

**REPORT OF THE
VIRGINIA COMMISSION ON YOUTH ON**

**The Study of the Role of Guardians
ad Litem and the Modification of
Courtroom Environment in Child
Sexual Abuse Cases**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 64

**COMMONWEALTH OF VIRGINIA
RICHMOND
1994**



COMMONWEALTH of VIRGINIA

Commission on Youth

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January 18, 1993

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TO: The Honorable George Felix Allen, Governor of Virginia
and
Members of the Virginia General Assembly

The 1993 General Assembly, through House Joint Resolution 490, requested the Virginia Commission on Youth to "study the role of Guardians ad Litem, the modification of the courtroom environment, and the use of closed circuit television testimony in child sexual assault cases."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input in this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Houck".

R. Edward Houck
Chairman

Senator Robert L. Calhoun
Delegate L. Karen Darner
Delegate R. Creigh Deeds

Delegate Arthur R. Giesen, Jr.
Delegate Thomas M. Jackson, Jr.
Senator Yvonne B. Miller
Delegate Linda M. Wallace

Ms. Thomasina T. Binga
Ms. Elizabeth N. Miner
Mr. Robert E. Shepherd, Jr.

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I. Authority for Study

§9-292 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." §9-294 provides that the Commission has the powers and duties "to undertake studies and gather information and data in order to accomplish its purposes...and to formulate and present its recommendations to the Governor and the General Assembly."

The 1993 General Assembly passed Delegate Jay W. DeBoer's (Petersburg) House Joint Resolution 490 directing the Commission on Youth, with the assistance of the Executive Secretary of the Supreme Court of Virginia, the Department of Criminal Justice Services, and the Family Law Section of the Virginia State Bar, to conduct a comprehensive study on the role of Guardians ad Litem (GALs), modification of the courtroom environment and the use of closed circuit television testimony in child sexual assault cases. The Commission on Youth, in fulfilling its legislative mandate, undertook the study.

II. Members Appointed to Serve

For the studies enacted in 1993, the Commission on Youth formed three subcommittees to provide oversight and direction for the topics assigned. These three subcommittees were Prevention, Juvenile Justice and Treatment. At the May 7, 1993 meeting of the Commission on Youth, Senator R. Edward Houck, Chairman, assigned the study on the role of Guardians ad Litem, modification of the courtroom environment, and use of closed circuit television testimony to the Commission's Treatment Subcommittee. Serving on the Treatment Subcommittee are Senator Houck (Spotsylvania), Subcommittee Chair, Senator Robert L. Calhoun (Alexandria), Delegate L. Karen Darner (Arlington), Delegate Arthur R. Giesen, Jr. (Waynesboro), and Ms. Thomasina T. Binga (Richmond).

III. Executive Summary

House Joint Resolution 490 was enacted during the 1993 General Assembly Session in response to testimony received in 1992 by the Legal Issues Subcommittee of the Commission on the Reduction of Sexual Assault Victimization in Virginia. Testimony was received on the poor quality of legal representation for children who were victims of sexual abuse and the negative impact of the courtroom experience on these victims.

Testimony before the Commission brought forward two key points:

- ***Children who are victims of abuse and neglect are unique clients whose representation requires special expertise and attention.*** Unlike adults, children do not have the ability to "shop around" in selecting their attorneys. They are totally dependent on the justice system to select qualified attorneys trained to represent their best interests. Child victims lack the physical and mental ability to protect their own interests and well-being, both in and outside the courtroom environment.
- ***Children are ill-equipped to understand court proceedings.*** Comprehending legal and judicial proceedings can be extremely difficult for well educated adults. Children, whose mental and emotional abilities are not yet fully developed, have even greater difficulty understanding and advocating for themselves in these proceedings.

The original mandate for the study was written to address only children who are the victims of sexual abuse. However, given the similarity of issues, the study's focus was broadened to include all child victims of abuse and neglect. The goal has been to develop recommendations which reduce the trauma experienced by child victims in the legal proceedings and, ideally, increase their opportunities for healing.

Children who are alleged victims of abuse or neglect need representation by attorneys with specialized knowledge in the areas of juvenile court procedure, child psychology and development, and community treatment resources. Unfortunately, in Virginia children often receive legal representation by attorneys with little or no expertise in these areas. Because Juvenile and Family Court law are not topics of study in law school or bar review curricula, many attorneys have no formal training in these relevant subjects.

Throughout the nation and Virginia there are several examples of model efforts to improve the quality of legal representation of these children. Several other states have model Guardian ad Litem programs in which full or part time attorneys with specialized expertise and experience in this area of the law handle all cases of alleged abuse and neglect.

In Virginia there are many judicial districts in which frequent efforts are made to improve the courtroom experience for children who must testify as victims of abuse or neglect. For example, the presence of a support person is allowed in some instances, depending on the judge and circumstances of the particular case. Few Virginia jurisdictions have Commonwealth's Attorneys available to prosecute all cases in which the victim is a juvenile. Some Virginia court facilities have separate courtroom entrances for child victims. Some have developed children's waiting areas and interview rooms with toys and furniture appropriate for children. Court staff in some areas provide informal introductions to the courtroom and court procedure. However, none of these modifications is available consistently to child victims across the state.

Virginia has neither model Guardian ad Litem programs similar to those in other states nor a statute specifically permitting the presence in the courtroom of support people for all children who must testify. Techniques which are permissible by statute, such as closed circuit television testimony, are used infrequently. In many instances there is no designated monitoring procedure to insure that court-ordered treatment services are actually received or delivered.

As a result, child victims in Virginia are frequently further traumatized by the justice system designed to protect them. Children who already feel betrayed by the trusted adults who abused them often feel further betrayed by the justice and law enforcement systems ostensibly there to help them. Multiple interviews, lengthy courtroom proceedings, and adversarial cross examinations compound their feelings of victimization.

LEGISLATIVE RECOMMENDATIONS

Improvements in the quality of counsel and courtroom environment are needed statewide. Through the establishment of standards, comprehensive training packages for allied professionals, legislative revisions, and the expansion of judicial guidelines, the Commonwealth can better meet the needs of children who are victims of abuse or neglect.

On the basis of its findings, the Commission on Youth offers the following legislative recommendations in the areas of:

- Improved Legal Representation
- Modifications of Courtroom Environment
- Increased Utilization of Closed Circuit Testimony, and
- Professional Development.

Improved Legal Representation

Recommendation 1

Introduce legislation which establishes criteria for attorneys to qualify for appointment as Guardians ad Litem for children. These standards should include:

- a. license or permission to practice law in Virginia,
- b. current training in Guardian ad Litem representation,
- c. familiarity with the Juvenile and Domestic Relations and Family Court systems, and
- d. demonstrated proficiency in this area of the law.

Recommendation 2

Fund pilot model Guardian ad Litem programs in two localities in the state.

Recommendation 3

Institutionalize a mechanism through which a pool of attorneys meeting the standards established for Guardians ad Litem commit a specific number of hours annually to *pro bono* Guardian ad Litem work.

Recommendation 4

Develop and implement a statewide marketing plan to build a pool of *pro bono* attorneys to serve as Guardians ad Litem for abused and neglected children.

Recommendation 5

Request the Commission on Youth to continue this study for six months to initiate a statewide network for Guardians ad Litem throughout the state. The Commission on Youth's tasks would be: (a) to determine the most effective method for establishing this network, either through existing related associations or the creation of an entirely new association, and (b) to secure funding to support network activities.

Recommendation 6

Through Judicial Guidelines and training, encourage all Juvenile and Domestic Relations Court judges in the state to be uniform in their payment of \$40 hourly for out-of-court and \$60 for in-court time, with no ceiling for documented hours.

Modifications of Courtroom Environment

Recommendation 7

Request the Supreme Court of Virginia, in conjunction with the Department of Criminal Justice Services, to develop and provide training to judges on courtroom modifications available to lessen the psychological trauma of testimony by child victims of abuse and neglect.

