

New Child Abuse Prevention and Treatment Act (CAPTA) Requirements Concerning GAL/Attorney/CASA Training

Public Law 108-36, Section 114(b)(1)(B)(vii)

The New Pre-Appointment Training Requirement

Since its enactment in 1974, CAPTA has required appointment of a “guardian ad litem” in “every case involving an abused or neglected child which results in a judicial proceeding.” States must meet this requirement, among others, in order to be eligible for federal support under the CAPTA state grant program. The guardian ad litem (GAL) can be “an attorney or a court appointed special advocate (or both)” for the child and must obtain a first-hand understanding of the child’s situation and needs and make recommendations to the court concerning the child’s best interests.

The CAPTA requirement as just amended [42 U.S.C. §5106a(b)(2)(A)(xiii)] now specifies that, in order for states to be eligible for a CAPTA state grant, there must be:

[An assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, relating to child abuse and neglect that includes...provisions and procedures requiring that] in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem *who has received training appropriate to the role*, who may be an attorney or a court appointed special advocate *who has received training appropriate to the role* (or both), shall be appointed to represent the child in such proceedings [new text italicized].

This new language means there should be no appointment of a GAL for a child *who has not, before their appointment, received “appropriate” training that is specifically related to their role as the child’s court-appointed representative*. Although the new requirement is specific to the child’s GAL, it includes anyone who fulfills the function of a GAL in states that do not use that term. States should also strongly consider training all individuals who appear in court to represent the child on their respective roles. Many courts have, too often, appointed individuals as GAL or attorney for the child without those persons having undergone prior training that adequately addresses the specific types of responsibilities they will undertake. In such situations, the legal system’s protection of children may suffer.

Because, in certain states and localities, persons appointed by the court as GAL or lawyer for the child may receive a very low rate of compensation, or not be compensated at all, we acknowledge that judges often recruit (or select from general lists of attorneys) those who have not been specifically trained in this demanding form of representation. Through this amendment, the law is now clear that such court practices should not continue. CAPTA was amended to ensure higher quality representation and to bar appointment of untrained or poorly trained court-appointed representatives for children.

The law is silent on the precise content of what training is “appropriate” to the GAL role. We therefore provide the following guidance to the states. First, the volunteer curricula developed by the National CASA Association provides a model for training of CASA volunteers before they begin to receive appointments by the court on behalf of individual children. States should consider offering training for lay volunteer CASA or GAL equivalent to that specified in the National CASA Association curricula. Second, two national authorities on the quality of attorney training in child

abuse/neglect proceedings – the American Bar Association and the National Association of Counsel for Children – each have approved standards of practice for lawyers representing children in abuse and neglect cases that include a provision specifying the content of “appropriate” training. An outline of this follows, and state and local training for attorneys who serve as legal representatives for children should consider providing training that at least encompasses this:

I-2. Content of Lawyer Training. The appropriate state administrative office of the trial, family, or juvenile courts should provide educational programs, live or on tape, on the role of a child's attorney. At a minimum, the requisite training should include:

- (1) Information about relevant federal and state laws and agency regulations;
- (2) Information about relevant court decisions and court rules;
- (3) Overview of the court process and key personnel in child-related litigation;
- (4) Description of applicable guidelines and standards for representation;
- (5) Focus on child development, needs, and abilities;
- (6) Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home;
- (7) Information concerning family dynamics and dysfunction including substance abuse, and the use of kinship care;
- (8) Information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; the structure of agencies providing such services as well as provisions and constraints related to agency payment for services; and
- (9) Provision of written material (e.g., representation manuals, checklists, sample forms), including listings of useful material available from other sources.

I-3. Continuing Training for Lawyers. The court system should also assure that there are periodic opportunities for lawyers who have taken the “basic” training to receive continuing and “new developments” training.

In conclusion, state child protective services agencies, as they begin to work on applying this change to CAPTA, should collaborate with and seek advice from their state Court Improvement Program, state and local bar associations, and the Children's Bureau's *National Child Welfare Legal Resource Center on Legal and Judicial Issues* (based within the ABA Center on Children and the Law).

To implement this new requirement, many states will find it helpful to first identify courts within their jurisdiction that are now requiring all individuals representing children, whether as GAL or children's legal counsel, to first receive special training. That training content may be usefully adapted and then replicated in other parts of the state where courts have failed to mandate pre-appointment training. To hasten full compliance, it can also help to identify those courts in the state where the largest number of non-trained GAL and attorneys have been appointed and to focus new training efforts on those courts as early as possible.