

April 19, 2024

Chair Mark Pearson
House of Representatives
New Hampshire General Court
Via Online Submission Portal

Letter in Support of Senate Bill 463

Title: Requiring an attorney for a child who is the subject of a proceeding in a family court case

Dear Chair Pearson and Committee Members:

The [National Association of Counsel for Children](#) (NACC) supports the incremental expansion of children's right to counsel as proposed in [Senate Bill 463](#). Founded in 1977, NACC is the leading membership and advocacy organization for child welfare law attorneys in the United States. NACC trains and certifies attorneys who represent children, families, and agencies; supports a diverse community of professionals; and advocates for policy reform alongside young people and families.

There is national consensus that children require independent legal representation throughout dependency proceedings – a principle [supported by research, endorsed by the federal government](#), and already implemented in [37 States](#) across the country. Attorneys for children and youth in foster care are integral in holding the state accountable, assisting judges in making the best possible decisions with accurate, relevant and complete information, and ensuring full participation and due process for children and youth. We urge you to support expanding children's guaranteed access to legal representation in child protection court proceedings.

Individualized Advocacy and System Accountability are Critical for Youth in Institutional Care

Youth placed in institutional care¹ are [often subject to](#) unsafe conditions, poor supervision by untrained staff, physical and sexual abuse, inadequate services, restricted communications, physical and chemical restraints, isolation, seclusion, medical neglect and more. Contrary to best practice, these placements are not driven by a child's clinical and therapeutic need. Instead, they are often utilized as a "placement of last resort" by overburdened systems. The [inhumane conditions and practices](#) in institutions have [devastating outcomes](#) for youth. In one horrific example, sixteen-year-old [Cornelius Frederick](#) died by suffocation at a privately operated residential facility in Michigan in April 2020.

¹ Term refers to all non-family placements for children in the child welfare system, including group homes, institutions, emergency shelters, residential treatment facilities, or other congregate care facilities

The failures of institutional placements are numerous and [calls to eliminate](#) this industry abound. In 2018, Congress passed the [Family First Prevention Services Act \(FFPSA\)](#) which restricts federal funding and increases judicial oversight of these settings. To receive federal financial support, an institutional placement must provide clinical assessments of a child's needs, engage family in case planning, be time-limited, and submit to ongoing court review and judicial approval. The court review process is critical to preventing the misuse of institutional care. This process is not meaningful unless children are appointed legal counsel who:

- Challenge improper use of institutional care
- Advocate for family-like settings appropriate to each child's needs.
- Protect a youth's right to family integrity: to live with their parents and siblings, to have regular family time when that is not possible, and to be allowed to live in kin foster homes when family separation is necessary.
- Fight against the use of chemical and physical restraints.
- Ensure children are seen and heard by the judge making decisions about their lives.

Children's Attorneys Improve Systems and Save Public Dollars

Children appointed attorneys experience [better results](#) than those who do not, including less time in foster care, shorter time to adoption or guardianship, and more successful reunifications. Children represented by specially trained counsel are [40% more likely](#) to leave the foster care system within their first six months, [45% more likely](#) to reunify with their biological parents, [30% less likely](#) to change placements, and [65% less likely](#) to change schools for reasons other than graduation. An attorney can shorten the time a child is in the foster care system, meaning [cost-savings](#) for state and federal taxpayers.

Judicial Discretion to Appoint Counsel is Not the Same as a Guaranteed Right to Counsel

Attorneys should be required for all children in foster care, but SB 463 is a step in the right direction. Current New Hampshire Law allows the appointment of a child attorney in two scenarios: (1) if a Court Appointed Special Advocate (CASA) or other guardian *ad litem* (GAL) is unavailable for appointment or (2) when the child's expressed interests conflict with a recommendation made by the GAL.² Amended SB 463 would improve upon this by *requiring* a judge to appoint an attorney when a child is placed in institutional care and *permitting* attorney appointment in all other cases.

This enhanced protection is critical for youth placed in institutional settings. Notably, all children involved in the juvenile justice system are already guaranteed due process and the right to legal counsel under the United States Constitution.³ [Yet similarly situated children in foster care](#) are not yet afforded the same protections of their civil rights. Although these two distinct groups of children share living space in institutional care settings, only one group is promised the protection of legal counsel. SB 463 would fix this disconnect.

² NH Rev. Stat. [Section 169: C-10](#)

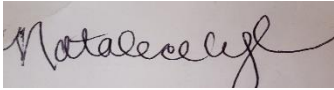
³ In re Gault, 387 U.S. 1 (1967).

Conclusion

True access to justice can only be achieved when all children in child protection proceedings are guaranteed the right to counsel. [NACC](#), the [federal government](#), the [American Bar Association](#) (ABA), the [National Council of Juvenile and Family Court Judges](#) (NCJFCJ), and [youth with lived experience in the child welfare system](#) agree that any child subject to dependency court proceedings must have legal representation throughout the case. New Hampshire should join the majority of states that already mandate legal representation of all children in dependency proceedings, demonstrating that this is a feasible and practicable reform.

Today I urge you to start the expansion of youth access to legal representation in New Hampshire by voting to support amended SB 463. I invite you to review the [Policymaker's Guide to Counsel for Kids](#) and welcome the opportunity to talk more with you about this proposal. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalece Washington", is displayed on a light gray rectangular background.

Natalece Washington
Policy Counsel
National Association of Counsel for Children
Natalece.Washington@NACCchildlaw.org
www.counselforkids.org
(404) 954-2427