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## COURTS Juvenile Proceedings, Parental Rights: Provide for Appointment of Counsel or Court Appointed Special Advocate as Guardian Ad Litem for a Minor in Deprivation Cases

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## COURTS

### *Juvenile Proceedings, Parental Rights: Provide for Appointment of Counsel or Court Appointed Special Advocate as Guardian Ad Litem for a Minor in Deprivation Cases*

CODE SECTION:	O.C.G.A. § 15-11-55 (amended)
BILL NUMBER:	HB 1288
ACT NUMBER:	802
GEORGIA LAWS:	1998 Ga. Laws 652
SUMMARY:	The Act authorizes the appointment of counsel or a “court appointed special advocate” to act as a guardian ad litem for a minor in deprivation cases. The Act defines a court appointed special advocate as a carefully selected and trained volunteer whom a juvenile court appoints to serve as the guardian ad litem for a child in a deprivation case. The Act also neutralizes, in terms of gender, the former language of Code section 15-11-55.
EFFECTIVE DATE:	July 1, 1998

#### *History*

In 1971, the Georgia General Assembly passed the “Juvenile Court Code of Georgia,”<sup>1</sup> which created an independent juvenile justice system in the State, with the expressed intent that the Code be “liberally construed” to protect and assist “children whose well-being is threatened.”<sup>2</sup> Additionally, that same Act required the juvenile court to provide a child “removed from the control of his [or her] parents [with] care as nearly as possible equivalent to that which his [or her] parents should have [provided].”<sup>3</sup> Elsewhere in that Act, the General Assembly recognized that in many instances when juveniles come before the court, a guardian ad litem is necessary to safeguard the best interests of the child when no parent or guardian can adequately represent those interests.<sup>4</sup> Thus, the court is authorized to appoint a

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1. 1971 Ga. Laws 709, § 1, at 710.
  2. *Id.* (codified at O.C.G.A. § 15-11-1(1) (1994)).
  3. *Id.* (codified at O.C.G.A. § 15-11-1(3) (1994)).
  4. *See id.* at 749 (formerly found at O.C.G.A. § 15-11-55 (1994)).

guardian ad litem at any time during a juvenile proceeding in the absence of the child's parent or guardian or when the parent's or guardian's interests conflict with those of the child.<sup>5</sup> Moreover, the guardian ad litem cannot be a party to the proceeding nor the employee or representative of any party thereto.<sup>6</sup>

In 1974, the United States Congress recognized the importance of guardians ad litem in representing not only abandoned children or the children of divorced couples, but also children who had been abused or neglected.<sup>7</sup> That year, Congress enacted the "Child Abuse Prevention and Treatment Act,"<sup>8</sup> which, in addition to providing states with funding for programs focusing on the "prevention, identification, and treatment of child abuse and neglect," requires mandatory appointment of a guardian ad litem to represent the children of an abusive or neglecting family.<sup>9</sup>

Two years later, Judge David Soukup of King County Superior Court in Seattle, Washington, became concerned with deciding the fate of abused and neglected children "without sufficient information."<sup>10</sup> As a result, he founded a Court Appointed Special Advocate (CASA) program on January 1, 1977, to equip volunteers with the skills necessary to represent these children adequately.<sup>11</sup> In 1984, the National CASA Association was formed to unify the efforts of the various local CASA chapters and to further the program's expansion across the United States.<sup>12</sup> In 1990, Congress recognized the success of the program by allocating federal funds to the National CASA Association under the "Victims of Child Abuse Act."<sup>13</sup> Presently,

5. *See id.*

6. *See id.*

7. *See* Brian E. Jones, *Guardians Ad Litem: Minnesota's Response to the Growing Dissatisfaction with a "Friend,"* 17 *HAMLIN J. PUB. L. & POL'Y* 427, 433 (Spring 1996) (quoting 42 U.S.C. § 5106a(b)(6) (1974)).

