

# Children's Attorneys Make a Difference

January 20, 2024

9:10am – 9:40am

Children's Law Committee  
Meeting

South Carolina Bar Conference



**Children in  
foster care  
may  
experience any  
of the  
following:**

- Family separation: grief, loss, attachment
- Loss of everything familiar (family, friends, neighborhoods, school, belongings, churches, community groups, etc.)
- Extreme uncertainty
- Lack of familiarity with complex court processes
- Potential abuse and neglect in foster care
- Foster care placement or school instability
- Physical and sexual health problems
- Mental health consequences
- Poor long-term outcomes

# The Justice Gap For Children in Foster Care

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



**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***

# No Minimum Age of Criminal Responsibility

- Child of *any* age can be charged with delinquent act *and* appointed legal counsel to defend his rights.
- A 12-year-old who can be committed to DJJ and placed in institutional confinement is not guaranteed the right to counsel in a dependency case.

[https://www.njcn.org/uploads/digital-library/UPDATED%20August%202023\\_Minimum%20Age%20Laws%20for%20Juvenile%20Court%20Jurisdiction%20and%20Confinement.pdf](https://www.njcn.org/uploads/digital-library/UPDATED%20August%202023_Minimum%20Age%20Laws%20for%20Juvenile%20Court%20Jurisdiction%20and%20Confinement.pdf)

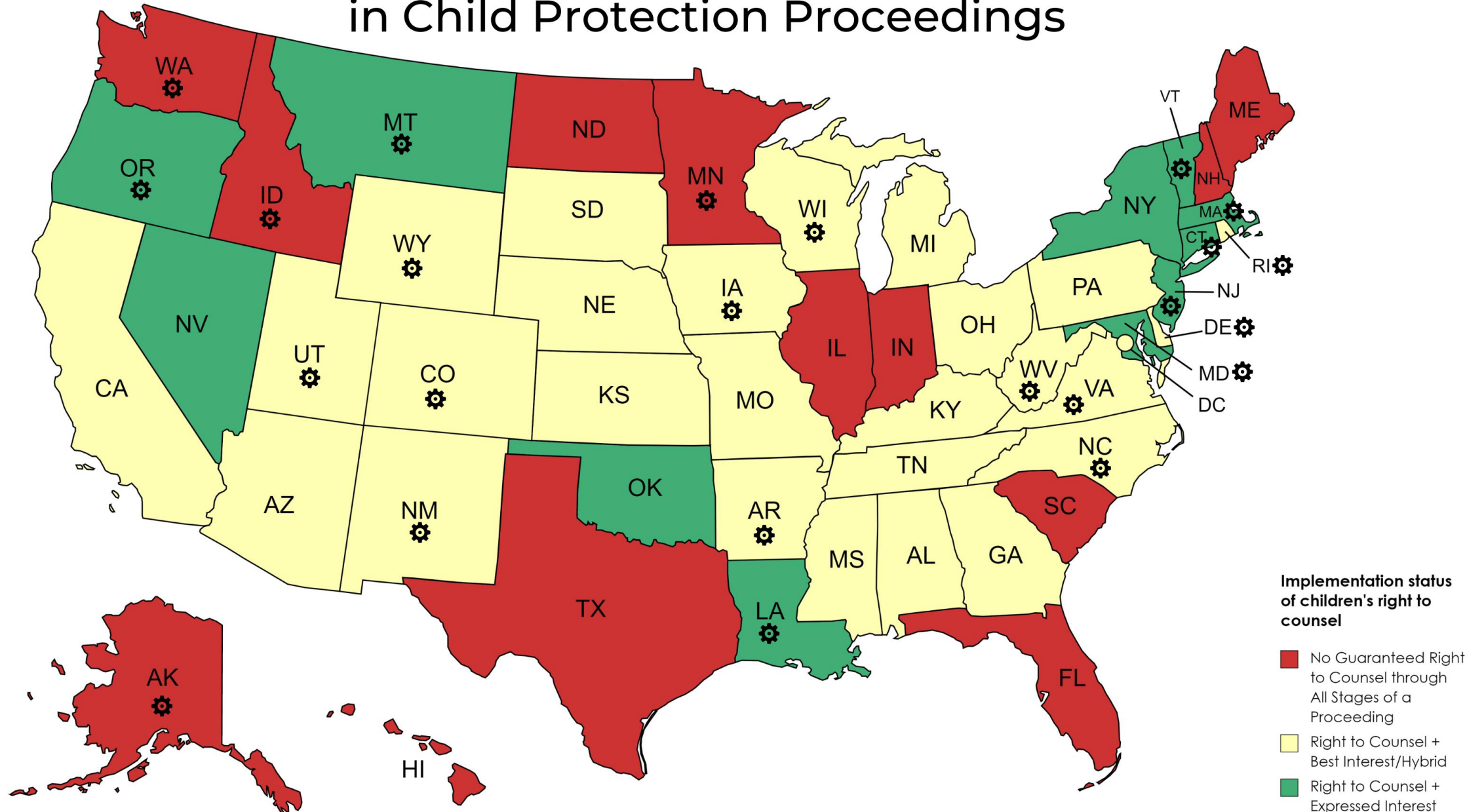
Note that children under 12 years old can be committed to the custody of the Department of Juvenile Justice but they cannot place them in institutional confinement. S.C. Code Ann. § 63-19-1440(A).



