concerns. Children’s attorneys gather the child’s perspective and reasoning, recognizing that they are “the individuals most knowledgeable about solutions that will benefit them.”⁷⁴

iv. Promoting Fairness

Principles of equity and justice require that parties to legal proceedings experience fair legal procedures.⁷⁵ A party’s evaluation of the fairness of legal proceedings depends on more than their case outcomes.⁷⁶ Access to counsel, having one’s viewpoint heard, neutrality of decision-makers, respectful treatment throughout the process, and trustworthy authorities are all criteria individuals use to evaluate the fairness of their legal experience.⁷⁷ Fairness in legal procedures “enhances the perceived legitimacy” of the court and parties’ willingness to accept decisions made.⁷⁸

A youth’s perception of the legal representation they receive in foster care is strongly correlated with their perception of the overall foster care experience.⁷⁹ “When children believe their positions have been effectively advocated, their resultant feelings of procedural justice and fairness enhance their acceptance of the proceedings and the decisions made.”⁸⁰ The National Foster Youth and Alumni Policy Council 2020 Recommendations identify increasing access to high-quality legal representation as a top policy priority.⁸¹

CHILDREN’S ATTORNEYS AND JUDGES⁸² GENERATE TRUST THAT LEGAL PROCEDURES ARE FAIR AND THAT THE VALUABLE PERSPECTIVES OF YOUTH IN CHILD PROTECTION COURT PROCEEDINGS ARE HEARD THROUGH RESPECTFUL TREATMENT AND MEANINGFUL ENGAGEMENT. Youth often have limited knowledge of legal procedure and their legal rights. Without a legal representative to voice their needs and concerns to the judge, they may feel unseen and view court proceedings as unfair. The children’s attorney has a direct influence on the child’s courtroom experience and their evaluation of its fairness.⁸³ For example, a children’s attorney develops litigation goals with the child’s input,

73 NAT’L ASS’N OF COUNSEL FOR CHILD, *supra* note 33. See also CHILD’S BUREAU *supra* note 33.

74 Andrea Khoury, *Why A Lawyer? The Importance of Client-Directed Legal Representation for Youth*, 48 FAM. CT. REV. 277 (2010), <https://onlinelibrary.wiley.com/doi/10.1111/j.1744-1617.2010.01309.x>.

75 CHILD’S BUREAU *supra* note 32.

76 Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective* 37 FORDHAM URB. L.J. 473 (2010), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2334&context=ulj>.

77 *Id.*

78 *Id.*

79 J. Jay Miller et. al., *Exploring the Legal Representation of Individuals in Foster Care: What Say Youth and Alumni?*, 78 CHILD. & YOUTH SERVS. REV. 142 (2017), <https://www.sciencedirect.com/science/article/abs/pii/S0190740917302505?via=ihub>.

80 Khoury, *supra* note 74.

81 NAT’L FOSTER CARE YOUTH & ALUMNI POL’Y COUNCIL, *A HISTORIC OPPORTUNITY TO REFORM THE CHILD PROTECTION SYSTEM: YOUTH & ALUMNI PRIORITIES ON OLDER YOUTH SUCCESSFUL TRANSITION TO ADULTHOOD* (2020), https://nationalpolicycouncil.org/sites/default/files/docs/blogs/_Older%20Youth%20Successful%20Transition%20to%20Adulthood.pdf.

82 *Engaging Youth in the Courtroom*, NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, <https://www.ncjfcj.org/bench-cards/engaging-youth-in-the-courtroom/#section-5> [Last visited December 6, 2022] (Judges can question a youth’s absence from court hearings and inquire into efforts made and the accommodations offered to encourage the youth’s attendance. They may also communicate with the youth during court hearings encouraging them to ask questions, soliciting their input, and reviewing the outcome of the hearing with them).

83 Zimmerman & Tyler, *supra* note 76 (Procedural justice is a theory explaining how an individual’s perception of fairness is significantly shaped by the quality of their experiences rather than the outcome alone. Researchers have identified four key components to procedural justice: 1) voice – having one’s viewpoint heard; 2) neutrality – unbiased decision-makers and transparency of process; 3) respectful treatment – individuals are treated with dignity; 4) trustworthy authorities – the view that the authority is benevolent, caring, and genuinely trying to help.).

“I knew who my attorney was and what their role was; I was very involved in my case and they strongly encouraged that.”

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helps ensure their presence and participation in court hearings, and raises issues affecting them during proceedings. Children’s attorneys center the child and their perspective so that they are seen and heard.

v. Advancing Client’s Interests Through Skilled Advocacy

A children’s attorney litigates a child protection case to secure the desired legal outcomes of their clients. They may subpoena records, file motions, interview witnesses, make objections, file appeals, and otherwise provide legal services on a child’s behalf. The attorney develops legal strategy in partnership with their client. A children’s attorney listens to and advises children and youth of their legal rights,⁸⁴ giving them space to ask questions and provide their input. They explain what is expected to occur in legal proceedings and ensures their clients have notice of hearings and an opportunity to meaningfully prepare for and participate in them with the aid of counsel. Without counsel, children lack the same individualized advocacy and legal toolbox offered to other parties to their case.

Children have a legal interest in family integrity — a right to remain safely in their homes with their families.⁸⁵ Attorneys advance children’s civil rights through skilled advocacy. Keeping families intact is a child protection system priority. New federal law focuses even more attention on efforts to prevent placement in foster care.⁸⁶ Still, it remains a commonly overused intervention.⁸⁷ This can result in unwarranted removals, unnecessary foster care placement, and avoidable trauma to child and family alike. Even brief foster care placements can cause considerable trauma.⁸⁸

THE CHILDREN’S ATTORNEY SERVES AS A CHECK AND A BALANCE ON A SYSTEM THAT HAS ENORMOUS POWER TO SEPARATE FAMILIES AND GENERATE DEVASTATING CONSEQUENCES.

They are duty bound to conduct independent investigations, rather than relying solely on second-hand reports from agency workers, and to approach each case with fresh eyes. Children’s attorneys are trained to examine evidence to ensure that the child protection agency has only intervened in a family’s private life because of safety concerns likely to cause harm to a child, as required by law. Attorneys can protect a child’s right to remain with their family by challenging removal decisions that lack sufficient evidence of harm.

Keeping Abe and Sarah at Home

Siblings Abe, age nine, and Sarah, age six, were removed from their mother’s custody because they were being left alone at home while she worked overnight shifts.

LEGAL ADVOCACY: In court, their attorney challenged the removal and demonstrated that the state agency had not made legally-required “reasonable efforts” to prevent the removal. The attorney filed a motion with the court to have them returned home, with in-home support services including parenting classes and vouchers for state-assisted childcare services. The judge granted the attorney’s motion and Abe and Sarah were returned home under court supervision.

84 Some states have codified the rights of foster children into a Bill of Rights. See *Foster Care Bill of Rights*, NAT’L CONF. OF STATE LEGISLATURES (OCT. 29, 2019), <https://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx>; see also SUSAN DOUGHERTY, RIGHTS OF CHILDREN IN FOSTER CARE (2006), <http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/rights-children-foster-care.pdf>.

85 Shanta Trivedi, *supra* note 1 (The right to family integrity stems from the fundamental constitutional liberty interest of parents to raise their children and encompasses the premise that families have a right to stay together).

86 *Tools for Engaging the Legal Community in Implementing Family First*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/content/dam/aba/administrative/child_law/ffpsa-tool-legal-community-engagement.pdf (last visited July 25, 2022); See Family First Prevention Services Act of 2018, Pub. L. 115-123.

87 Trivedi, *supra* note 1.

88 *Id.*



...by talking to the child client about their network of friends, family, and other supportive adults (faith leaders, teachers, coaches, etc.), attorneys help identify potential kin placements and fight to ensure they are properly considered and evaluated...

Children’s attorneys also uphold a child’s right to remain with family by applying state and federal reasonable efforts analysis;⁸⁹ **IN SHORT, THEY HOLD THE CHILD PROTECTION AGENCY RESPONSIBLE FOR ITS DUTY TO CARE FOR CHILDREN AND PROVIDE REASONABLY NECESSARY SERVICES AND SUPPORTS TO THE FAMILY TO FACILITATE THE CHILD’S EXIT FROM THE FOSTER CARE SYSTEM AND TRANSITION TO A SAFE HOME.**⁹⁰ For example, if inadequate supervision is alleged, then — barring emergency circumstances — the agency must first make reasonable efforts to mitigate the issue before considering removal. This might include: education to parents about appropriate supervision needs for children of certain ages, resources for local childcare services, or safety plans supported by kin caregivers. A children’s attorney will provide evidence to help the judge understand whether this was done or may propose alternative strategies to keep the child safely at home.

Even in cases where removal is necessary to keep a child safe, attorneys provide invaluable advocacy. For example, by talking to the child client about their network of friends, family, and other supportive adults (faith leaders, teachers, coaches, etc.), attorneys help identify potential kin placements and fight to ensure they are properly considered and evaluated so that the child may avoid stranger foster care. In addition to supporting kin placements, attorneys can advocate for siblings to remain together in a placement setting as required by federal law.⁹¹

Finally, an attorney helps ensure that the child client is returned to their home as soon as it is safe to do so.

Attorneys use each court hearing to examine or present evidence of resolved safety concerns and parental progress on case plan goals. They can request increased family time⁹² and unsupervised or overnight visits when appropriate to ensure a child-centered, methodical approach to reunification transitions. If no court hearing is scheduled and safety issues have been mitigated to allow the child’s safe return home, children’s attorneys can file motions to expedite court decisions to avoid a child’s needless time in foster care.

Attorneys representing children and youth must possess a strong knowledge of and ability to apply the law in their advocacy. Although the individual tasks a children’s attorney engages in may differ based on the needs of the case and client, there are crucial skills that all children’s attorneys must possess and refine to provide effective and high-quality legal representation. Those skills include (1) independent investigation; (2) client interviewing; (3) client counseling; (4) case planning; (5) out-of-court advocacy; (6) alternative dispute resolution; (7) written advocacy; (8) in-court advocacy; and (9) appellate practice.⁹³

Children’s attorneys, like all lawyers, require specialized training in ethics and professional responsibility. They must understand their jurisdiction’s standards of practice; how their ethical obligations might change based on those standards and the circumstances of the case; and the rules regarding conflicts of interest.

⁸⁹ CHILD WELFARE INFO. GATEWAY, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN (2020), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/reunify/>.

⁹⁰ 42 U.S.C. § 671(a)(15)(B), (C).

⁹¹ 42 U.S.C. § 671(a)(31)

⁹² CHILD’S BUREAU U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-20-02, Family Time and Visitation for Children and Youth in Out-of-Home Care (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2002.pdf>.

⁹³ See, e.g., CHILD’S BUREAU *supra* note 32 See also NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 33.

Children’s attorneys should seek to understand their clients as whole people, inside and outside the context of the legal proceedings. Holistic representation may include monitoring of and representation in collateral matters, such as delinquency, criminal law, family law/domestic relations, interpersonal violence, public benefits, housing, education, and immigration.⁹⁴ Practicing holistically, both in and out-of-court, is the best approach to targeting issues affecting child safety, permanency, and well-being.

CASA OR GAL VOLUNTEERS DO NOT PROVIDE LEGAL REPRESENTATION. THEY ARE NOT LICENSED TO GIVE LEGAL ADVICE OR OTHERWISE ENGAGE IN THE PRACTICE OF LAW.⁹⁵ These volunteers do not call or cross-examine witnesses, file motions, or make legal arguments. Under program supervision, these CASA or GAL volunteers ascertain and advance what they have determined to be in a child’s best interest. A child can benefit from having a volunteer CASA/GAL assigned to their case in addition to their appointed children’s attorney. Children’s attorneys and CASA/GAL volunteers can and do serve their distinct and complementary functions simultaneously — both roles require training, standards, oversight, and support.⁹⁶

d. Impact to the Child Protection System

HIGH-QUALITY LEGAL REPRESENTATION OF CHILDREN PROMOTES WIDESPREAD IMPROVEMENT OF THE CHILD PROTECTION SYSTEM. Children’s attorneys play a vital role in holding state actors accountable for their duties to serve children and families fairly. They facilitate the recognition and protection of the civil rights of children and youth involved with the child protection system.

i. Confronting System Inequity

RACE

The child protection system disproportionately and disparately impacts Black and Indigenous families.⁹⁷ Twenty-three percent of children in foster care are Black, compared to fourteen percent of the total youth population, and Native American youth are twice as likely to enter the foster care system.⁹⁸ Black and Indigenous families are far more likely to be subject to a CPS investigation at some point in their lives than White or Asian families.⁹⁹ Specifically, 53% of all Black children will experience a child protection investigation by their eighteenth birthday.¹⁰⁰ Links between racism, the disproportionate targeting of Black and Indigenous families in the child protection system, and unnecessary removals are entrenched in this system, which continues to grow its regulatory capacities.^{101, 102}

Children’s attorneys disrupt deeply rooted systemic inequities by challenging policies and practices that have a disparate impact on Black and Indigenous families

94 AM. BAR ASS’N, STANDARDS FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES 13–14 (1998), https://www.americanbar.org/content/dam/aba/administrative/child_law/repstandwhole.pdf; MODEL ACT GOVERNING THE REPRESENTATION OF CHILD. IN ABUSE, NEGLECT, & DEPENDENCY PROCS. 6–7 (AM. BAR ASS’N 2011), https://www.americanbar.org/content/dam/aba/administrative/child_law/aba_model_act_2011.pdf.

95 NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 12.

96 *Id.*

97 CHILD WELFARE INFO. GATEWAY, CHILD WELFARE PRACTICE TO ADDRESS RACIAL DISPROPORTIONALITY AND DISPARITY (2021), <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>. (See also Child Trends *supra* note 7, explaining that in limited instances, other racial disparities are apparent in state child protection systems. For example, in California, Hispanic or Latino children make up 52% of the population, but 59% of maltreatment victims.)

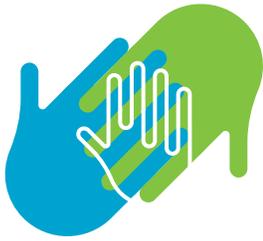
98 *Black Children Continue to Be Disproportionately Represented in Foster Care*, KIDS COUNT DATA CTR. (APR. 13, 2020), <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity>.

99 Frank Edwards et. al., *Contact with Child Protective Services is Pervasive but Unequally Distributed by Race and Ethnicity in Large US Counties*, 118 PROCS. NAT’L ACAD. SCI. AT E2106272118 (2021), <https://www.pnas.org/content/118/30/e2106272118>

100 DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEMS DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD*, P. 37. (2022).

101 ELISA MINOFF, *ENTANGLED ROOTS: THE ROLE OF RACE IN POLICIES THAT SEPARATE FAMILIES* (2018), <https://cssp.org/resource/entangled-roots/>. See also HUMAN RIGHTS WATCH AND AMERICAN CIVIL LIBERTIES UNION, *If I Wasn’t Poor, I Wouldn’t be Unfit: The Family Separation Crisis in the US Child Welfare System*, (2022) https://www.hrw.org/sites/default/files/media_2022/11/us_crd1122web_3.pdf.

