



Legal Services Funders Network

The background of the lower section is a high-angle, slightly hazy photograph of a city skyline with numerous skyscrapers. The text is overlaid on this image.

***The ABC & Gs of  
Representing Youth***

***3.25.24 | 12pm***

**NCCRC**

National Coalition for a  
Civil Right to Counsel



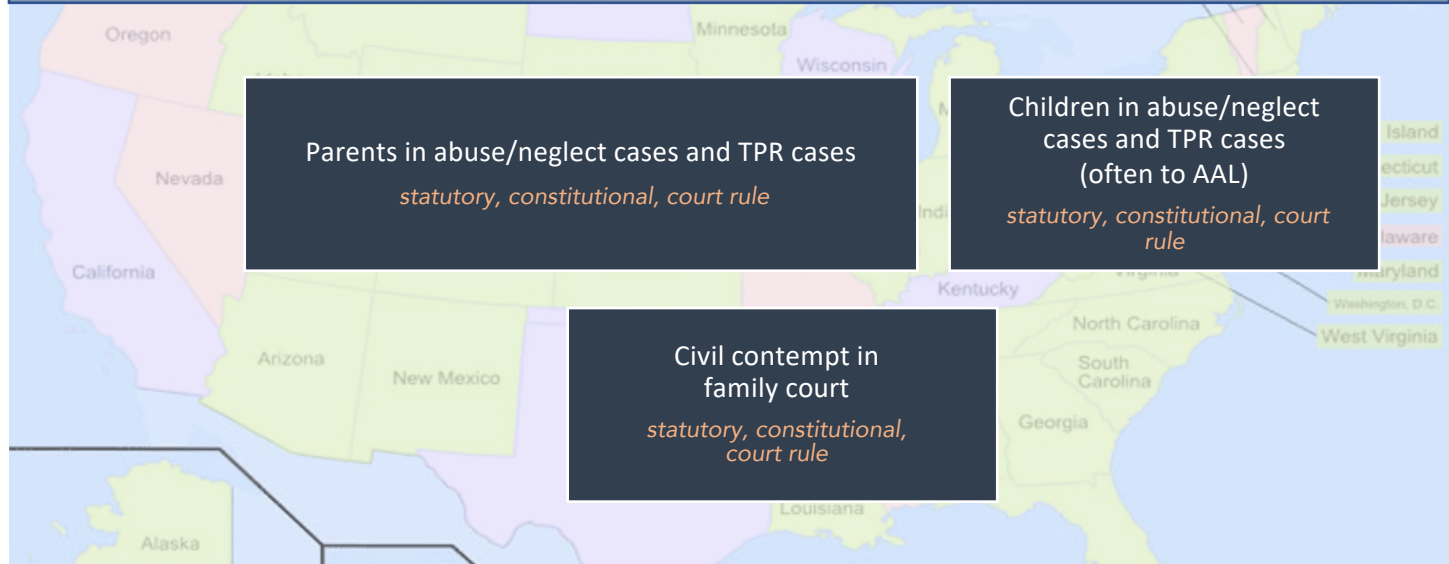
# RTC for Parents/Children: The National Landscape

