

**Written Testimony in Support of House Bill 22-1038
Concerning Client-Directed Legal Representation for Youth in Court Proceedings for Youth**

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Representative Weissman, and Committee Members,

The [National Association of Counsel for Children](#) submits testimony to the Colorado House Judiciary Committee to express our strong support for [HB 22-1038](#).

The National Association of Counsel for Children (NACC) was founded 45 years ago by a handful of lawyers in Denver, Colorado with a singular goal: ensuring children received specialized legal representation in dependency and neglect cases. A national nonprofit now reaching over 10,000 professionals annually, NACC continues to share a special relationship with Colorado stakeholders to whom we provide technical assistance.

Colorado has been and continues to be a leader in children's law. In 1907, Colorado was one of the first states in the country to create a separate juvenile court for children in dependency and delinquency cases.² In 1967, after the US Supreme Court decision *In re Gault*, the Colorado General Assembly adopted the Children's Code providing guardian ad litem for children in dependency cases and client-directed attorneys for children in delinquency cases. And in 1973, when Congress considered requiring representation for children in the Child Abuse Treatment and Prevention Act, Colorado was highlighted as model state providing lawyers to children.³

H.B. 22-1038 will keep Colorado in the forefront of best practices by changing existing law from a guardian ad litem model to a client-directed model for children and youth ages 12 and older.

No Decisions for Youth Without Youth

From the moment the child welfare system intervenes in a child's life, everything is at stake—their home, their bonds with parents and siblings, their education, their community, their belongings. In sum: their future. When a child aged 12 or older is represented by a client-directed attorney, they should have a meaningful voice in the processes that shape the rest of their lives.

In a client-directed model, the attorney presents evidence and makes argument for the child's requests and positions. This does *not* mean that the attorney has reflexive, or "robotic allegiance" to each directive of the client. Client counseling and relationship-building are fundamental to the representation of children and youth in any courtroom. Attorneys with specialized training advise child clients in a developmentally-appropriate manner on their legal rights, their options, and potential outcomes. Child safety is not jeopardized simply because a youth has access to counsel; in fact, it may be enhanced. As the federal government has noted, "[c]onfidential attorney-client privilege allows children to feel safe sharing information with attorneys that otherwise may go unvoiced."⁴

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² King, Laoise. "Colorado Juvenile Court History: The First Hundred Years." *The Colorado Lawyer* 33 (April 2003).

³ Child Abuse Prevention Act, 1973. Hearings Before the Subcommittee on Children and Youth of the Committee on Labor and Public Welfare, United States Senate, Ninety-Third Congress, First Session on S.1191. Statement of Brian Fraser, Staff Attorney, National Center for the Prevention and Treatment of Abuse and Neglect.

⁴ U.S. Department of Health and Human Services, Administration of Children and Families. (2017, January) [High Quality Legal Representation for All Parties in Child Welfare Proceedings](#), Log No: ACYF-CB-IM-17-02.

For 20 years, I provided client-directed representation as a matter of course to children and youth who were accused of crimes. There was no question to whom I owed a duty of loyalty, confidentiality, and advocacy. But I did not simply parrot my client's words in a courtroom; it was through investigation, consistent client communications, advice, and counseling, that we developed a theory of the case together. Through this work, I did not protract litigation but helped achieve what youth most want – a timely exit from the court system. Attorneys in dependency and neglect cases will similarly help to achieve what youth most want: permanency.

Empowering Legal Representation and Fair Proceedings

There is increasing recognition of the necessity of integrating youth voice in child welfare practice and policy. As stated by the U.S. Children's Bureau, "[f]amilies and youth are our best sources of information about the strengths and needs of their families and communities, yet, historically, we make decisions and plans in the absence of their input. Moreover, where input is sought, it may not receive meaningful consideration."⁵

Client-directed representation centers the child's perspective and reasoning, recognizing that they are "the individuals most knowledgeable about solutions that will benefit them."⁶ It is an essential component of procedural justice.⁷ Research has shown that youth perception of the quality of legal representation they receive in foster care is strongly correlated with their perception of the foster care experience.⁸ It comes as no surprise that youth with lived experience in foster care have identified access to high-quality legal representation as a priority area for reform efforts.⁹

Nationally-Recognized Best Practice

HB 22-1038 is consistent with the American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings,¹⁰ ABA Model Rules of Professional Conduct (R. 1.2), and NACC's Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings¹¹ which endorse client-directed representation. Other states are also turning to client-directed legal representation as a strategy for system improvement. In 2021, Arizona, North Dakota and Washington State all passed legislation expanding access to client-directed counsel and, this year, Florida is poised to do the same.¹²

We commend the Colorado Office of the Child's Representative, a national leader in children's legal representation, for spearheading HB 22-1038. OCR's fervent commitment to best practices is evident in its focus on elevating youth voice, promoting due process, and advancing equity for youth. Colorado youth must have the right to have their perspective considered by legal decisionmakers and be treated as an equal and essential part of their own case. The National Association of Counsel for Children thanks you for considering this critically important issue for youth and urges the committee to vote in support of HB 22-1038.

⁵ U.S. Department of Health and Human Services, Administration of Children and Families. (2019, August) [Engaging, empowering, and utilizing family and youth voice in all aspects of child welfare to drive case planning and system improvement](#). Log No: ACYF-CB-IM-19-03.

⁶ Id. at 3

⁷ Tyler, T. & Zimmerman, N. (2010) Between Access to Counsel and Access to Justice: A Psychological Perspective. *Fordham Urban Law Journal*, 37, 473-507.

⁸ Miller, J. J., Duron, J., Washington, E. & Donohue-Dioh, J. (2017, July) [Exploring the Legal Representation of Individuals in Foster Care: What Say Youth and Alumni?](#) *Children and Youth Services Review*.

⁹ National Foster Care Youth Alumni, Policy Council (2020, December) [A Historic Opportunity to Reform the Child Welfare System: Youth and Alumni Priorities on Older Youth Successful Transition to Adulthood](#).

¹⁰ American Bar Association. (2011, August). [Resolution: Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings](#).

¹¹ [Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings, National Association of Counsel for Children](#) (2022, January).

¹² AZ [Senate Bill 1391 \(2021\)](#); ND [House Bill 1035 \(2021\)](#); WA [House Bill 1219 \(2021\)](#); FL [Senate Bill 948/ House Bill 1549](#).