Recommendation 8

Request the Supreme Court, with the support of the Commission on Youth, and the Departments of Social Services and Criminal Justice Services, to develop a list of Judicial Guidelines on courtroom modifications. These guidelines should include, but not be limited to, the following:

- a. Provision of separate entrances to the courtroom and separate waiting areas available to child witnesses whenever possible;
- b. Avoidance of unnecessary interviews for child witnesses through the use of videotapes, consolidation of the investigation by Child Protective Services and law enforcement personnel, or the assignment of the same prosecutor throughout the entire court proceeding;
- c. Provision of an informal introduction to the courtroom and court proceedings to the child witness prior to the actual hearing, when appropriate, as determined by the needs of the child;
- d. Allowance of frequent recesses due to the child's limited attention span and developmental stage; and

- e. Appointment of the same Guardian ad Litem whenever a child returns to court on a subsequent petition. In his/her role as Guardian ad Litem, the attorney acquires special knowledge which allows him/her to better represent the child's best interests.

Recommendation 9

Request the Department of Criminal Justice Services to develop a training package on courtroom modifications available for adaptation and implementation by Court Appointed Special Advocates (CASA), Court Service Units, Child Protective Services, Victim Witness programs, and the Association of Commonwealth's Attorneys.

Recommendation 10

Include the following changes for Juvenile and Domestic Relations Courts in the next revision of the *Virginia Courthouse Facility Guidelines* originally published in March 1987 by the Judicial Council of Virginia:

- a. Increase the availability of separate and private witness and/or conference rooms to protect the child from unnecessary exposure to public scrutiny and defense witnesses;
- b. Incorporate into the design or function of new and old courthouses a separate entrance for victim witnesses, including children; and
- c. Include in the design a specific seating place for a support person with enough proximity to reassure, but not to touch, the victim.

Recommendation 11

Introduce legislation which entitles any victim or witness under the age of 18 to have in attendance a person of his/her choosing who is not a witness in the proceeding to provide support at any judicial proceeding in which the juvenile must testify.

Recommendation 12

Introduce legislation to require that Commonwealth's Attorneys be involved in all misdemeanors against the person of a juvenile.

Recommendation 13

Request the Department of Criminal Justice Services to provide training and develop an informational brochure for Commonwealth's Attorneys and the defense bar about the availability and accessibility of technology and personnel for the utilization of closed circuit television testimony.

Increased Utilization of Closed Circuit Testimony

Recommendation 14

Request the Department of Criminal Justice Services to develop statewide protocol for the utilization of closed circuit television testimony in cases which involve children who are the victims of abuse or sexual assault.

Recommendation 15

Amend Virginia Code §18.2-67.9 for seven-day written notification for the use of closed circuit television testimony in the emergency removal hearings and requiring 48-hour advance notice.

Professional Development**Recommendation 16**

Request the Commission on Youth, in conjunction with the Supreme Court, to develop continuing legal education training for Guardians ad Litem which enhances their skills in providing quality representation for children who are the victims of sexual abuse and neglect and deliver it in 1994 to Guardians ad Litem throughout the state.

Recommendation 17

Support the Prevention Subcommittee of the Governor's Commission on Violent Crime's budget request of \$60,000 in 1995 and \$120,000 in 1996 to start new Court Appointed Special Advocates (CASA) programs throughout the Commonwealth.

Recommendation 18

Support the Department of Criminal Justice Services' request for \$80,000 in 1995 and \$100,000 in 1996 to fund Court Appointed Special Advocates (CASA) programs which have been in existence for a minimum of three years.

Recommendation 19

Request the Supreme Court to assess the feasibility of developing an automated tickler system to monitor the follow-through of court-ordered treatment for children who are the victims of abuse or neglect, either through the Clerks of Courts' offices or the Department of Youth and Family Services so that, if services are not received, the case is brought back to the attention of the presiding court within a specified time.

Recommendation 20

Through Judicial Guidelines and training, encourage all Juvenile and Domestic Relations Court Judges in the state to designate in their court orders a specific agency responsible for monitoring follow-through of court-ordered treatment for children who are victims of abuse and neglect.

IV. Methodology

The findings of the 1993 Commission on Youth study are based on several different research methodologies. A work group, composed of experts from each of the disciplines which deal with victims of abuse and neglect, convened on ten occasions during the year. Membership of the work group is listed in Appendix B. Thorough

analyses were made of program literature and law review articles, as well as relevant case law and federal and state guidelines and statutes.

Materials compiled by national associations with similar objectives, such as National Court Appointed Special Advocates (CASA), the American Bar Association, and the U.S. Department of Justice, were also reviewed. Furthermore, interviews by telephone and in person were conducted with Guardian ad Litem programs throughout the nation. Finally, relevant data compiled by the Supreme Court of Virginia and the Virginia Department of Social Services was studied and analyzed.

V. Study Goals and Objectives

On the basis of the requirements of HJR 490, the following study objectives were developed by the work group:

- Identification of the uniqueness of the child client who has been the victim of abuse and neglect;
- Identification of the special expertise required by attorneys who represent child victims;
- Identification and analysis of relevant state and federal law addressing the role, responsibilities, and duties of Guardians ad Litem who represent children who have been victims of abuse and neglect;
- Identification of state and national model Guardian ad Litem programs;
- Comparative analysis of compensation for Guardians ad Litem in Virginia and other states;
- Identification of formalized training programs and procedures for Guardians ad Litem in Virginia and other states;
- Identification of methods used in Virginia and other states to modify the courtroom environment and processes for children who are the victims of abuse and neglect;
- Assessment of the degree to which state law and policies encourage the provision of high-quality legal representation for children who are victims of abuse and neglect;
- Identification of statutes in other states which allow the presence in the courtroom of support persons for children who are victims of abuse and neglect;

- Identification of specific cases in Virginia since 1988 in which closed circuit television testimony has been utilized and the factors contributing to this lack of usage;
- Analysis of closed circuit testimony utilization in child abuse cases; and
- Identification of facility improvements in courtroom settings to accommodate a child's special needs.

VI. Background

House Joint Resolution 490 directed the Commission on Youth, with the assistance of the Executive Secretary of the Supreme Court of Virginia, the Virginia Department of Criminal Justice Services, and the Family Law Section of the Virginia State Bar, to conduct a comprehensive study on the role of Guardians ad Litem (GALs), the courtroom environment, and the use of closed circuit television testimony in child sexual assault cases.

In order to develop recommendations pursuant to the study mandate, a review of pertinent state and federal laws and procedures was essential. Improvements in the field of child abuse prosecution requires an understanding of the parameters of legal reform, clinical research findings and program designs. In the pages which follow, a brief description of the following is provided:

- Relevant Statutes in Federal and State Law
- Procedure
- Statistical Overview
- GAL Program Models and
- National Studies.

For more information, please refer to the Bibliography.

RELEVANT STATUTES

Federal Law

Although the primary responsibility for responding to cases of child abuse and neglect rests with state and local agencies, the federal Child Abuse Prevention and Treatment Act (Public Law 93-27) mandates legal representation for all children involved in child abuse and neglect proceedings.

Child abuse and neglect is defined by the federal act as:

the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of 18 by a person responsible for the child's welfare under circumstances which indicate the child's health or welfare is harmed or threatened.

Despite this requirement, a 1990 study and subsequent telephone update by National CASA indicates that not all child victims of abuse and neglect are receiving legal representation in at least half of the states in the nation. Virginia, fortunately, does provide representation in 100% of these cases; however, the quality of the representation in the Commonwealth is uneven.

The Children's Justice and Assistance Act was enacted in 1986 to address the needs of children who are victims of abuse and neglect from a legal perspective. The federal statutes provide incentive funds to states to encourage improvement in the handling of child abuse cases, especially those involving sexual abuse, in a manner which reduces additional trauma to the child and improves procedures for the investigation and prosecution of such cases. Currently \$9.3 million is available from the Crime Victims' Fund for grants under the Children's Justice Act (CJA). The requirements of the Act include a strong emphasis on multi-disciplinary involvement in investigation and prosecution, reducing the number of interviews of the child victim, and addressing the needs of the child victim.

State Law

Virginia Code §16.1-266A requires the appointment of an attorney as GAL for any child who is alleged to be abused or neglected, the subject of an entrustment agreement, the subject of a petition terminating residual parental rights, or involved in a proceeding where the parents, for good cause, seek to be relieved of the child's custody. Code §16.1-281E also mandates the appointment of a GAL in any proceeding reviewing foster care status.

§16.1-266D of the Code permits a GAL be appointed "in all other cases which in the discretion of the court require a GAL to represent the interests of the child." While this statute permits the appointment of a GAL in criminal proceedings, it does not delineate a specific role or set of responsibilities for a GAL in such proceedings.