John Pollock | NCCRC Coordinator

LSFN | Mar 25, 2024

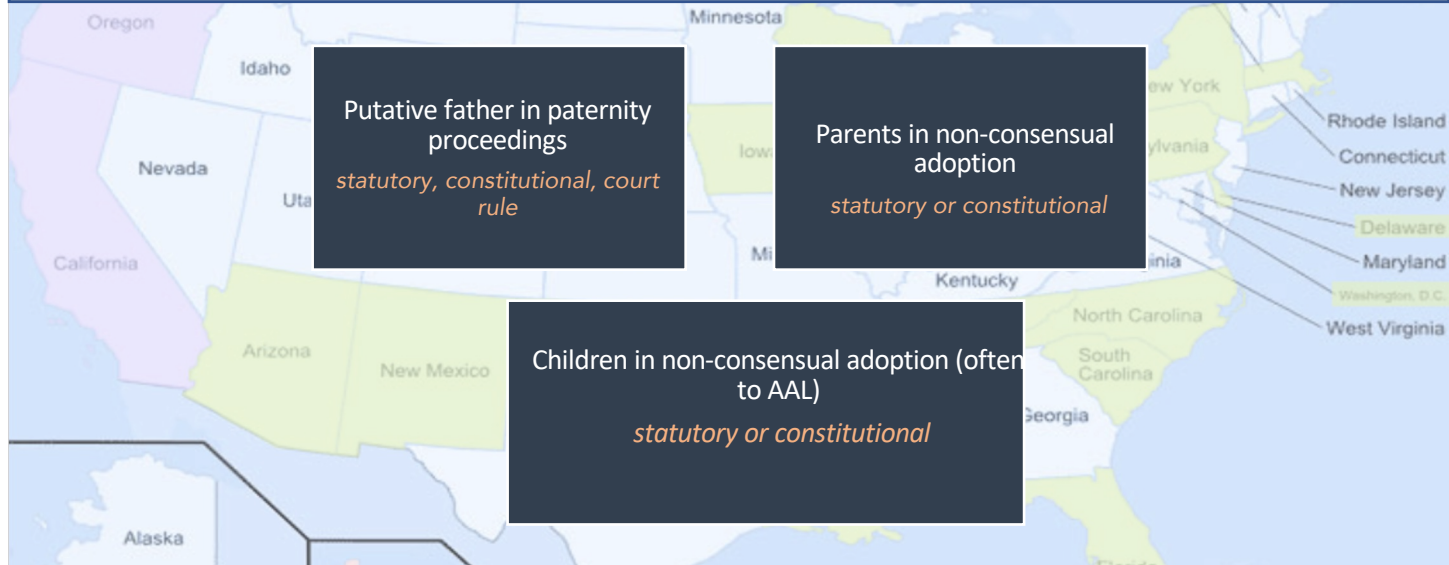
# The Current Mixed Bag for Parents/Children

