

Counsel for Youth Involved in CHINS Cases: National Landscape, Researched Impact, & Funding Opportunities

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Absence of Federal Law

- No federal law for “Counsel for Kids”
- No uniformity in state law
- 6 states with no guarantee
- Youth in foster care= not guaranteed counsel
- Youth in juvenile justice system= guaranteed counsel



6 States Without Right to Counsel

Hawaii

Illinois

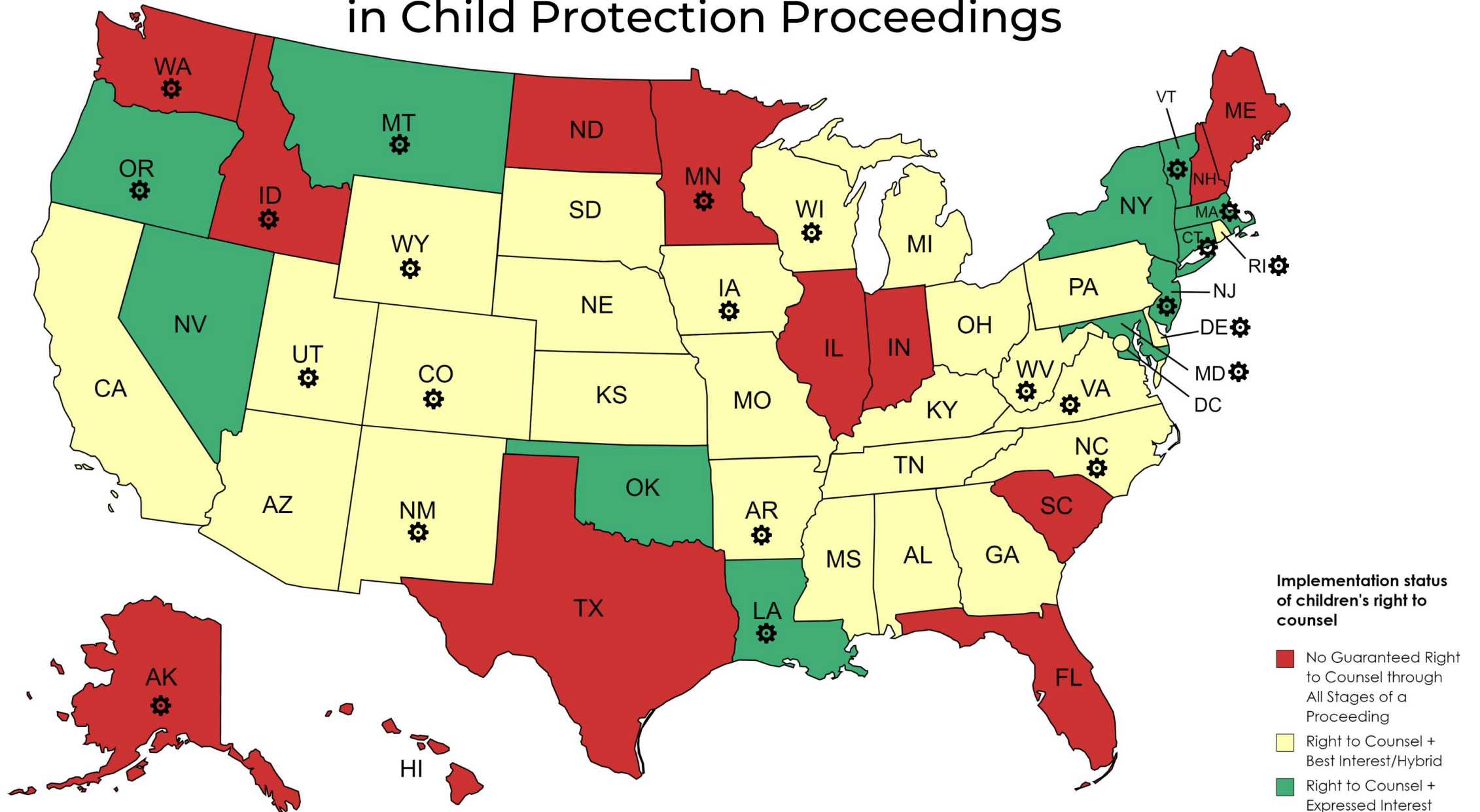
Indiana

Maine

New Hampshire

South Carolina

Implementation of Children's Right to Counsel in Child Protection Proceedings



**Child
Protection
System**

Youth Experience

**Juvenile
Legal
System**

Separated from their siblings,
family, and community

• • •

Trauma

• • •

Decisions made by judges
deeply impact their lives

• • •

Locked in restrictive
institutional settings

• • •

Subjected to dangerous physical
and chemical restraints

• • •

Prescribed Psychotropic
Medications

• • •

***No federally
recognized
right to
counsel***

***Constitutional
right to the
effective
assistance
of counsel***

Liberty Interests at Stake in Dependency Cases for Children

- *[C]hildren have fundamental liberty interests at stake in deprivation and TPR proceedings. These include a child's interest in his or her own **safety, health, and well-being**, as well as an interest in **maintaining the integrity of the family unit** and in having a relationship with his or her biological parents. Kenny A. v. Perdue et. al., 356 F.Supp.2d 1353 (N.D. Ga. 2005)*



Without Counsel Children Are Effectively Denied Access to Dependency Court

Fairness requires children in dependency court to be guaranteed lawyers just as children in juvenile justice proceedings.

A “child requires the guiding hand of counsel at every step in the proceedings against him.”
In re Gault, 387 U.S. at 13

States Implementing a Client-Directed Model of Representation

Client-directed Legal Counsel for all Children

- Arizona
- Connecticut
- Louisiana
- Massachusetts
- Montana
- Nevada
- New Jersey
- New York
- Oregon
- Vermont

Client-Directed Legal Counsel for Children of a Certain Age, Competency, or Special Need.

- Alaska
- Colorado
- Florida
- Idaho
- Maryland
- Minnesota
- New Mexico
- North Dakota
- Oklahoma
- Washington
- Wisconsin

Best Interest Legal Representation

Alabama
Arkansas
