



CENTER FOR THE RIGHTS
OF ABUSED CHILDREN

Strengthening Child Welfare by Reauthorizing Title IV-B of the Social Security Act to Provide Traditional Counsel for Children

The Center for the Rights of Abused Children supports H.R. 8810 to encourage states to provide abused and neglected children with traditional legal representation by an attorney to represent the child's expressed interests in dependency proceedings.

Written Testimony

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U.S. House Committee on Ways and Means On Strengthening Child Welfare and Protecting America's Children

Wednesday, June 26, 2024, at 10:00 a.m.
1100 Longworth House Office Building
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Chair Smith and Members of the House Committee on Ways and Means:

Due process, equal protection of the law, and justice demand that children have a meaningful opportunity to be heard, have their position accurately advocated for, and have their rights protected. The best way to accomplish these objectives is to give children a voice in abuse and neglect proceedings through traditional attorneys appointed to represent the child's expressed interests, to protect the child's rights, and to hold the child protection system accountable.

Despite how crucial it is for children to have a voice in abuse and neglect proceedings, only ten states offer traditional legal representation to children of all ages.¹ Furthermore, 13 states provide no guarantee of child representation by an attorney.² The remaining states offer some variation of legal representation, either providing representation through attorneys who represent their opinions concerning what is in a child's best interest as a guardian ad litem (GAL) or a hybrid representation

¹ Ctr. for the Rts. of Abused Child., *States with Right to Counsel for Children* (last visited June 25, 2024) https://www.thecenterforchildren.org/wp-content/uploads/2024/05/2023_Center_for_Children_Map_Statutes_final-003-2.pdf.

² Nat'l Ass'n of Counsel for Child., *State Models of Children's Legal Representation* (May 2023), <https://counselforkids.org/wp-content/uploads/2023/05/Model-of-Rep-Chart-2023.pdf>.



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model where some children get a GAL while others are appointed a traditional attorney.³

As the committee investigates ways to improve child protection through the reauthorization of Title IV-B, the Center for the Rights of Abused Children (Center) urges the committee to incentivize states to provide children with independent legal representation. While the Center strongly supports efforts to provide all children, regardless of age, with traditional attorneys to represent children’s expressed interests in abuse and neglect proceedings, we also support House Resolution (H.R.) 8810 and urge enactment.

Policy Discussion

Pending language for H.R. 8810 will require states to take steps to ensure “information about and access to available independent legal representation is provided” to child victims of abuse and neglect. This slight change provides an incentive for those 13 states⁴ to progress toward independent legal representation for children, and hopefully, toward the best practice of appointing traditional attorneys to all children in care to represent children’s expressed interests in abuse and neglect proceedings. The Center asks the committee to pass H.R. 8810.

Attorneys Protect Children’s Constitutional Rights.

Children possess fundamental rights. Among these rights are basic necessities, education, family, and freedom from abuse.⁵ Without fit parents to provide for and protect them, and because of the state’s woeful inability to serve as a good substitute, abused and neglected children are often left without an advocate.

After being removed from their homes, children are thrust into legal proceedings where decisions that impact children’s fundamental rights and liberties will be made. In these proceedings, judges decide what is in children’s best interests, determinations that can influence familial and community relationships, physical and

³ *Id.*

⁴ States include: Alaska, Florida, Hawaii, Idaho, Illinois, Indiana, Maine, Minnesota, New Hampshire, North Dakota, South Carolina, Texas, Washington. Counsel for Kids, *Right to Counsel Map* (last visited June 25, 2024), <https://counselforkids.org/right-to-counsel-map/>.

⁵ Tim Keller, Ctr. for the Rts. of Abused Child., *Asserting, Arguing, and Appealing the Constitutional Rights of Children in Foster Care* 7 (2024), https://www.thecenterforchildren.org/wp-content/uploads/2024/01/2024_Center_Practice_Manual_Digital_Final_012324.pdf.



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mental wellbeing,⁶ educational attainment,⁷ economic stability,⁸ likelihood of incarceration,⁹ and even mortality rates.¹⁰

Acknowledging children's due process rights is imperative when so much is at stake. When fundamental aspects of children's liberties hang in the balance, children must be heard and express their perspectives and concerns, facilitated by the appointment of a traditional attorney to articulate children's goals and safeguard their rights and interests.

Although a different arena of juvenile law, the United States Supreme Court found the Due Process Clause of the Fourteenth Amendment applies to juvenile defendants.¹¹ Consequently, juvenile defendants must be notified of their right to counsel. If they cannot afford counsel, an attorney must be appointed in delinquency proceedings.¹²

The court rejected arguments that other adults – such as parents, probation officers, and judges – could effectively protect the child's interests.¹³ When facing a serious loss of liberty, the court found:

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 child "requires the guiding hand of counsel at every step in the proceedings against him."¹⁴

Children needing state care are not juvenile defendants accused of committing a crime. In dependency proceedings, they are victims of abuse and neglect. Like youth in juvenile delinquency proceedings, children who are victims of abuse and neglect are placed in the state's custody and have serious liberty interests at stake. They are removed from their homes and granted limited, if any, visits with parents and siblings.