Right to counsel: **majority of states**



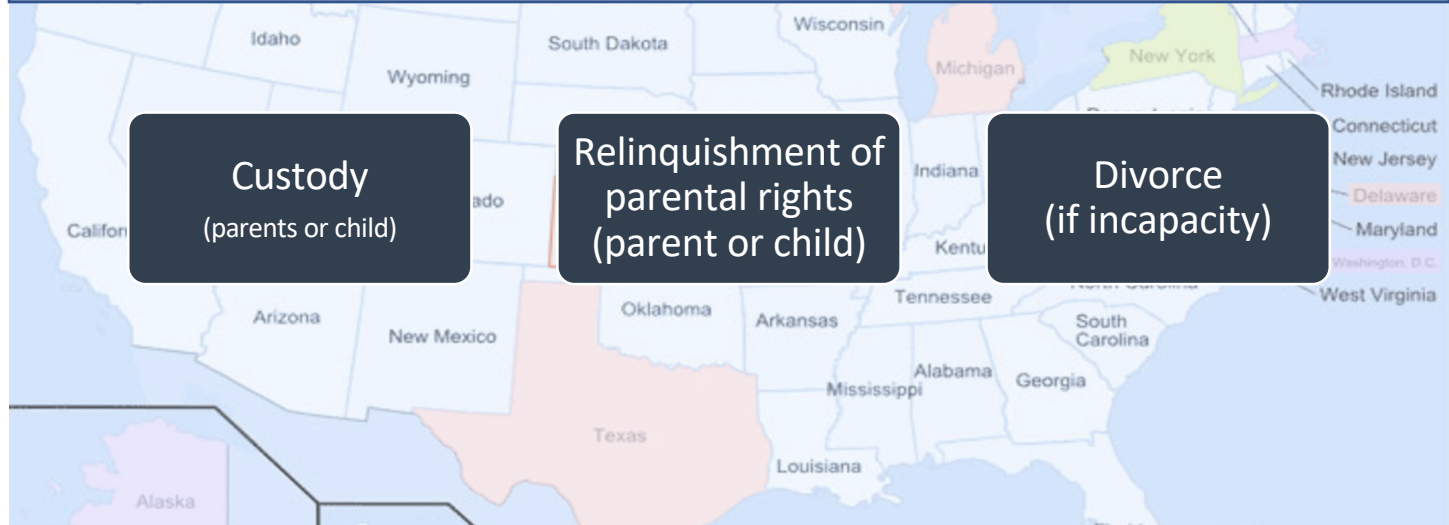
# The Current Mixed Bag

Right to counsel: **many states**



# The Current Mixed Bag

Right to counsel: **few states**



# RTC: the good, the improving, and the bad

## Birth Parents in state-initiated TPR

Select a subject area for which to compare all states,  
**Termination of Parental Rights (State) - Birth Parents**

OR

Select a specific jurisdiction to be taken to a separate page with all information for that jurisdiction.

Key	Total States
<span style="color: green;">■</span> Categorical Right To Counsel <sup>?</sup>	46
<span style="color: pink;">■</span> Discretionary Appointment Of Counsel <sup>?</sup>	5
<span style="color: purple;">■</span> Right Or Appointment Is Qualified <sup>?</sup>	0
<span style="color: brown;">■</span> No Such Proceeding <sup>?</sup>	0



## Tenants facing eviction

Select a subject area for which to compare all states,  
**Housing - Evictions**

OR

Select a specific jurisdiction to be taken to a separate page with all information for that jurisdiction.

Key	Total States
<span style="color: green;">■</span> Categorical Right To Counsel <sup>?</sup>	3
<span style="color: pink;">■</span> Discretionary Appointment Of Counsel <sup>?</sup>	0
<span style="color: purple;">■</span> Right Or Appointment Is Qualified <sup>?</sup>	13
<span style="color: brown;">■</span> No Such Proceeding <sup>?</sup>	0



## Health care access

Select a subject area for which to compare all states,  
**Health Care Access**

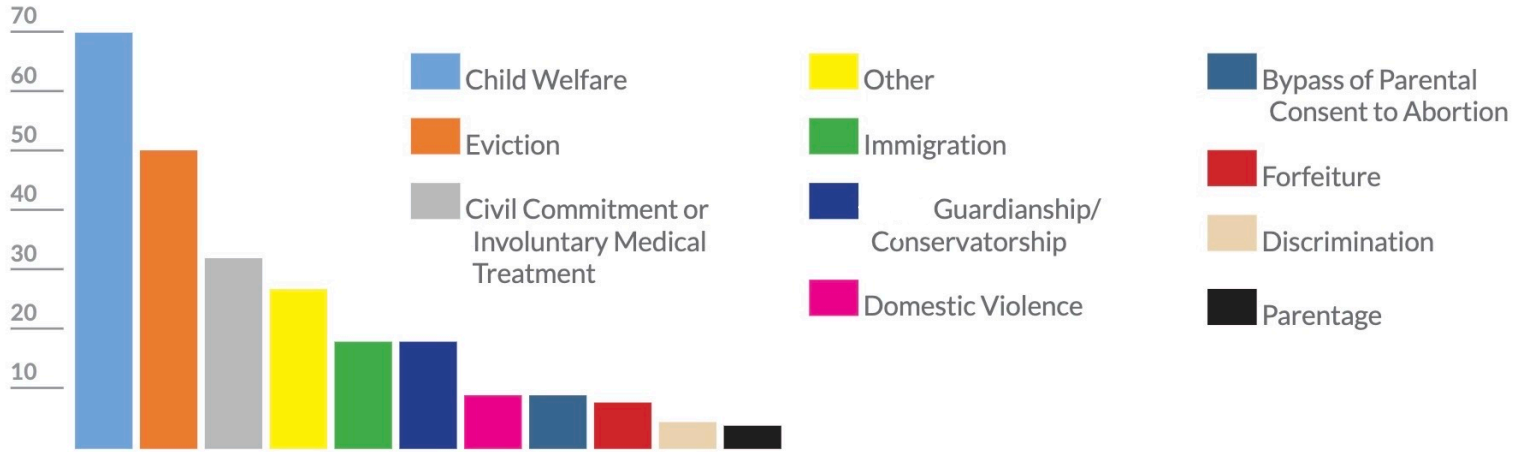
OR

Select a specific jurisdiction to be taken to a separate page with all information for that jurisdiction.