102 CHILD’S RTS., *FIGHTING INSTITUTIONAL RACISM AT THE FRONT END OF CHILD WELFARE SYSTEMS: A CALL TO ACTION* (2021), <https://www.childrensrights.org/news-voices/fighting-institutional-racism-at-the-front-end-of-child-welfare>.



The Complementary Roles of Attorneys and CASA/GAL Volunteers for Child Advocacy

Attorneys for children and Court Appointed Special Advocate (CASA®)/Guardian *ad litem* (GAL) volunteers have distinct but complementary roles in the child welfare court system. The chart below highlights key features of their responsibilities:

Children’s Attorneys/Guardians <i>ad litem</i>	CASA/GAL Volunteers
Professional lawyer, licensed by state bar following an exam and professional conduct review, working in law office or independently, sometimes using multidisciplinary teams (peer partners, social workers). Graduate of a 3-year law school who receives continuing legal education training in accordance with professional and ethical standards.	Community volunteers screened by local program and sworn in as a court officer, working under the supervision of a court-approved program, sometimes using multidisciplinary teams. 30-hour initial training requirement and continuing education requirement of at least 12 hours per year per National CASA standards.
Duty to ascertain the child’s wishes and rights, and to ensure the law is followed.	Duty to ascertain what the child needs and inform the court.
Confidential attorney-client relationship bound by longstanding legal and ethical rules (ex. privilege).	Non-confidential, advocacy relationship with the child bound by legal and best practice standards.
Typically carry a caseload of clients. Wide breadth of expertise helps child navigate the system.	Typically work with 1 child or sibling set, allowing more time for intensive attention and support.
Provide legal advice to the child about their rights and options. Conduct thorough investigation, call witnesses, subpoena records, file motions and appeals. Make legal arguments to judges and ensure child’s voice is heard.	Provide recommendations to the court so the judge can make a well-informed decision. Prepare written and oral reports to court with firsthand observations and best interest recommendations.
Both Attorneys and CASA/GAL Volunteers Should: Communicate regularly with the child, review relevant records and reports, monitor the case to ensure service delivery, thoroughly prepare for all court hearings and meetings, advocate for the child in the courtroom and community if their needs are not being met.	

Lawyers and CASA/GAL Volunteers Collaborate for Kids

Baby Jonah’s kinship placement

Baby Jonah was placed in stranger foster care shortly after he was born. His CASA/GAL volunteer successfully searched social media for extended family and provided the information to the court. Jonah’s attorney filed a motion with the court to have the kin evaluated for expedited placement. Jonah is now thriving in the home with his kin caregivers.

Keeping Ben and Sarah together

Ten-year-old twins Ben and Sarah were initially placed in separate foster homes, nearly 2 hours apart. Their attorney filed a motion with the court to have them placed in the same home. While the motion was pending, their CASA/GAL volunteer facilitated joint outings to maintain their bond and reported to the court on the frequency of the sibling visits. The judge granted the attorney’s motion and Ben and Sarah are now placed together.

Helping Lila get to college

Lila’s attorney successfully advocated for to remain in the same school when she entered foster care during 11th grade. Her CASA/GAL volunteer helped develop a plan for her to attend college and informed the court. Lila’s attorney advised her about her rights to ETV funds and extended foster care, then filed a motion with the court to expedite funding. She’s now a college sophomore majoring in Biology.

∞ I had an attorney for the entire 6 or 7 years that I was in care. They allowed space for me to advocate for myself (for example, they allowed space for me to request gender-affirming care, re-evaluate my case plan, advocate for home study because I was being bullied at school).∞

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and urging courts to stop unnecessary removals.¹⁰³ They advocate for judicial officers to balance concerns for child safety with the trauma of family separation and the harms imposed by the out-of-home foster care system itself.¹⁰⁴ They listen to the experiences of their clients directly affected by racial injustice, to inform advocacy for culturally-responsive services.¹⁰⁵ As children’s attorneys take affirmative steps to introduce evidence of and confront racial bias in judicial or child protection agency decision making, they help ensure fair treatment throughout court proceedings.¹⁰⁶

LGBTQIA+

LGBTQIA+ youth or those who have a non-conforming gender identity or expression face enormous challenges in the child protection system including hostility and violence, rejection by caregivers, discrimination, and barriers to gender-affirming medical care.¹⁰⁷ One study showed that LGBTQIA+ youth were disproportionately represented in the child protection system and 1.5 to 2 times more likely than their peers to experience foster care.¹⁰⁸ Additionally, youth experiencing foster care are nearly three times as likely to identify as LGBTQIA+ and more than four times as likely to identify as transgender than youth not in foster care.¹⁰⁹ Children’s attorneys representing these youth advocate for tailored service plans to meet their individualized needs and challenge insufficient agency efforts to address their trauma, family conflicts, and access to affirming medical care. Attorneys can also serve as affirming and supportive advocates for LGBTQIA+ youth, ensuring that they are in safe placements.¹¹⁰

EQUITY FOR ALL

Some youth in foster care experience unique barriers and challenges due to their disability status or limited English language proficiency. High-quality lawyering centers youth needs and opposes policies and practices that interfere with their safety, permanency, and well-being. Children’s attorneys promote equity for their clients by treating them with dignity and respect in all interactions and challenging unfair treatment by system professionals.

ii. Promoting Responsible Public Spending

The public relies on policymakers to ensure tax dollars are responsibly spent. Appointing legal counsel to children experiencing foster care is an effective way to maximize limited state and local budgets. In SFY 2018, 33 billion dollars of federal, state, and local funds were spent to finance child protection services across the nation – with more than half of those funds coming from state and local sources.¹¹¹

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 20.

¹⁰⁵ Gina Pruski, Practicing Cultural Humility Race Matters II Seminar: The Impact of Race on Criminal Justice, National Association of Criminal Defense Lawyers (Jan. 10–11, 2019), <https://www.nacd.org/getattachment/8d685d93-86f4-40b5-849b-39eb495302ee/practicing-cultural-humility.pdf>.

¹⁰⁶ COUNSEL FOR KIDS, COUNSEL FOR KIDS PROMOTE RACE EQUITY (2022), <https://secureservercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2022/03/Counsel-for-Kids-Promote-Race-Equity-202202r3-1.pdf>.

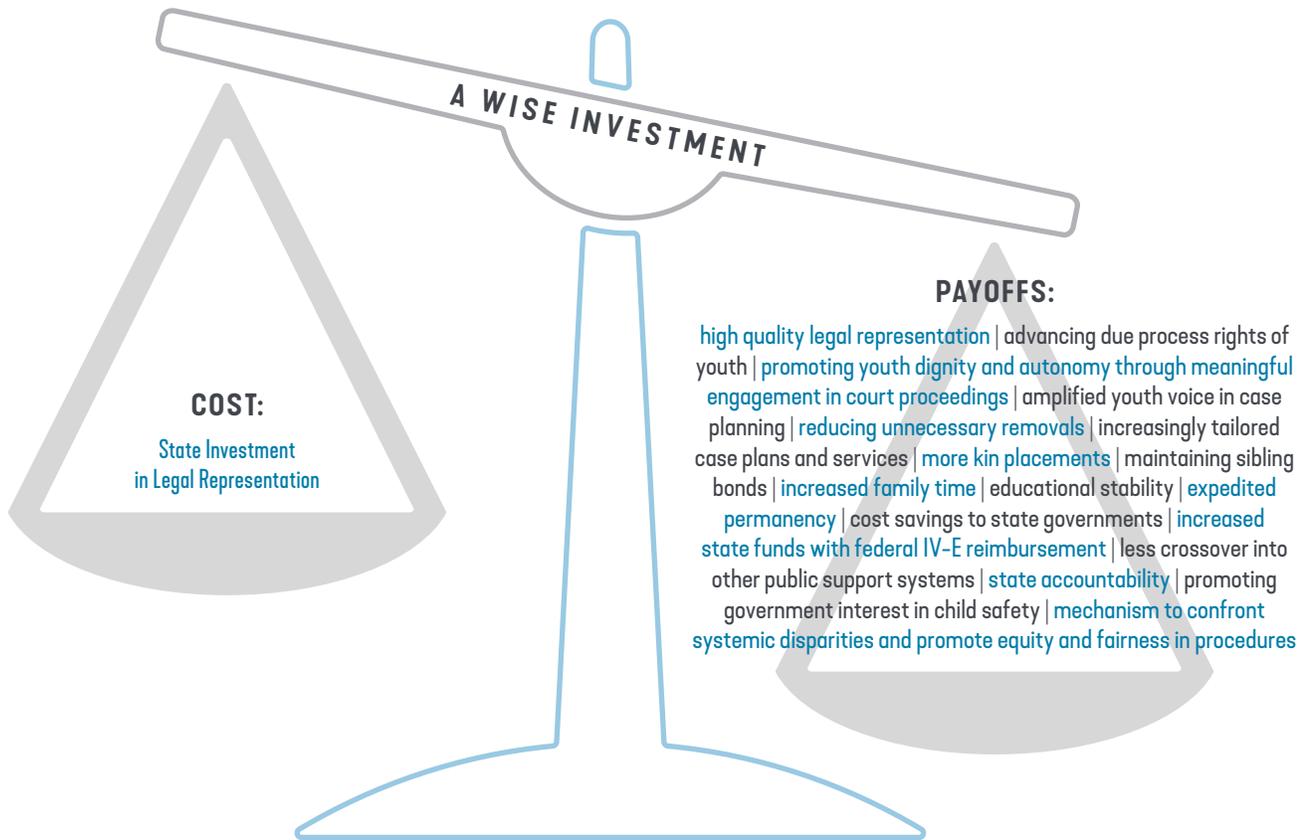
¹⁰⁷ CHILD’S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-22-01, GUIDANCE FOR TITLE IV-B AND IV-E AGENCIES WHEN SERVING LGBTQI+ CHILDREN AND YOUTH (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf>.

¹⁰⁸ BIANCA D.M. WILSON ET AL., SEXUAL AND GENDER MINORITY YOUTH IN FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES 37 (2014), <https://williamsinstitute.law.ucla.edu/publications/sgm-youth-la-foster-care/>.

¹⁰⁹ Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PEDIATRICS AT E20174211 (2019), <https://publications.aap.org/pediatrics/article/143/3/e20174211/76787/LGBTQ-Youth-in-Unstable-Housing-and-Foster-Care?autologincheck=redirected>.

¹¹⁰ See MIMI LAVER & ANDREA KHOURY, OPENING DOORS FOR LGBTQ YOUTH IN FOSTER CARE: A GUIDE FOR ATTORNEYS AND JUDGES (Claire Chiamulera ed., 2008), <https://www.glad.org/wp-content/uploads/2018/04/lgbtq-foster-care-aba-guide.pdf>.

¹¹¹ KRISTINA ROSINSKY ET AL., CHILD WELFARE FINANCING SFY 2018: A SURVEY OF FEDERAL, STATE, AND LOCAL EXPENDITURES (2021), https://www.childtrends.org/wp-content/uploads/2021/03/ChildWelfareFinancingReport_ChildTrends_March2021.pdf.



Federal, state, and local child protection funding is overwhelmingly spent on the removal of children from their homes and placement in foster care.¹¹²

CHILDREN REPRESENTED BY ATTORNEYS EXIT FOSTER CARE MORE QUICKLY THAN THOSE NOT REPRESENTED.¹¹³ FEWER DAYS IN EXPENSIVE FOSTER CARE AND INSTITUTIONAL PLACEMENTS TRANSLATE TO TAXPAYER SAVINGS. Initial investments to hire attorneys and establish supportive infrastructure are outweighed by the government interest in child safety, and often offset by the improved outcomes and savings generated.¹¹⁴

Appointing children’s attorneys can also reduce public spending beyond the foster care system. The financial impact of children lingering in foster care is staggering. “The trauma inflicted by family separation increases with the length of time spent apart.”¹¹⁵ The trauma of removal and long-term foster care is correlated with costly societal problems, including: serious school disciplinary infractions, incomplete high school education, unemployment, homelessness, teenage pregnancy, and drug and alcohol dependence and abuse.¹¹⁶ Youth who have experienced foster care are more likely to become involved in the criminal-legal system and are overrepresented in state and federal prisons.¹¹⁷ Each of these

¹¹² ROBERTS, *supra* note 100, at 142.

¹¹³ See, e.g., ZINN & SLOWRIVER, *supra* note 8. See also, Cora Peterson et al., *The Economic Burden of Child Maltreatment in the United States, 2016*, 86 CHILD ABUSE & NEGLECT 178 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0145213418303867> [Discussing the substantial economic burden on state governments of child maltreatment in cost per victim].

¹¹⁴ *Id.*

¹¹⁵ ROBERTS, *supra* note 100, at 132.

¹¹⁶ NICHOLAS ZILL, CTR. ON CHILD. & FAMS., *ADOPTION FROM FOSTER CARE: AIDING CHILDREN WHILE SAVING PUBLIC MONEY* (2011), https://www.brookings.edu/wp-content/uploads/2016/06/05_adoption_foster_care_zill.pdf; and see, e.g., *Young Adults Formerly in Foster Care: Challenges and Solutions*, YOUTH.GOV, <https://youth.gov/youth-briefs/foster-care-youth-brief/challenges> (last visited December 6, 2022).

¹¹⁷ ZILL, *supra* note 116, at 2.

outcomes impact state budgets, vis-à-vis increased need for law enforcement/corrections, public welfare programs, specialized treatment, and more.

The national cost of children aging out of foster care without proper supports is nearly 8 billion dollars a year.¹¹⁸ One report explained that “[...] federal and state governments are paying an unnecessary premium for expensive foster care that inevitably requires those same governments to pay an unnecessary premium in the future while attempting to fix the damage that foster care caused.”¹¹⁹ **THESE CONSIDERABLE SOCIETAL COSTS CAN BE MITIGATED THROUGH PROACTIVE INVESTMENT IN CHILDREN’S ATTORNEYS.** High-quality legal representation decreases time youth spend in foster care, lessens the damaging ripple effect into other systems, and alleviates strain on other areas of state budgets.

III How Policymakers Can Develop Excellent Child Representation Delivery Systems

There is national agreement among the federal government and prominent national organizations that legal representation is critical for all children – from infants,¹²⁰ to school-aged children, to teens. Driven by this consensus, empirical research, and media attention,¹²¹ mandating counsel for kids is gaining momentum among state legislatures.¹²² As states consider establishing and expanding the right to counsel, practical questions arise regarding implementation. Specifically, how are excellent children’s legal representation delivery systems formed?