In addition to the Code, *The Rules of Court* further describes the role of the GAL. *The Rules of the Court* is prescribed by the Supreme Court and published by the Virginia Code Commission to regulate the practice and pleading procedures in all courts throughout the state. Prior to reaching closure in Rule 8:6, the Judicial Council of Virginia wrestled at length over the issue of a GAL's representing the

wishes (versus the best interests) of the child. Rule 8:6, which indicates that a GAL is to represent best interest, but alert the court when there is a conflict, reads:

The guardian ad litem shall vigorously represent the child, fully protecting the child's interest and welfare. The guardian ad litem shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child's best interest and welfare.

PROCEDURE

In Virginia's Juvenile and Domestic Relations system, there are essentially four types of court proceedings involving a GAL for child victims of abuse and neglect:

1. Emergency Hearings - convened to determine the need for emergency treatment or placement of a child who has been the victim of alleged abuse and neglect.

2. Adjudicatory Hearings - convened to determine whether a child has been the victim of abuse or neglect and whether there exists a legal basis for the State to intervene for the protection of the child.

3. Dispositional Hearings - convened to determine the action to be taken on the case after adjudication.

4. Review Hearings - convened to review placement and services for children in foster care.

There is no statewide procedure for the appointment of GALs in the Commonwealth of Virginia. Lists of attorneys interested in being appointed are compiled by local bars in the different judicial districts. These lists are then made available to the Juvenile and Domestic Relations Court Judges and Clerks of the Court in each particular judicial district. In some localities, judges make the appointments; while in others, the Clerks assign the GALs.

There are some localities where judges have developed their own training program and have chosen to require training prior to appointment as a GAL. There are also some localities with CASA programs where judges have required attorneys on the list to participate in the annual training program provided by CASA.

While the role of the GAL is critical at all stages of the court proceeding, it is most critical at the dispositional hearing. In the adult system the focus is on the adjudicatory hearing, with the greatest importance attached to the determination of guilt or innocence. In contrast, in child abuse and neglect cases, the focus is on the dispositional stage of the proceedings and the ordering of services for the families and the children who have been victimized. The presence of the GAL is essential at this

junction because of the GAL's responsibility to advocate for treatment services for the child and family. The GAL is also vital at this stage because the GAL functions as the interpreter and the spokesman for the child in the courtroom.

STATISTICAL OVERVIEW

National statistics indicate that child abuse and neglect continues to be a problem involving many children and families. Because national reports are kept on a calendar year basis and state statistics are kept on a fiscal year basis, it is difficult to draw an exact parallel between national and state reports. Statistics at the national level are available only through calendar year 1991, while statistics on the state level are available through fiscal year 1993.

At the national level, no system to collect data similar to that accessed in Virginia was initiated until September 1989. The first national data comparable to Virginia covers a ten-month, as opposed to a twelve-month, period. In addition, the number of states participating in the national studies varies from year to year. Despite these inconsistencies, a brief look at the statistics on abuse and neglect on both levels illustrates the magnitude of the problem.

Between September 1989 and June 1990, 48 states showed a total of 857,308 founded reports of children who were victims of abuse or neglect. 16% (139,837) of these children were the victims of sexual abuse and 43% (369,126) were six years old or younger. In calendar year 1991, 45 states reported a total of 826,422 founded reports of abuse or neglect. 15% (131,479) of these children were the victims of sexual abuse and 45% (376,406) were six years of age or less. It is significant to note that the reduction in the number of total victims in calendar year 1991 results from data having been collected in 1991 in only 45 states, as opposed to 48 between September 1987 and June 1990.

In Virginia for fiscal year 1993, there were a total of 14,663 completed investigations of child abuse or neglect which were determined to be founded or with reason to suspect. 15% (2,277) of these children were victims of sexual assault, which represents a 13% increase from the preceding year. 48% (7,073) were six years of age or less.

Reason to suspect is defined in the Child Protective Services Department Manual as a situation in which the

...review of facts shows no clear and convincing evidence that abuse or neglect as defined has occurred. However, the situation gives the worker reason to believe that abuse or neglect has occurred. The evidence supporting the worker's disposition must be documented in case record.

Beginning in fiscal year 1994, the terminology *reason to suspect* is replaced by new language less susceptible to the subjectivity of the worker.

PROGRAM MODELS

There are no national guidelines for the role and responsibilities of GALs. Few states provide GALs with written guidance. According to a 1990 National CASA survey, only 20 states have statutes, court rules, or state administrative policy directives specifying the activities of a GAL. Jurisdictions that do provide written guidance have defined GAL responsibilities to include: conducting independent investigations of the case; meeting with the children, families, and foster families; providing legal representation; insuring that the children's needs or best interests are met through court-ordered treatment; and providing regular monitoring of cases. Clear delineation of the GAL role is found in *The Standards of Practice for Guardians ad Litem* developed by the Colorado Bar Association in 1991 (Appendix C) and the *Order Substituting Guardian ad Litem* in Hawaii (Appendix D), which enumerates ten specific duties on the back of the order distributed at the initial court hearing.

There are several different program models for GALs throughout the country. Comparisons between these models is extremely difficult because of their diversity in statutory authority, structure, and terminology among the different states. Analysis for HJR 490 focused on six basic model structures. Program models cited are from Pulaski County, Arkansas; Denver, Colorado; Portland, Oregon; and three statewide models in Delaware, North Carolina, and Vermont. These particular programs were selected because they represented well-known programs which were diverse by virtue of their inclusion of the full spectrum of characteristics being utilized in legal representation models.

In order to satisfy Arkansas' statutory mandate that GALs be attorneys, the Office of the County Attorney in Pulaski hires two full-time attorneys to handle exclusively GAL cases involving minors. These attorneys receive no formal training in this particular area of the law and their performance is evaluated by the Pulaski County Attorney. Whenever available, CASA volunteers are also assigned to these children. As in Virginia, CASA volunteers in the County of Pulaski function as friends of the court, but not as parties to the case.

As friends to the court, CASAs can make informal suggestions and recommendations to the court staff and GAL, but do not actually participate in the court hearing. Friends of the court are available to help investigate the case, befriend and support the child, and offer suggestions to the GAL. In a model with volunteers serving as friends of the court, the duty to represent the best interests of the child to the court rests solely on the GAL. Volunteers who are parties to the case are expected to present formal findings and recommendations in the court proceeding.

The strength of the Pulaski program is that all children receive the legal representation of a GAL, as well as the emotional support of a CASA. Because of the low salary available for the GAL position, the levels of expertise and experience of attorneys hired may not always be as high as in other program models. Low pay also

increases the likelihood of staff turnover. There is no standardized training for the full-time GALs. There is no direct supervision by an attorney also practicing GAL work.

In contrast, the Children's Law Center (CLC) in Denver, Colorado has three and a half attorney positions dedicated to handling all cases involving children and the law. These include health-related issues and services for learning disabled children, as well as abuse and neglect. As in Virginia and Arkansas, Colorado mandates by statute that GALs be attorneys. Children who become involved with the Denver CLC on GAL cases of abuse and neglect are also assigned a CASA whenever available. Unlike Virginia or Arkansas, however, Denver CASAs function as legal parties to the proceedings and the CLC attorney essentially represents the CASA volunteer. In this program model, the recommendation of the GAL prevails in those instances where the GAL and CASA conflict as to their views of the child's best interests.

The performance of the CLC attorneys is monitored by the executive director of the agency, who has been a practicing attorney for over ten years. Although there is no formalized training program for the CLC staff of attorneys, they frequently attend seminars and symposiums on juvenile and family law. As with Arkansas, CLC's attorneys' salaries are low. The program as, nevertheless, been extremely successful in attracting dedicated and experienced attorneys in this area of the law, most likely because of its nationwide reputation for quality representation.

Both Delaware and North Carolina have statutes requiring that GALs be assigned to all children who are the victims of abuse and neglect. These GALs, however are not attorneys, but rather trained volunteers who are considered legal parties to the court proceedings. While the North Carolina statute mandates that attorneys be assigned to all cases with volunteer GALs, the Delaware statute does not. However, both states have staff attorneys available to handle abuse and neglect cases in all judicial districts. In Delaware, two attorneys are hired annually on a contractual basis by the State Court System. In North Carolina several attorney advocates are hired to assure coverage in every judicial district in the state.