Key	Total States
<span style="color: green;">■</span> Categorical Right To Counsel <sup>?</sup>	0
<span style="color: pink;">■</span> Discretionary Appointment Of Counsel <sup>?</sup>	0
<span style="color: purple;">■</span> Right Or Appointment Is Qualified <sup>?</sup>	1
<span style="color: brown;">■</span> No Such Proceeding <sup>?</sup>	0



# 2023 Legislative Session Summary



During the 2023 legislative session, the NCCRC [tracked almost 300 RTC-related bills](#) introduced nationwide. About **94% of tracked bills** were introduced in state legislatures. Of the **20 federal** bills we tracked, 14 were immigration-related. There are several federal-level housing bills in the works.

## Successful RTC-as-PDP Litigation

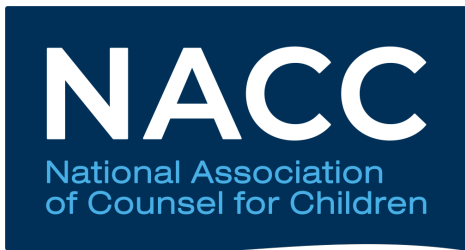
- Historical litigation:
  - Termination of parental rights: 12 states rejected *Lassiter*
  - Child support contempt
  - Paternity
  - Civil commitment
  - Guardianship
- Recent litigation:
  - Custody:
    - Private custody: AK, CA, MI
    - Child guardianship: MA
    - Child welfare/TPR: NJ (parents in admin proceedings), OH (adoption), PA (child in TPR)
  - Driver's licenses: NJ
  - Debtor's prison: MD, NJ, PA



# RTC Key Area:

## Children and Parents

Child RTC legislation	Parent RTC legislation	Parent/child RTC litigation
<ul style="list-style-type: none"><li>● AZ (child welfare)*</li><li>● CO (child welfare, extended foster care)*</li><li>● ND (child welfare)*</li><li>● NM (extended foster care)*</li><li>● WA (child welfare)*</li><li>● WV (parents in child welfare cases)*</li><li>● VA (extended foster care)</li></ul>	<ul style="list-style-type: none"><li>● AR (adoptions)*</li><li>● HI (child welfare cases)</li><li>● IA (private child guardianships)*</li><li>● MO (deleting adoption RTC)</li><li>● NC (when children placed in DSS custody due to delinquency)*</li><li>● ND (private child guardianships)*</li><li>● WA (private child guardianships)*</li><li>● WV (parents in child welfare cases)*</li></ul>	<ul style="list-style-type: none"><li>● HI (parents in A/N and TPR)**</li><li>● IN (dependency class action for kids)</li><li>● LA (parents in neglect cases)</li><li>● NJ (parents in admin. cases)**</li><li>● NY (parents on A/N registry)</li><li>● OH (adoption)**</li><li>● PA (child in TPR)**</li></ul>



Kim Dvorchak, JD, Executive Director  
[National Association of Counsel for Children](#)

**NACC's Mission:** NACC advances children's and parents' rights by supporting a diverse, inclusive community of child welfare lawyers to provide zealous legal representation and by advocating for equitable, anti-racist solutions co-designed by people with lived experience.



