



Colorado Office of the
Child's Representative

CAPTA and Client Directed Counsel

Colorado's proposed transition to client-directed counsel is consistent with CAPTA:

- ✓ Current relevant Child Abuse Prevention and Treatment Act (CAPTA) provisions require that in every D&N proceeding, a guardian ad litem who has received training appropriate to the role and who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings to: obtain first-hand, a clear understanding of the situation and needs of the child; make recommendations to the court concerning the best interests of the child. *See* 42 U.S.C.A. § 5106a(b)(2)(B)(xiii). While CAPTA's legislative intent at the time of its enactment in 1974 was grounded in models of legal representation, 1996 revisions attempted to address high attorney caseloads by allowing the GAL role to include CASA volunteers. *See American Bar Association Center on Children and the Law Reauthorization of the Child Abuse Prevention and Treatment Act of 2022 Talking Points* available at https://www.americanbar.org/groups/public_interest/child_law/ (see CAPTA reauthorization documents on this page).
- ✓ The U.S. Department of Health and Human Services Adoption 2002 Guidelines outline recommendations for children's representatives. The commentary to Guideline 15A offers two options for states providing client-directed representation to comply with CAPTA. First, the commentary indicates that "states are free to appoint a guardian ad litem, perhaps a volunteer CASA, in addition to an [client-directed] attorney for the child." **Second, the commentary indicates that states may appoint the attorney alone in fulfillment of the CAPTA requirement, noting that such appointment "is consistent with the CAPTA requirement because advocating the child's wishes and preference could be seen as in the child's best interests, serving the child's best interests, and helping the court to better arrive at overall decisions that are best for the child."** While the guidance notes a preference for allowing states to also appoint a GAL/CASA, it notes that these options are not mutually inconsistent and uses the example of prioritizing CASAs for younger children when there are not sufficient volunteers to appoint a CASA to every case. *See Donald N. Duquette & Mark Hardin, Adoption 2002: Guidelines for Public Policy and State Legislation Governing Permanence for Children*. WASHINGTON, DC: DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, CHILDREN'S BUREAU (1999) available at: <https://babel.hathitrust.org/cgi/pt?id=umn.31951d01955739i&view=1up&seq=69> at 163.

- ✓ Since the Adoption 2002 Guidance, the U.S. Department of Health and Human Services has issued more recent recognition of the value of client-directed representation for children and youth. Specifically, ACYF-CB-IM-17-02, *High Quality Legal Representation for All Parties in Child Welfare Proceedings* available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>, states that “[while] CAPTA allows for the appointment of an attorney and/or a court appointed special advocate (CASA), there is widespread agreement in the field that children require legal representation in child welfare proceedings.” The IM notes that “this view is rooted in the reality that judicial proceedings are complex and that all parties, especially children, need an attorney to protect and advance their interests in court, provide legal counsel and help children understand the process and feel empowered. The confidential attorney-client privilege allows children to feel safe sharing information with attorneys that otherwise may go unvoiced.” The IM also recognizes the National QIC-ChildRep project’s recommendation that states adopt the 2011 ABA Model Act (providing for client-directed representation).
- ✓ A 2014 Children’s Bureau document documenting how state statutes comply with CAPTA includes reference to client-directed states. See *Child Welfare Information Gateway, Representation of Children in Child Abuse and Neglect Proceedings*, available at <https://www.childwelfare.gov/pubPDFs/represent.pdf>. A 2010 Family Court Review article indicates that all states providing lawyers for youth have been found in compliance with CAPTA. See Andrea Khoury, *Why A Lawyer? – The Importance of Client-Directed Legal Representation for Youth*, 48 FAMILY COURT REVIEW 277-83 (2010). Recent correspondence with the American Bar Association has confirmed that all other states that use client-directed models of representation continue to receive CAPTA funding.
- ✓ While S. 1927, the current CAPTA reauthorization bill, would further clarify that counsel services satisfies CAPTA’s child representation requirement, **Colorado is not at risk of losing CAPTA funding under the current version.**

A GAL or best interests advocate need not be appointed in every case:

- ✓ HB 22-1038 starts from the premise that children and youth do care about their safety and well-being and have an important--and often *the most important*—perspective about what is safe and best for them. Counsel for youth will play a critical role in helping youth understand the issues and information impacting their safety and well-being, and developing factually and legally grounded arguments to make to advance these important interests. Courts’ ultimate decision making on behalf of the best interests of the child will benefit from the unfiltered perspective of what youth believe is best for them and why.
- ✓ Routine appointment of a GAL for youth ages 12 and older would be duplicative to the comprehensive investigation and advocacy counsel for youth will perform on behalf of the youth they represent. Appointment of a GAL for a youth age 12 or older who does not have diminished capacity would significantly undermine the youth’s due process

rights by appointing a second attorney to potentially advocate against the youth's objectives in the name of the youth's best interests.

- ✓ As detailed in response to the CAPTA question above, appointment of a GAL in addition to counsel for youth is not necessary to satisfy CAPTA's independent representation requirement.
- ✓ Both the NACC and the ABA have confirmed with the OCR that the legislation in its current form is consistent with the NACC's Model Statute and the ABA's Model Act, and both organizations have written letters in support of this legislation. Consistent with the ABA Model Act and the NACCs's Model Statute, this legislation does not prohibit courts from appointing a best interests advocate (CASA volunteer for any youth, GAL for youth age 12 and older with diminished capacity).

Further questions? Please contact our legislative Liaison, Ashley Chase, at ashleychase@coloradochildrep.org or (720) 351-4346.