In Delaware and North Carolina, the attorneys represent the volunteer GALs who are considered legal parties to the case. The role of the volunteer GALs is to befriend the child, investigate the case, and research possible treatment and placement options. Both programs have built into their models coordinated meetings between the assigned attorney and GAL prior to each court proceeding.

While there is no standard training or job performance evaluation in place, Delaware staff report that their contractual relationship with private attorneys allows them to select attorneys with significant experience and expertise in this area of the law. Furthermore, the annual renewal of the contract creates an opportunity for the contractor to reevaluate and monitor the two attorneys' job performance every 12 months. North Carolina, in contrast, requires participation in a 20-hour training session for all newly-hired attorneys serving as GALs. The North Carolina attorneys are state

employees, whose performance is monitored annually through the standard personnel procedures of the state.

The program model in Delaware is unique in its procedure of allowing the recommendation of the volunteer to prevail whenever there is conflict between the attorney and the GAL as to the best interests of a child. North Carolina staff report that they do not experience such conflicts because of their focus on the partnership of the attorney and GAL. Their emphasis on the mutual goal of serving the best interests of the child mitigates against conflict between the two roles.

Vermont, unlike Delaware and North Carolina, has a statutory requirement that volunteer GALs be assigned in all abuse and neglect cases, as well as staff attorneys for all children before the court on any matter. Public defenders are assigned to all juvenile cases. Both the public defenders and the volunteer GALs are considered parties to the court proceedings in Vermont.

While the public defender represents the child's wishes, the volunteer GAL represents the child's best interests. As state employees, the public defender's job performance is monitored annually by the Public Defender Deputy Director. Although there is no formalized training for public defenders who represent children, the quality of representation provided is described by court service staff as outstanding because of the strong orientation toward families and children in the Vermont statute and the state Office of the Public Defender.

Another very different program model can be found at the Lawyers for Children office in Portland, Oregon. Oregon statute mandates the involvement of a volunteer CASA who functions as a party to the court proceedings. Lawyers for Children is a non-profit group which organizes, trains, and networks with local attorneys to represent children in GAL proceedings *pro bono*. One staff person provides administrative support to this pool of volunteer attorneys available to serve as GALs. Through regular newsletters and brown bag lunches, efforts have been made to recognize and support their achievements. These networks also provide *pro bono* GALs with opportunities to keep their training current and retain their interest and enthusiasm for this area of the law.

Figure 1 which follows outlines the eligibility, client characteristics, and staffing patterns of the six program models discussed.

Figure 1

A Comparison of Guardian Ad Litem Models throughout the Country

Program	Pulaski County, Arkansas	Children's Law Center Denver, Colorado	State of Delaware	State of North Carolina	Lawyers for Children Portland, Oregon	State of Vermont
Participants	Volunteer (CASA) Staff Attorney(GAL)	Volunteer (CASA) Staff Attorney (GAL)	Volunteer (GAL)* Staff Attorney	Volunteer (GAL)* Staff Attorney	Volunteer (CASA) Volunteer Attorney	Volunteer (GAL) Staff Attorney
Volunteer as Party	No	Yes	Yes	Yes	Yes	Yes
Attorney Represents	Child	CASA	GAL	GAL	CASA	Child
Statutory Req. in Abuse/Neglect Cases	GAL - Mandatory	Attorney - Mandatory	GAL - Judicial Discretion	GAL - Mandatory Attorney - Mandatory if GAL is appointed	Volunteer - Mandatory	Attorney - Mandatory
Statewide Source of Legal Representation	No County Attorneys	No Staff Attorneys	Yes Contractual	Yes State-funded Attorneys (per Judicial District)	No Volunteers	Yes State-funded Public Defenders**
Standardized Training of Attorney	No	No	No	Yes	No	No
Standardized Monitoring of Attorney Performance	Yes	Yes	No	Yes	No	Yes
Structured Coordination of Atty/Volunteer	No	No	Yes	Yes	No	No
Recommendation Which Controls	Attorney's	Attorney's	Volunteer's	Not Addressed	Not Addressed	Volunteer's: best interests; Attorney's: child's wishes
Compensation per Attorney	\$25,000	\$30,000	\$41,600	Not Available	None	\$30-\$40,000
Program Budget Funding Source	\$50,000 State, County Gov't Funds	\$200,000 United Way, Private Contributions, State	\$150,000 State Court	\$200,000 State Agency	None Private	Unknown Legislative Appropriation

* Affiliated with National CASA

** Duties are note limited to Juvenile and Domestic Relations cases

Source: Graphic & Analysis Virginia Commission on Youth September 1993

In Virginia there are several localities with programs designed specifically to improve the quality of legal representation provided by GALs. For example, judges in five judicial districts have established and imposed their own criteria for GALs who represent alleged victims of abuse and neglect. Each of these judges has developed and implemented local training programs required for the appointment of GALs in their particular locality. These judges serve the following judicial districts:

- 7th City of Newport News
- 15th City of Fredericksburg; Counties of Caroline, Essex, Hanover, King George, Lancaster, Northumberland, Richmond, Spotsylvania, Stafford and Westmoreland
- 16th City of Charlottesville; Counties of Madison, Greene, Albemarle, Fluvanna, Goochland, Louisa, Orange, and Culpeper
- 17th Cities of Arlington and Falls Church, and
- 24th Cities of Lynchburg and Bedford; Counties of Nelson, Amherst, Campbell and Bedford

CASA programs exist in one third of the localities of the state. These programs provide mandatory training for all volunteers and are available to interested GALs. The Young Lawyer's section of the Virginia State Bar has occasionally presented Continuing Legal Education courses in juvenile and family law. These programs, however, have not been offered consistently on an annual basis, but rather in those years when the Young Lawyers has chosen family and juvenile law as its area of focus. There are no on-going statewide initiatives to recruit, train, or support attorneys providing GAL work to child victims.

NATIONAL STUDIES

It was not until 1987 that researchers began to undertake empirical studies of the effect of the court process on sexually abused children. Four studies have been conducted to date.

In 1987, J.F. Tedesco and S.V. Schnell conducted a mail survey in Iowa which measured children's reactions to sex abuse investigation and litigation. Older children were asked to complete the survey independently, while the primary caretakers of the younger children completed it after first discussing the survey questions with the children themselves (except in the case of infants or children too young or incapacitated to communicate). While 53% of victims rated the legal system helpful, 21% found it harmful, citing factors such as multiple, repetitive interviews and adversarial cross examination.

D.K. Runyan in 1988 researched impact of legal interventions on sexually abused children in North Carolina. He followed 100 children, ages 6-17, who had been victims of intra familial sexual abuse. Using standard psychological instruments he assessed their mental health at the time of referral, five months later, and eighteen months later. At the five month follow-up he found a significant decrease in the anxiety

level of children who had already testified in juvenile court and whose cases had not been continued or delayed.

Another study by G.S. Goodman measured the impact of court processes in Colorado on children 4-17 years old who had been victims of sexual abuse by either family members or strangers. The children were interviewed at the time of referral, three months after testifying in court, seven months after testifying in court, and after the final court disposition. These results were compared to results for children who did not testify but "matched" the above group in age, sex, race, and characteristics of the offense. At the seven month follow-up interviews, children who had testified more than one time showed less improvement than those who had not testified. At the final disposition follow-up, however, these differences were no longer apparent, implying that any adverse effects of testifying dissipate with time. Furthermore, the Colorado study, unlike the previous study in North Carolina, found that court continuances did not have a particularly negative impact.

Both the North Carolina and the Colorado studies used direct interviews and courtroom observations to examine factors which appeared to impact children's emotional response to their involvement in the court process. While both studies found maternal support to be an important factor to the children's mental health, the North Carolina study found that children enjoyed the same benefit from the presence of a child advocate. Both studies found two primary factors which significantly increase the trauma of the courtroom experience for these children: (1) a lack of training and preparation by the attorneys and (2) the child's perception of threats by the defendant.

More recently, D. Whitcomb reported the preliminary findings of a more in-depth study of 256 children, ages 4-17, whose allegations of sexual abuse were referred for prosecution in four Colorado counties. These children were interviewed twice; first, just before trial, and, second, seven to nine months after trial. A battery of psychological tests and interview data were used to measure their psychological well-being.

