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THE CENTER FOR THE RIGHTS OF ABUSED CHILDREN

Establishing a Federal Right to Counsel for Children in Child Abuse and Neglect Proceedings

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The Problem

Federal law¹ mandates states provide children a representative to 1. obtain a clear understanding of the situation and needs of the child, and 2. make recommendations to the court concerning the *best interests* of the child. This person can be an attorney or a court appointed special advocate.

Research, however, indicates that children with traditional attorney representation exit the system to family more quickly and have better outcomes.² Many leading legal advocates, including The Center, believe it is also a constitutional right. Despite this, representation for children in child abuse and neglect proceedings varies widely across the country. An estimated [14 states](#) do not guarantee a right to counsel—and just a handful provide client directed counsel.³

In the absence of federal action, several states have begun fixing this issue by expanding access to attorneys, to varying degrees. This includes Arizona's [SB1391](#) of 2021 converting the guardian ad litem system to a guaranteed attorney for every child. Absent federal pressure or mandates, the process is slow and often a hybrid model that still leaves children and parents inadequately represented.

The Solution

Amend federal law to require states to provide client-directed legal counsel for every child in child abuse and neglect proceedings.

The federal government can provide equal opportunities for quality representation for every child in America by amending federal laws requiring states to develop a system

¹ 42 U.S. Code § 5106a.

² 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>; "Evaluation of the Washington State Dependent Child Legal Representation Program, 2021," Washington State Center for Court Research, 2021, <https://www.courts.wa.gov/subsite/wscrr/docs/DCLR%20Report%202021.pdf>; Natalece Washington, "Counsel for Kids Information Sheet," National Association of Counsel for Children, 2022, <https://zmcc18.p3cdn1.secureserver.net/wp-content/uploads/2022/02/Counsel-for-Kids-Information-Sheet-2022.pdf>.

³ Arizona, Colorado, Connecticut, Louisiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oklahoma, Oregon, and Vermont.

by which children and parents are guaranteed legal representation throughout child abuse and neglect proceedings.

This change could be enacted various pathways:

- The most likely, and already attempted, pathway to reform would be an amendment of CAPTA ([42 U.S.C.](#)) to require states to offer child and parent legal counsel—not just best interest representation as currently written. (See proposed language attached.)
- As the main source of foster care funding, lawmakers could amend Title IV-E to make federal foster care dollars *conditional* on states providing counsel for children.
- States have considerable flexibility with the Title IV-B program to prevent child abuse and preserve families. Through state law or administrative changes, the federal government could make representation an explicit goal of such grants, with a potential increased appropriation.
- Congress could make additional appropriations to states for the explicit purpose of counsel for children, likely through the Department of Health and Human Services' Administration on Children, Youth and Families, which offers direct social services as well as technical and financial assistance to states.

Funding

Under the new Child Welfare Policy Manual—via [Executive Order #13930](#) (2020)—the federal government will reimburse states for up to 50% of the cost of providing legal representation for parents and children in child welfare proceedings.⁴ This [map](#) estimates that many states are drawing down Title IV-E funding for some sort of representation, but it's not clear to what extent—that is, whether they fund client-direct lawyers, CASAs, GALs, and for parent and/or children.

Regardless, this match is available, and could be further solidified in Title IV-E and granted explicit appropriations for expansion across the states.

CAPTA Reauthorization Efforts

There was a national effort during the 2021–2022 congressional session to establish counsel for both adults and children through CAPTA reauthorization, driven largely by [Amy Harfeld](#) with Children's Advocacy Institute, Prudence Beidler Carr with the

⁴ "E.O. 13930: Strengthening the Child Welfare System for America's Children," Federal Register, 2020, <https://www.federalregister.gov/documents/2020/06/29/2020-14077/strengthening-the-child-welfare-system-for-americas-children>. Federal guidance was issued within 6 months, followed by a [Technical Bulletin](#) and a 2021 [Information Memorandum](#) from the Department of Health and Human Services affirming this funding option for states.



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American Bar Association, and the [National Association of Counsel for Children](#). The [sign-on](#) letter sent to congressional leaders had five pages of supporters.

A guaranteed right to counsel was stripped from the final proposed reauthorization draft during the lame duck session and made only an aspirational goal. Yet early 2021 reauthorization drafts included more ideal language and reforms (see proposed legislation below).

SEC. 106. GRANTS TO STATES FOR CHILD ABUSE OR NEGLECT PREVENTION AND TREATMENT PROGRAMS.

(a) DEVELOPMENT AND OPERATION GRANTS

(2) Supporting trauma-informed response, investigation, and treatment of child abuse and neglect by—

(C) improving legal preparation and representation, including—

(ii) provisions to ensure that all children and parents shall have legal representation by a trained attorney in all cases involving an allegation of child abuse or neglect that results in a judicial proceeding, for the entire duration of the court's jurisdiction in the case.

(2) PLAN PROVISIONS.—

(A) DESCRIPTIONS.—Each State plan required under paragraph (1) shall describe—

(xii) the State's plan to ensure that, within a timeline determined by the State, all child victims of child abuse or neglect that results in a judicial proceeding are appointed—

(I) a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and domestic violence, and who may be an attorney or a court appointed special advocate—

(aa) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(bb) to make recommendations to the court concerning the best interests of the child; and

(II) an attorney ad litem to provide legal services for the child who—

(aa) owes to the child the duties of loyalty, confidentiality, and competent legal representation; and

(bb) is appointed to represent and express the child's wishes to the court.

(B) ASSURANCES—Each State plan shall provide assurances that the State has—

(xxii) provisions and procedures to ensure that all parents shall, in all cases involving allegations of child abuse or neglect which results in a judicial proceeding, have legal representation by a trained attorney for the entire duration of the court's jurisdiction in the case;

(3) RULES OF CONSTRUCTION

(D) ALIGNMENT WITH EXTENDED FOSTER CARE—For purposes of paragraph(2)(A)(xii), the term 'child victim' shall have any age limit elected by the State pursuant to section 475(8)(B)(iii) of the Social Security Act (42 U.S.C. 675(8)(B)(iii)).

SEC. 109. REPORTS.

(f) REPORT RELATING TO COURT APPOINTMENTS.—



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(1) STUDY—Not later than 2 years after the date of enactment of the CAPTA Reauthorization Act of 2021, the Comptroller General of the United States shall conduct a study of—

(A) policies in selected States regarding the appointment of guardians ad litem and attorneys ad litem as described in section 106(b)(2)(A)(xii); and

(B) successes and challenges in selected States regarding the appointment of a guardian ad litem and attorney ad litem in each case involving a victim of child abuse or neglect that results in judicial proceeding.

(2) REPORT.—Not later than 1 year after completion of the study under paragraph (1), the Comptroller General of the United States shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives a report that summarizes the study under paragraph (1) and includes recommendations, as appropriate, for improving access for such victims to guardians ad litem and attorneys ad litem.