The three branches of state government share responsibility for creating and sustaining an equitable child protection system that promotes child well-being, strengthens families, and protects children from neglect or abuse. The executive branch, through the child protection agency, has a duty to investigate reports of neglect and abuse and provide services and interventions, including foster care, to serve families. The judicial branch is responsible for determining whether and when a child should be placed in foster care, with kin, or returned home – while balancing the legal rights of all parties involved in the proceedings. Finally, the legislative branch has the critical role of appropriating funding and establishing the legal and policy framework for child protection systems.

LAWMAKERS CAN CHAMPION BILLS THAT GUARANTEE CHILDREN’S RIGHT TO COUNSEL AND ENSURE THE EFFECTIVE DELIVERY OF HIGH-QUALITY LEGAL SERVICES. The following considerations guide the development and implementation of children’s right to counsel legislation.

- What legal services delivery system would best serve the jurisdiction based on existing infrastructure?

118 JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, *supra* note 10.

119 Abbie Blaker, Cole Donahue, & Joshua Santangelo, Representation Matters: Advocating for a Quality Legal Representation Model in Georgia Dependency Proceedings (Nov. 2020) (Barton Child Law and Policy Clinic Paper, Emory University School of Law), <https://naccchildlaw.box.com/s/5oddz1vn1a7az630px2c44weggc3bs>.

120 *High Quality Legal Representation in Safe Baby Court Teams*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/content/dam/aba/administrative/child_law/qlr-sbct.pdf (last visited July 28, 2022).

121 *Indiana Lawmakers Consider a Bill to Appoint All Foster Children an Attorney*, FOX59 NEWS (JAN. 10, 2022), <https://fox59.com/video/indiana-lawmakers-consider-bill-to-appoint-all-foster-children-an-attorney/7292547/>; Anne Geggis, *Lauren Book’s Child Welfare Bill Advances in Committee*, FLA. POL. (JAN. 11, 2022), <https://floridapolitics.com/archives/485639-lauren-books-child-welfare-bill-advances-in-committee/>.

122 S.B. 1391, 55th Leg., Reg. Sess. (Ariz. 2021); H.B. 1219, 67th Leg., Reg. Sess. (Wash. 2021); H.B. 1035, 67th Leg. Assemb., Reg. Sess. (N.D. 2021); H.B. 22-1038, 73d Gen. Assemb., Reg. Sess. (Colo. 2022).

A centralized law office strengthens children’s legal representation by:



connecting lawyers to each other and to staff who can provide training, supervision, and support;



providing technical assistance on individual cases;



giving access to multidisciplinary legal team members such as social workers and peer mentors, as well as experts;



promoting consistency and continuity in trial and appellate practice; and



providing general oversight and accountability for the entire child protection system.¹²⁰

- How will the legal service delivery system be financed?
- How much funding is necessary for the formation and administration of children’s legal services?
- How will the quality of legal representation be monitored and evaluated?

a. Centralize Children’s Legal Representation

NACC recommends a centralized children’s law office as the best mechanism for delivery of high-quality legal services to children.¹²³ This is an institutional structure that allows multiple attorneys to focus their attention on representing children in general and representing children in child protection court proceedings in particular — in other words, a dedicated child protection law office.¹²⁴ Centralized law offices allow attorneys to specialize in this unique area of legal practice, thereby strengthening the quality of representation and availability of shared resources.¹²⁵

Centralized children’s legal services can be delivered through an independent government agency, a public defender’s office, or a legal non-profit organization.¹²⁶ Any of these organizational models can be supplemented by pro bono attorney projects or law school clinical programs as discussed later in sections iv. and v.

Centralized children’s law offices provide children’s legal representation through staff attorneys and/or independent contractors. **FULL-TIME STAFF ATTORNEYS ARE THE PREFERRED MEANS TO DELIVER HIGH-QUALITY LEGAL SERVICES.¹²⁷ THE FULL-TIME POSITION ALLOWS AN ATTORNEY TO DEVELOP EXPERTISE THAT COMES PRIMARILY THROUGH EXPERIENCE GAINED FROM FOCUSING ONE’S PRACTICE ON CHILD PROTECTION CASES.¹²⁸** A children’s law office can provide attorneys with comprehensive training, practice standards, supervision, and multi-disciplinary team support. It also supports consistency of a client’s experience and legal representation when staff attorneys use sick and parental leave time.

In contrast, independent contractor models with part-time contract attorneys that practice other areas of law and infrequently represent child-clients, are limited in their ability to provide excellent child representation.¹²⁹ Child protection law is complex and difficult to master on a part-time basis. In some jurisdictions part-time contract attorneys may not have access to training, practice standards, and supervision to support high-quality legal services delivery. Generally, multidisciplinary teams cannot be supported by independent contractor models. These models may also struggle to attract and retain sufficient contractor workforce due to the role’s ineligibility for federal Public Service Loan Forgiveness.¹³⁰ If a contract model must be employed, contract administrators should ensure contract attorneys have professional support to provide quality legal services, pre-appointment and ongoing training, access to multidisciplinary team members, oversight, and practice standards.

CENTRALIZED CHILD LAW OFFICES STAFFED WITH FULL-TIME ATTORNEYS ARE THE MOST EFFECTIVE MEANS TO IMPLEMENT THE BEST PRACTICE IN CHILDREN’S LEGAL REPRESENTATION — THE MULTIDISCIPLINARY TEAM.¹³¹ Ideally a child’s multidisciplinary legal team will include

¹²³ NAT’L ASS’N OF COUNSEL FOR CHILD., CHILD WELFARE LAW OFFICE GUIDEBOOK (2006), <https://naccchildlaw.org/wp-content/uploads/2023/03/clopguidebook.pdf>.

¹²⁴ *Id.*

¹²⁵ Mimi Laver & Cathy Krebs, *The Case for a Centralized Office for Legal Representation in Child Welfare Cases*, AM. BAR ASS’N (Dec. 1, 2020), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/.

¹²⁶ A nonprofit organization offering indigent legal services.

¹²⁷ NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 128.

¹²⁸ NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 128.

¹²⁹ Independent contractors who devote their entire law practice to child protection law, are considered differently from others who spend part of their time working on child protection law, and the remainder on other areas of law like personal injury or criminal defense.

¹³⁰ FEDERAL STUDENT AID, PUBLIC SERVICE LOAN FORGIVENESS, <https://studentaid.gov/pslf/> (You must be directly employed by a qualifying employer for your employment to be eligible for PSLF.)

¹³¹ FAM. JUST. INITIATIVE, HIGH QUALITY LEGAL REPRESENTATION, ATTRIBUTED 2: INTERDISCIPLINARY PRACTICE MODEL (N.D.), <https://familyjusticeinitiative.org/model/high-quality-representation/>.

Each professional strengthens quality legal representation for children in numerous ways:



Peer Advocates:

Assist with client engagement and communication, supporting the youth through various case events such as meetings and court hearings.¹³³



Investigators:

Collect relevant case records, interview witnesses, search for possible kinship supports;



Social Workers:

Identify relevant community resources, provide clinical insight for case planning, offer relevant psychoeducation, assist with client engagement and communication.

investigators, social workers, peer advocates, and interpreters when necessary.¹³² These different perspectives and expertise work in concert to improve the case strategy, litigation, and support for clients.

Multidisciplinary team models are a demonstrated effective strategy to address the complex needs of families involved in the child protection system and enhance legal representation for children and youth.¹³⁴ They improve communication, resolve cases more expeditiously, and preserve more family connections for children.¹³⁵

In developing a multidisciplinary team, attorneys should set up appropriate protocols to protect client confidentiality (such as advising client of any differences in roles, seeking informed consent, creating conflict walls, etc.). **THE WORK OF THE CHILD'S MULTIDISCIPLINARY LEGAL TEAM IS NEVER A SUBSTITUTE FOR THE CHILD PROTECTION AGENCY'S OBLIGATIONS, INCLUDING ITS REASONABLE EFFORTS REQUIREMENT.**¹³⁶ During court reviews, attorneys should ensure the court understands that tasks accomplished by the multidisciplinary legal team are distinguishable from agency efforts.¹³⁷ Professionals assigned to the case should collaborate to ensure a streamlined delegation of tasks that do not overwhelm the client and family.

i. Independent Government Agency

Independent government agencies provide centralized children's legal services at the state or local level. The agency may employ attorneys or contract with legal nonprofit organizations to provide the representation.

STAFF ATTORNEYS AND INDEPENDENT CONTRACTORS

Massachusetts Committee for Public Counsel Services'¹³⁸ Children and Family Law Division (CAFL) is the agency providing legal representation to children through staff attorneys and independent contractors in care and protection or termination of parental rights cases. Most CAFL attorneys are private attorneys. CAFL engages resource attorneys to support these members of the private bar with advice and technical assistance for their legal representation.¹³⁹

Arkansas' Attorney *Ad Litem* Program provides attorneys for all children in child protection court proceedings. It is operated and monitored through the Juvenile Division of the Administrative Office of the Courts.¹⁴⁰ Qualified attorneys are hired as staff or contractors of the agency and are appointed at the start of a child protection court proceeding. These attorneys must meet ongoing training requirements and comply with the standards of practice adopted by the program.

¹³² *Id.*

¹³³ Peer advocates are youth with lived experience in the foster care system who share their own experiences with current youth in care and help them better understand the legal process and services available to them. See FAM JUST. INITIATIVE, OUT-OF-COURT ADVOCACY (2021), <https://familyjusticeinitiative.org/wp-content/uploads/sites/48/2021/05/out-of-court-advocacy.pdf> (last visited Nov. 28, 2022)

¹³⁴ *Id.*

¹³⁵ Robbin Pott, *The Flint MDT Study: A Description and Evaluation of a Multidisciplinary Team Representing Children in Child Welfare*, in CHILDREN'S JUSTICE: HOW TO IMPROVE LEGAL REPRESENTATION OF CHILDREN IN THE CHILD WELFARE SYSTEM 189, 203–204 (Donald N. Duquette ed., 2016) [MDT impacted cases in positive ways including increasing the likelihood that cases would be dismissed at adjudication rather than have the court take jurisdiction; when removed, children more likely to be placed with relatives than in foster care; and fewer petitions to terminate parental rights were filed.].

¹³⁶ CHILD WELFARE INFO. GATEWAY, *supra* note 89.

¹³⁷ NAT'L ASS'N OF COUNSEL FOR CHILD., *supra* note 33.

¹³⁸ The Committee is a 15-member body appointed by the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Massachusetts Supreme Judicial Court. It oversees the provision of legal representation to indigent persons in criminal and civil cases and administrative proceedings in which there is a right to counsel. (See <https://www.publiccounsel.net/committee/>.)

¹³⁹ CPSC Children and Family Law Division, PUBLIC COUNSEL, <https://www.publiccounsel.net/cafl/> (last visited Nov. 21, 2022).

¹⁴⁰ Attorney *Ad Litem* Program: About Us, ARKANSAS JUDICIARY, <https://www.arcourts.gov/administration/ar/ci/ci-aty-ad-litem> (last visited Nov. 21, 2022).

INDEPENDENT CONTRACTORS

The Colorado Office of the Child Representative (OCR) is the state agency mandated to provide legal representation to children involved in child protection proceedings. The OCR contracts with attorneys throughout the state to represent children and provides litigation support, high-quality statewide training, and oversight of their contractors' practice.¹⁴¹

STAFF ATTORNEYS

The DeKalb County Child Advocacy Center (DCCAC), established within DeKalb County, Georgia, represents children in all child protection matters in DeKalb County Juvenile Court. DCCAC was established in response to a federal class action lawsuit, *Kenny A v. Perdue*¹⁴² alleging that children in foster care in DeKalb County received inadequate legal representation. The case was resolved via a settlement agreement with terms requiring significantly reduced caseloads and enhanced quality of legal representation. DCCAC staff attorneys, with the assistance of investigators and support staff, investigate and litigate cases using a multidisciplinary team model.¹⁴³

The Utah Office of the Guardian ad Litem employs more than 40 trained attorneys who specialize in representing children in dependency proceedings throughout the state.¹⁴⁴ The office delivers legal services with the help of support staff and trained Court Appointed Special Advocate volunteers.

ii. Legal Non-Profit Organization

GOVERNMENT AGENCY CONTRACTS WITH LEGAL NON-PROFIT ORGANIZATION

Executive or judicial branch government agencies may contract with legal non-profit organizations to provide children's legal representation. In Maryland, the Maryland Legal Services Program, within the state's Department of Human Resources,¹⁴⁵ manages statewide contracts for the legal representation of children involved in dependency and termination of parental rights proceedings with Maryland's Legal Aid Bureau and other law firms. Similarly, in Washington, D.C. the judiciary branch contracts with the Children's Law Center of the District of Columbia¹⁴⁶ to provide legal services to the district's children experiencing foster care.

GENERAL CIVIL LEGAL AID OFFICE

Civil legal aid offices may provide children's legal representation. These law firms often provide a wide range of indigent civil legal services. This organizational model is beneficial to children and families that often experience multitiered legal issues that impact their child protection case (ex. housing, public benefits, intimate partner violence). Civil legal aid supports direct legal representation during child protection proceedings and helps resolve the collateral legal issues that impact the child protection cases.¹⁴⁷

¹⁴¹ *About OCR*, COLO. OFF. OF THE CHILD'S REPRESENTATIVE, <https://coloradochildrep.org/about-ocr/> (last visited July 11, 2022).

¹⁴² *Kenny A. supra* note 24.

¹⁴³ *DeKalb County Child Advocacy Center*, DEKALB CNTY. GA., <https://www.dekalbcountyga.gov/child-advocacy-center/welcome> (last visited July 11, 2022).

¹⁴⁴ *Office of the Guardian ad Litem*, UT COURTS, <https://www.utcourts.gov/en/about/miscellaneous/gal-casa.html> (last visited Nov. 21, 2022).

¹⁴⁵ *Child in Need of Assistance, Maryland Legal Services Program*, <https://dhs.maryland.gov/maryland-legal-services-program/children-in-need-of-assistance/> (last visited Nov. 30, 2022).

¹⁴⁶ *Who We are*, D.C.'s Children's Law Center, <https://childrenslawcenter.org/who-we-are/history/> (last visited Nov. 30, 2022).

¹⁴⁷ *CHILD'S BUREAU*, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-21-02, CIVIL LEGAL ADVOCACY TO PROMOTE CHILD AND FAMILY WELL-BEING, ADDRESS THE SOCIAL DETERMINANTS OF HEALTH, AND ENHANCE COMMUNITY RESILIENCE (2021), <https://www.acf.hhs.gov/cb/policy-guidance/im-21-02>.