# Why is Legal Representation for Children in Foster Care Critical?

- Children removed from their families and placed in the custody of the state have civil legal needs
- They are disadvantaged in hearings where other parties to the proceeding are represented by counsel
- Without counsel, children and youth may not have input in decisions with long-term impact on their lives
- Children's attorneys are necessary for fair hearings, judicial economy, and improved outcomes

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





**SECTION 63-7-1620.** Legal representation of children.

In all child abuse and neglect proceedings:

(1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to Section 63-11-530(C).

(2) The family court **may appoint** legal counsel for the child. Counsel for the child may not be the same as counsel for:

(a) the parent, legal guardian, or other person subject to the proceeding;

(b) any governmental or social agency involved in the proceeding;

(c) the child's guardian ad litem.

# State Law on Children's Attorneys in South Carolina





# Children's Attorneys

- Spend time getting to know their clients and building rapport
- Ensure that judges have all information necessary to make life changing decisions about children and families.
- Give their client a voice—dignity—respect.
- Explain complex legal processes, help clients understand their options, provide legal advice, develop legal strategy, ensure client notice and participation, prepare clients for court
- Engage in as much out-of-court advocacy as in-court
- Communicate with agency workers, service providers, foster parents, kin connections, and opposing counsel
- Can provide high quality legal representation with specialized training, standards-based oversight, reasonable caseloads, and fair compensation.



# 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

# The National Consensus for Counsel for Kids



*The American Bar Association's (ABA) Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings*

*The National Council of Juvenile and Family Court Judges' Enhanced Resource Guidelines,*

*The NACC's Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*



“Volunteer GALs can offer a unique perspective in court cases, as well as emotional support for the child, but they cannot replace the role of an attorney representing the child’s legal rights in court proceedings.<sup>8</sup> Every other party to these proceedings, including the Department of Social Services (DSS) and parents, has direct representation unless they choose to represent themselves.<sup>9</sup> Courts appoint attorneys for parents who cannot afford one.<sup>10</sup> Yet, children, the ones who arguably have the most at stake, are typically the only party-in-interest in these cases without an attorney.”

