



Why Children and Youth Require Legal Representation: A Guide for Right to Counsel Policy Advocates

INTRODUCTION

In the United States, approximately 673,000¹ children live in the foster care system every year. Significant loss accompanies the separation of children from their families — loss of home and family, belongings, pets, school, friends, neighborhoods, religious institutions, extracurricular activities, and more. Losses are compounded by uncertainty, confusion, and often powerlessness.

Children rely on adults to help them navigate the complex processes of the foster care and judicial systems. Many adults — including relatives, resource parents, caseworkers and mentors — are important supports to them. It is licensed attorneys who play a uniquely critical role to ensure children and youth are heard in the processes that shape their lives and future.

For the majority of children in America's foster care system, state statute, court rule, or local practice provide for legal representation. Still, 14 states² do not guarantee legal counsel to children and youth in the dependency cases that impact their lives and future. It is time for this to change.

ACCESS TO COUNSEL IS CRITICAL FOR CHILDREN AND YOUTH

- **Attorneys provide due process protections** that safeguard a child's rights to physical liberty, safety, health, well-being, and ability to maintain family relationship with parents and siblings.
- **Attorneys investigate whether reasonable efforts have been made** to prevent removal and challenge or support removals based on first-hand information.
- If a child must come into the foster care system, **attorneys participate in case planning** and ensure the child welfare agency fulfills its duties to provide needed services, identify kinship placements, and implement court-ordered family time/visitation.
- **Attorneys challenge unreasonable delays** in court hearings and accelerate time to case closure and permanency through reunification, guardianship, and adoption so that children can enjoy safe and permanent homes outside of the foster care system as soon as possible.

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ATTORNEYS SECURE ACCESS TO JUSTICE

- Attorneys explain complex judicial processes to clients, develop a legal strategy, and are the only professional permitted to offer legal advice to the child/ youth to help them understand, in a developmentally appropriate manner, their legal options and potential outcomes.
- Attorneys ensure clients can meaningfully participate in the court hearings and case planning meetings that impact their lives.
- Attorneys use strategic trial skills and frequent court appearances (evidentiary hearings, review hearings, motion hearings) to advance their client's goals.
- Attorneys ensure that judges have all information necessary to make well-informed decisions about children and families.
- Attorneys hold agencies accountable for their duty to provide care, supervision, placement, and service provision.
- Attorneys confront systemic inequity by challenging evidence of racial bias in judicial or child welfare decision making at all stages of child welfare proceedings.

ENGAGING CHILDREN AND YOUTH IN COURT PROCEEDINGS SUPPORTS THEIR OVERALL WELLBEING

- Attorneys give their client a **voice, dignity, and respect**.
- Persons with lived experience in the child welfare system overwhelmingly indicate a desire to be heard, informed about what is happening in their case, and to be engaged in the legal proceedings that shape their lives. Meaningful participation includes recognition, supportive communication and involvement.³

LEGAL REPRESENTATION MITIGATES THE ADVERSE IMPACT OF FOSTER CARE AND HELPS AVOID SOCIETAL COSTS

- Separating a child from his or her parent(s) causes detrimental, long-term emotional and psychological consequences that may be worse than leaving the child at home. This is due to the trauma of removal itself, as well as the unstable nature of, and high rates of abuse in, foster care.⁴
- Children and youth who enter and remain in foster care long term are more likely to experience poor lifelong outcomes, including longer stays in foster care, multiple placements, including group homes and institutional placements, different schools and disruption of mental health and educational services.⁵
- Children and youth who have experienced foster care disproportionately face a multitude of costly societal problems, including serious disciplinary infractions in



schools, dropping out of high school, teenage pregnancy, and drug and alcohol dependence and abuse.⁶

- The national societal cost of children aging out of foster care without proper supports is nearly 8 billion dollars a year.⁷
- **Attorneys are uniquely qualified to address and prevent many of these outcomes.** They can file motions and appeals, give voice to their client's counseled wishes and service needs, advocate for family and sibling reunification or visitation, call and cross-examine witnesses, pursue other well-being priorities, and accelerate permanency.