The Children’s Law Unit of Kansas Legal Services provides legal representation to abused and neglected children involved with the state child protection system.¹⁴⁸ Legal Aid Center of Southern Nevada’s Children’s Attorneys Project¹⁴⁹ provides legal counsel, advice and representation to children involved in child protection matters. In Florida, where the right to counsel is limited to only a subset of children, Legal Aid Society of Palm Beach County, Legal Aid Society of Broward County, and L. David Shear Children’s Law Center of Bay Area Legal Services provide representation to children in child protection court proceedings.¹⁵⁰

SPECIALIZED NON-PROFIT ORGANIZATION

Legal services for children involved in child protection proceedings are also provided through legal non-profit organizations that specialize in child protection law. Lawyers for Children NYC¹⁵¹ was founded in 1984 and engages attorneys and social workers in its multidisciplinary advocacy model. Oregon’s Youth Rights and Justice organization (YRJ)¹⁵² is a nonprofit law firm dedicated exclusively to children and families. YRJ attorneys are appointed statewide by the court to represent children, youth, and parents involved in the foster care and juvenile justice systems. Children’s Law Center of the District of Columbia¹⁵³ is one of the largest nonprofit legal providers in D.C. and provides legal representation to children navigating the city’s foster care system.

iii. Public Defender System

Some state public defender systems provide representation to children involved in child protection matters. For example, the Connecticut Division of Public Defender Services’ Child Protection Unit¹⁵⁴ ensures the legal representation of children and parents involved in the child protection system. Likewise, the New Jersey Office of the Public Defender houses the state’s Office of the Law Guardian that provides representation to children in child protection proceedings.¹⁵⁵

In some states, public defender offices serve both children and parents as clients. In this instance, conflicts of interests between parties must be closely monitored. There may be conflicts between criminal defense, juvenile justice, and child protection clients; between child protection representation of a child and criminal representation of their parent, and there may be victims of criminal charges related to persons involved in child protection cases. These conflicts can be managed or resolved with an organizational structure developed to protect the legal and ethical responsibilities of the attorney-client relationship or by use of a separate panel of attorneys appointed when a conflict arises.¹⁵⁶

iv. Pro Bono Attorney Projects

As many states navigate attorney workforce shortages,¹⁵⁷ pro bono projects and law school clinics provide an opportunity to supplement the work of more tra-

¹⁴⁸ Children’s Advocacy Resource Center, KAN. LEGAL SERVS. (MAR. 30, 2022), <https://www.kansaslegalservices.org/node/842/childrens-advocacy-resource-center>.

¹⁴⁹ Children’s Attorneys Project, LEGAL AID CTR. OF S. NEV., <https://www.lacsn.org/practice-areas/childrens-attorneys-project#:~:text=Legal%20Aid%20Center%20attorneys%20provide,responsibility%20in%20their%20own%20destiny> (last visited July 11, 2022).

¹⁵⁰ Children & Education, LEGAL AID SERV. OF BROWARD CNTY., <https://www.browardlegalaid.org/what-we-do/areas-of-legal-service/children-education/> (last visited December 7, 2022).

¹⁵¹ LAWS. FOR CHILD., <https://www.lawyersforchildren.org/> (last visited July 11, 2022).

¹⁵² YOUTH, RTS. & JUST., <https://youthrightsjustice.org/> (last visited July 11, 2022).

¹⁵³ History, Child’s L. Ctr., <https://childrenslawcenter.org/who-we-are/history/> (last visited July 11, 2022).

¹⁵⁴ Child Protection Services, CT.GOV., <https://portal.ct.gov/OCPO/Child-Protection/Child-Protection-Services> (last visited July 11, 2022).

¹⁵⁵ Office of Law Guardian, STATE OF N.J. OFF. OF THE PUB. DEF., <https://www.nj.gov/defender/structure/olg/> (last visited July 11, 2022).

¹⁵⁶ See N.J. Div. of Child Prot. & Permanency v. G.S., 149 A.3d 816 (N.J. Super. Ct. App. Div. 2016).

¹⁵⁷ See Sarah Martinson, *Public Defender Shortages in West are Nationwide Norm*, LAW360 (JAN. 23, 2022), <https://www.law360.com/articles/1457317/public-defender-shortages-in-west-are-nationwide-norma>; Frederick Shelton, *The Great Resignation & Associate Shortage: Cause & Effect*, ATTY AT L. MAG. (DEC. 22, 2021), <https://attorneyatlawmagazine.com/the-great-resignation-associate-shortage-cause-effect>.



ditional models of legal services delivery. Staffed with volunteer attorneys or law students under the supervision of a licensed attorney, these models require fewer full-time personnel and can augment the number of children served when attached to existing delivery systems. Pro bono attorney¹⁵⁸ models should only be implemented with extensive support, supervision, training, and accountability measures in place and never stand alone as a jurisdiction's primary children's legal services delivery system. Volunteers and students do not have the in-depth knowledge and experience of staff attorneys.¹⁵⁹ Oftentimes the numbers of available volunteers and law students is inconsistent and unpredictable. Finally, law students are often enrolled in clinical courses for a limited time and unable to serve on lengthy multi-hearing child protection cases from beginning to end. Beyond direct legal representation, law students and volunteer attorneys can engage in a wide range of activities to support the legal representation of staff attorneys on pending cases. For example, they can take witness statements, conduct legal research, and draft motions and briefs.

Baby Hannah is born prematurely with evidence of exposure to opioids in utero and placed in foster care. Her parents struggle with substance use dependency. Hannah is appointed a pro bono attorney that is supervised by a staff attorney and supported by a social worker. Hannah's attorney conducts an independent investigation. She reviews all medical and court records. She observes and interacts with Hannah in-person. She interviews Hannah's foster parent, daycare provider, her biological parents, relatives, and her medical providers. She speaks with Hannah's Aunt, a school bus driver that lives in the next county over. **LEGAL ADVOCACY:** The attorney advocates for frequent visitation between Hannah and her parents to allow for attachment and bonding. She advocates for parent involvement in Hannah's doctor visits. She advocates for assessment of Hannah's aunt for foster placement. She helps Hannah's aunt understand the policy requiring her evaluation for placement and helps her get all required materials to the agency quickly. Ultimately, Hannah's Aunt becomes a licensed kin placement.

Tulsa Lawyers for Children (TLC) was established in 2000 in response to a growing need for children's legal representation in child protection proceedings. TLC recruits, trains, and assists volunteer attorneys for appointment in these matters.¹⁶⁰ The Children's Law Center of Minnesota (CLCM) provides direct representation to children and youth, primarily in the child protection system, through volunteer attorneys. CLCM staff attorneys and social workers provide training and ongoing support to the volunteer attorneys.¹⁶¹

In some jurisdictions, volunteer attorneys supplement the work of a state agency or legal aid. For example, Delaware's Office of the Child Advocate (OCA)¹⁶² is an independent government agency that provides a legal representation program for children in Delaware. OCA's organizational capacity is increased by volunteer lawyers who routinely serve more than 250 children statewide. Similarly, Legal Aid of Southern Nevada (LASN) supplements the work of staff attorneys by recruiting and training volunteer attorneys to represent children through its Pro Bono Project.¹⁶³

¹⁵⁸ MODEL RULES OF PROF. CONDUCT r. 6.1, *supra* note 39, (AM. BAR ASS'N 1983). (The American Bar Association Model Rule 6.1 provides that all attorneys should aspire to provide at least 50 hours of pro bono service each year.)

¹⁵⁹ NAT'L ASS'N OF COUNSEL FOR CHILD *supra* note 128.

¹⁶⁰ *About Us*, TULSA LAWS. FOR CHILD., <https://www.tulsalawyersforchildren.org/about-us/> (last visited July 11, 2022).

¹⁶¹ *About Us*, CHILDREN'S LAW CENTER OF MINN., <https://clcmn.org/about-us/> (last visited Nov. 15, 2022).

¹⁶² *Office of the Child Advocate*, DEL. CTS., <https://courts.delaware.gov/childadvocate/#:~:text=The%20Office%20of%20the%20Child,Delaware%20resulting%20from%20child%20abuse> (last visited July 11, 2022).

¹⁶³ *Children's Attorneys Project* *supra*, note 154.

v. Law School Clinical Programs

Established in 1976, the Child Advocacy Clinic (CAC) at the University of Michigan School of Law is the oldest children’s legal representation clinical program in the nation. CAC has trained thousands of students and served thousands of families. It is staffed by second- and third-year law students who represent children, parents, or the Department of Health and Human Services in various child protection cases during their clinical rotation.¹⁶⁴ Similarly, third-year students, or those with student practice licensure, enrolled in the Civitas Child Law Clinic at Loyola University Chicago School of Law represent children in child protection cases under the supervision of clinic faculty.¹⁶⁵ The Children and Youth Law Clinic at the University of Miami School of Law gives more than two dozen second- and third-year law students hands-on experience providing legal representation to children experiencing foster care (as well as alumni of foster care) in health care, mental health, disability, education, immigration, and other general civil legal matters.¹⁶⁶ Law school clinics provide students with exposure to dependency law and create an excellent forum for child law offices to recruit for attorney positions.

b. Steward Responsible Financing

Responsible stewardship of limited public funds requires maximizing the use of federal dollars, state funding, and private philanthropy to finance the legal representation of children involved with the child protection system. A fiscal analysis should consider the number of attorneys needed in relation to the number of children in foster care, necessary support staff, estimated compensation, required training costs, and overall operating expenses.¹⁶⁷ If a multidisciplinary legal team model¹⁶⁸ will be implemented, the fiscal note should also include costs of professional social workers and peer advocates.

FEDERAL FUNDING STREAMS

RESOURCES FOR CHILDREN’S LEGAL REPRESENTATION EXIST BEYOND STATE COFFERS. Every state should examine the wide range of federal funding sources available to support children’s access to legal services.¹⁶⁹ Federal funding opportunities may supplement state funding of high-quality legal representation for children experiencing foster care¹⁷⁰ or those at risk of involvement in the child protection system due to civil legal issues.¹⁷¹ The array of federal funding opportunities included later is illustrative, but not exhaustive. *Appendix A* includes a chart with examples of state-administered federal funds that may support civil legal services for children experiencing foster care.

¹⁶⁴ *Child Advocacy Law Clinic*, MICH. L., <https://michigan.law.umich.edu/academics/experiential-learning/clinics/child-advocacy-law-clinic-0> (last visited July 11, 2022).

¹⁶⁵ *Civitas Child Law Clinic*, LOYOLA UNIV. CHI. SCH. OF L., <https://www.luc.edu/law/academics/clinical-programs/civitaschildlawclinic/index.cfm> (last visited July 11, 2022).

¹⁶⁶ *Children and Youth Law Clinic*, UNIV. OF MIAMI SCH. OF L., <https://www.law.miami.edu/academics/clinics/children-and-youth-law-clinic> (last visited July 11, 2022).

¹⁶⁷ In 2021, the Washington legislature passed House Bill (HB) 1219 adding a right to legal counsel for children age 8 and older in child protection proceedings and establishing a children’s representation program through the Office of Civil Legal Aid. HB 1219’s multi-agency fiscal note projected the operating expenditures for the Administrative Office of the Courts, Office of Public Defense, Office of Civil Legal Aid, and Office of the Attorney General. The fiscal note included cost of new attorneys, administrative support, training coordinator and training, case management system, travel, payment for professional services/experts, interpreters, and anticipated federal IV-E reimbursement. Appropriations for the mandate were sourced from the state general fund. H.B. 1219, 2021 Leg., Reg. Sess. (Wash. 2021), <https://legiscan.com/WA/text/HB1219/2021>.

¹⁶⁸ FAM. JUST. INITIATIVE, *supra* note 136.

¹⁶⁹ JUST. IN GOV’T PROJECT, GRANTS MATRIX: STATE-ADMINISTERED FEDERAL FUNDS THAT CAN SUPPORT LEGAL AID (2021), <https://legalaidsourcesdotorg.files.wordpress.com/2021/07/grants-matrix.pdf>.

¹⁷⁰ JUST. IN GOV’T PROJECT, CIVIL LEGAL AID HELPS KEEP FAMILIES TOGETHER AND OUT OF THE CHILD WELFARE SYSTEM (2021), <https://legalaidsourcesdotorg.files.wordpress.com/2021/04/foster-care-factsheet.pdf>.

¹⁷¹ ZERO TO THREE, SUPPORTING SUSTAINABILITY FOR INFANT-TODDLER COURT TEAMS: A FEDERAL FUNDING GUIDE (2021), <https://www.zerotothree.org/resources/3976-supporting-sustainability-for-infant-toddler-court-teams-a-federal-funding-guide>.

While states must spend state funds to receive federal reimbursement, the Title IV-E grant is considered an open-entitlement because the federal government sets no upper limit to reimbursable expenditures.

STATE LEGISLATURE ALLOTMENT

Federal funding is often, but not always, contingent on state cost-sharing.¹⁷² To date there is no funding mechanism that will eliminate the need for state investment, thus states commonly appropriate general funds for children’s legal services. Policymakers can contact their state’s Access to Justice Commission¹⁷³ for guidance and institutional support in removing barriers to civil justice. **FUNDING CHILDREN’S LEGAL REPRESENTATION IS A WISE INVESTMENT THAT LEADS TO TAXPAYER SAVINGS BY REDUCING THE TIME CHILDREN ARE IN FOSTER CARE AND THUS PUBLIC SPENDING ON FOSTER CARE.**¹⁷⁴

TITLE IV-E OF THE SOCIAL SECURITY ACT

The federal foster care program is authorized by Title IV-E of the Social Security Act. Each year, federal funds are earmarked for distribution as open-ended entitlement grants¹⁷⁵ to child protection agencies (Title IV-E agencies) with approved state plans. These funds support the cost of daily foster care administration payments, adoption assistance, and guardianship assistance to eligible children.¹⁷⁶ **FEDERAL POLICY ALLOWS CHILD PROTECTION AGENCIES TO SEEK IV-E REIMBURSEMENT FOR UP TO 50% OF ELIGIBLE COSTS OF INDEPENDENT LEGAL REPRESENTATION FOR CHILDREN, PARENTS, AND TRIBES.**¹⁷⁷ Reimbursable administrative costs can include costs of paralegals, office support staff, social workers, and overhead.¹⁷⁸ Training costs are reimbursable at an even higher rate of 75%.¹⁷⁹ **MANY STATES ARE NOT YET FULLY LEVERAGING IV-E FUNDING TO ITS FULL POTENTIAL.**¹⁸⁰

State government agencies may invest Title IV-E reimbursement funds in the expansion of civil legal advocacy on behalf of families involved with the child protection system.¹⁸¹ Increasing access to civil legal services can help families resolve civil legal matters prior to system involvement and prevent the need for removal.¹⁸² For example, legal representation during an eviction hearing that permits a family to remain in housing can prevent a child’s foster care placement.¹⁸³ A growing body of research indicates the efficacy of civil legal advocacy as a key strategy to preserve family integrity. Funding for pre-petition legal services is distinct from the IV-E funds dispersed under the Family First Prevention and Services Act, but both are philosophically aligned, smart investments to keep families together.¹⁸⁴

¹⁷² CHILD TRENDS, CHILD WELFARE FINANCING 101 (2019), <https://www.childtrends.org/wp-content/uploads/2019/08/Child-Welfare-Finance-101-Infographic-8.23.pdf>.

¹⁷³ AMER. BAR ASS’N, ACCESS TO JUSTICE COMMISSIONS, https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/atj-commissions/ (last visited December 5, 2022).