# COMMITTEE *on* CHILDREN

2022 Annual Report



# RESEARCH

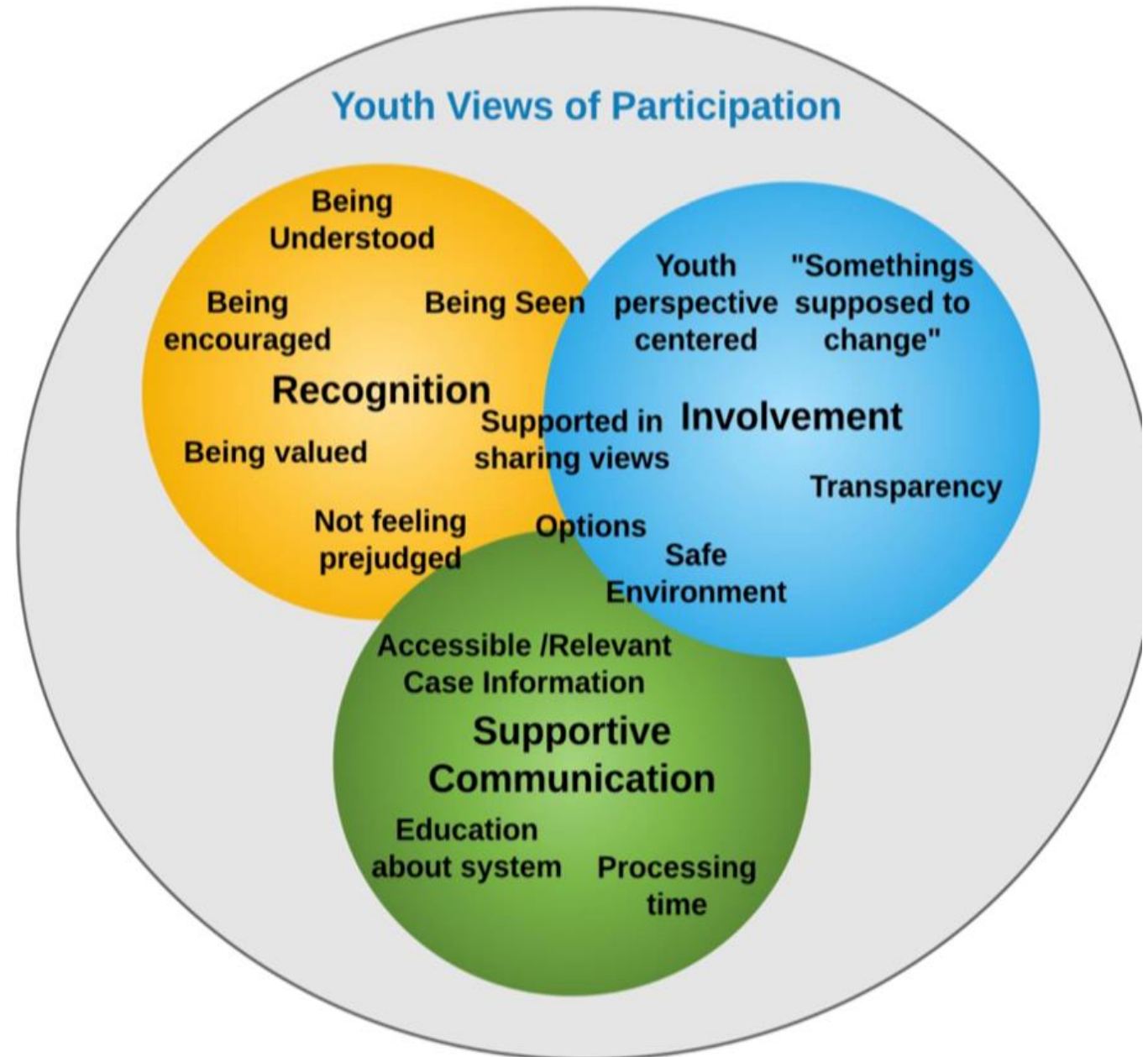


# What Say Youth?

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>

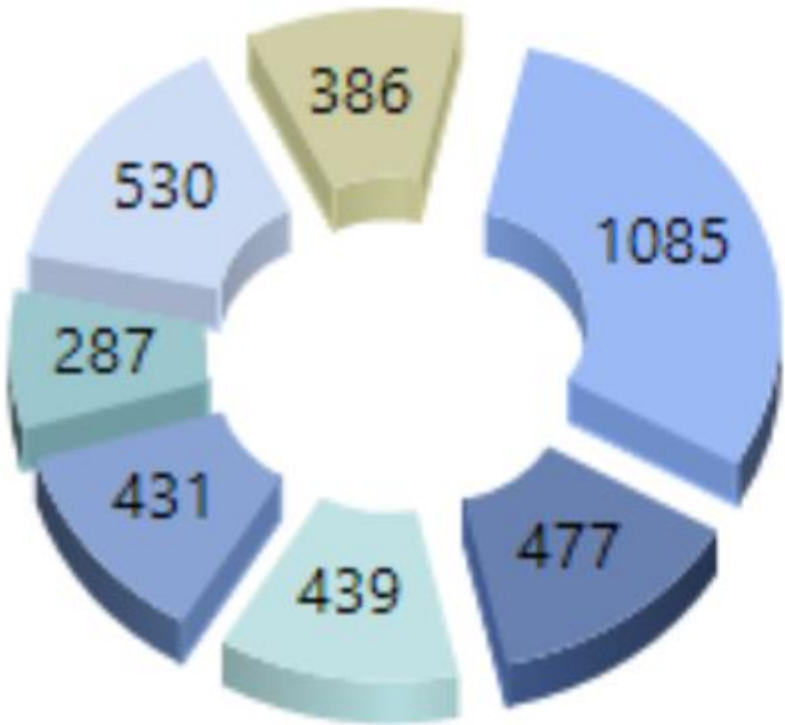
# Expediting Permanency

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

# South Carolina



**Months in Care**  
**Total In Care: 3635**

- 0 - 2 (477 - 13.12%)
- 3 - 5 (439 - 12.08%)
- 6 - 8 (431 - 11.86%)
- 9 - 11 (287 - 7.90%)
- 12 - 17 (530 - 14.58%)
- 18 - 23 (386 - 10.62%)
- 24+ (1085 - 29.85%)

<https://reports.dss.sc.gov/ReportServer/Pages/ReportViewer.aspx?/Foster+Care>

# Board Rate

## Board Rates for Regular Foster Homes *Effective July 1, 2023*

- **Regular Foster Care - Age 0-5**
  - Monthly Rate - \$644.00
  - Daily Rate - \$21.47
- **Regular Foster Care - Age 6-12**
  - Monthly Rate - \$752.00
  - Daily Rate - \$25.07
- **Regular Foster Care - Age 13-20**
  - Monthly Rate - \$794.00
  - Daily Rate - \$26.47

## Societal Costs of not Appointing Children's Attorneys

- Children who enter and remain in foster care are more likely to experience poor lifelong outcomes
- Including: 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, and welfare dependency
- Youth of color and LGBTQIA+ youth are disproportionately represented among those youth in out-of-home placement and experience disproportionate levels of negative outcomes





# IV-E Funding Opportunity

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.

## As of 6/22/23:

1. \$728,616- Legal Representation of Parent or Child Federal Financial Participation
2. 44.55% -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>)





“The Children’s Bureau (CB) strongly encourages all child welfare agencies and jurisdictions to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.”

Children’s Bureau, ACYF-CB-IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings, January 17, 2017







# Access to Justice Barriers

- Lack of understanding of children's legal rights and a paternalistic view that only adults know what is best for them
- Misunderstanding of the role and impact of a children's attorney
- Confusion about the distinct role of the CASA volunteer
- Misperception about a child's capacity to direct counsel
- Concerns that a child will be unsafe if empowered to set objective of legal representation



# Access to Justice Barriers

- Untapped federal funding resources
- Insufficient attorney workforce
- **Absence of state law to guarantee appointment of a children's attorneys to every child at all stages of a proceeding**

## What's Next?

- **Review** the handouts provided to learn more about the role of child attorneys and the research on the impact of legal representation for children in dependency cases.
- **Visit** [www.counselforkids.org](http://www.counselforkids.org) for even more information and resources on children's legal representation.
- **Share** knowledge and information with partners, policy makers, and other stakeholders on the right to counsel movement, national landscape, and research.
- **Advocate** for use of federal title IV-E funds to enhance the quality of legal representation.

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