Preliminary findings have indicated that the courtroom experience has not produced any long-term negative effects on any of the children, except those nine and older who were required to testify on more than one occasion and were subjected to harsh or extensive cross examination. In fact, parental reports suggest that testifying may have actually reduced the stress experienced by the children under the age of nine.

These four studies identify certain key factors which ameliorate or exacerbate the emotional impact of court involvement on child victims. Factors which consistently ameliorate the stress include:

- testifying in court,
- case resolution,
- passage of time, and
- support of a mother or specifically assigned child advocate.

Factors which exacerbate the trauma include:

- inadequate training and preparation by the attorneys involved,
- repeated interviews during investigation and trial preparation,
- testifying at more than one proceeding,
- long and rough cross examination,
- absence of maternal support, and
- defendant's presence in court.

Guided by these findings, there are many changes which can be made on the local, statewide, and national levels to ameliorate the stress of children who are alleged victims of abuse or neglect with respect to the courtroom experience. The quality of representation provided by attorneys who practice as GALs can be improved through uniform statewide training. Courtroom facilities can be adapted to more adequately meet the needs of these child victims to be protected from encounters with the defendant and defense witnesses. Informal introductions to the courtroom and court procedure can be encouraged in guidelines and training. Informational brochures can increase public awareness of the accessibility of closed circuit television and other similar technologies which can reduce the stress for these children. Rather than have children experiencing the justice system as one more victimization, the legal process can be altered to facilitate the first step in their healing process.

VII. Findings and Recommendations

Findings

1. There are no specific requirements for an attorney licensed to practice law in Virginia to be appointed as a GAL for child victims of abuse and neglect.
2. The capacity and needs of child victims are different from those of an adult.
3. Juvenile law and procedure are not included as required subjects in any law school curricula or in the areas of study and examination for the Virginia State Bar.
4. Children in Virginia who are alleged victims of abuse and neglect frequently receive legal representation by GALs with inadequate experience and expertise in this area of the law.
5. Statewide training of attorneys currently practicing as GALs is inadequate.

Recommendation 1

Introduce legislation which establishes criteria for attorneys to qualify for appointment as Guardians ad Litem for children. These standards should include:

- a. license or permission to practice law in Virginia,
- b. current training in Guardian ad Litem representation,

- c. familiarity with the Juvenile and Domestic Relations and Family Court systems, and**
- d. demonstrated proficiency in this area of the law.**

Discussion--Training of attorneys who practice as GALs is random at best in the majority of other states, as well as in most localities in Virginia. According to a 1990 survey by National CASA, there are only seven states and the District of Columbia which require training for attorneys who serve as GALs: Massachusetts, New Jersey, New York, North Carolina, Rhode Island, Utah, and Missouri.

Through telephone research with these seven states and the District of Columbia, it became apparent that North Carolina is the only state in which mandated training is actually being delivered and received by all practicing attorneys participating in cases of alleged child abuse and neglect. While Vermont reported no mandate for training, it did report that all attorneys who serve as GALs for children routinely attend the same training as their court advocate volunteers. Ironically, training requirements in general are more consistently enforced in the 27 states which rely primarily on non-attorney volunteer advocates to function as GALs.

While there are localities in Virginia in which the judge appoints only those GALs who have participated in locally-administered training, most localities do not offer any training whatsoever. In the rural areas of the state, judges sometimes have difficulty finding attorneys with any experience in GAL representation. Testimony before the Commission on the Reduction of Sexual Assault Victimization in Virginia in November 1992 included repeated descriptions of poor legal representation.

To obtain a law degree or a license to practice law in Virginia, there is no academic training required in juvenile law or procedures. Training in the social sciences with respect to child development and interviewing skills is also not mandated. GALs for child victims need basic training in juvenile law and procedure as well as child development and community treatment resources in order to better fulfill their role as the child's interpreter and spokesman. From the child's perspective, the role of the GAL and the GAL's ability to advocate for services are key to successful resolution of the case.

Findings

6. There are several program models in other states where attorneys with expertise and experience in this area of the law are hired exclusively to handle GAL cases. In areas with these models, judges, court service staff, and parties to the case report tremendous satisfaction with the quality of legal representation provided.

7. No single program model improves the quality of legal representation for children who are victims of abuse or neglect.

Recommendation 2

Fund pilot model Guardian ad Litem programs in two localities in the state.

Discussion--Model programs in Vermont, Delaware, North Carolina, Pulaski County, Arkansas, and Denver, Colorado offer examples of well known programs where all parties involved report satisfaction with the quality representation they receive. In some models attorneys are hired contractually, while in others they are employees of the state court system. In both types of model, there is a built-in monitoring of performance, either through standard state personnel procedures or annual review at the time of the contract's potential renewal.

A pilot in Virginia would provide an opportunity to test different program structures. Specifically, part-time contracts in localities with a CASA program could be contrasted with an area without a CASA. Evaluations could be conducted to measure satisfaction on the part of the judges, Social Services and the client. Currently GALs are compensated by the Crime Compensation fund. As a point in comparison, *Figure 2* provides a summary of compensation paid to attorneys serving as GALs on a full-time or contractual basis.

Figure 2

Compensation of Staff Attorneys Serving as Guardians ad Litem

State	Full-time or Part-time	Annual Compensation	Employer
Alaska	Full-time	\$60-85,000	Office of Public Advocacy
Delaware	Full-time	\$41,600	State Courts
Georgia	Full-time	\$25-39,000	Locality
Illinois	Full-time	\$25-35,000	Office of Public Guardian
Iowa	Full-time	\$32,000	Public Defender's Office
Maryland	Full-time	\$21-35,000 \$32-\$50,000	Legal Aid Public Defender's Office
Michigan	Part-time	\$5-15,000	Locality
Mississippi	Full-time	\$28-40,000	Public Defender's Office
Missouri	Full-time	\$30,000	Legal Aid
New Jersey	Full-time	\$30-62,000	Public Defender's Office
New York	Full-time	\$23-48,000	Legal Aid
North Carolina	Full-time	\$32-40,000	Children's Law Center (Mecklenberg Co.)
Oklahoma	Full-time	\$28-40,000	Public Defender's Office
Oregon	Full-time	\$28,000	Public Defender's Office
Pennsylvania	Part- and Full-time	\$12-37,000 \$12-37,000	Public Defender's Office Support Center for Child Advocates
Utah	Part- and Full-time	\$4,800-20,000	State Court Administrator's Office
Vermont	Full-time	\$21,300-42,600	Public Defender's Office
West Virginia	Full-time	\$25-38,000	Public Defender's Office
Wisconsin	Full-time	\$23-50,000	Public Defender's Office

Source: Virginia Commission on Youth analysis of State Summaries of Guardian ad Litem Representation, with CSR, Inc. and National CASA, Seattle, Washington, December 1990. Telephone Update October 1993.

Findings

8. There is no coordinated statewide strategy to attract a pool of available *pro bono* attorneys to serve as GALs.

9. The American Bar Association (ABA), in its 1993 report, *America's Children At Risk—A National Agenda for Legal Action*, specifically calls for attorneys to represent individual children on a *pro bono* basis and become their advocates.

Recommendation 3

Institutionalize a mechanism through which a pool of attorneys meeting the standards established for Guardians ad Litem commit a specific number of hours annually to *pro bono* Guardian ad Litem work.

Discussion--The Virginia Bar Association is currently giving serious consideration to the requirement of a designated number of annual hours of *pro bono* service. The ABA report is a strong supporter of expanded *pro bono* commitments. As the report states, "the ABA should lead a national effort to recruit lawyers to provide free legal assistance to children."

Recommendation 4

Develop and implement a statewide marketing plan to build a pool of *pro bono* attorneys to serve as Guardians ad Litem for abused and neglected children.

Discussion--Several model programs, such as the Support Center for Child Advocates in Philadelphia, Pennsylvania and the Lawyers for Children in Portland, Oregon, rely heavily on well-trained volunteer attorneys. They actively recruit and train attorneys to serve as GALs *pro bono*. Because there are so many children in need of quality legal representation in Virginia, a volunteer component, as well as court-appointed GALs, is necessary to address adequately the needs of all the Virginia children who have allegedly been victimized. Costs of the project are anticipated to be \$25,000.

Findings

10. Attorneys serving as GALs in Virginia, for the most part, are sole practitioners who operate without benefit of collegial support.

11. Professionals who routinely work with attorneys representing children in GAL cases observe frequent burnout and excessive turnover.

