

## 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.

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State of California

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Chambers of  
Leonard P. Edwards, Judge

December 6, 1989

Richard O'Neil, Director  
Department of Family  
and Children's Services  
55 West Younger  
San Jose, California 95110

Dear Dick:

I am writing to explain why the Juvenile Court Judicial Officers have made several "no reasonable efforts" findings in the past few months and what I believe the findings mean to the Department and the County. I believe these issues are novel and deserving of some detailed explanation.

As you know, pursuant to both state and federal law, the Court is required to make reasonable efforts findings at almost every stage of a dependency action. Reasonable efforts refers to those actions which the Department would reasonably be expected to take to enable children to remain safely at home before they are placed in foster care. It also refers to those actions the Department would reasonably make to reunite foster children with their biological parents.

Two issues have recently resulted in findings of no reasonable efforts. The first is the failure of the Department to provide a placement for teenage mothers and their babies. The second is the failure of the Department to provide intensive in-home services to enable drug abusing mothers and their drug exposed babies to be placed together in the community.

In each of these types of cases, the Social Workers who appear in my court are working hard to prevent the removal of children and to provide services to facilitate reunification. They are, however, unable to provide the services on the scale to which I refer. Instead, they report to me in court that they have looked everywhere, that these services do not exist and that, as a result, the baby must be removed from the mother's care.

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These are cases in which everyone in the courtroom agreed that the baby and mother should be together and, but for the lack of resources, they would be placed with one another. Moreover, everyone agreed that the provision of these services was reasonable under the circumstances. Indeed, these services have been widely discussed in Santa Clara County as being a necessary part of the effective support of children and families in the County. They are available in many counties both in and out of California.

The finding of "no reasonable efforts" in these cases is important for several reasons. First, it is an indication that certain specified services were all that were necessary to retain a child with a parent. Second, it means that, given the circumstances of the County, the services are not extraordinary or unreasonable. Third, it may mean the Department will be unable to complete permanency planning for the child. Without a finding of "reasonable efforts," the termination of parental rights may not be legally possible. See Welfare and Institutions Code Section 366.22. Finally, the finding means that the Department cannot be reimbursed for the costs of a child's out-of-home care. See 42 U.S.C. Sections 671(a)(15) and 672 (a)(1).

Pursuant to my duties as Juvenile Court Judge, I am advising you of the consequences of a no reasonable efforts finding and hoping that by working with the Board of Supervisors you will be able to take steps to ensure that such services are available to the children and families in Santa Clara County. Of course, I will do whatever I can to assist you in your efforts.

Thank you for your consideration and attention to this important problem. I look forward to hearing from you about its resolution.

Sincerely yours,

LEONARD EDWARDS  
Presiding Judge, Juvenile Court

LE: hd

cc: Board of Supervisors  
County Executive  
Presiding Judge, Superior Court  
Superior Court Juvenile Court Committee  
County Counsel  
District Attorney  
Public Defender  
Chief Probation Officer  
Federal Compliance Officer