



STATE STATUTES

CURRENT THROUGH JUNE 2021

Representation of Children in Child Abuse and Neglect Proceedings

To find statute information for a particular State or Territory, go to the [State Statutes Search](#).

The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires States to document in their State plan provisions for appointing a guardian ad litem (GAL) to represent the child's best interests in every case of abuse or neglect that results in a judicial proceeding. The GAL may be an attorney or a court-appointed special advocate (CASA)—or both—who has received appropriate training.¹ The GAL represents the child at all judicial proceedings related to the case and has the responsibility to perform the following tasks:

- Obtain a clear and firsthand understanding of the situation and needs of the child
- Make recommendations to the court concerning the best interests of the child²

¹ To be eligible for funding under CAPTA, a State is required to submit to the Secretary of the U.S. Department of Health and Human Services a written plan for improving the State's child protective services system. The plan must include an assurance that the State has in effect laws, policies, or procedures that address specific issues required by CAPTA (42 U.S.C. § 5106a(b) (2019)).

² 42 U.S.C. § 5106a(b)(2)(B)(xiii) (2019). For more information on issues related to providing representation for children, visit the [National Quality Improvement Center on the Representation of Children in the Child Welfare System website](#).

WHAT'S INSIDE

Making the appointment

The use of court-appointed special advocates

Qualifications and training

Specific duties

Compensating the representative

At the State level, statutes specify when the court must appoint a representative—and whom the court may appoint—for a child who is involved in an abuse and neglect proceeding. As described in the National Council of Juvenile and Family Court Judges' *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*,³ there are several ways that a child's interests can be represented. In some instances, two or more of these representatives may work on the same case:

- A GAL may be appointed to investigate and advocate for the child's best interests.
- An attorney may be appointed specifically to advocate for the child's position and expressed wishes before the court.
- A CASA may be appointed to assist the court by investigating a child's circumstances and providing recommendations on meeting the child's needs. In some cases, a CASA may serve as the child's GAL, as described in CAPTA.

MAKING THE APPOINTMENT

For this publication, statutes regarding requirements for providing legal representation for children involved in cases of child abuse

or neglect that result in judicial proceedings were collected from across all States, the District of Columbia, and the U.S. territories, and an analysis of the information informs the discussion that follows.⁴

All States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands provide for the appointment of representation for a child involved in a child abuse or neglect proceeding in their statutes. Approximately 41 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands provide for the appointment of a GAL to represent the best interests of the child.⁵ In 16 of these States, the District of Columbia, and the Virgin Islands, the GAL must be an attorney.⁶ In Montana, a CASA, who may or may not be an attorney, can be appointed as the child's GAL. In other States, volunteers who may or may not be attorneys may serve as GALs.

Sixteen States require the appointment of an attorney for the child;⁷ eight States require both an attorney and GAL.⁸ Oregon requires the appointment of a CASA. In Wisconsin, a child has the right to counsel, and he or she may not be removed from the home unless counsel has been

³ Gatowski, S., Miller, N., Rubin, S., Escher, P., & Maze, C. (2016) *Enhanced resource guidelines*. Reno, NV: National Council of Juvenile and Family Court Judges.

⁴ Throughout this document, analyses of requirements in some States were derived from court rules as well as statutes.

⁵ The word "approximately" is used to stress the fact that States frequently amend their laws and applies to all data in this publication. The information in this publication is current only through June 2021. The States that provide for the appointment of a GAL include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico (for a child under age 14; an attorney must be appointed for a child who is age 14 or older), North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin (for a child under age 12; an attorney must be appointed for a child who is age 12 or older), and Wyoming.

⁶ Alabama, Arizona, Arkansas, Colorado, Kansas, Michigan, Missouri, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, Utah, Virginia, Wisconsin, and Wyoming.

⁷ The States that require appointment of an attorney for the child include California, Connecticut, Delaware, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Nevada, New Mexico, New York, Oklahoma, South Dakota, Vermont, West Virginia, and Wyoming. In Wyoming, the attorney also shall serve as the child's GAL. In New Mexico, an attorney is required if the child is age 14 or older. In California, the appointment of an attorney is required unless the court finds the child would not benefit from the appointment; in that case, the court must appoint a CASA for the child.

