

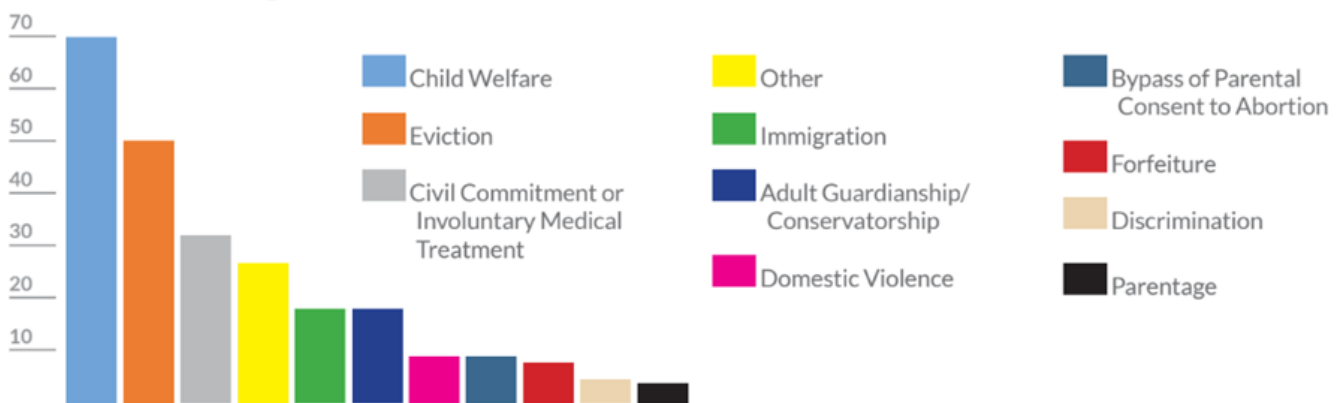


## Civil Right to Counsel Legislative Update

January 30, 2024

The 2023 legislative session was a busy and productive one; 2024 is looking to be the same! Below is a 2023 recap and a summary of some of the significant civil right to counsel (RTC) bills we're tracking during the 2024 session.

### 2023 Legislative Session Recap



During the 2023 legislative session, the NCCRC tracked almost **300 RTC-related bills** introduced nationwide. The chart above demonstrates the frequency of topics among tracked bills.

- About **94% of tracked bills were introduced in state legislatures.**

- Of the 20 federal bills we tracked, **14 were immigration-related.**
- Several **federal-level housing bills** were also in the works.

### Notable RTC-related bills enacted in 2023:

- **Minnesota** ([HB 1149](#)) | Minnesota [expanded](#) the right to counsel for children in abuse and neglect matters to "all stages" (instead of just all "critical" stages) and removed the indigency requirement. The bill also explicitly specified that "all stages" includes shelter hearings. We submitted testimony in support of this bill!
- **New Mexico** ([SB 31](#)) | New Mexico provided [parents and legal guardians](#) with the right to counsel prior to signing of a voluntary placement agreement proposed by the state in response to an investigation of abuse/neglect. The bill also provided children with [the right to an attorney ad litem](#) in such matters.
- **North Dakota** ([SB 2225](#)) | The North Dakota legislature enacted a law revoking a guardian's authority to consent on behalf of a protected adult to involuntary treatment with certain prescribed medications. The new law also provides that where a guardian files a petition for involuntary treatment, [the court must appoint an attorney ad litem](#) for the protected adult.
- **Oklahoma** ([HB 2259](#)) | Oklahoma enacted reform in the fees/fines context, providing that a person has the right to a hearing on their ability to pay, and the court can impose incarceration only if the person was represented by counsel or waived their right to counsel. We provided supportive testimony for this bill. Read more about [fees and fines matters](#) in Oklahoma.
- **Pennsylvania** ([SB 506](#)) | For alleged incapacitated adults in guardianship matters, Pennsylvania [established](#) the right to counsel for such individuals where they are unrepresented and regardless of their ability to pay. The right to counsel also extends to guardianship modification and termination proceedings! Pennsylvania had long been one of the few states that did not provide a right to an attorney in guardianship cases, so this bill's passage is an important one for the movement.