California
Delaware
Kansas
Kentucky
Michigan
Missouri
North Carolina
Rhode Island
South Dakota
Tennessee
Utah
Virginia
Wyoming

Varied Representation Based on Age

Colorado	Attorney Client-Directed for age 12 and older; Attorney Best Interest for children age 11 and under
Maryland	Attorney Client-Directed for children with considered judgement; Attorney Best Interest for children lacking considered judgement
New Mexico	Attorney Client-Directed for age 14 and older; Attorney Best Interest for children age 13 and under
Oklahoma	Attorney Client-Directed for children with capacity; Attorney Best Interest when client has diminished capacity
Wisconsin	Attorney Client-Directed for age 12 and older; Attorney Best Interest for children under 12

What about CASA?

Court Appointed Special Advocates or CASA volunteers serve children in 49 states, co-existing and complementing the work of children's attorneys in jurisdictions

CASA's Role



- **Child Advocate**
- **Investigator**
- **Gather Information**
- **Make Recommendations**
- **Monitor progress and case oversight**
- **Courtroom Advocacy/Testimony**
- **Objective Reporting**
- **Advocate for a Safe Environment**
- **Supportive Role**
- **Collaborate with other parties, stakeholders, etc.**

Attorneys and CASA/GAL Volunteers: Distinct & Complementary Roles

<u>Attorneys</u>	<u>CASAs</u>
Attorney-client relationship bound by legal and ethical guidelines	Supportive mentor relationship
Investigate and act on case facts on behalf of the client	Investigate case and report on facts on behalf of the court
Typically carry a caseload of clients, offering a wide breadth of experience, familiarity with the child welfare system and a deep understanding of the pertinent laws	Typically work with 1 child or sibling set at a time, allowing more time for intensive attention and support
Provide legal advice to the child about their rights and legal options in their case	Cannot provide legal advice to the child
File motions, call witnesses, make legal arguments, and use other legal tools to advocate for the client's position	Provide written and oral reports to court with best interest recommendation
Law school graduate, state bar licensure, continuing education requirements, knowledge of pertinent federal and state law	30-hour training program
Paid professional role	Unpaid volunteer role

