

Children's Rights

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<https://www.childrensrights.org/children-right-to-counsel/>

Public Facing Advocacy Writing

By Evie Cai, Paralegal Intern

It may surprise you to learn that in the U.S., children have no federal constitutional right to legal counsel. Even in judicial proceedings held because of allegations of child abuse or neglect, children are forced to stand alone. Meanwhile, all adult parties, governments, foster care agencies, parents have a lawyer by their side. This is patently unfair, since children are the ones who ultimately face grave consequences, including whether they will be removed from their homes and families, placed in institutions, or given psychotropic medications.

A recent [report](#) shows general improvement in state statutes providing abused and neglected children with a right to counsel, although the federal government remains largely resistant. A record 29 states now boast an A or B rating as compared to only 22 states in 2009. 34 of 51 states and the District of Columbia now require independent counsel in all cases pertaining to child abuse and neglect; however, only 15 of those 34 jurisdictions require client-directed counsel in all reasonable circumstances, meaning that, in each instance, the attorney must adhere to the child's expressed preferences.

The report, conducted by the First Star Institute in collaboration with the Children's Advocacy Institute (CAI) of the University of San Diego, ranks state statutes on a 100-point scale. Criteria for the rating include whether state law mandates the appointment of attorneys in child dependency proceedings, regardless of age; whether children receive client-directed representation; whether state statutes require counsel to undergo special education; whether children are recognized as a party to the proceedings; whether counsel is required to adhere to confidentiality, and whether the state sets maximum case load numbers. Eleven states still score under 70 in this ranking system, which reflects a failing grade, and the five lowest ranked states include Indiana, New Hampshire, Hawaii, Idaho, and Montana.

Children's Rights has long fought for the right to counsel, most notably in our 2005 landmark federal case, [Kenny A. v. Perdue](#), which is cited in the First Star and CAI report. It was the first time a federal court ruled that all abused and neglected children have a right to legal counsel in deprivation and termination of parental rights proceedings. The U.S. District Court for the Northern District of Georgia's reasoning in *Kenny A.* is that, in such cases, the child's fundamental liberty interests are vulnerable even when a child is in state custody, and, therefore, each child is entitled to an attorney during these proceedings. The holding of the case also set a maximum of 90 children per counsel for its designated class.

Researchers at First Star and CAI found that only 10% of states set a caseload standard for counsel in child abuse and neglect cases and 12% of state statutes merely acknowledge that attorneys must hold reasonable caseloads. The report also noted that 24% of states have yet to allow an attorney to stay with a child's case for its entire duration, including appeal.

Providing children with a right to counsel would have far-reaching benefits, given that, in 2017, there were 670,000 instances of child abuse and neglect. [Studies](#) show that the estimated economic burden of substantiated child mistreatment cases is \$438 billion, and the estimated economic burden of investigated child mistreatment cases is \$2 trillion. A right to counsel is not only [cost-saving for states](#), but also significantly improves outcomes for children, often leading to shorter time in foster care.

The First Star and CAI report comes as the [Family First Prevention Services Act, a federal bill passed under the Bipartisan Budget Act of 2018](#), is being implemented. The law provides [title IV-E funds for up to 50% of the cost of legal counsel in foster care proceedings](#). This will help states with good programs and protections enhance their counsel programs, but there's no mandate that kids actually have a lawyer. There is still a long way to go before every child is adequately represented.

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First Name	Last Name
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