## Looking ahead: 2024 Legislative Session

Numerous bills from 2023 have "carried over" into this year and hundreds of new bills have been filed. **We've listed a smattering of RTC-related bills we're tracking this session that we consider especially significant!**

### Child Welfare

Some bills in the child welfare context would expand or strengthen the right to counsel or the discretionary appointment of counsel, while others seek to change the role of a child's appointed attorney:

- **Delaware** ([HB 86](#)) | Currently, indigent parents in dependency proceedings are appointed counsel on a case-by-case basis. The bill would make appointment mandatory for all indigent parents and extend the RTC to "all stages" of the proceedings.

- **Florida** ([HB 185](#) / [SB 1224](#)) | These bills would repeal the mandatory appointment of an attorney ad litem in abuse/neglect cases for children with "special needs", replacing it with the permissible appointment for all children, provided that certain maturity requirements are met. They would also repeal provisions requiring counsel for a child who's the subject of a permanent custody proceeding.
- **Indiana** ([HB 1056](#)) | This bill would provide children between the ages of 14 and 23 with a RTC in abuse and extended foster care matters if the child meets certain requirements, such as residential care placement, the child's wishes differing from the determined best interest, if they are an alleged victim of human trafficking, or if they are the minor parent of a child who is also the subject of a CHINS matter. The bill also expands the RTC in truancy matters by incorporating these factors into Ind. Code § 31-32-4-2, the provision governing truancy. Indiana [SB 230](#) is similar though less extensive, making appointment of counsel for children in abuse and neglect matters mandatory only for scenarios involving children who are the alleged victim of human or sexual trafficking.
- **Kansas** ([HB 2381](#)) | This bill would provide children in abuse/neglect, TPR, and truancy proceedings the right to a client-directed attorney in all proceedings (including appeals), where they were previously entitled only to an attorney GAL. Makes appointment of GAL discretionary.
- **Missouri** ([SB 1236](#)) | This would change appointment of counsel for parents in abuse/neglect matters from discretionary to mandatory as well as replace the child's right to attorney GAL with the "right to legal representation". And it would change appointment of counsel for kids in truancy matters from discretionary to mandatory while adding RTC for certain children in parentage matters. [SB 1040](#) would accomplish all of the same changes as SB 1236 except it would not add the RTC for children in parentage matters.
- **New Hampshire** ([HB 535](#)) | This bill would provide a right to counsel to minor children who are the subject of proceedings in the judicial branch family division. For abused/neglected children, it would change the definition of "conflict" that triggers discretionary appointment of counsel from instances where the child's expressed interests conflict with "the recommendation for dispositional orders" of the GAL to instances where the child's expressed wishes conflict with "any recommendation of the GAL."
- **New Hampshire** ([SB 463](#)) | Currently, discretionary appointment of counsel for children in dependency matters is limited to situations where there is a conflict between child's wishes and GAL's recommendation, but this bill would remove the conflict requirement. It would also require appointment of client-directed counsel for children placed in certain institutions.
- **Washington** ([HB 1295](#)) | When there is no pending dependency proceeding and the Department of Children, Youth, and Families proposes a voluntary placement agreement, this bill would provide the child's parent, guardian or legal custodian with the right to consult with an attorney by telephone or video conference. If, after the consultation, they desire to have an attorney assigned, they would receive representation by counsel according to the implementation schedule in the bill. **New Mexico** [enacted a similar law last year.](#)

## Forfeiture

Several bills aimed at forfeiture reform are under consideration this year:

- **Colorado** ([HB 1023](#)) | This bill would provide for discretionary appointment of counsel for indigent persons whose property is subject to forfeiture under certain provisions of the criminal code.
- **Kansas** ([HB 2380](#)) | This bill would abolish civil forfeiture and provide the right to counsel for indigent defendants in criminal forfeiture proceedings.
- **Nebraska** ([LB 916](#)) | This bill would provide that a defendant represented by appointed counsel in a criminal matter has a RTC in any related forfeiture case. Also, if the property subject to forfeiture is not summarily returned to an innocent owner or to a secured interest holder, such individuals would be able to file a motion to intervene for which the court could appoint counsel if they are indigent.
- **New Hampshire** ([HB 593](#)) | This bill would require that if a defendant is represented by a public defender or appointed counsel in a criminal matter, "the public defender or appointed counsel shall represent the defendant in the forfeiture proceeding and any other related criminal proceeding."
- **Tennessee** ([HB 1285](#) / [SB 1462](#)) | Similar to New Hampshire's bill mentioned above, if a criminal defendant is represented by appointed counsel in the criminal matter and is also a claimant in a related forfeiture matter, this bill would require that the appointed counsel shall also represent the defendant in the forfeiture proceeding.
- **Vermont** ([HB 302](#)) | This bill provides that the public defender shall be assigned to indigent individuals in certain forfeiture proceedings.