12. Attorneys who practice as GALs describe these cases as emotionally draining and exhausting.

Recommendation 5

Request the Commission on Youth to continue this study for six months to initiate a statewide network for Guardians ad Litem throughout the state. The Commission on Youth's tasks would be: (a) to determine the most effective method for establishing this network, either through existing related associations or the creation of an entirely new association and (b) to secure funding to support network activities.

Discussion--The majority of attorneys now serving in Virginia as GALs are sole practitioners. Frequently, they operate in a vacuum with little opportunity for interaction with their colleagues and with limited recognition for their commitment and effort. Burnout is often a by-product of limited peer support and recognition. When burnout occurs, keeping qualified, contributing GALs becomes difficult. If GALs throughout the state could have more opportunity to learn from one another and to exchange their thoughts and concerns, the quality of representation they provide should improve significantly.

There are many examples of successful network/support systems for attorneys who serve as GALs in other states, such as the Children's Law Centers in Denver, Colorado and Charlotte, North Carolina. These programs provide a forum for the exchange of knowledge, ideas, and experiences related to the representation of children and their best interests. They use monthly newsletters to recognize outstanding service and lunch meetings to provide updates on changes in the law. Similarly, where there are statewide GAL programs such as in Delaware, Vermont, and North Carolina, there are significantly more networking, peer support, and information sharing.

Findings

13. Compensation for GALs for children is not uniform throughout the state.
14. Compensation for GALs varies across the country.

Recommendation 6

Through Judicial Guidelines and training, encourage all Juvenile and Domestic Relations Court judges in the state to be uniform in their payment of \$40 hourly for out-of-court and \$60 for in-court time, with no ceiling for documented hours.

Discussion--Compensation for attorneys who practice as GALs varies significantly between states and localities. According to the 1990 National CASA survey and an October 1993 telephone update, the national average hourly compensation awarded GALs is \$50, with a ceiling of total payment ranging from \$300 to \$1500. *Figure 3* shows compensation paid to private attorneys serving as GALs.

GALs in Virginia can be paid a maximum of \$60 per hour for time in court and \$40 per hour for time out of court. According to a recent Court of Appeals decision, Kaplan v. Kaplan (Sept. 14, 1993) and a 1990 Attorney General's Opinion, there is no limit on the total amount of reimbursement a GAL can receive. Compensation, however, varies significantly from one locality to another. At least one locality pays a blanket \$100 per case, while some others choose on a case-by-case basis the number of hours submitted by the attorney to whom they will award payment. Other localities honor the hourly amount but impose their own ceilings. Appendix E shows the cost by locality of GAL representation in Virginia in fiscal year 1993.

To attract qualified attorneys willing to meet the standards established, compensation must, at the very least, be adequate and consistent. Attorneys interviewed consistently reported that \$40 an hour does not cover their overhead and office expenses. When localities pay below the maximum, attracting qualified GALs becomes difficult.

Figure 3

Compensation of Private Attorneys Serving as Guardians ad Litem

State	Rate Per Hour In Court	Rate Per Hour Out of Court	Cap*
Alabama	\$40	\$20	\$1,000/case, \$1,500 with appeal
Alaska	\$60	\$60	
Colorado	\$50	\$40	\$1,500
Connecticut	\$50 for 1st hour, \$25 for 2nd, \$15 for 3rd	\$15	\$135
D.C.	\$35	\$35	\$750/case, \$1500 with appeal
Florida	\$23 or more	\$23 or more	\$3,000
Georgia	\$40 - \$50	\$30 - \$50	
Hawaii	\$60	\$40	\$1500/case, \$2000 with appeal
Idaho	\$40	\$40	
Illinois	\$35 - \$60	\$35 - \$60	
Indiana	\$40 - \$50	\$40 - \$50	
Iowa	\$40 - \$50	\$40 - \$50	
Kansas	\$50	\$50	
Kentucky	\$50	\$50	\$750
Maine	\$40	\$40	\$1,000
Maryland	\$65	\$65	
Massachusetts	\$35	\$35	
Michigan	\$40 - \$60	\$40 - \$60	
Minnesota	\$40 - \$45	\$40 - \$45	
Missouri	\$25 - \$75	\$25 - \$75	
Montana	\$30 - \$60	\$30 - \$50	
Nebraska	\$40 - \$50	\$40 - \$50	
Nevada	\$60	\$40	

State	Rate Per Hour In Court	Rate Per Hour Out of Court	Cap*
New Hampshire	\$30	\$20	
New York	\$40	\$25	
North Carolina	\$40	\$40	
North Dakota	\$45	\$45	
Ohio	\$15 - \$50	\$15 - \$50	
Oklahoma	N/A	N/A	\$500
Oregon	\$35 - \$50	\$35 - \$50	\$275
Pennsylvania	\$30 - \$40	\$30 - \$40	
Rhode Island	\$30	\$20	
South Carolina	\$50 - \$100	\$50 - \$100	
South Dakota	\$40 - \$45	\$40 - \$45	
Tennessee	\$20 - \$75	\$20 - \$75	\$500
Texas	\$80 - \$100	\$60 - \$80	
Utah	\$40 - \$50	\$40 - \$50	
Virginia	\$60	\$40	Unlimited
Washington	\$55	\$55	
West Virginia	\$60	\$40	
Wisconsin	\$60	\$60	
Wyoming	\$45 - \$75	\$45 - \$74	\$550

*If blank, there is no cap used consistently enough within the state to identify it as statewide.

Source: Virginia Commission on Youth analysis of State Summaries of Guardian ad Litem Representation with CSR, Inc. and National CASA, Seattle, Washington, December 1990. Telephone update October 1993.

Findings

15. Modifications for child victims of abuse and neglect are made in some courtrooms and localities in Virginia, but are not found consistently nor routinely applied throughout the state.

16. Multiple interviews of the alleged child victims can be traumatic.

17. There are several ways to avoid multiple interviews, such as consolidation of the investigation by Child Protective Services and law enforcement personnel, assignment of the same prosecutor throughout the entire judicial proceeding, or use of videotapes.

18. Children testifying in abuse and neglect cases can benefit from frequent court recesses because of their limited attention span and wide range of developmental stages.

19. In many localities in Virginia, attorneys are appointed to serve as GALs randomly, sometimes by the presiding judge and sometimes by the Clerk's Office.

20. In many instances there is no effort made to re-appoint in subsequent proceedings the same attorney who has represented the particular child.

21. Attorneys who serve as GALs for children acquire a special knowledge of the child and his family which enables them to better represent the same child and his best interests in subsequent petitions.

Recommendation 7

Request the Supreme Court of Virginia, in conjunction with the Department of Criminal Justice Services, to develop and provide training to judges on courtroom modifications available to lessen the psychological trauma of testimony by child victims of abuse and neglect.

Recommendation 8

Request the Supreme Court, with the support of the Commission on Youth and the Departments of Social Services and Criminal Justice Services, to develop a list of Judicial Guidelines on courtroom modifications. These guidelines should include, but not be limited to, the following:

- a. **Provision of separate entrances to the courtroom and separate waiting areas available to child witnesses whenever possible;**
- b. **Avoidance of unnecessary interviews for child witnesses through the use of videotapes, consolidation of the investigation by Child Protective Services and law enforcement personnel, or the assignment of the same prosecutor throughout the entire court proceeding;**
- c. **Provision of an informal introduction to the courtroom and court proceedings to the child witness prior to the actual hearing, when appropriate, as determined by the needs of the child.**
- d. **Allowance of frequent recesses due to the child's limited attention span and developmental stage; and**
- e. **Appointment of the same Guardian ad Litem whenever the child returns to court on a subsequent petition. In his/her role as Guardian ad Litem, the attorney acquires special knowledge which allows him/her to better represent the child's best interests.**

Recommendation 9

Request the Department of Criminal Justice Services to develop a training package on courtroom modifications available for adaptation and implementation by CASA, Court Service Units, Child Protective Services, Victim Witness programs, and the Association of Commonwealth's Attorneys.

Discussion--Throughout the Commonwealth there are examples of judges and attorneys who have gone to great lengths to minimize the trauma and maximize the comfort of these children who are victims of abuse or neglect. In order to consistently reduce the potential for revictimization of these children by the legal system, Virginia will need to adopt uniform training packages and guidelines which respond to the special needs of a child victim.

