



Testimony to the New York State Legislature

2026 Joint Legislative Budget Hearing - Public Protection

Subject: Funding to Ensure Implementation of the Right to Counsel for Foster and Kinship Caregivers

February 5, 2026

Thank you for the opportunity to submit written testimony. I write on behalf of the Adoptive and Foster Family Coalition of New York (the “Coalition”), a statewide organization supporting foster, adoptive, and kinship caregivers, and most importantly, the children in their care. Through our legal program, 24/7 hotline, support services, and advocacy work, we assist caregivers statewide, including many who are attempting to challenge arbitrary moves of children between foster homes.

The Problem: A Right That Exists, But Is Not Meaningfully Implemented

The legislature has already determined that foster and kinship caregivers may require legal representation in certain abuse and neglect proceedings. Family Court Act §262 provides for the assignment of counsel to eligible caregivers. In practice, however, this right is applied inconsistently across counties and often not at all.

The Coalition routinely hears from caregivers who:

- are never advised by the court that they may be entitled to an attorney;
- are told by agency staff that they are not entitled to counsel, or that requesting an attorney could “cause problems”; or
- receive legal representation only after a child has already been removed from their home.

As a result, access to counsel depends heavily on geography, local practice, and how persistent they are in their request for assigned counsel. A right that depends on insider knowledge or persistence is not a meaningful right.

The Real-World Consequences of No Early Counsel

The consequences of delayed or denied access to counsel are severe and often irreversible.

The Coalition has worked with caregivers who paid **\$30,000 to \$40,000 out of pocket** for private legal representation because they were never advised that they might be entitled to assigned counsel. Others were discouraged from requesting an attorney altogether, out of fear that doing so would cause the agency to view them as adversarial. Some have even suggested that requesting counsel could result in the children being removed from the foster home.



We have seen children **removed after six years in the same foster home**, including cases where the child had lived with the caregiver since birth, based on allegations that later turned out to be unfounded. In some of these cases, the child was already on a path to adoption and the birth parents' rights had been terminated. Yet the removal still proceeded.

Once a child is removed from a foster or kinship home, the procedural protections available to caregivers are dramatically limited. Unlike birth parents, who have access to emergency hearings under Family Court Act §1028, foster and kinship caregivers have no comparable mechanism to quickly challenge a removal. Administrative fair hearings and subsequent appeals can take **two years or more**, even in cases where the caregiver ultimately prevails.

During that time:

- children remain separated from long-term caregivers;
- placements are disrupted permanently;
- and courts are often unable to restore stability, even when the removal is later found to be unjustified.

Agencies frequently remove children pending appeal, even where there is no emergency or immediate safety concern. By the time review occurs, the harm has already been done.

A Systemic Chilling Effect

The lack of clear, court-driven advisement of the right to counsel has created a chilling effect across the caregiver community. Foster parents routinely warn one another not to retain an attorney because “the agency will remove the child.” These warnings are not theoretical; they are grounded in lived experience.

At the same time, the Coalition has begun to see evidence that change is possible. As a result of advocacy and education around the right to counsel, caregivers have reported that judges advised them of their right to an attorney, sometimes to the visible surprise of caseworkers in the courtroom. This underscores both the depth of the implementation gap and the fact that it is correctable.

Why Funding Is the Missing Piece

Early access to counsel is not about creating new rights. It is about ensuring that existing law is implemented at a point when it can still prevent harm.



Timely legal representation:

- ensures courts receive accurate information before critical decisions are made;
- allows procedural protections to be meaningfully exercised;
- prevents unnecessary removals before they occur; and
- reduces reliance on lengthy, ineffective after-the-fact review processes.

Without funding, courts lack the infrastructure to consistently advise and assign counsel, and caregivers are left to navigate complex legal terrain alone or at great personal expense.

Last year, the Legislature included **\$4 million to establish a Kinship Legal Network**, but this funding was not retained in the enacted budget. This reflects legislative recognition of the need for legal supports for kinship caregivers, even though the Governor's final budget did not include the funding.

The Budget Request

We respectfully urge the Legislature to include **\$2-3 million in the state budget** to support early legal representation for foster and kinship caregivers, with the goal of ensuring consistent implementation of Family Court Act §262 statewide.

This funding would support:

- early legal advice and representation for eligible caregivers in Family Court;
- compliance with existing statutory requirements;
- training, coordination, and court-based implementation; and
- prevention of unnecessary and costly placement disruptions.

Even a more limited investment of **\$1-1.5 million** would meaningfully expand access and improve consistency in high-need regions.

Looking Ahead: Fair Hearings and Removal Challenges

As the Legislature considers how best to protect children and ensure fairness, it is also important to recognize the growing gap between Family Court proceedings where the right to counsel exists and administrative processes that often determine whether a child remains in a caregiver's home.

When removals are challenged through fair hearings, caregivers have no right to counsel, despite the stakes being the permanent loss of a child they have raised for years. This disconnect undermines the very purpose of early legal protections and warrants further legislative attention.



Conclusion

New York has already made the policy decision that foster and kinship caregivers may need legal representation in abuse and neglect proceedings. The problem is not the absence of law, but the absence of implementation at the moment when it matters most.

Without dedicated funding, the right to counsel will continue to exist on paper while children bear the consequences of inconsistent practice, unnecessary removals, and delayed review. We respectfully urge the Legislature to include funding in the final budget to ensure that existing law is carried out as intended and that caregivers have access to legal representation before irreversible harm to already vulnerable children occurs. Thank you.