8. Pub. L. No. 93-247, 88 Stat. 4 (1974) (codified at 42 U.S.C. §§ 5101 to -07 (1988)).

9. Jones, *supra* note 7; *see* 42 U.S.C. § 5101 (1974).

10. National CASA Association Website (visited Jan. 9, 1999) <<http://www.nationalcasa.org/casa/about.htm>> [hereinafter National CASA Website]; *see* Cowley County (Kansas) CASA Website (visited Jan. 9, 1999) <<http://www.hit.net/~casacc/history.htm>> [hereinafter Cowley County Website].

11. *See* National CASA Website, *supra* note 10; Cowley County Website, *supra* note 10.

12. *See* National CASA Website, *supra* note 10.

13. Pub. L. No. 101-647, 104 Stat. 4792 (1990) (codified as amended at 42 U.S.C. §§ 13001-13041 (1994)); *see* National CASA Website, *supra* note 10; Telephone Interview with Rep. Greg Hecht, House District No. 97 (June 18, 1998) [hereinafter Hecht Interview].

nearly 770 CASA programs exist nationwide with over 42,400 volunteers.<sup>14</sup>

The Georgia branch of CASA was founded in 1988 with a grant from the National CASA Association.<sup>15</sup> With the aid of state funds provided by the General Assembly since 1990, the Georgia CASA chapter assists communities in forming and operating their own independent CASA affiliates.<sup>16</sup> The Georgia branch establishes localized CASA programs at the invitation of juvenile court judges, with each program created according to judicial circuits rather than according to counties.<sup>17</sup> Of Georgia's forty-seven judicial circuits, twenty-seven now maintain CASA programs.<sup>18</sup>

Georgia's CASA volunteers are carefully screened and trained and are eventually sworn in as officers of the court by a juvenile court judge.<sup>19</sup> Each volunteer is required to represent a child for the duration of a deprivation case, which may last anywhere from a few months to several years.<sup>20</sup> In 1996 alone, the juvenile justice system in Georgia reported nearly 18,000 deprivation cases.<sup>21</sup> The goal of CASA representation is to "break the cycle of abuse [or neglect] early" and establish a more secure and permanent living situation for those children victimized by deprivation.<sup>22</sup> Apart from benefitting Georgia's deprived children, the CASA program's efforts towards "securing permanency" also save the state millions of dollars in foster care allocations.<sup>23</sup>

In 1998, the General Assembly recognized the need to codify the use of CASA volunteers in state deprivation cases.<sup>24</sup> As a result, legislators passed HB 1288 to expressly grant juvenile courts the authority to appoint a special advocate to act as a guardian ad litem in cases evidencing the abuse or neglect of a child.<sup>25</sup>

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14. See National CASA Website, *supra* note 10.

15. See Telephone Interview with Donna J. Maley, Georgia Court Appointed Special Advocates, Inc. (June 10, 1998) [hereinafter Maley Interview].

16. See *id.*

17. See *id.*

18. See *id.* Donna J. Maley stated that 80% of the deprivation cases occurring in Georgia are decided in these 27 judicial circuits. See *id.*

19. See *id.*

20. See *id.*

21. See *id.*

22. *Id.*

23. *Id.*

24. See Hecht Interview, *supra* note 13; O.C.G.A. § 15-11-55 (Supp. 1998).

25. See Hecht Interview, *supra* note 13; O.C.G.A. § 15-11-55 (Supp. 1998).

*HB 1288*

Representative Greg Hecht of the 97th District introduced HB 1288 on January 15, 1998.<sup>26</sup> The bill was referred to the House Judiciary Committee, where legislators offered one substantive change to the bill's language.<sup>27</sup> In its original version, HB 1288 provided that CASA volunteers must satisfy the screening and training requirements "adopted by the Georgia Court Appointed Special Advocates, Inc., or its successors."<sup>28</sup> The Committee, however, removed this language from the bill because the General Assembly is constitutionally prohibited from delegating its authority to a private entity, such as Georgia CASA.<sup>29</sup> As a result, the substitute passed by the Committee contains a more general screening and training requirement to avoid any "ultra vires" issues.<sup>30</sup> After leaving the Committee, both the House and the Senate unanimously passed the substitute without further changes.<sup>31</sup> Governor Zell Miller signed HB 1288 on April 6, 1998.<sup>32</sup>