There is a gradual national trend, particularly on the part of judges and prosecutors, to utilize several innovative techniques aimed at reducing the stress of children testifying in the courtroom. A recent telephone survey by NCCAN found that the majority of the 600 prosecutors contacted reported frequent use of courtroom tours and victim witness advocates for children. Defense attorneys, in contrast, reported there being far less likelihood of using innovative techniques of any sort.

In many localities throughout Virginia, creative efforts are made to reduce the trauma associated with the prosecution of these cases. For example, there are localities where Child Protective Services and law enforcement personnel routinely conduct their initial interviews as a team. Similarly, court personnel in some areas are providing informal courtroom tours and court schools to explain to participants the procedures involved in the trial. Still other localities report videotaping initial interviews. Due to the sophisticated equipment required and sheer logistics of many cases, videotaping is not always feasible.

While some judges in Virginia routinely re-appoint a GAL in a child's subsequent cases, other judges do not. GALs consistently report that, whenever they represent a child, they acquire a special knowledge of that child and the child's family which better equip them to represent the child and his best interests in subsequent proceedings.

Children's attention span and ability to sit through proceedings are limited. While some judges offer frequent recesses, many child witnesses still endure lengthy sessions with no break.

Findings

22. Separate entrances, waiting areas, and interview rooms are not always available for children who are testifying in cases of abuse and neglect.

23. Cases involving domestic relations and alleged abuse or neglect have a greater propensity than most other type cases for violent behavior and emotional outbursts.

Recommendation 10

Include the following changes for Juvenile and Domestic Relations Courts in the next revision of the *Virginia Courthouse Facility Guidelines* originally published in March 1987 by the Judicial Council of Virginia:

- a. **Increase the availability of separate and private witness and/or conference rooms to protect the child from unnecessary exposure to public scrutiny and defense witnesses;**
- b. **Incorporate into the design or function of new and old courthouses a separate entrance for victim witnesses, including children; and**
- c. **Include in the design a specific seating place for a support person with enough proximity to reassure, but not to touch, the victim.**

Discussion--Judges and court staff describe a wide range of accommodations, particularly in the more antiquated and limited physical facilities, to make a private entrance to the courtroom available for children unable to face defense witnesses or the general public. In several localities, local volunteer groups have developed and maintained children's waiting and interview rooms with toys and furniture geared for children. Nevertheless, the number of special interview and waiting rooms available for children is limited in many areas of the state. In many localities, particularly where there are no support programs, such as Victim Witness and CASA, child witnesses still experience the courtroom and procedures as confusing at best and traumatizing at worst.

Findings

24. Studies have shown the following factors which ameliorate the traumatic impact of testifying in abuse or neglect cases for children: testifying in juvenile court, case resolution, the passage of time, and the support of a mother or an assigned child advocate.

25. Studies have shown the following factors which exacerbate the traumatic impact of testifying in abuse or neglect cases for children: inadequate training and preparation by the attorneys involved, repeated interviews during the investigation and trial preparation, long and rough cross examination, absence of maternal support, and the defendant's presence in court.

Recommendation 11

Introduce legislation which entitles any victim or witness under the age of 18 to have in attendance a person of his/her choosing who is not witness in the proceeding to provide support at any judicial proceeding in which the juvenile must testify.

Discussion--According to a recent study conducted by the National Center on Child Abuse and Neglect (NCCAN) and reported in the 1993 publication, *Child Victims As Witnesses*, most child victims who testify will continue to do so in a traditional courtroom

setting and, according to the research summarized, will withstand the ordeal reasonably well. Nevertheless, as described earlier in the review of current national studies available, there are certain key factors which have been proven to consistently ameliorate or exacerbate the emotional impact of these child victims' court involvement.

Preliminary findings of the four national studies described previously indicate that one of the factors most likely to ameliorate the emotional impact of court involvement for children who are victims of abuse or neglect is the presence of a support person, whether it is a family member, a close adult friend, or a designated court staff person such as a Victim Witness coordinator or CASA volunteer. By the end of 1990, 13 states had enacted laws permitting a child advocate or other support person be present during the child's testimony. In several other states support people are often permitted to assist child witnesses without the benefit of legislative sanction.

Some Virginia judges, even in jurisdictions without formal victim witness or CASA programs, already allow the attendance of a support person who is not going to testify in the proceedings. There are several judges who routinely permit, and even encourage, their presence. The placement of the support person in the courtroom varies greatly, depending on the physical layout of the facility.

Findings

26. In some jurisdictions, Commonwealth's Attorneys do not participate in misdemeanor trials involving the alleged abuse or neglect of a child.

27. Judges have to try misdemeanor abuse cases without the assistance of a prosecutor.

28. In many courtrooms in Virginia security is inadequate in court hallways, waiting areas, and the courtroom itself during misdemeanors involving alleged abuse or neglect.

Recommendation 12

Introduce legislation to require that Commonwealth's Attorneys be involved in all misdemeanors against the person of a juvenile.

Discussion--The number of bailiffs and Commonwealth's Attorneys available is often outstripped by demand. Security in waiting and interview rooms, hallways, and the courtroom, particularly during misdemeanor trials of alleged abuse or neglect, is extremely limited. Because of the intensity of feelings involved, domestic relations cases frequently have the potential to be highly explosive and even dangerous at times. The fiscal impact of a request for increased security in Juvenile and Domestic Relations courts throughout the state would be significant. While this report acknowledges the need for more security personnel, it has chosen not to make a formal request for such a staff increase in light of the current economic climate. In this context, it is important to

note that the December 1993 *Report on the Implementation of the Family Court* by the Judicial Council of Virginia includes a significant increase in security personnel throughout the Family Court System.

Similarly, prosecutors frequently have extremely heavy workloads. As a result, there are many localities in which Juvenile and Domestic Relations Court judges are sometimes put in a very difficult position when expected to impartially hear misdemeanor cases involving abuse or neglect without the assistance of a prosecutor to represent the Commonwealth.

Findings

29. Closed circuit television testimony has been used in less than 13 cases of alleged child abuse or neglect since the legislation permitting it was passed in 1988.

30. The most frequently cited reasons for not using closed circuit testimony were: a) not having a case which necessitated its usage and b) technology was unavailable in the localities.

Recommendation 13

Request the Department of Criminal Justice Services to provide training and develop an informational brochure for Commonwealth's Attorneys and the defense bar about the availability and accessibility of technology and personnel for the utilization of closed circuit television testimony.

Recommendation 14

Request the Department of Criminal Justice Services to develop statewide protocol for the utilization of closed circuit television testimony in cases which involve children who are the victims of abuse or sexual assault.

Discussion--In 1988 the Virginia General Assembly approved legislation allowing the use of a two-way closed circuit television for testimony in any criminal or civil proceeding involving an alleged offense against a child relating to a charge of abuse or sexual assault. A child 12 years of age or less can testify in a room outside the courtroom by a two-way closed circuit television. Since the statute was enacted, there have been less than ten cases in which it has been used.

In a recent study by the DCJS, the two most frequently given reasons for not using closed circuit testimony were: (a) not having a case which necessitated its usage and (b) technology unavailable in the localities. Prosecutors and GALs throughout the state are not aware that the Virginia State Police possess both the technology and personnel to facilitate its usage. DCJS has just been awarded \$38,500 by the U.S. Department of Justice to purchase additional equipment for use throughout the state. The grant also

provides for them to develop a statewide protocol for the use of closed circuit television testimony, as well as an informational brochure describing the accessibility of equipment.

Finding

31. To use closed circuit testimony, written notice must be given seven days prior to the trial.

Recommendation 15

Amend *Virginia Code* §16.1-252D to allow the use of closed circuit television testimony in emergency removal hearings and requiring 48-hour advance notice.

Discussion--Virginia Code §63.1-248.13:1 requires a minimum of seven days notice in writing prior to the use of closed circuit television in court proceedings involving a child 12 years of age and under. *Virginia Code* §16.1-251.D requires a maximum of five days between an emergency removal order for a child and the removal hearing. Emergency removal orders most often involve intra familial abuse. The use of closed circuit testimony is most applicable when the child will have difficulty in testifying due to the degree of emotional trauma experienced. Therefore, an amendment needs to be made to *Virginia Code* §16.1-252D to allow the use of closed circuit television testimony requiring 48-hour notice prior to its usage.