¹⁷⁴ WILLIAM NIELSEN & TIMOTHY ROMAN, ECOTONE ANALYTICS, THE UNSEEN COSTS OF FOSTER CARE: A SOCIAL RETURN ON INVESTMENT STUDY (2019), <https://www.thetcj.org/wp-content/uploads/2019/10/Alia-unseen-costs-of-FC.pdf>. (See above discussion in section II. d. ii. Promoting Responsible Public Spending.)

¹⁷⁵ While states must spend state funds to receive federal reimbursement. The Title IV-E grant is considered an open-entitlement because the federal government sets no upper limit to reimbursable expenditures.

¹⁷⁶ *Title IV-E Foster Care*, CHILD’S BUREAU (JULY 1, 2022), <https://www.acf.hhs.gov/cb/grant-funding/title-iv-e-foster-care>. See also 8.1B: *Title IV-E*, *supra* note 13.

¹⁷⁷ CHILD’S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., TECHNICAL BULLETIN, FREQUENTLY ASKED QUESTIONS: INDEPENDENT LEGAL REPRESENTATION (2020), https://www.acf.hhs.gov/sites/default/files/documents/cb/technical_bulletin_faq_legal_representation.pdf.

¹⁷⁸ 8.1B: *Title IV-E*, *supra* note 13, at Q. 32.

¹⁷⁹ CHILD’S BUREAU, *supra* note 182.

¹⁸⁰ *States Experiences Claiming Title IV-E Funds for Parent and Child Attorneys*, https://cdn.yowms.com/www.naccchildlaw.org/resource/resmgr/title_iviv-e_two_pager____1_.pdf.

¹⁸¹ CHILD’S BUREAU, *supra* note 122. (Citing CHILD’S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-21-02, CIVIL LEGAL ADVOCACY TO PROMOTE CHILD AND FAMILY WELL-BEING (2021).)

¹⁸² *Id.* (See also Amber Gilson and Michelle Jungers, Preserving Families Through High-Quality Pre-Petition Representation, AMER. BAR ASS’N, (MARCH 4, 2021) <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2021/spring2021-preserving-families-through-high-quality-pre-petition-representation/>.)

¹⁸³ Similarly, legal representation for kin caregivers seeking to obtain guardianship of a child while a parent resolves mental health, substance abuse, or incarceration issues can prevent unnecessary foster care placement. See also Gianna Giordano & Jey Rajaraman, *Increasing Pre-Petition Legal Advocacy to Keep Families Together*, AM. BAR ASS’N (DEC. 15, 2020), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-increasing-pre-petition-legal-advocacy-to-keep-families-together/>. See also Viviek Sankaran, Chapter 29, Preventing Legal Advocacy: How Lawyers Can Help Prevent Unnecessary Child Protective Services Involvement, in CHILD PROTECTION LAW AND PRACTICE (Nat’l Ass’n of Counsel for Child, ed., 4th ed. 2022.)

¹⁸⁴ See *FAQ Regarding the Relationship Between Family First IV-E Funds and Attorney IV-E Funds*, https://www.americanbar.org/content/dam/aba/administrative/child_law/ffpsa-legal-rep-funding.pdf. (FFPSA enables states to use funds under parts B and E of Title IV of the Social Security Act “to provide enhanced support to children and families and prevent foster care placements through the provision of mental health and substance abuse prevention and treatment services, in-home parent skills-based programs, and kinship navigator services.)

Federal Funding Available: In 2018, the federal government changed longstanding policy to expand access to funding for the legal representation of children and parents through Title IV-E of the Social Security Act.¹⁸⁵ Although federal Title IV-E reimbursement had always been available to states to support the work of their agency attorneys and caseworkers, this was the first time the federal government made resources available to support the work of attorneys for children, parents, and tribes.¹⁸⁶ This landmark change signified formal, federal recognition of the important work that children’s attorneys do to achieve positive outcomes in child protection cases.¹⁸⁷ In explaining its rationale for the shift, the U.S. Children’s Bureau stated that “[t]his change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans.”¹⁸⁹ The federal government affirmed its support for children’s (and parent’s) right to counsel in a 2017 Information Memorandum concluding that “providing high-quality legal representation to all parties at all stages of dependency proceedings is crucial to realizing... basic tenets of fairness and due process under the law.”¹⁹⁰ To wisely steward limited public funds while improving outcomes for children, policymakers must ensure their state maximizes the revenue available through Title IV-E reimbursement funds for the costs of children’s attorneys and their support staff.

State Opioid Response grants fund legal services provided through medical-legal partnerships and other civil legal aid.

MEDICAID

Federal funding through the Medicaid program can fund civil legal services, medical-legal partnerships, and demonstration site projects that assist enrollees in addressing legal problems that affect their health.¹⁹⁰ For example, Los Angeles County Health Services partners with four non-profit legal organizations to provide legal aid that addresses child custody and family safety issues.¹⁹¹

SOCIAL SERVICES BLOCK GRANT (SSBG)

The federal government allocates funds through the Social Services Block Grant for states to provide specific social services to vulnerable children, adults, and families. Funds can be used to prevent or remedy neglect, abuse, or exploitation of children and adults unable to protect their own interests or preserve, rehabilitate, or reunite families. SSBG funding could support legal aid for children in foster care.¹⁹²

STATE OPIOID RESPONSE GRANT

The State Opioid Response Grant program is a formula grant administered by U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) to address the nation’s opioid crisis by funding prevention, treatment, and recovery activities.¹⁹³ Funding may only be used to supplement, not replace, any existing opioid prevention, treatment, and recovery activities in a state. State Opioid Response grants fund legal services provided

¹⁸⁵ *Title IV-E Funding for Legal Representation*, NAT’L ASS’N OF COUNSEL FOR CHILD, <https://www.naccchildlaw.org/page/TitleIVforLegalRepresentation>.

¹⁸⁶ *Id.*

¹⁸⁷ CHILD’S BUREAU, U.S. DEPT OF HEALTH & HUM. SERVS., LOG NO. ACYF-CB-IM-21-06, UTILIZING TITLE IV-E FUNDING TO SUPPORT HIGH QUALITY LEGAL REPRESENTATION (2021), <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2106.pdf>.

¹⁸⁸ Child Welfare Policy Manual, *supra* note 13.

¹⁸⁹ CHILD’S BUREAU, *supra* note 32.

¹⁹⁰ CHILD’S BUREAU, *supra* note 152. For information on medical-legal partnerships aimed at addressing health-harming legal needs, see JENNIFER TROTT ET AL., FINANCING MEDICAL-LEGAL PARTNERSHIPS: VIEW FROM THE FIELD (2019), <https://medical-legalpartnership.org/wp-content/uploads/2019/04/Financing-MLPs-View-from-the-Field.pdf>. See also Zero to Three, *Supporting Sustainability for Infant-Toddler Court Teams: A Federal Funding Guide*, <https://www.zerotothree.org/resource/supporting-sustainability-for-infant-toddler-court-teams-a-federal-funding-guide/>. (Medicaid funding can support specific functions of the infants-toddler court team, including enabling access to comprehensive assessments and evidenced-based services.)

¹⁹¹ Legal, HEALTH SERVS. LA. CNTY, <https://dhs.lacounty.gov/health-care-centers/our-services/resources/legal/#1600883416995-1f7e8e07-5ccb> (last visited July 12, 2022).

¹⁹² JUST. IN GOV’T PROJECT, *supra* note 174. See also *About Social Services Block Grant*, ADMIN. FOR CHILD. & FAMS. (JUNE 10, 2019), <https://www.acf.hhs.gov/ocs/programs/ssbg/about>.

¹⁹³ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., U.S. DEPT OF HEALTH & HUM. SERVS., FUNDING OPPORTUNITY NO. TI-20-02, STATE OPIOID RESPONSE GRANTS (2020) <https://www.samhsa.gov/sites/default/files/grants/pdf/fy-2020-sor-foa.pdf>.

Both block grants may be used to fund legal services that address social determinants of health, which are non-medical factors that influence health outcomes, and advance overall health equity.

through medical-legal partnerships and other civil legal aid.¹⁹⁴ Funding is also used for community-based services such as peer supports, housing needs, and legal aid services that address family issues, “for example needs of families regarding reunification of children who may be in foster care while a parent(s) receives treatment.”¹⁹⁵

STOP (SERVICES, TRAINING, OFFICERS, AND PROSECUTORS) VIOLENCE AGAINST WOMEN FORMULA GRANT

The U.S. Department of Justice Office on Violence Against Women administers STOP grants authorized by the Violence Against Women Act of 1994. STOP grants are awarded to states to improve the criminal justice system response to violent crimes against women and enhance services for victims.¹⁹⁶ STOP grants allow subgrantees to provide legal representation as a direct service if they have demonstrated expertise in serving the impacted population, partner with an individual demonstrating the expertise, or are training to develop the competency. Assistance may be provided to youth or adults in a wide range of practice areas including family, immigration, employment, administrative, housing, stay-away order proceedings, and criminal justice matters that may affect the victim’s safety or privacy.¹⁹⁷ Children involved with the child protection system due to domestic violence could receive legal aid funded by STOP grants.

SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT AND THE COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANT

The Substance Abuse Prevention and Treatment Block Grant (SABG) and the Community Mental Health Services Block Grant (MHBG) are two block grants authorized by the U.S. Department of Health and Human Services, SAMHSA. SAMHSA utilizes a joint application¹⁹⁸ for both programs to help grantees improve data collection and coordinate between programs. The SABG funds may be used to plan, implement, and evaluate activities that prevent and treat substance abuse and promote public health.¹⁹⁹ The MHBG funds may be used to provide comprehensive, community-based mental health services to adults with serious mental illnesses and to children with serious emotional disturbances and to monitor progress in implementing a comprehensive, community-based mental health system.²⁰⁰ Both block grants may be used to fund legal services that address social determinants of health, which are non-medical factors that influence health outcomes,²⁰¹ and advance overall health equity.²⁰² SABG and MHBG funding could be used to support children’s legal representation that addresses personal and family stability, common social determinants of health.²⁰³

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Temporary Assistance for Needy Families (TANF) is a federal block grant that provides states with funds to help low-income families with children.²⁰⁴ State TANF

194 VT. LEGAL AID, LEGAL ADVOCACY IN RECOVERY SERVICES (LAIRS) PROJECT (N.D.), https://www.dropbox.com/sh/1jqk0kv2wdlqsls/AAAtmjtVLVbVCWgrfz1N3e0a/Cohort220case220studies?dl=0&preview=Opioids-and-MLPs+--Vermont.pdf&subfolder_nav_tracking=1.

195 SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 193 at 7. *And see* JUST. IN GOV’T PROJECT, *supra* note 174.

196 OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEPT. OF JUST., FORMULA GRANT PROGRAMS (N.D.), <https://www.justice.gov/ovw/page/file/1117621/download>.

197 OFF. ON VIOLENCE AGAINST WOMEN, U.S. DEPT. OF JUST., FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS (2017), <https://www.justice.gov/ovw/page/file/1008816/download>.

198 SUBSTANCE ABUSE & MENTAL HEALTH ADMIN., U.S. DEPT. OF HEALTH & HUM. SERVS., OMB NO. 0930-0168, FFY 2020-2021 BLOCK GRANT APPLICATION (2020), https://www.samhsa.gov/sites/default/files/grants/ffy_2020-2021_block_grant_application_and_plan.pdf.

199 *Substance Abuse Prevention and Treatment Block Grant*, SUBSTANCE ABUSE & MENTAL HEALTH ADMIN. (APR. 14, 2022), <https://www.samhsa.gov/grants/block-grants/sabg>.

200 *Community Mental Health Services Block Grant*, SUBSTANCE ABUSE & MENTAL HEALTH ADMIN. (APR. 16, 2022), <https://www.samhsa.gov/grants/block-grants/mhbg>.

201 *NCHHSTP Social Determinants of Health*, CTR. FOR DISEASE CONTROL & PREVENTION (MAY 9, 2022), <https://www.cdc.gov/nchhstp/socialdeterminants/index.html>.

202 *How Legal Services Help the Health Care System Address Social Needs*, NAT’L CTR. FOR MEDICAL-LEGAL P’SHP, <https://medical-legalpartnership.org/response/i-help/> (last visited July 12, 2022).

203 *Id.*

204 *Temporary Assistance for Needy Families (TANF)*, ADMIN. FOR CHILD. & FAMS. (JUNE 29, 2022), <https://www.acf.hhs.gov/ofa/programs/temporary-assistance-needy-families-tanf>.

programs disburse monthly cash assistance payments to eligible families conditioned on their participation in minimum work requirements.²⁰⁵ Programs operated by TANF funds “provide assistance to needy families so that children can be cared for in their own homes.”²⁰⁶ Legal services that assist families towards self-sufficiency and meet one of the purposes of TANF may be eligible for funding. Legal advocacy surrounding access to healthcare, education, employment, enhancing public safety, and family stability are just some activities that promote the TANF purpose areas. The U.S. Department of Health and Human Services opines that TANF funds may be used to support legal help for needy families pursuing Supplemental Security Income (SSI) benefits and to resolve personal or family legal problems, “e.g., where legal problems are a threat to family stability or undermine the employment of needy parents.”²⁰⁷

VICTIM OF CRIMES ACT (VOCA) VICTIM ASSISTANCE FORMULA GRANTS

The Victims of Crime Act Program²⁰⁸ could provide another federal funding opportunity for children’s legal representation. VOCA funds direct services to crime victims. The VOCA grant is overseen by the U.S. Department of Justice’s Office for Victims of Crime, which distributes funding to states collected from fines and penalties levied in federal criminal matters.²⁰⁹ VOCA guidelines include a grantee match requirement of “not less than 20% of the total cost of each project.”²¹⁰ States administering VOCA grants must ensure that a portion of funding is directed to priority areas that include child abuse, sexual assault, and domestic violence; grantees may only be government agencies or non-profit organizations. VOCA grants may fund legal representation, in dependency, divorce, or civil restitution recovery proceedings, unrelated to enforcing the legal rights associated with an individual’s victimization.²¹¹

LEGAL SERVICES CORPORATION FUNDING

The Legal Services Corporation (LSC) is the primary source of funding for civil legal aid in the United States. In FY2020, the federal government appropriated \$490 million to LSC to provide legal assistance to persons with low-income.²¹² Over 90% of LSC funds are distributed to non-profit civil legal aid offices. Even still, LSC is unable to fund all jurisdictions’ civil legal needs and encourages LSC-funded programs to partner with other civil legal aid funding sources.²¹³

LSC recognizes the increasing involvement of families with child protection systems due to opioid dependency²¹⁴ and encourages legal aid providers to partner with local organizations serving individuals and families affected by the opioid epidemic.²¹⁵ In response to the increase in children entering foster care due to parental substance use, Ohio State Legal Services Association uses LSC funding to partner with a local non-profit to provide legal advice and representation to young people

Legal advocacy surrounding access to healthcare, education, employment, enhancing public safety, and family stability are just some activities that promote the TANF purpose areas.