RESEARCH SHOWS THAT LEGAL REPRESENTATION CAN IMPROVE OUTCOMES

- Research shows that children exit the foster care system more quickly and with more individualized case plans when represented by specially trained attorneys.⁸
- Research on standards-based legal representation found a **45% higher reunification rate** with their biological parents; **30% reduction in the rate of placement moves**; and **65% reduction in the rate of unnecessary school moves**.⁹
- A six-year federal government study demonstrated that children were **40% more likely to leave foster care within their first six months** when their attorney was specially trained.¹⁰
- Legal representation is associated with:
 - Increases in party perception of fairness;
 - Increases in party engagement in case planning, services, and court hearings;
 - More personally tailored and specific case plans and services;
 - Increases in visitation and parenting time;
 - Increased rates of kinship placements;
 - Expedited Permanency; and
 - Cost savings for state governments due to reduction of time children and youth spend in care.¹¹

STATES THAT DO NOT PROVIDE LEGAL REPRESENTATION TO CHILDREN ARE OUTLIERS

- **Only 14 States¹² do not provide universal representation to children in foster care.**
- Some states mandate counsel in limited circumstance (i.e. when a child reaches a certain age or when specified issues arise in a case).



- A few more states require the appointment of attorneys at the initiation of a child welfare case but do not guarantee the continuation of the appointment after the termination of parental rights.
- The majority of states recognize children’s legal rights and guarantee legal counsel to children in foster care at all stages of a child welfare proceeding.

POLICY REFORM IS HAPPENING NOW

Right to counsel policy reform is trending in states as they recognize the need to ensure children’s rights are protected and their voices heard. In 2021, Arizona, North Dakota, and Washington state passed laws expanding the right to direct representation for children and youth in foster care. Bills were also proposed in the Florida and Texas legislatures.

Children and youth **must be seen, heard, and represented**. The time is now to support legislation that guarantees their right to counsel. Visit counselforkids.org to learn more.

Endnotes

- 1 U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Adoption and Foster Care Analysis and Reporting System (AFCARS), AFCARS 2019 Report available here: [FY2019 data](#)
- 2 Alaska, Florida, Hawaii, Idaho, Illinois, Indiana, Maine, Minnesota, Montana, New Hampshire, North Dakota, South Carolina, Texas, Washington
- 3 Cody, Anna. “Children’s Participation Rights in Child Welfare Systems: Identifying Opportunities for Implementation.” <https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=7617&context=etd>
- 4 Shanta Trivedi, The Harm of Child Removal, 43 NEW YORK UNIVERSITY REVIEW OF LAW & SOCIAL CHANGE 523 (2019). Available at: https://scholarworks.law.ubalt.edu/all_fac/1085; See also Sankaran, V., Church, C. & Mitchell, M. “A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families.” MARQ L. REV. 102, no. 4 (2019). Available at <https://repository.law.umich.edu/articles/2055/>.
- 5 Havlicek, Judy (Child Youth Serv. Rev. 2011) *Lives in Motion: A Review of Former Foster Youth in the Context of Their Experiences in the Child Welfare System*.
- 6 Zil, N. *Adoption from Foster Care: Aiding Children While Saving Public Money* (Washington, D.C.: Center on Children and Families, 2011). https://www.brookings.edu/wp-content/uploads/2016/06/05_adoption_foster_care_zil.pdf
- 7 Jim Casey Youth Opportunities Initiative. (May 2013) Issue Brief: *Cost Avoidance—The Business Case for Investing in Youth Aging Out of Foster Care*. <https://assets.aecf.org/m/resourcedoc/JCYOI-CostAvoidance-2013.pdf>
- 8 Zinn, A. & Slowriver, J. (2008), *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chapin Hall at the University of Chicago
- 9 Washington State Center for Court Research, (2021) Evaluation of the Washington State Dependent Child Legal Representation Program. Olympia, WA: Administrative Office of the Courts.
- 10 Orlebeke, B., Zhou, X., Skyles, A., & Zinn, A. (2016). *Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System*. Chicago, IL: Chapin Hall at the University of Chicago.
- 11 U.S. Dept. of Health and Human Services, Administration for Children and Families, Children’s Bureau, Information Memorandum, ACYF-CB-IM-17-02, pg. 2
- 12 *Supra* note 2.