⁶ Am. Acad. of Pediatrics, *Health Care of Young Children in Foster Care*, 109 Pediatrics 536, 536 (2002). See also, Md. Dep't of Legis. Servs., *Overview of Homelessness and Homeless Services in Maryland* 15 (Sept. 2015).

⁷ Mark E. Courtney, et. al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26*, 20 (Chapin Hall, 2011), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf>.

⁸ U.S. Dep't of Health & Hum. Servs., *Coming of Age: Employment Outcomes for Youth Who Age Out of Foster Care Through Their Middle Twenties*, at i (2008), <https://www.urban.org/sites/default/files/publication/31216/1001174-Coming-of-Age-Employment-Outcomes-for-Youth-Who-Age-Out-of-Foster-Care-Through-Their-Middle-Twenties.PDF>.

⁹ *Supra* note 8.

¹⁰ U.S. Dep't of Health & Hum. Servs., *Child Maltreatment 2020*, 58 (2023) <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2020.pdf>.

¹¹ *In re Gault*, 387 U.S. 1, 41 (1967).

¹² *Id.*

¹³ *Id.* at 35.

¹⁴ *Id.* at 36 (citing *Powell v. State of Alabama*, 287 U.S. 45, 69, (1932).)



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Often children are placed in the care of strangers and moved from one placement to another, lacking crucial stability. In some instances, children are placed in group facilities that are more akin to warehouses than homes. Children can experience significant educational disruption, leading to poor educational attainment. In summary, the decisions made in abuse and neglect proceedings have far-reaching impacts and can infringe upon children's fundamental rights. Children need genuine legal representation to manage legal proceedings, ensure due process, and chart the course for finding a family and flourishing. They also need assistance to hold the child protection system accountable.

Because traditional legal representation is crucial to protecting individual liberties, children in state care must have the right to an attorney. Yet, repeatedly, we hear foster youth condemning the system, quipping, "Nobody listens to us," or "Nobody cares what we think or what we want." What these children and youth need is an advocate. Someone who will make their voice heard and zealously protect their rights to safety, stability, family, and swift permanency. Providing children with an attorney accomplishes this.

Traditional Attorneys Improve Children's Outcomes.

In addition to satisfying the demands of justice, in states where children are represented by their own independent, traditional legal counsel, a developing body of research shows improved case outcomes that align with Title IV-B's objectives.

Consider the following findings:

- **Children with counsel exit foster care at rates up to 3.5 greater than children who do not have counsel.**¹⁵
 - Represented children exited to any type of permanency at rates 1.4 and 1.6 times higher than comparison children.¹⁶
 - Most of this difference appears driven by higher adoption rates (between 2.8 and 2.9) and long-term custody (between 1.7 and 3.5) as the permanency outcome compared to comparison children. Represented children were also slightly more likely to be reunified (up to 1.23 times higher than comparison).¹⁷

¹⁵ Andrew E. Zinn and Jack Slowriver, *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*, Chapin Hall Center for Children at the University of Chicago (2008),

<https://search.issuelab.org/resource/expediting-permanency-legal-representation-for-foster-children-in-palm-beach-county.html>.

¹⁶ *Id.*

¹⁷ *Id.*



- **Children and parents with legal representation obtain better results than those who do not, including less time in foster care or group settings, shorter time to adoption or guardianship, and more successful reunifications.**
 - Children represented by specially trained legal counsel were:
 - 40% more likely to leave foster care within six months;
 - 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.¹⁸
 - Further, a cost-benefit analysis of a Washington program offering legal representation to dependent youth found a hypothetical cost savings of over \$1.2 million, without accounting for potential cost savings outside of the child welfare system, such as in the educational, employment, health, or criminal justice domains.¹⁹

Conclusion

Traditional legal counsel ensures children’s constitutional and fundamental rights. Appointing attorneys who can and must build trust, assert children’s voices, and protect children’s liberty interests in complex proceedings satisfies justice and leads to expedited permanency and improved child wellbeing.

The Center supports reauthorizing Title IV-B to provide children with attorneys to serve as the child’s independent legal counsel. H.R. 8810 sets states on a path to providing children with independent counsel, centers children's rights and promotes family integrity or timely permanency. We urge you to support this measure and to take a significant step toward recognizing and protecting the rights of abused and neglected children.

¹⁸ Natalece Washington, *Counsel for Kids Information Sheet*, Nat’l Ass’n of Counsel for Child. (2022), <https://zmcc18.p3cdn1.secureserver.net/wp-content/uploads/2022/02/Counsel-for-Kids-Information-Sheet-2022.pdf>.

¹⁹ Wash. State Ctr. for Court Research, *Evaluation of the Washington State Dependent Child Legal Representation Program, 2021* (2021), <https://www.courts.wa.gov/subsite/wscrr/docs/DCLR%20Report%202021.pdf>.