RESEARCH

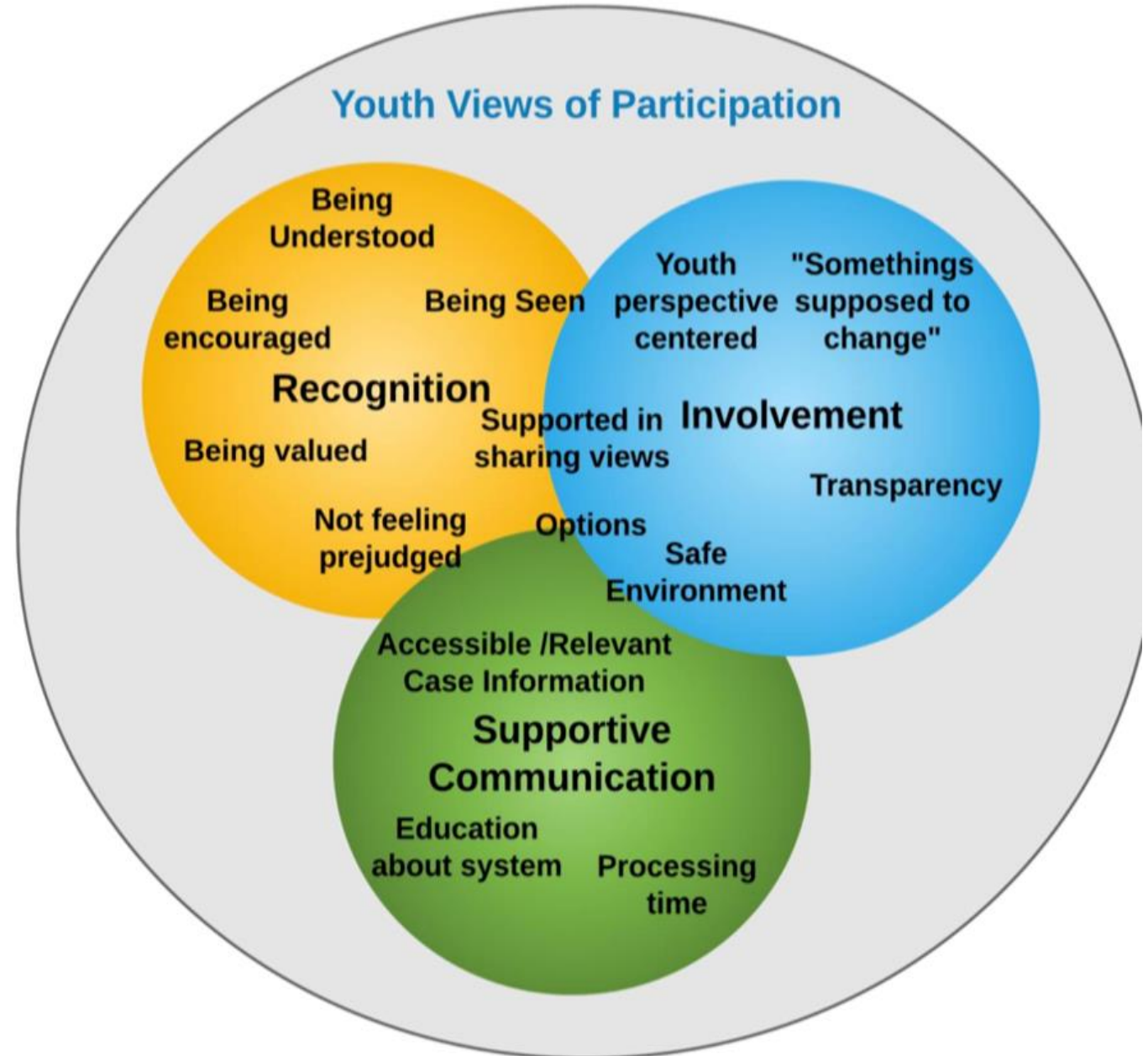


What Say Youth?

Individuals with lived experience in the child welfare system overwhelmingly indicate a desire to:

- Be heard;
- Be engaged in and helped to understand their legal proceedings;
- Be told what is happening in their case.

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>



Key Findings on the Impact of High- Quality Legal Representation

Prevents the need for removal;

Expedites timelines to permanency;

Decreases placement changes and school moves

Promotes engagement in case planning, services, and court hearings;

Increases rates of kinship placements; and

Yields cost savings for government agencies.

Children represented by Attorneys experience:

- 45% higher reunification rate with their biological parents
- 30% reduction in the rate of placement moves and
- 65% reduction in the rate of school moves not associated with graduations.

Evaluation of the Washington State Dependent Child Legal Representation Program (2021). Washington State Center for Court Research.

<https://seureservercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/11/DCLR-Report-2021.pdf>



Expediting Permanency

Children represented by specially trained legal counsel are 40% more likely to exit the foster care system within their first six months.



Achieving permanency sooner increases cost savings

Societal Costs of not Appointing Children's Attorneys

- longer stays in foster care
- unattained permanency
- homelessness
- criminal-legal system involvement
- increase in emotional and behavioral problems
- mental health symptoms
- attachment disorders
- physical health problems in adulthood
- unemployment
- welfare dependency





C4K Cost Savings Analysis

Critical Findings

- Counsel for kids shortens the time children spend in foster care.
- Even a modest reduction in time in care results in substantial government savings.
- As a result of the reduction in foster care costs, the cost of legal representation is offset.
- Providing counsel could result in a net monetary savings for Indiana taxpayers.