### TRAINING & CERTIFICATION

NACC offers attorneys high-quality **training**, adaptable **education materials**, & **Child Welfare Law Specialist certification** program



### PRACTITIONER NETWORK

NACC builds a sense of community by hosting **conferences**, **networking opportunities**, & an **open forum** for discussion



### POLICY ADVOCACY

NACC works to **publish legal opinions**, **write amicus briefs**, & **advocate for policies** aimed at improving child welfare in the US



Juvenile/Criminal


Child Protection

Immigration

Education

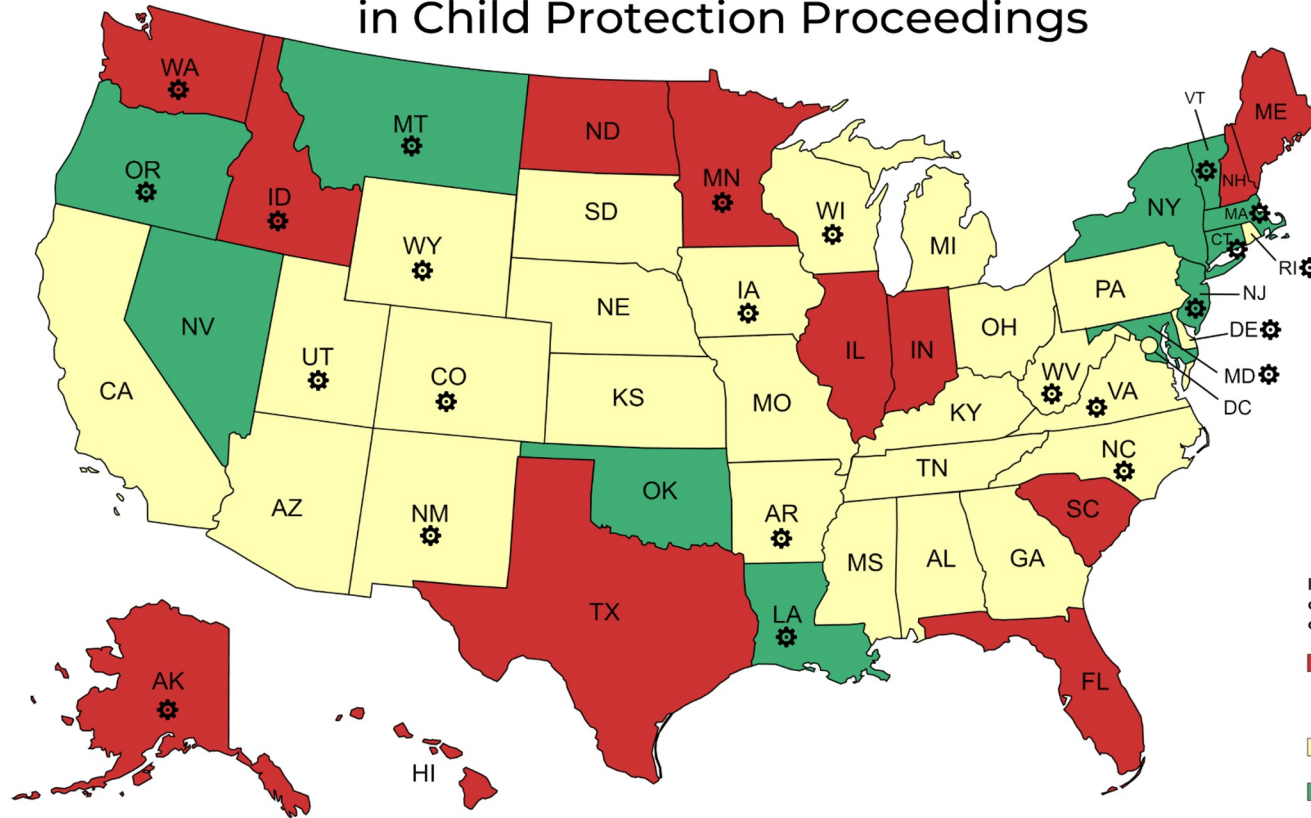
Civil Legal Aid

Reproductive Health



Youth  
Access  
to  
Justice

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



## Implementation status of children's right to counsel

- No Guaranteed Right to Counsel through All Stages of a Proceeding
- Right to Counsel + Best Interest/Hybrid
- Right to Counsel + Expressed Interest
- ⚙ Statewide Children's Legal Services Infrastructure (May not include states where child law offices provide legal services to portions of the state)