⁸ The States that require both an attorney and a GAL include Georgia, Mississippi, Montana, Nevada, North Carolina, South Carolina, Texas, and Vermont. In Texas, the attorney may serve in the dual role of attorney and GAL, or a separate GAL may be appointed. In Mississippi and North Carolina, an attorney also must be appointed if the court appoints a nonattorney GAL.

appointed. If the child is under age 12, the court may appoint a GAL instead of counsel. In four States, if the GAL is not an attorney, counsel may be appointed to represent the GAL.⁹

In all cases, the appointment of a GAL, attorney, or CASA is made by the court that has jurisdiction over the child abuse or neglect proceedings. In Louisiana, the attorney may be provided by a Child Advocacy Program. In Maryland, the court appoints an attorney with whom the Department of Human Resources has contracted to provide legal services. In Washington, the court may select a GAL from a rotational registry of qualified GALs.

THE USE OF COURT-APPOINTED SPECIAL ADVOCATES

Approximately 37 States, the District of Columbia, and the Virgin Islands allow for the appointment of a CASA.¹⁰ In 16 of these States, the CASA may serve as the GAL.¹¹ In 14 States, the District of Columbia, and the Virgin Islands, the CASA may be appointed in addition to the GAL.¹² A CASA may be appointed in addition to an attorney in seven States.¹³ In Connecticut, Louisiana, and New Mexico, a CASA may be assigned to assist the court; while in Missouri, Rhode Island, and Utah, a CASA may be selected to assist the court or the child's GAL.

QUALIFICATIONS AND TRAINING

Approximately 46 States, the District of Columbia, and the Virgin Islands address the qualifications and training required for a person who can be assigned to represent a child involved in a child abuse or neglect proceeding.¹⁴ In the States that require the appointment of an attorney for the child, six of these States do not require additional specific training¹⁵, while three States express in general terms that a child's counsel must have training and experience that is appropriate to the role.¹⁶ Twelve States have certain requirements that must be met before an attorney may be appointed as a child's counsel, either in terms of the content of training, the number of hours of training, or both.¹⁷

For attorneys serving as GALs, training requirements vary considerably from State to State. In three States, additional training is not specified.¹⁸ In 14 States, laws require attorneys to receive training specific to their roles as GALs.¹⁹ For example, Florida requires training to be provided by the Statewide Guardian ad Litem Office. In Georgia, the requirement for training can be satisfied within the State's existing continuing legal education obligations. Laws in seven States and the District of Columbia provide more specific requirements about the

⁹ Idaho, Illinois, Indiana, and South Carolina have this requirement. In Minnesota, a child who is age 10 or older may request the appointment of counsel who is not also the child's GAL.

¹⁰ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

¹¹ Arizona, California, Georgia, Illinois, Indiana (the court may appoint a CASA to act as GAL or appoint both a CASA and GAL), Iowa, Maine, Missouri, Montana, Nevada, New Hampshire, Ohio, Oregon, South Carolina, Texas, and Washington

¹² Alabama, Arkansas, Colorado, Indiana, Kansas, Mississippi, Nebraska, New Mexico, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, and Wisconsin

¹³ Connecticut, Delaware, Kentucky, Louisiana, Maryland, Oklahoma, and Wisconsin

¹⁴ In all states except Arizona, Hawaii, Iowa, and Oregon

¹⁵ Nevada, New York, Oklahoma, South Dakota, Vermont, and Wyoming

¹⁶ Delaware, Georgia, and Kentucky

¹⁷ California (both content and number of hours), Connecticut (content), Kansas (hours), Louisiana (both), Maryland (content), Massachusetts (both), Missouri (both), New Hampshire (both), New Mexico (content), Ohio (both), West Virginia (number of hours), and Wisconsin (content)

¹⁸ New Jersey, New York, and Pennsylvania

¹⁹ Alabama, Colorado, Florida, Georgia, Michigan, Mississippi, Missouri, North Dakota, South Carolina, Texas, Utah, Virginia, Wisconsin, and Wyoming

content of training, including knowledge about the needs and protection of children; applicable statutory, regulatory, and case law; and the roles, responsibilities, and duties when representing the best interests of a child.²⁰

For nonattorneys acting as GALs and CASAs, the laws in many States provide more detailed training requirements. Typically, an initial training program must be completed before a person may be assigned to a child's case, followed by ongoing in-service training. The training programs are designed to ensure that the child's advocate possesses the knowledge and skills to competently represent the child's best interests. Topics covered in these programs may include the following:

- Child abuse and neglect
- Early childhood, child, and adolescent development
- Roles and responsibilities of the child's advocate
- Cultural awareness
- The juvenile court process
- Federal, State, and local laws, regulations, and rules
- Interview techniques and information gathering
- Documentation and report writing

Nine States specify that the training provided to CASAs must comply with standards set by the National Court Appointed Special Advocates Association.²¹