*The Act*

Georgia's juvenile courts have allowed CASA volunteers to serve as guardians ad litem in state deprivation cases for many years.<sup>33</sup> However, prior to the Act, these courts lacked the formal statutory authority to make such appointments.<sup>34</sup> As a response to this situation, the General Assembly amended Chapter 11 of Title 15 of the Official Code of Georgia, "relating to juvenile proceedings and parental rights,"<sup>35</sup> by codifying the authority necessary to continuing the

26. See HB 1288, as introduced, 1998 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

27. Compare HB 1288, as introduced, 1998 Ga. Gen. Assem., with HB 1288 (HCS), 1998 Ga. Gen. Assem.; see also Telephone Interview with Rep. Jim Martin, House District No. 47 (June 17, 1998) [hereinafter Martin Interview].

28. HB 1288, as introduced, 1998 Ga. Gen. Assem.

29. See Martin Interview, *supra* note 27. Representative Hecht drafted the substitute version that removed Georgia CASA as the "training entity." Letter from Rep. Greg Hecht, House District No. 97 (Jan. 21, 1999). The House Judiciary Committee approved the draft and passed it as the Committee substitute. See *id.*

30. Martin Interview, *supra* note 27.

31. See Georgia House of Representatives Voting Record, HB 1288 (Feb. 11, 1998); Georgia Senate Voting Record, HB 1288 (Feb. 20, 1998). Compare O.C.G.A. § 15-11-55 (Supp. 1998), with HB 1288 (HCS), 1998 Ga. Gen. Assem.

32. See 1998 Ga. Laws 652, at 653.

33. See Hecht Interview, *supra* note 13.

34. See *id.*

35. 1998 Ga. Laws 652.

contributions CASA volunteers have made in state deprivation cases.<sup>36</sup> Code section 15-11-55(b) now provides that “[i]n deprivation cases, an attorney or court appointed special advocate, or both, may be appointed as [a] child’s guardian ad litem.”<sup>37</sup>

The Act further amends Code section 15-11-55 by replacing gender specific language with gender neutral language: for example, “the child” is substituted for “he,” and “his” employee becomes “the” employee.<sup>38</sup> Finally, in Code section 15-11-55(a), the Act defines a court appointed special advocate as “a volunteer who has been screened and trained regarding deprivation, child development, and juvenile court procedures and has been appointed as a guardian ad litem by the court in a deprivation case.”<sup>39</sup> In essence, the Act codifies the existence of the CASA program, which has become an influential voice in the struggle to protect abused and neglected children.<sup>40</sup>

*William R. Joiner*

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36. See Maley Interview, *supra* note 15; *Lawmakers '98* (GPTV Broadcast, Feb. 20, 1998) [hereinafter *Lawmakers*] (remarks by Sen. Nathan Dean, Senate District No. 31) (available in Georgia State University College of Law Library); O.C.G.A. § 15-11-55(b) (Supp. 1998).

37. O.C.G.A. § 15-11-55(b) (Supp. 1998).

38. Compare 1971 Ga. Laws 709, §1, at 749 (formerly found at O.C.G.A. § 15-11-55 (1994)), with O.C.G.A. § 15-11-55(b) (Supp. 1998).

39. O.C.G.A. § 15-11-55(a) (Supp. 1998).

40. See *Lawmakers*, *supra* note 36 (remarks by Sen. Nathan Dean); Maley Interview, *supra* note 15.