IV-E Funding Opportunity

2019- Policy changes allow Title IV-E reimbursement in eligible cases for costs of legal representation of parents and children including the costs of paralegals, social workers, investigators, etc.

May 10, 2024- Federal regulation expands Title IV-E to allow reimbursement for the costs of legal representation of tribes/Indian custodians in state court proceedings, kin caregivers, and civil legal proceedings, including pre-petition. (effective 7/9/24)

Indiana as of 6/22/23:

1. \$439,157- Legal Representation of Parent or Child Federal Financial Participation
2. 21.57% -Title IV-E Participation Rate

Title IV-E Programs Expenditure and Caseload Data 2022
(<https://www.acf.hhs.gov/cb/report/programs-expenditure-caseload-data-2022>)



Title IV-E Financing Math 101

Quarterly Cost of Children &
Parents Legal Representation

X

21.57% Indiana Title IV-E
Penetration Rate (FY'22)

X

50% Title IV-E admin rate
reimbursement

Sample:

\$1000 state dollars

X.21 X.5 =

\$105 federal dollars

75%
match
for
training
costs

How Might Title IV-E Funding Elevate the Quality of Legal Representation?



Hiring to ensure reasonable caseloads



Elevating salaries to attract and retain top talent



Promoting multi-disciplinary models of practice



Building in assurances of quality, e.g. certification



Expanding representation to all stages of the process



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Direct Representation Program and Research



Does your court appoint
counsel to CHINS?

Counsel for Kids in Indiana – What do they do?



Inform



Advocate



Protect



Encourage



Indiana Rights of CHINS

- All party rights granted to the child (IC 31-34-9-7)
- Placed in the least restrictive environment – family considered first. (I.C. 31-34-6-2)
- Right to be present in court for hearings, except for good cause shown on record (IC 31-32-6-8)
- Right to cross examine, obtain witnesses through subpoena, and introduce evidence (IC 31-32-2-1)
- Right to fact finding in 60 days (IC 31-34-11-1)
- Right to controvert any portion of another party's predispositional report (IC 31-34-19-2)
- Right to request sibling visitation and DCS § 31-28-5-3.
- Right to participate in negotiating the case plan with DCS if 14 years old. (IC 31-34-15-7)
- Right to a copy of the case plan within ten days if over 14 years. (IC 31-34-15-7)
- Right to a copy of the Indiana Bill of Rights for Foster Children if over 14 years (Ind. 31-34-15-4)
- Before leaving foster care, children have the right to: (1) an official or certified copy of the child's United States birth certificate; (2) a Social Security card; (3) insurance records; (4) a copy of the child's medical records; and (5) a driver's license or identification card issued by the state. (IC 31-34-21-7.6)

11,485 INDIANA CHILDREN

**FOSTER YOUTH EXPERIENCE
THE WORST POVERTY-
RELATED OUTCOMES OF ANY
POPULATION.**

**But we rarely hear about the
child's right to family integrity,
safe placements, education,
parenting time, and sibling
visits?**



RESIDENTIAL FACILITIES

At any one moment, there are
475 Indiana foster youth living
in a residential facility.



In 2023, Notre Dame's Lab for Economic Opportunity and Child Advocates partnered together to study Counsel for Kids.

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RESEARCH QUESTION:

**WHAT IS THE IMPACT OF
EXPRESSED-INTEREST
REPRESENTATION FOR
OLDER CHILDREN IN THE
FOSTER CARE SYSTEM?**



Desired Outcomes

- **Decrease time** to a permanent home
- **Decrease time** out of home
- **Increase reunification** with parents
- **Less residential facility stay**
- **Increase stability** while in care
- **Better educational outcomes**
- Less involvement with the delinquency system
- **Advocacy** on behalf of youth
- **Child empowerment** through the system



Why should parents' attorneys care whether children have a client-directed attorney?

- Better case outcomes
 - More rights
 - =
 - more justice

Prevents the need for removal;

Expedites timelines to permanency;

Decreases placement changes and school moves

Promotes engagement in case planning, services, and court hearings;

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Counsel for Kids is happening in Indiana!

Get involved!

- Direct Representation Program
- Legislation
- Litigation
- Ask the Court to appoint an attorney, or ask the guardian ad litem to hire one for the child
- Educate judges, attorneys, clients and other stakeholders

We'd love to hear from you!

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