205 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 110 Stat. 2105, Pub. L. No.104-193.

206 45 C.F.R. §§ 260.10-260.76 (2022).

207 JUST IN GOVT PROJECT, FAQs ABOUT LEGAL AID & TANF (2021), <https://legalaidresourcesdotorg.files.wordpress.com/2021/05/faqs-about-tanf.pdf>.

See also Q&A: Use of Funds, ADMIN. FOR CHILD. & FAMS. AT Q. 20 (MAY 2, 2018), <https://www.acf.hhs.gov/afa/faq/q-use-funds?page=all>.

208 Welcome: Victims of Crime Act (VOCA) Admits, OFF. FOR VICTIMS OF CRIME (APR. 8, 2020), <https://ovc.ojp.gov/program/victims-crime-act-voca-administrators/welcome>.

209 Crime Victims Fund, OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/crimevictimsfundfs/intro.html#FundSupport> (last visited July 12, 2022).

210 Additional Resources: Victims of Crime Act (VOCA) Admits, OFF. FOR VICTIMS OF CRIME (APR. 8, 2020), <https://ovc.ojp.gov/program/victims-crime-act-voca-administrators/additional-resources>.

211 Victims of Crime Act Victim Assistance Program, 81 Fed. Reg. 44,515 (Aug. 8, 2016) [codified at 28 C.F.R. pt. 94].

212 Who We Are, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> (last visited December 8, 2022).

213 *Id.*

214 LEGAL SERVS. CORP., STRENGTHENING THE ROLE OF CIVIL LEGAL AID IN RESPONDING TO THE OPIOID EPIDEMIC: REPORT OF THE LSC OPIOID TASK FORCE (2018), <https://lsc-live.app.box.com/s/7f9qgh5hjpgdq4z0ldt00ozlexwk9sqhd>.

215 *Id.*

No single source should be relied on to completely fund legal services.

transitioning from foster care who face legal issues related to education, housing, public benefits, and essential documents.²¹⁶

PRIVATE PHILANTHROPY

Non-government sources, such as individuals, private corporations, charities, and foundations may make donations or award grants that can support children's legal representation.²¹⁷ No single source should be relied on to completely fund legal services.

c. Ensure High-Quality Legal Representation

i. Mandatory Training, Practice Standards, Reasonable Caseloads, and Fair and Competitive Compensation

Child protection law is a highly specialized legal practice area. Policymakers can promote children's right to counsel, high-quality legal representation, and improved individual and systemic outcomes by ensuring legislation requires the development of training requirements, standards of practice, and maximum caseload limits for children's attorneys. See the Counsel for Kids *Model Statute* in *Appendix B*.

MANDATORY TRAINING

Foundational training should be required before a children's attorney's first appointment, in addition to frequent, ongoing learning throughout their practice.²¹⁸ The QIC-ChildRep Best Practices Model is a widely accepted national training model.²¹⁹ An array of topic areas are vital to the practice of child protection law, including, but not limited to: federal and state laws and regulations, court rules, ethical duties, trial skills, interviewing skills, and relevant social science, including trauma and child and adolescent development. Attorneys should also receive initial and ongoing training on cultural humility, the impact of systemic racism, and disproportionate and disparate outcomes experienced by Black and Indigenous children as well as LGBTQIA+ youth.²²⁰

PRACTICE STANDARDS

TO PROMOTE QUALITY AND UNIFORMITY OF LEGAL REPRESENTATION, LEGISLATION MANDATING COUNSEL MUST REQUIRE THE DEVELOPMENT OF AND ADHERENCE TO LOCAL STANDARDS OF PRACTICE FOR ALL ATTORNEYS REPRESENTING CHILDREN.²²¹ Standards detail the qualifications, duties, and expected activities of attorneys in and out of court. Established standards can assist supervising bodies in evaluating the performance of children's attorneys.²²² States developing practice standards in their jurisdictions should use widely accepted national models as guides including the American Bar Asso-

²¹⁶ *Id.*

²¹⁷ *Natural Allies: Philanthropy and Civil Legal Aid*, KRESGE Foundation, <https://kresge.org/sites/default/files/Philanthropy-and-civil-legal-aid.pdf> (last visited Nov. 16, 2022). See Also *Funding*, LEGAL AID SOC'Y OF PALM BEACH CNTY., <https://legalaidpbc.org/funding/> (last visited July 12, 2022).

²¹⁸ *Best Practice Model Six Core Skills*, QIC CHILDREP, <https://www.improvechildrep.org/QICModelSixCoreSkills/SixCoreSkills.aspx> (last visited July 12, 2022).

²¹⁹ *QIC Best Practice Model of Child Representation*, QIC CHILDREP, <https://www.improvechildrep.org/QICModelSixCoreSkills/QIC-ChildRepBestPracticeModel.aspx> (last visited July 13, 2022).

²²⁰ NAT'L ASS'N OF COUNSEL FOR CHILD., *supra* note 33.

²²¹ The Arkansas Supreme Court was charged with developing standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases. In June of 1999, the Supreme Court issued a Per Curiam Order adopting prerequisite qualifications, standards of practice and caseload standards for Attorneys Ad Litem that became effective on January 1, 2000 and were revised per Arkansas Supreme Court Administrative Order No. 15 in September 2001. See *Attorney Ad Litem Program*, ARK. JUDICIARY, <https://www.arcourts.gov/administration/arjdc/atty-ad-litem> (last visited July 13, 2022).

²²² The Counsel for Child Abuse and Neglect (CCAN) Office is a branch of the Family Court of the District of Columbia Superior Court. The Superior Court has adopted Practice Standards which regulate the performance of attorneys practicing in the child abuse and neglect area pursuant to Administrative Order 03-07. See *Counsel for Child Abuse and Neglect*, D.C. CTS., <https://www.dccourts.gov/superior-court/family-court-operations/counsel-for-child-abuse-and-neglect> (last visited Dec. 14, 2022).

All the Right Skills

Child welfare law is an extremely complex area of legal practice. Dependency attorneys must master a number of multidisciplinary skills. Child welfare lawyers possess a legal expertise not held by lay advocates and knowledge of childhood dynamics and the foster care system that distinguishes them from fellow attorneys.

Expert Trial Skills

Knowledge of the Law: CAPTA, ICWA, ASFA, PSTSFA, ADA, etc.



Client Counseling: Trauma-Informed, Age-Appropriate Guidance



Zealous Advocacy: Rigorous Legal Analysis, Expert Trial Skills



Child Welfare Skills



Knowledge of Medicine, Mental Health, and Child Development



Understanding of Complex Child Welfare Funding Streams



Insight Into Various Treatment and Placement Options

Jurisdictions should utilize an hourly rate (rather than a flat case rate) and avoid inflexible caps on case hours, which may disincentivize robust and uniform fulfillment of all attorney duties.

ciation *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*²²³, and *NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*.²²⁴

REASONABLE CASELOADS

Competent representation can only occur if an attorney has adequate time for high-quality legal advocacy. **RESEARCH SHOWS THAT REASONABLE CASELOADS²²⁵ ALLOW ATTORNEYS TO INVEST THE TIME NECESSARY TO ENGAGE IN HIGH-QUALITY LAWYERING ACTIVITIES** (investigation, document review, and legal case preparation).²²⁶ A reasonable caseload allows for frequent, high-quality client communication, out-of-court and in-court advocacy, and other core functions of children's legal representation. A typical caseload includes matters at various stages of the legal process. Some cases will be in active litigation, while others will not (ex. cases pending appeal). The attorney will be expected to respond to the changing, urgent, or unforeseen case circumstances which are inherent to the practice. Policymakers should ensure that legislation includes a plan to establish case load maximum caps to support the provision of high-quality legal representation.²²⁷

FAIR AND COMPETITIVE COMPENSATION

To ensure high-quality legal representation, attorneys must also be reasonably compensated. Attorneys in contract or assigned counsel systems can be paid by hour, event, by case, or by time period.²²⁸ Jurisdictions should utilize an hourly rate (rather than a flat case rate) and avoid inflexible caps on case hours, which may disincentivize robust and uniform fulfillment of all attorney duties.²²⁹ Hourly rates should be consistent for in-court and out-of-court time. Pay structures that do not

223 AM. BAR ASS'N, STANDARDS FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996), https://www.americanbar.org/content/dam/aba/administrative/child_law/repstandwhole.pdf.

224 NAT'L ASS'N OF COUNSEL FOR CHILD., *supra* note 33.

225 *Id.* (NACC recommends a caseload range of 40–60 individual clients for attorneys representing children and youth in dependency cases.)

226 CHILDREN'S JUSTICE, *supra* note 140.

227 NAT'L ASS'N OF COUNSEL FOR CHILD., *supra* note 33.

228 2022 ABA Public Defense Summit Management and Oversight of Assigned Counsel and Contract Systems, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/public-education-events/public-defense-summit/agenda/ (last visited July 13, 2022).

229 NAT'L ASS'N OF COUNSEL FOR CHILD., *supra* note 33.

cover out-of-court work like client meetings, case planning, family team meetings, or other attorney work negatively impact the quality of representation.²³⁰

Insufficient compensation for attorneys in the public sector is associated with high caseloads²³¹ particularly in systems relying on contract attorneys who take more cases in order to earn sufficient income.²³² To attract and maintain a competent workforce, children’s attorneys – full-time salaried or independent contractors – must be paid fair, competitive²³³ wages “adequate for the practice and accounting for overhead and other costs borne by the private professional.”²³⁴ Systems should also ensure pay parity among public sector lawyers so as not to incentivize the representation of one party over another.

ii. Oversight and Accountability

High-quality legal service delivery systems for children must include oversight and accountability. At the individual attorney level, supervision ensures adherence to practice standards, practical support for attorneys, performance evaluations, training and accountability structures.²³⁵ Any legal service delivery system must provide a mechanism for clients to raise concerns about an attorney’s engagement or performance. **THESE OVERSIGHT AND ACCOUNTABILITY TOOLS SHOULD BE DEVELOPED IN PARTNERSHIP WITH INDIVIDUALS WITH LIVED EXPERIENCE IN FOSTER CARE.** In developing these protocols, attorneys should be particularly attuned to, and account for, youth’s worries they may be dismissed or retaliated against for voicing concerns about the work of professionals assigned to their case. Potential channels for feedback and oversight may include the use of online portals, review boards, surveys with incentivized participation, supervisory review, and/or systemic oversight (court offices, bar associations, ombudspersons).²³⁶

IV Strengthening State Policy

BY GUARANTEEING COUNSEL FOR KIDS, STATES HAVE THE OPPORTUNITY TO TRANSFORM SYSTEMS TO ACHIEVE BETTER OUTCOMES FOR CHILDREN INCLUDING FASTER PERMANENCY, INCREASED WELL-BEING, AND AVOIDANCE OF LONG-TERM CONSEQUENCES. The road to policy change will differ based on state politics, budgetary constraints, existing legal services, and competing legislative priorities. Strategic planning is critical to establishing high-quality legal service delivery systems.

Successful legislative change and implementation requires the input of and collaboration with a diverse range of stakeholders including lived experience experts, judges, court staff, child protection agency staff, service providers, Court Appointed Special Advocate/Guardian *ad litem* volunteers, juvenile defense attorneys, and parent and agency attorneys. These stakeholders must be communicated with, prepared, supported, and equipped for the transition. Stakeholder roundtables can help promote system-wide buy-in and ensure development and adoption of best practice standards.

²³⁰ KRISTA ELLIS ET AL., CHILD WELFARE ATTORNEYS NATIONAL COMPENSATION & SUPPORT SURVEY – 2017 (2018).

²³¹ AM. BAR ASS’N CTR. ON CHILD. & THE L., EFFECTS OF FUNDING CHANGES ON LEGAL REPRESENTATION QUALITY IN CALIFORNIA DEPENDENCY COURTS (2020).

²³² Debra Cassens Weiss, *Contract Public Defenders in This State Make About \$5 an Hour After Overhead*, *New Study Says*, AM. BAR ASS’N J. (JULY 9, 2020), <https://www.abajournal.com/news/article/contract-public-defenders-in-this-state-make-about-5-on-hour-after-overhead-study-says>.

²³³ At a minimum, parents’ attorneys’ and children’s attorneys’ compensation should be equal to county or child welfare agency attorneys’ compensation, and consistent with other publicly funded attorneys’ compensation, including criminal defense attorneys.

²³⁴ FAM. JUST. INITIATIVE, ATTRIBUTE 1: CASELOADS AND COMPENSATION (N.D.), <https://familyjusticeinitiative.org/wp-content/uploads/sites/48/2020/03/fji-implementation-guide-attribute1-1.pdf>.

²³⁵ FAM. JUST. INITIATIVE *supra* note 136.

²³⁶ NAT’L ASS’N OF COUNSEL FOR CHILD., *supra* note 33.

Strategic policymakers should meet regularly with stakeholders to foster authentic input and engagement in system reform.

Policymakers must allot sufficient time to plan, launch, and implement a mandate for children’s legal representation. **IT CAN BE HELPFUL TO ESTABLISH A DELAYED EFFECTIVE DATE TO PROVIDE AMPLE TIME TO DEVELOP THE CHILDREN’S LEGAL SERVICES DELIVERY SYSTEM. ANOTHER HELPFUL STRATEGY IS PHASED-IN IMPLEMENTATION, WHICH CAN BUFFER THE INITIAL FISCAL IMPACT AND PERMIT THE DEVELOPMENT OF RESOURCES AND SYSTEMS OVER TIME.**

For example, Washington’s House Bill 1219 (2021) provided for a 6-year phase in approach to allow for the creation of a system of data collection, and the development of practice standards, oversight, a delivery system, and training for children’s attorneys.²³⁷ These strategies promote understanding of the benefits of the systems change, build trust, and encourage positive engagement during implementation.

a. Vital Collaborations Between Policymakers and Stakeholders

The success of system reform often depends upon alignment of diverse stakeholders both in and out of the child protection legal system.²³⁸ Public pressure prompted by organizations that represent children, agencies that focus on systemic advocacy issues, bar association committees, state ombudsmen, state agencies responsible for parents’ representation, national children’s rights organizations, and other stakeholder groups made up of lived experience experts can drive the success of reform efforts.²³⁹ Strategic policymakers should meet regularly with stakeholders to foster authentic input and engagement in system reform.²⁴⁰ Fueled with the expertise of the coalition, policymakers and their staffers can educate their peers on the impact of children’s legal representation.

