

STATEMENT IN SUPPORT OF
NATIONAL COURT APPOINTED SPECIAL ADVOCATES ASSOCIATION
EFFORT TO RETAIN CASA AS GUARDIAN AD LITEM LANGUAGE
IN THE CHILD ABUSE PREVENTION AND TREATMENT ACT

The National Council of Juvenile and Family Court Judges (NCJFCJ) supports the efforts of the National Court Appointed Special Advocate Association (National CASA) to retain language in the Child Abuse Prevention and Treatment Act (CAPTA) which allows for a court appointed special advocate (CASA) to be appointed to serve in the guardian ad litem (GAL) role required by the CAPTA.

The National CASA's position (*see attached*) is consistent with resolutions adopted by the NCJFCJ Membership in 1982, 1989, and 2005 endorsing the concept of court appointed special advocates and the appointment of trained volunteer GALs/CASAs in child abuse and neglect proceedings; and consistent with a resolution adopted in 2010 supporting the reauthorization of the CAPTA.

The NCJFCJ supports the current provisions of CAPTA "...requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings..."

The NCJFCJ shares the National CASA's concern that if CAPTA language is changed to exclusively require attorney representation, it will likely amount to an unfunded mandate and children could be effectively left unserved and without a best interest advocate, and reaffirms its endorsement of the concept and use of court appointed special advocates in child abuse and neglect proceedings.

***Retain Court Appointed Special Advocate (CASA) as Guardian ad Litem
(GAL) Language in the Child Abuse Prevention and Treatment Act
(CAPTA)***

Children who have been abused or neglected are among the most vulnerable populations in the United States. To improve outcomes for these children and their families, ***the National CASA Association supports court systems that include CASA/GAL volunteers and attorneys operating in accordance with each state's laws.***

Strong, cohesive partnerships with all professionals and service providers in the courtroom are essential to ensuring each child's safety, timely permanency, and well-being. America's most vulnerable children deserve comprehensive representation and all the resources possible to help them heal and thrive.

Since 1996, the Child Abuse Prevention and Treatment Act (CAPTA) has required states applying for funding under CAPTA to submit an assurance in the form of a certification by the governor 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—

...

(xiii) provisions and procedures requiring that in every case involving a victim of child abuse or neglect which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, including training in early childhood, child, and adolescent development, and who ***may be an attorney or a court appointed special advocate*** who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child.

The United States Department of Health and Human Services enacted regulations to support the language around the representation provision. The intent of the regulations, which supports National CASA's position on supporting systems operating ***in accordance with the state's laws***, is to let individual states decide how to implement the GAL provision of CAPTA. The regulations include:

“Guardian ad litem. In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child. This requirement may be satisfied: (1) By a statute mandating the appointments; (2) by a statute permitting the appointments, accompanied by a statement from the Governor that the appointments are made in every case; (3) in the absence of a specific statute, by a formal opinion of the Attorney General that the appointments are permitted,

accompanied by a Governor's statement that the appointments are made in every case; or (4) by the State's Uniform Court Rule mandating appointments in every case. However, the guardian ad litem shall not be the attorney responsible for presenting the evidence alleging child abuse or neglect." (former 45 C.F.R. 1340.14(g).)

Issue of Critical Importance:

- Thousands of children are being served by volunteer GALs in states that developed a structure to provide volunteer GAL services that they have determined best meets the needs of abused and neglected children in their states and their compliance with CAPTA mandates
- 30 states allow the CASA/GAL volunteer to serve in the role of GAL to meet compliance with CAPTA
- In many of our largest child serving states the volunteers have GAL status
- Programs in the majority of these states are heavily state funded to provide the volunteer GAL service
- If CAPTA does not allow the GAL to be a CASA/GAL volunteer, programs in those states risk losing their standing to serve children as GAL and/or state CASA/GAL funding is at risk if the state must pay for attorney representation
- Usually, CASA/GAL volunteers serve only one child (or sibling group) at a time. The national standards, promulgated by the American Bar Association and the National Association of Counsel for Children, recommend caseload maximums of 100 clients per full-time attorney. In states that require attorneys for children, the attorney-child client caseload is usually much higher. If CAPTA language is changed to exclusively require attorney representation it will likely amount to an unfunded mandate and children could be effectively left unserved and without a best interest advocate

It is imperative that we retain the provision allowing the CAPTA GAL to be either an attorney or a court appointed special advocate.

Please support National CASA in the retention of this language in the Child Abuse Prevention and Treatment Act.