Children in court need lawyers of their own.  
*We're working to make sure they have them.*

# Models of Legal Representation of Children

## Client-Directed

Juvenile/Criminal  
Child Protection/Immigration

- Advocates for the youth's expressed wishes
- Duties of loyalty and confidentiality
- Maximizes youth voice/client participation
- Recommended by the [American Bar Association](#), the [National Association of Counsel for Children](#), also [The Gault Center Standards](#)

## Best Interest

Child Protection  
Guardian/Attorney ad Litem

- Advocates for what the attorney thinks is in the youth's best interest after investigation, counseling
- Also the model for lay volunteers, Court Appointed Special Advocates (who may also be called Guardian ad Litem or GAL)

## Hybrid

Child Protection  
Guardian/Attorney ad Litem

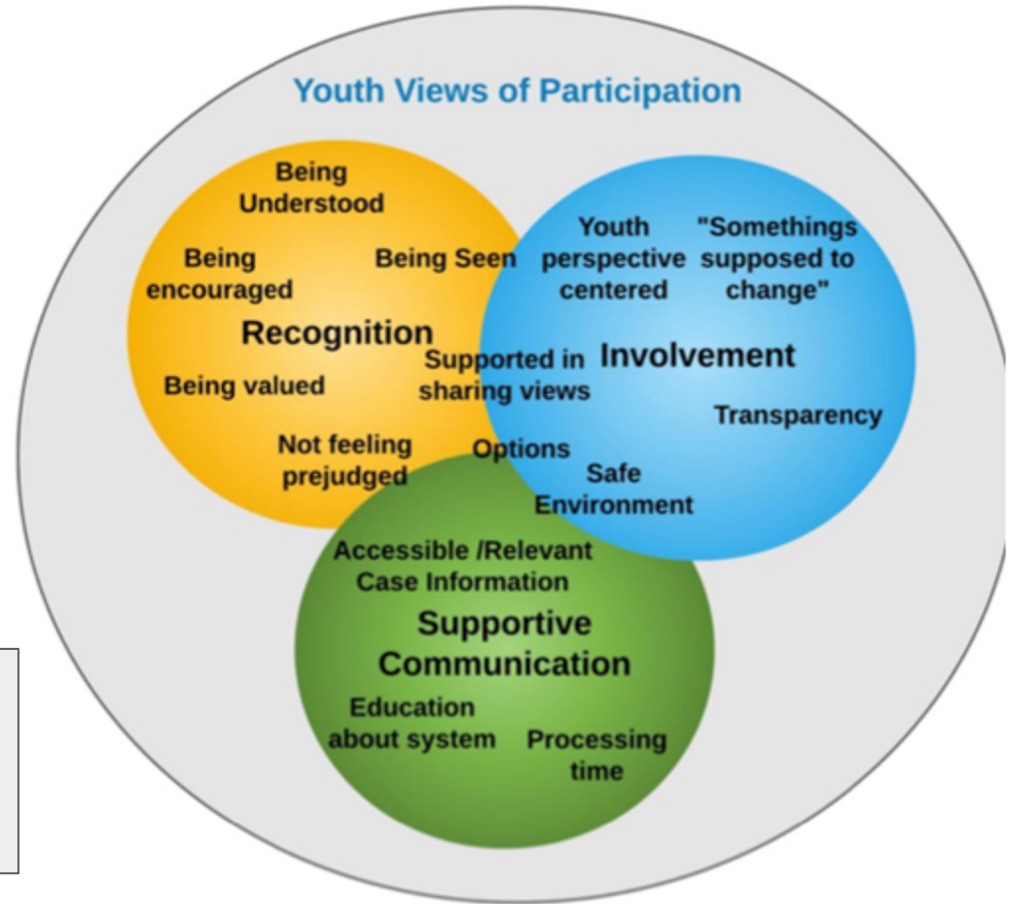
- Advocates for both the child or youth's expressed wishes and what the attorney thinks is in the child or youth's best interest
- If such a conflict between those positions develops, the roles are bifurcated.