## Domestic Violence

- **Massachusetts** ([HB 1605](#)) | This would provide a RTC to minors who are at least 13 years old and who are seeking protective orders due to abuse or harassment.
- **New Jersey** ([AJR 36](#)) | This bill would create a legislative task force to study the impact of lack of access to counsel on both petitioners and respondents in domestic abuse cases.

## Adult Guardianship

- **Hawaii** ([HB 1440](#) / [SB 1595](#)) | This bill would: Enact a right to counsel for minors who are subject to a guardianship proceeding where (i) requested by a minor 12 years of age or older, (ii) recommended by a [GAL], or (iii) the court determines the minor needs representation; Change the factors a court must consider in deciding whether to appoint an attorney for an adult respondent in plenary guardianship hearings; Change appointment of counsel for adults in emergency guardianship cases from discretionary to mandatory; Add a RTC where an adult seeks to remove a guardian or conservator or modify / terminate guardianship/conservatorship and certain factors are met.

- **Kentucky** ([SB 53](#)) | This bill would provide that a protected person has the right to counsel upon request for matters related to petitions for termination or modification of an order of partial or full disability as well as for petitions for removal or replacement of limited or full guardians or conservators. It also would specify that the attorney appointed for the respondent serves as client-directed counsel and not as a guardian ad litem.
- **Kentucky** ([HB 238](#)) | This would extend the right to counsel for adult individuals subject to guardianships or conservatorships through the appeal.

### Miscellaneous RTC-related bills of interest

- **Massachusetts** ([HB 1448](#)) | This would provide that a party with sufficient standing who brings a Right Of Action [for Specific Environmental Pollution] based on actual, or sufficient evidence of harm has the right to court-appointed counsel.
- **Tennessee** ([HB 279](#) / [SB 904](#)) | Currently, an individual who is behind on child support payments cannot vote nor register to vote. The bill would allow those behind their payments with a provisional right to vote if they enter into a payment plan to become current on payments. If the person "willfully fails" to make payments, their provisional right to vote may be revoked, but not before the court appoints an attorney for the individual and allows them to be heard.

To see a list of all of the bills we are tracking, visit our [2023/2024 civil right to counsel bills](#) tracking page!

## Did you know?

**The NCCRC provides support work around legislation that fits our priority areas.** We also diligently track and report on all bills around the country that would impact the right to counsel in civil cases. If you have questions or comments about any of these legislative updates, or if you wish to inquire about partnering around legislative efforts, please contact **Amanda Insalaco**, the NCCRC's Legal Research Specialist, at [insalacoa@publicjustice.org](mailto:insalacoa@publicjustice.org).

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# Civil Right to Counsel Resources

Interactive Status Map

Comprehensive Bibliography

Legislative Tracking



The **National Coalition for a Civil Right to Counsel** (NCCRC) is an association of individuals and organizations committed to ensuring individuals have a right to effective counsel when facing the loss of their basic human needs in the civil legal system. [www.civilrighttocounsel.org](http://www.civilrighttocounsel.org) | [Donate](#)

*The National Coalition for a Civil Right to Counsel is a project of the Public Justice Center, Inc. - a 501(c)(3) organization, gifts to which are deductible as charitable contributions for federal income tax purposes. The Public Justice Center is incorporated in the State of Maryland. Copies of current financial statements are available upon request by contacting the Public Justice Center at 201 N. Charles Street, Suite 1200, Baltimore, MD 21201 or by telephone at 410-625-9409. Documents and information submitted to the State of Maryland under the Maryland Charitable Solicitations Act are available from the Office of the Secretary of State, Annapolis, MD 21401 for the cost of copying and postage. The Public Justice Center is registered to request contributions in the states that require charitable solicitation registration. See <http://www.publicjustice.org/en/charitable-solicitation-disclosures/> for more information.*



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