²⁰ Arkansas, Kansas, Nebraska, New Mexico, Utah, Virginia, and Wyoming

²¹ Those states are Arkansas, California, Kentucky, Louisiana, Mississippi, Nevada, Pennsylvania, Tennessee, and Utah

²² Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington

²³ Arkansas, Colorado, Connecticut, Illinois, Kentucky, Minnesota, Missouri, Nebraska, Pennsylvania, Rhode Island, Virginia, and Washington

²⁴ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming

In addition to training requirements, volunteers are screened and interviewed prior to acceptance in a GAL or CASA program. Twenty States and the Northern Mariana Islands require criminal background checks.²² Checks of the State's child abuse and neglect registry are required in 12 States.²³ California, Florida, and Idaho require checks of the State's sex offender registry.

SPECIFIC DUTIES

The primary responsibility of a GAL is to represent the best interests of a child in child abuse and neglect proceedings. The laws in 42 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands list specific duties that may be required as part of that responsibility.²⁴ These duties include, but are not limited to, the following:

- Meeting face to face with the child on a regular basis, including before all hearings
- Conducting an independent investigation of the circumstances of the case
- Attending all hearings and staffings related to the case
- Monitoring cases to ensure that court orders for services have been fulfilled
- Submitting written reports to the court

The GAL also is expected to make recommendations to the court about specific actions that would serve the best interests of the child. Sometimes, the GAL's determination of best interests may conflict with the child's

expressed wishes. In 29 States, the District of Columbia, Guam, and the Virgin Islands, the GAL is obligated to communicate the child's wishes to the court along with his or her own recommendations.²⁵ In 16 States, the District of Columbia, and Guam, the court may appoint a separate counsel to represent the child's wishes.²⁶

The statutes in 15 States list specific duties for a CASA who is appointed in addition to an attorney or GAL.²⁷ Typically, these duties may include the following:

- Investigating the case to provide independent, factual information to the court
- Monitoring the case to ensure compliance with court orders
- Determining whether appropriate services are being offered to the child and family
- Preparing regular written reports for the court and parties to the case

COMPENSATING THE REPRESENTATIVE

Most States, the District of Columbia, American Samoa, and Guam provide in statute that reasonable compensation should be paid to attorneys and GALs who are appointed to

represent a child.²⁸ In Arkansas, the child's attorney is contracted through a State agency, while in Colorado, Kentucky, and Oregon, attorney expenses are paid by either a State agency or a specially designated fund. In California and Connecticut, the child's attorney and GAL are assigned by the public defender's office, which also has the responsibility to pay the fees of the attorney and GAL.

In 33 States, the District of Columbia, American Samoa, and Guam, fees and expenses for attorney and/or GAL services are paid by the court handling the case.²⁹ In seven States and American Samoa, these costs are funded by the State;³⁰ in 13 States, expenses are paid by the county.³¹ To the extent that they are able to pay, the court in 23 States and Guam may require the parent or guardian of the child or other appropriate party to reimburse the court for any attorney or GAL fees that have been paid.³² In Tennessee and American Samoa, the person found responsible for the abuse or neglect is required to pay these expenses.

Since they serve as volunteers, CASAs are not compensated. However, in Maine and Missouri, they may be reimbursed for any expenses they incur.

²⁵ Arkansas, California, Delaware, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Michigan, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming

²⁶ Alaska, Connecticut, Georgia, Hawaii, Illinois, Kansas, Maine, Michigan, Missouri, New Hampshire, Ohio, South Dakota, Tennessee, Texas, Washington (if a child who is age 12 or older requests separate counsel), and Wisconsin

²⁷ Arkansas, Colorado, Connecticut, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Mexico, Pennsylvania, Tennessee, Utah, Virginia, and Wisconsin

²⁸ Alabama, Georgia, New Hampshire, New Jersey, North Dakota, Pennsylvania, Rhode Island, South Carolina, Vermont, Puerto Rico, the Northern Mariana Islands, and the Virgin Islands do not address this issue in their statutes.

²⁹ Alaska, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

³⁰ Alaska, Minnesota, Montana, Nevada, New Mexico, Virginia, and Washington

³¹ Arizona, Idaho, Illinois, Indiana, Iowa, Kansas, Mississippi, Nebraska, Ohio, South Dakota, Texas, Wisconsin, and Wyoming

³² Arizona, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri (except for any person who is found not to have committed the abuse), Nebraska, New Mexico, North Carolina (only if the child is adjudicated as being abused or neglected), North Dakota, Oklahoma, Texas, Utah, Virginia, and Wisconsin

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

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