# What Say Youth?

Youth in court 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.

“Consider high-quality legal representation as a proactive measure to ensure children and youths are successful in all areas of their lives.”



**Mission** - To promote access to justice for children and families.

**Structure** - Nonprofit grant-funded entity in the American Bar Association with team of attorneys and core staff who work on projects across the country unified by two goals: *to improve legal representation, and to improve the legal systems that impact children and families' lives.*

**Approach** - Collaboration and coalition building at local, state and national levels to build the capacity of legal practices and systems that serve children well and to help change those that do not.

[www.ambar.org/child](http://www.ambar.org/child)



## Effects of Funding Changes on Legal Representation Quality in California Dependency Cases

### *An Assessment*

## Assessment Background

- Changes in California state budget allocation
- 2014-2018
- Three significant findings
- Coincided with policy change at the Children's Bureau



# 1 Key Finding

Funding changes for child and parent counsel had a direct impact on several factors that affect legal representation quality, such as attorney recruitment and retention, multidisciplinary legal practice, caseloads, workload per case, and case delays.

Primary areas affected by funding changes fall into two categories: Staffing and Time

**2**

**In addition to attorney funding, other child welfare system factors influenced the quality of child and parent legal representation.**

**These included agency policy, court funding and structure, and client access to services.**

A child welfare agency's approach to filing petitions only in cases presenting the greatest risk to child safety can reduce total caseload numbers per attorney while increasing the complexity of the workload in each case, court backlogs can limit attorney time in and out of the courtroom, and a child or parent client's ability to access services as part of a case plan can directly affect attorney advocacy in the case.

**3**

**Factors outside the child welfare system also affected the quality of legal representation available to children and parents in the sites studied. For example, homelessness and poverty were regularly reported as significant challenges for effective legal representation.**

# Multidisciplinary Models of Representation

- Attorney works with other team members such as investigators, social workers, paralegals, and peer advocates (for youth) and parent advocates (for parent clients).
- Increase the legal services provider's ability to meet the out-of-court case needs of children and families, including connecting children with highly specialized attorneys and supports.



# Leveraging Federal IV-E Funding to Pay for Child Representation

## Strategies:

- Get Creative!
- Encourage legal representation programs that provide parent and child representation to seek IV-E funding

## Considerations:

- IV-E is an open entitlement reimbursement plan.
- State match
- Applies to all models

# Pending Federal Rule on Children's Representation

## PUBLISHED DOCUMENT

### AGENCY:

Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

### ACTION:

Notice of proposed rulemaking (NPRM).

### SUMMARY:

ACF proposes to allow a title IV-E agency to claim Federal financial participation (FFP) for the administrative cost of an attorney providing: legal representation in foster care proceedings of a title IV-E agency or any other public agency or tribe that has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child; independent legal representation of a child who is either a candidate for title IV-E foster care, or in title IV-E foster care (hereafter, referred to as a child "who is eligible for title IV-E foster care"), the child's parent(s), and the child's relative caregiver(s) in foster care and other civil legal proceedings when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency's title IV-E foster care plan; and legal representation of an Indian child's tribe, when the child's tribe intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care when such legal representation is found necessary by the Secretary to carry out the requirements in the title IV-E agency's title IV-E foster care plan.

## DOCUMENT DETAILS

**Printed version:**  
[PDF](#)

**Publication Date:**  
09/28/2023

**Agencies:**  
[Department of Health and Human Services](#)  
[Administration for Children and Families](#)

**Dates:**  
In order to be considered, ACF must receive written comments on this NPRM on or before November 27, 2023.

**Comments Close:**  
11/27/2023

**Document Type:**  
Proposed Rule

**Document Citation:**  
88 FR 66769

**Page:**  
66769-66780 (12 pages)

**CFR:**  
45 CFR 1356

**RIN:**  
[0970-AC89](#)

**Document Number:**  
2023-20932

- Aim: to codify federal funding under Title IV-E for legal services
- Language specifically includes tribal organizations
- Many comments urged CB to provide additional clarity