Working with a coalition also provides legislators with direct access to impacted stakeholders who may lobby or provide testimony in support of a proposed bill. Additionally, if opponents of a bill raise concerns, a coalition of advocates can help identify appropriate responses or areas of compromise. The collaboration between the coalition and policymaker and their staff should be a reciprocal relationship. The policymaker and staff should communicate with the group about upcoming committee hearings, votes, key decisionmakers, and/or holdout legislators who need to hear from their constituents. Effective collaboration between policymakers and a stakeholder coalition will support the success of children’s right to counsel legislation.

b. Essential Partnerships with Lived Experience Experts

Authentic and intentional engagement of people with lived experience in the foster care system is invaluable to children’s right to counsel policy reform.²⁴¹ Centering the voices and priorities of youth and families with lived experience provides unique perspective and insights that cannot be provided by other means.²⁴² Lived experience experts are critical to each phase of policy reform, including: identifying the issues and brainstorming solutions, drafting proposed bill language, working with legislative sponsors, leading stakeholder meetings, and developing campaign strategy.

THE ENGAGEMENT OF LIVED EXPERIENCE EXPERTS IN STAKEHOLDER COALITIONS MUST NOT HINGE ON THE EXPERT’S WILLINGNESS TO SHARE THEIR PERSONAL LIFE EXPERIENCES TO GARNER SUPPORT FOR LEGISLATION.²⁴³ While an individual’s foster care experience may have honed

²³⁷ H.B. 1219, 67th Leg., Reg. Sess. (Wash. 2021) *supra* note 172.

²³⁸ Casey Irupin, *System and Policy Advocacy*, in *CHILD WELFARE LAW AND PRACTICE* 963 (Donald N. Duquette et al. eds., 3d. ed. 2016).

²³⁹ *Id.* at 952.

²⁴⁰ *Id.* at 954.

²⁴¹ NAT’L ASS’N OF COUNSEL FOR CHILD, *SO YOU WANT TO INCLUDE A LIVED EXPERIENCE EXPERT* (2021), <https://secureserververcdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/10/NACC-Lived-Experience-Expert-Tipsheet.pdf>.

²⁴² *Id.*

²⁴³ *Id.*

their relevant expertise, their participation in advocacy does not grant stakeholders or policymakers unfettered access to their personal experiences. Instead, youth with foster care experience should be permitted to establish and maintain boundaries around their personal stories only sharing *what* they decide to share when they decide to share.²⁴⁴ Stakeholder coalitions and legislators must recognize and honor lived experience experts and the specialized knowledge they offer to influence policy change. Additionally, it is critical that coalitions have a plan to compensate lived experience experts for their work at a wage that reflects their lived and professional experience.²⁴⁵

c. Time Limited: Legislative Task Force or Interim Study Committee

At times, it may be helpful to convene a legislative task force or interim study committee to give policymakers extended time outside of the busy legislative session to become familiar with the issue of children's legal representation. These convenings provide a separate vehicle for policymakers to hear from stakeholders including youth and adults with lived experience in the child protection system, researchers, judges, and legal and ethics experts. Ideally, these time-limited convenings will help legislators understand the impact of children's legal representation and facilitate efforts to pass legislation in the following legislative session.

d. Pilot Project

Even with the overwhelming amount of research on the efficacy of children's legal representation, policymakers may decide to initiate reform by establishing a pilot project. Pilot projects are beneficial because they require the preliminary development of infrastructure for legal services delivery systems, training, and oversight for the identified demonstration sites — effectively incubating implementation of state-wide children's legal services delivery. Data collected from pilot projects can be extremely persuasive when policymakers consider further expansion. Policymakers should ensure a clearly defined data collection period with a clear end date. Once the project data is evaluated, there should be a concrete plan to propose new legislation that expands the legal representation beyond the pilot sites.

The Washington legislature established a children's representation pilot project in 2016 and corresponding study by the Washington State Center for Court Research. The study compared the "time to permanency" and other key outcomes for children with standards-based legal representation to those without legal representation.²⁴⁶ This study was instrumental in influencing legislation passed in 2021 to guarantee the right to counsel for children eight and older in the state.

In Indiana, Child Advocates, Inc. established a Direct Representation Project²⁴⁷ to represent older youth experiencing foster care. Though legal counsel is discretionary under current Indiana law, the efficacy of the Direct Representation Project has influenced legislative proposals in the state²⁴⁸ that would mandate children's right to counsel and also enhanced corresponding media attention.²⁴⁹

244 NAT'L RES. CTR. FOR YOUTH DEV., STRATEGIC SHARING (2015), <https://www.whcp.org/wp-content/uploads/2015/12/youth-leadership-toolkit-strategic-sharing.pdf>.

245 NAT'L ASS'N OF COUNSEL FOR CHILD., *supra* note 241.

246 *Office of Civil Legal Aid – Children's Representation Program*, WASH. CTS., <https://www.wacita.org/childrens-representation-program-office-of-civil-legal-aid/> (last visited July 13, 2022).

247 *Online Direct Representation Referral Form*, CHILD ADVOC., <https://www.childadvocates.net/direct-rep-referral/> (last visited July 13, 2022).

248 S.B. 180, 122d Gen. Assemb., 2d Reg. Sess. (Ind. 2022).

249 *Indiana Lawmakers Consider a Bill to Appoint All Foster Children an Attorney*, *supra* note 83; *Indiana Lawmaker to Reinstate Bill Providing Attorneys to Children* (December 20, 2022), <https://fox59.com/video/indiana-lawmaker-to-reintroduce-bill-providing-attorneys-to-foster-children/8248757/>. See also Marilyn Odendahl, *Senate Bill 180 Reignites Conversation About Direct Representation for CHINS, TPR Proceedings*, IND. LAW. (MAR. 2, 2022), <https://www.theindianalawyer.com/articles/senate-bill-180-reignites-conversation-about-direct-representation-for-chins-tp-proceedings>; Marilyn Odendahl, *Child Advocates Program Provides Model for Direct Representation*, IND. LAW. (MAR. 2, 2022), <https://www.theindianalawyer.com/articles/child-advocates-program-provides-model-for-direct-representation>.

Policymakers should ensure a clearly defined data collection period with a clear end date.

V Conclusion

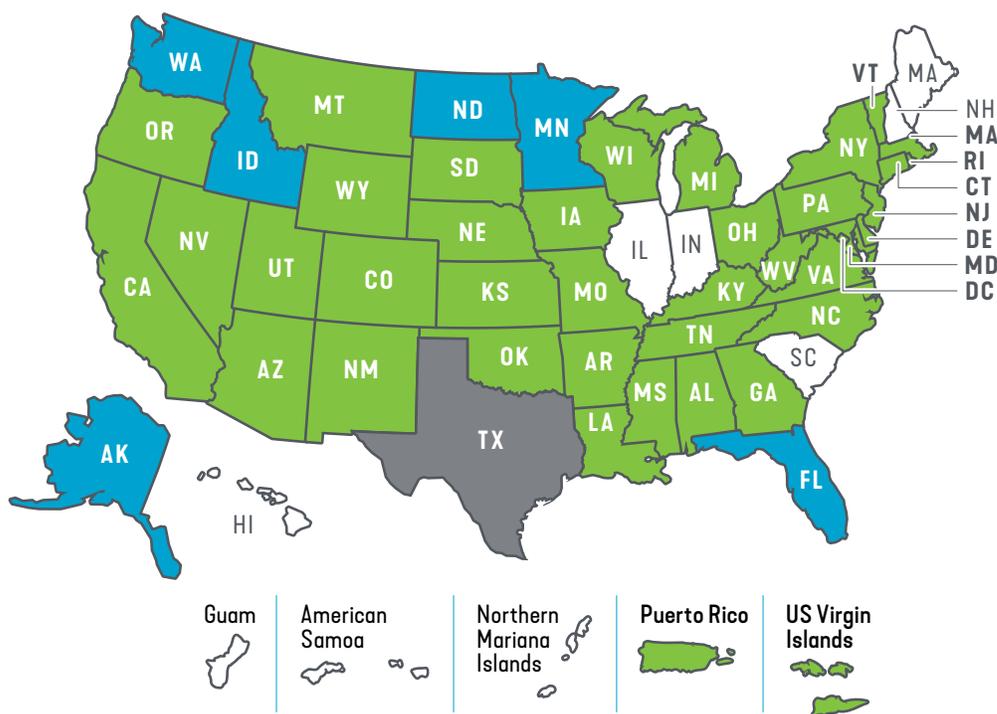
Maya Angelou once said, “When we know better, we do better.” We know that children have rights that deserve legal protections. We know that when attorneys represent children experiencing foster care, permanency is expedited, outcomes are improved, and public spending is reduced. We know that children and youth feel empowered and heard when represented by children’s attorneys. We know that when all parties to a child protection case are well-represented, court proceedings are better for all. Armed with this knowledge, led by legislative champions, and supported by stakeholder coalitions that include lived experience experts, system change can occur.

Legislative champions are essential to the success of efforts to ensure children’s right to counsel. Under their leadership, diverse groups of stakeholders can be engaged and deployed to educate the media, constituents, and other policy-makers on the impact of children’s legal representation. Legislative champions facilitate policy development by ushering bills through committees and prioritizing them among competing legislative priorities. Finally, legislative champions safeguard a bill from being passed without appropriate funding or implementation planning. **THE PROTECTION OF CHILDREN’S LEGAL RIGHTS IS CRITICALLY TIED TO THE LEADERSHIP OF A LEGISLATIVE CHAMPION.**

As states look for research-based strategies to improve child protection systems, ensuring legal counsel for children and youth must rank as a top priority. Children and youth are overdue for fundamental due process protections — a right to be heard and treated as an equal and essential part of their own case. High-quality

Right to Counsel Status ²⁵⁰

- Guaranteed ■
- Subset of Children ■
- Limited Duration ■
- None



²⁵⁰ As of fall 2023; see <https://counselforkids.org/right-to-counsel-map/>.

legal representation improves youth experience in foster care. It is also sound stewardship of resources and constituent well-being. With new federal funding, a strong body of evidence, and policymaker commitment to improving the lives of children in foster care, the time is now to mandate the appointment of counsel and guarantee access to justice for all children and youth.

In 2021, NACC launched the Counsel for Kids Campaign. NACC recognizes that a diverse range of bipartisan stakeholders will lead state-level policy reform efforts encouraged and supported by this campaign. NACC may offer technical assistance to any state advocate or organization seeking to engage in strategic policy reform to ensure the right to counsel for children and youth involved in child protection proceedings. NACC encourages individuals, groups, and organizations with varying levels of capacity to apply for a continuum of technical assistance (TA) services including policy analysis, data review, policy drafting/review, resource development, campaign strategy support, youth engagement, coalition building, and litigation strategies. These services are provided at no cost to selected sites. Learn more and apply at CounselForKids.org/technical-assistance/.

VI Policy Paper: Top 5 Priorities for Policymakers

1. Partner with coalitions that include lived experience experts and child protection system stakeholders to develop and advance a Counsel for Kids legislative proposal and seek bipartisan support.
2. Pass the Counsel for Kids model state statute to guarantee legal representation for children at all stages of a child protection court proceeding.
3. Adopt the National Association of Counsel for Children's Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings to ensure high-quality legal representation where attorney practice standards, maximum caseloads, initial and ongoing training requirements, supervision and accountability of attorneys, and reasonable compensation are established.
4. Launch centralized child law offices to deliver high-quality children's legal services supported by a multidisciplinary team.
5. Maximize federal, state, local, and philanthropic funding streams to support children's legal representation.

VII Appendix A

THE JUSTICE
IN GOVERNMENT
PROJECT

GETTING RESULTS WITH LEGAL AID
American University | Justice Programs Office



State-Administered Federal Funds that May Support Civil Legal Services for Children Experiencing Foster Care

Amends with Permission the Justice in Government Project Grant Matrix

Karen Lash, Former Director of Justice in Government Project

Funding Source	Description	Language Regarding Legal Representation of Children
<p>Title IV-E of the Social Security Act</p>	<p>Title IV-E of the Social Security Act supports the Federal Foster Care Program, which helps provide out-of-home care for children until the children are safely returned home, placed permanently, or placed in other planned arrangements; and the Adoption Assistance Program, which provides funds to states to facilitate the timely placement of children. The Foster Care Program's funding is awarded by formula as an open-end entitlement grant. To be eligible for Title IV-E Foster Care Program, children must be in out-of-home placements, be removed from families considered "needy" (based on measures from AFDC program), have entered care through judicial determination or voluntary placement, and be in licensed or approved foster care placements. The January 7, 2019 Children's Bureau policy change also includes as eligible a child who is a "candidate" for IV-E foster care.</p>	<p>In December 2018, the Children's Bureau revised the policy regarding independent legal representation. States can now claim federal matching funds through Title IV-E to help pay for costs of independent legal representation by an attorney for a child who is a candidate of IV-E foster care and the parent to prepare for and participate in foster care legal proceedings. The Child Welfare Policy Manual (CWPM) added language clarifying this change at Question 30: "The statute at section 474(a)(3) of the Act and regulations at 45 CFR 1356.60(c) specify that Federal financial participation (FFP) is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The title IV-E agency's representation in judicial determinations continues to be an allowable administrative cost.</p> <p>This policy is revised to allow the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home." In a July 2020 Technical Bulletin, the Children's Bureau clarified cost-sharing requirements for the non-federal share of program expenditures and the agencies with which states may form contracts to fulfill legal representation functions. Clarifications of special note include that private donations as well as state or local (non-federal) funds can be used as match, IV-E state agencies can contract directly with a legal aid program without the need for a public agency/court intermediary, and reimbursable administrative costs can include costs of paralegals, office support staff, social workers, and overhead. Specifically, FAQs 4 and 5, and the Appendix say: 4. "The required state share of costs claimed for the title IV-E foster care program must be sourced from state or local appropriated funds or donated funds but may not be sourced from federal funds provided through another program. State title IV-E agencies may not use third party in-kind expenditures (or contributions) as a source of the state share of funds for the foster care programs under title IV-E of the Act... For example, attorney volunteer hours may not be used as a source of state match." 5. "Title IV-E agencies often contract out title IV-E administrative functions such as legal representation to other private or public agencies through a contract or other type of agreement." Appendix: CWPM 8.1B Question #32 allows a Title IV-E agency to claim "administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing independent legal representation to a child who is a candidate for title IV-E foster care or is in title IV-E foster care, and his/her parent, to prepare for and participate in all stages of foster care legal proceedings, and for office support staff and overhead expenses." The costs must be "necessary to support an attorney in providing independent legal representation to prepare for and participate in all stages of foster care legal proceedings for candidates for title IV-E foster care, youth in foster care and his/her parents.</p>

Funding Source	Description	Language Regarding Legal Representation of Children
<p>Social Services Block Grant</p>	<p>SSBG lists five statutory goals: 1. Achieve or maintain economic self-support to prevent, reduce, or eliminate dependency; 2. Achieve or maintain self-sufficiency, including reduction or prevention of dependency; 3. Prevent or remedy neglect, abuse, or exploitation of children and adults unable to protect their own interests or preserve, rehabilitate, or reunite families; 4. Prevent or reduce inappropriate institutional care by providing for community based care, home-based care, or other forms of less intensive care; and 5. Secure referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.</p>	<p>The Administration of Children and Families lists legal aid as an additional support service that can be funded through SSBG. The Uniform Definitions of Services established in Federal Regulations for SSBG at 45 CFR Part 96 regulating particular HHS block grants, includes “legal services” among the 29 definitions for supportive services. These are activities states can provide using SSBG funds specifically: “[S]ervices or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist individuals in seeking or obtaining legal help in civil matters such as housing, divorce, child support, guardianship, paternity, and legal separation. Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.”</p>
<p>State Opioid Response Grant</p>	<p>The State Opioid Response (SOR) grant program “aims to address the opioid crisis by increasing access to medication-assisted treatment using three FDA approved medications for the treatment of opioid use disorder, reducing unmet treatment need, and reducing opioid overdose related deaths through the provision of prevention, treatment and recovery activities for opioid use disorder (OUD) (including prescription opioids, heroin and illicit fentanyl and fentanyl analogs).” SOR was announced in March 2018 as a two-year funding opportunity in addition to the Cures Opioid State Targeted Response Grants (funded through FY 2019). Services supported by states’ SOR funding are to be “based on needs identified in the State’s State Targeted Response (STR) strategic plan” and tracked separately from STR funding. SOR grants are awarded based on an allocation formula weighing (1) the state’s proportion of people with abuse or dependence on opioids (prescription and/or heroin) who need but do not receive treatment, and (2) the state’s proportion of overdose deaths. There is also a 15 percent set aside for states with the highest rate of drug overdose deaths. Each state’s grant awards are available online through HHS.</p>	<p>Legal services could fit in the language describing the purpose of SOR. The FY 2020 SOR Funding Opportunity Announcement (FOA) explains that grantees are “required to employ effective prevention and recovery support services to ensure that individuals are receiving a comprehensive array of services across the spectrum of prevention, treatment, and recovery.” Required activities similarly include implementing “service delivery models that enable the full spectrum of treatment and recovery support services that facilitate positive treatment outcomes and long-term recovery.”</p>
<p>STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant</p>	<p>The STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grants are awarded to states to develop and strengthen the criminal justice system’s response to violence against women and to support and enhance services for victims. Each state and territory must allocate 25 percent of the grant funds for law enforcement, 25 percent for prosecution, 5 percent to courts, and 30 percent for victim services. The remaining 15 percent is discretionary within the parameters of</p>	<p>In 2016, the Office on Violence Against Women (OVW) published a rule that included clarification about legal services in § 90.17(a): “Funds granted to qualified States are to be further subgranted by the State to agencies, offices, and programs including, but not limited to, State agencies and offices; State and local courts; units of local government; public agencies; Indian tribal governments; victim service providers; community-based organizations; and legal services programs to carry out programs and projects to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women, and specifically for the purposes listed in 42 U.S.C. 3796gg(b) and according to the allocations specified</p>

Funding Source	Description	Language Regarding Legal Representation of Children
<p>Continued: STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant</p>	<p>the Violence Against Women Act (VAWA). STOP grants are authorized by VAWA and subsequent legislation to support communities, including American Indian tribes and Alaska Native villages, in their efforts to develop and strengthen effective responses to sexual assault, domestic violence, dating violence and stalking. VAWA also funds three other formula grant programs—Sexual Assault Services Program, Grants to state sexual assault and Domestic Violence Coalitions, and Grants to Domestic Violence and Sexual Assault Tribal Coalitions Program.</p>	<p>in 42 U.S.C. 3796gg-1(c)(4) for law enforcement, prosecution, victim services, and courts.” Technology for remote court or service provider functions to improve victim services would be allowed under “other resources” referenced in 34 U.S.C. 10441(b) which governs the purpose areas and specifies that “grants...shall provide personnel, training, technical assistance, data collection and other resources for the more widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women [and] for the protection and safety of victims.” The US DOJ’s frequently asked questions regarding STOP Formula Grants says: “[S]tates can now provide a full range of legal services, such as housing, family law, public benefits, and other similar matters. Any subgrantee providing legal assistance must certify that it has demonstrated expertise in providing legal assistance to victims of domestic violence dating violence, sexual assault, or stalking in the targeted population; or is partnered with an entity or person that has such demonstrated expertise and has completed or will complete training in connection with domestic violence, dating violence, stalking, sexual assault, and related legal issues, including training on evidence-based risk factors for domestic and dating violence homicide.”</p>
<p>Substance Abuse Prevention and Treatment Block Grant and the Community Mental Health Services Block Grant</p>	<p>SAMHSA has a joint fiscal year 2022-2023 Block Grant Application for MHBG and SABG. The alignment of the MHBG and SABG applications is intended to “help block grant recipients improve data collection and coordination between programs.” SABG “program’s objective is to help plan, implement, and evaluate activities that prevent and treat substance abuse.”</p> <p>Among those populations the SABG seeks to serve are pregnant women with a substance use and/or mental disorder; parents with substance use and/or mental disorders who have dependent children, persons who inject drugs, individuals with tuberculosis and other communicable diseases and persons living with or at risk of HIV/AIDS. The SABG also supports prevention activities and persons who experience homelessness and involvement in the criminal justice system that support recovery, prevention, and treatment. MHBG’s goal is to provide comprehensive mental health services to adults with serious mental illness (SMI) and children with serious emotional disturbance (SED). The MHBG seeks to support individuals who have an Early Serious Mental Illness; adults with SMI, individuals with SMI or SED in the rural and homeless populations; and children with SED and their families.</p>	<p>In the FY 2020-2021 Block Grant Application, SAMHSA states that state agencies funded by the MHBG and SABG “may wish to develop and support partnerships and programs to help address social determinants of health and advance overall health equity. For instance, some organizations have established medical legal partnerships to assist persons with mental and substance use disorders in meeting their housing, employment, and education needs.”</p>
<p>Temporary Assistance for Needy Families</p>	<p>TANF is the federal government’s primary cash assistance program for needy families. The federal government gives states block grants to design and operate programs that accomplish one of the four purposes of the TANF program: Provide assistance to needy families so that children can be cared for in their own homes; Reduce the dependency</p>	<p>Legal aid can further the TANF program’s goals of helping needy families achieve self-sufficiency and provide support for job preparation and employment alongside other social services. Office of Family Assistance (OFA) indicated in its TANF Program Policy Questions and Answers that states can use TANF funds to support legal help for needy families pursuing SSI benefits and to resolve personal or family legal problems, “e.g., where legal problems are a threat to family stability or undermine the employment of needy parents.” Several definitions of TANF</p>

Funding Source	Description	Language Regarding Legal Representation of Children
<p>Continued: Temporary Assistance for Needy Families</p>	<p>of needy parents by promoting job preparation, work and marriage; Prevent and reduce the incidence of out-of-wedlock pregnancies; and Encourage the formation and maintenance of two-parent families. States have enormous flexibility over how to design their program and can support a broad range of activities related to promoting the four TANF purposes, so long as they comply with the rules and other guidance established by the U.S. Department of Health and Human Services Office of Family Assistance</p>	<p>“spending categories” can potentially include legal services. For example, the category “Supportive Services” has broad language that could include legal help to remove obstacles to employment such as securing expungement of an old record or reinstating a drivers’ license, or securing a restraining order when a parent and child are victims of domestic violence. Similarly, “Child Welfare Services” could potentially include legal representation for a child in adoption proceedings or a grandparent caring for a grandchild to secure legal guardianship. States can transfer up to ten percent of their TANF funds to their Social Services Block Grant (SSBG) spending. “Legal services” are included in the SSBG Uniform Definition of Services that states use for reporting to HHS: “Legal services are those services or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist individuals in seeking or obtaining legal help in civil matters such as housing, divorce, child support, guardianship, paternity, and legal separation. Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.”</p>
<p>Victim of Crimes Act (VOCA) Victim Assistance Formula Grants</p>	<p>The Victims of Crime Act (VOCA) of 1984 established the Crime Victims Fund (CVF), the nation’s primary funding source to help victims of all types of crimes. CVF is a repository of federal criminal fines, forfeitures and special assessments. It does not include tax dollars. Among the VOCA-authorized grant programs is the state administered victim assistance formula grants. It provides funding to groups and direct services for victims, such as domestic violence shelters, legal support, faith-based organizations, and child abuse organizations. Office for Victims of Crime (OVC) – the federal CVF administrator – awards the VOCA Victim Assistance Formula Grant Program in accordance with VOCA and the Victim Assistance Rule and related guidance. The states, in turn, provide subgrants to local public agencies and community service providers (referred to as “subgrantee” or “subrecipient”) that help individuals, families and communities recover from both the initial trauma and the long-term effects of victimization. Courts and legal aid organizations are eligible subgrantees. Because of fluctuations in annual CVF deposits of federal criminal fines and penalties, in 2000, Congress began “capping” annual CVF obligations. In 2015, Congress raised this cap and the amount of VOCA funds available to states nearly quadrupled. Although the amount has fluctuated, Congress has so far continued at elevated levels since the 2015 increase.</p>	<p>The DOJ OVC VOCA Assistance rule, effective August 8, 2016, included clarification that state VOCA administrators have the freedom and flexibility to use their funds for a broad array of legal needs beyond the immediate aftermath of the crime. In this document comparing the 1997 guidance to the new rule, DOJ OVC identified a non-exhaustive list of legal services state VOCA victim assistance administrators could fund: Proceedings for protective/restraining orders or campus administrative protection/stay-away orders; Family, custody, housing, and dependency matters, particularly for victims of intimate partner violence, child abuse, sexual assault, elder abuse, and human trafficking; Divorce; Immigration assistance for victims of human trafficking, sexual assault, and domestic violence; Intervention with creditors, law enforcement (e.g., to obtain police reports), and other entities on behalf of victims of identity theft and financial fraud; Intervention with administrative agencies, schools/colleges, tribal entities, and other circumstances where legal advice or intervention would assist in addressing the consequences of a person’s victimization; and VOCA funds may also be used to allow victims to file a motion to vacate and/or expunge certain convictions based on their status of being a victim. The rule also makes clear that states may fund direct services regardless of a victim’s participation in the criminal justice process and that victim eligibility under this program for direct services is not dependent on the victim’s immigration status. Court navigators and technology relevant to crime victims’ services are allowable uses of these funds. Use of the comparison chart is encouraged to explore other key services or aspects of collaboration that may be relevant and allowable under the Rule, e.g., multi-disciplinary partnerships and coordination activities.</p> <p>Most states now use VOCA funds for legal aid for crime victims. Several states have launched statewide VOCA-funded crime victims civil legal services programs and resources that incorporate technology and court partners.</p>

Funding Source	Description	Language Regarding Legal Representation of Children
Legal Services Corporation Funding	Legal Services Corporation (LSC) is the largest funder of civil legal aid for persons with low income in the United States. More than 90% of its funding is distributed to 132 non-profit legal aid programs.	The Legal Services Corporation Act establishes the LSC and sets rules for LSC and its grantees. Recognizing that the opioid epidemic is bringing more children into the foster care system, LSC recommends that legal aid providers build or develop partnerships with local organizations that serve affected individuals and families. Medical-legal partnerships are critical to addressing the unmet civil legal needs of patients with substance use disorders.
Medicaid	Federal funding through Medicaid is used to finance programs focused on improving social determinants of health in vulnerable populations.	Federal law allows states to fund experimental, demonstration, or pilot projects with Medicaid funds to promote Medicaid program objectives. Federal funding through Medicaid has been used to fund civil legal aid that improves health and health outcomes. Notably, medical-legal partnerships have been funded to provide civil legal aid for this purpose. In some states funding for legal services is included in a Medicaid managed care contract or Medicaid §1115 waiver to improve social determinants of health and address legal needs in vulnerable populations.

VIII Appendix B

Counsel for Kids Model Statute

REPRESENTATION OF A CHILD IN DEPENDENCY PROCEEDINGS

1. **Child's Right to Counsel.** Upon the filing of a petition alleging abuse or neglect, the court shall appoint licensed legal counsel who has received training appropriate to the role, and who has adequate time and resources to provide effective legal representation for the child in the proceeding. Nothing in this section shall limit the power of the court to appoint counsel prior to the filing of a petition for good cause.
 - a. **Required Pre-Appointment Training.** To be eligible for appointment as counsel for a child such individual must receive no less than 6 hours of initial multidisciplinary training appropriate to the role. Areas of education should include, but are not limited to:
 - relevant state and federal law; immigration law; education law; disability rights;
 - evidence and trial procedure; appellate procedure
 - communicating with clients in developmentally appropriate manner; presenting child testimony and alternatives to direct testimony;
 - professional ethics;
 - early childhood, child, and adolescent development;
 - dynamics of abuse and neglect; child sexual abuse; trauma; grief and attachment;
 - cultural, ethnic, and socioeconomic issues, cultural awareness and humility; race equity; LGBTQ+ equity;
 - mental health issues; substance abuse issues; impact of domestic violence;
 - and available services and community resources for families.
 - b. **Continuing Legal Education.** Thereafter, to remain eligible for appointment, the counsel for a child shall complete a minimum of 6 hours of annual continuing legal education or other courses relevant to an appointment that enhance counsel's knowledge of the issues of child representation.
 - c. **Duties.** The child's counsel owes to his or her client duties imposed by applicable rules of professional conduct and statutes, court rules, and judicial directives governing the obligations of lawyers to their child clients. This includes adherence to Rule 1.14 [or equivalent state Rule of Professional Conduct] for clients of diminished capacity.
 - d. **Duration of Appointment.** The appointment of counsel for the child shall remain in effect for all stages of the judicial proceedings involving allegations of abuse or neglect and petitions for the termination of parental rights. Legal counsel appointed to represent a child in a dependency proceeding shall continue the representation in any subsequent appeals unless excused by the court, which may appoint separate counsel on appeal.

- e. **Waiver.** Following the appointment of counsel for the child, no waiver of the right to counsel shall be made until the child has had the opportunity to meaningfully consult with legal counsel to discuss the full implication of the waiver. Waiver of the right to counsel may be withdrawn at any stage of a proceeding, in which event the court shall appoint counsel for the child.
2. **Child as Party; Right to Notice and Participation in Proceedings.** A child who is the subject of a petition shall:
 - a. Have party status as one who is directly interested in the subject-matter of the litigation.
 - b. Be given written notice of the date, time, place, and purpose of the review or hearing. The written notice shall be delivered to the recipient at least 72 hours before the review or hearing by United States mail, email, or hand delivery, except in the case of preliminary protective custody hearings or emergency hearings when such notice is not possible. Service on the child may be accomplished by serving counsel for the child.
 - c. Be permitted to participate in all proceedings on a petition, including the opportunity to personally attend all hearings, to be heard, to present evidence material to the case, and to cross-examine witnesses appearing at the hearing.
 3. **Additional Appointments. (Guardian *ad litem* or Court Appointed Special Advocate).** Nothing in this section shall prohibit the juvenile court from appointing a guardian *ad litem*, who may be a Court Appointed Special Advocate volunteer, to make recommendations to the court concerning the best interests of the child.



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Seen, Heard, and Represented:
A Policymaker's Guide to Counsel for Kids

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