Findings

32. *Virginia Code* §16.1-251 allows for the emergency removal of a child where "there is imminent threat to his life or health" and there are "no less drastic alternatives."

33. Where such an emergency removal occurs, a formal court hearing must be held within five business days.

34. Judges and attorneys involved in these removal proceedings report that closed circuit television is often extremely useful in these proceedings.

35. Training available to practicing GALs is randomly offered at best. There is no uniformity in content or timing.

36. A comprehensive curriculum addressing juvenile and family law procedures, developmental psychology, and treatment resources is not offered regularly to attorneys who practice as GALs.

Recommendation 16

Request the Commission on Youth, in conjunction with the Supreme Court, to develop continuing legal education training for Guardians ad Litem which enhances their skills in providing quality representation for children who are the victims of sexual abuse and neglect and deliver it in 1994 to Guardians ad Litem throughout the state.

*Discussion--*Judges in many jurisdictions in Virginia complain that GALs are unfamiliar with the juvenile code, juvenile court procedures, and dispositional resources available to children and families in need of special services. Basic training is needed to address the following: the role of the GAL, related statutes, rules of court, Virginia case law, federal requirements, the use of expert witnesses, interviewing child witnesses, the use of closed circuit television or videotape when necessary, the psychological development of children, and critical community resources. Such a training curriculum which meets the Virginia State Bar requirements for annual Continuing Legal Education is being developed and is scheduled to be offered in 1994.

Findings

37. CASA volunteers are effective in explaining the courtroom procedures, conducting more thorough investigations for the court, and monitoring follow-through on court-ordered treatment services.

38. As of December 1993, there were 20 CASA programs in various stages of development in Virginia.

Recommendation 17

Support the Prevention Subcommittee of the Governor's Commission on Violent Crime's budget request of \$60,000 in 1995 and \$120,000 in 1996 to start up new CASA programs throughout the Commonwealth.

Recommendation 18

Support the Department of Criminal Justice Services' request for \$80,000 in 1995 and \$100,000 in 1996 to fund CASA programs which have been in existence for a minimum of three years.

*Discussion--*CASA volunteers conduct a thorough investigation of the case, explain the court proceedings to the child, make recommendations wherever appropriate, and monitor follow-through on court ordered services. Judges in jurisdictions with CASA programs say they feel more comfortable with their dispositions because they have more information about the child and his situation. CASAs serve as advocates for the children as they explain and translate the proceedings. Where CASA volunteers are involved, children are more likely to receive the treatment and services ordered by the court because CASA volunteers are available to monitor the follow-through of these services.

CASAs are invaluable resources to Guardians ad Litem. Their investigations, recommendations, and follow-through provide vital assistance to GALs in the representation to the court of the child's best interests. However, only one third of the localities in Virginia have CASA programs. Even in localities with CASA programs, there are not always enough volunteers to assign them to all victims of alleged abuse or neglect.

Findings

39. Once a final court order is entered, there is no vehicle in Virginia's juvenile justice system to insure that the court ordered treatment services for these children are actually delivered or received.

34. Some judges continue the case so that they can monitor the receipt and delivery of court-ordered treatment services. Other judges express reluctance to utilize continuances in this way because it increases their already-full dockets.

Recommendation 19

Request the Supreme Court to assess the feasibility of developing an automated tickler system to monitor the follow-through of court ordered treatment for children who are the victims of abuse or neglect, either through the Clerks' of Courts offices or through the Department of Youth and Family Services, so that, if services are not received, the case is brought back to the attention of the presiding court within a specified time.

Recommendation 20

Through Judicial Guidelines and training, encourage all Juvenile and Domestic Relations Court Judges in the state to designate in their court orders a specific agency responsible for monitoring follow-through of court ordered treatment for children who are victims of abuse and neglect.

Discussion--Two of the primary objectives for litigating abuse and neglect cases are: (1) protecting the victim against subsequent abuse or neglect, and (2) provision of needed services to both the victim and offender. Advocating for treatment services for the victim at the dispositional stage is one of the GALs most significant responsibilities.

Unfortunately, the involvement of the GAL ends in Virginia when the final court order has been signed and goes into effect. Once this final court order is entered, there is no vehicle in the juvenile justice system to insure that services ordered are actually received. Ironically, children who are the victims of abuse or neglect are frequently dependent for the delivery of these services on the very same adult caretakers who originally inflicted the abuse or neglect. These services are particularly difficult to monitor because the community resources available and services needed vary

significantly among clients and localities. Services ordered, yet never received would represent yet another broken promise to the child victim.

VIII. Acknowledgments

In addition to individuals who served on the work group, the members of the Commission on Youth extend its appreciation to the following agencies and individuals for their cooperation and assistance on this study:

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Ms. Beverly Evans, CASA Director, Juvenile and Domestic Relations Court, 15th Judicial District

Judge Aundria D. Foster, Juvenile and Domestic Relations Court, 7th Judicial District

Judge J. Dean Lewis, Juvenile and Domestic Relations Court, 15th Judicial District

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Mr. Kevin Moran, Court Service Unit Director, Juvenile and Domestic Relations Court, 4th Judicial District

Judge Jannene L. Shannon, Juvenile and Domestic Relations Court, 16th Judicial District

Donna Van Winkle, Assistant Commonwealth's Attorney, City of Richmond

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Commission on Virginia Alcohol Safety Action Program
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National CASA Association, Seattle, Washington
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Office of Executive Secretary of the Supreme Court of Virginia
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Virginia Department of Social Services
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GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION
HOUSE JOINT RESOLUTION NO. 490

Requesting the Commission on Youth, with the assistance of the Executive Secretary of the Supreme Court of Virginia, the Department of Criminal Justice Services, and the Family Law Section of the Virginia State Bar, to study issues of courtroom environment and the role of guardians ad litem in child sexual assault cases.

Agreed to by the House of Delegates, February 7, 1993

Agreed to by the Senate, February 23, 1993

WHEREAS, the Commission on the Reduction of the Incidence of Sexual Assault in the Commonwealth has made recommendations for the improvement of the legal processes and expansion of prevention and treatment services for victims and perpetrators of child sexual assault; and

WHEREAS, throughout the course of the Commission's work, testimony was repeatedly offered regarding the trauma of courtroom proceedings for younger child victims of sexual assault; and

WHEREAS, modification to the courtroom environment in response to the special needs of child victims of sexual assault must be made with a sensitivity to maintaining the right to confrontation by the defendant; and

WHEREAS, there is inconsistent application across the Commonwealth in the use of support persons and mechanisms to aid the child victim of sexual assault in courtroom proceedings; and

WHEREAS, the judiciary currently receives limited guidance regarding the incorporation of alternatives to the traditional courtroom environment; and

WHEREAS, the 1988 General Assembly amended § 18.2-67 of the Code of Virginia to allow for the use of a two-way closed circuit television to provide support to the child victim when testifying in abuse cases; and

WHEREAS, the use of closed circuit testimony in Virginia has been extremely limited to date; and

WHEREAS, guardians ad litem assigned to child sexual abuse cases are often ill-prepared to represent the needs of the child in these complex cases; and

WHEREAS, the clarification of roles and improvement of training for guardians ad litem has been identified as a priority by the Virginia Office of the Supreme Court; and

WHEREAS, there are national models for the use of guardians ad litem and courtroom environment development in child sexual abuse cases which may have applicability to Virginia's court system; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on Youth, with the assistance of the Executive Secretary of the Supreme Court of Virginia, the Department of Criminal Justice Services, and the Family Law Section of the Virginia State Bar, conduct a study on the role of guardians ad litem and issues of courtroom environment, including the use of closed circuit testimony, in child sexual abuse cases.

All agencies of the Commonwealth shall provide assistance as requested by the Commission.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

**HJR 490 - Role of Guardians Ad Litem and
Courtroom Environment in Child Sexual Assault Cases**

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Standards of Practice for Guardians ad Litem

by Marie Walton and Donna Schmalberger



Over the past few years, there has been a growing dissatisfaction with the quality of representation for children and the lack of clear direction for attorneys appointed as guardians ad litem ("GAL"). The Colorado Bar Association ("CBA") Family Law Section and Juvenile Law Forum established a joint GAL Standards Committee in 1991. That group, with members from several Front Range counties, completed the following proposed Standards of Practice for Guardians ad Litem ("Standards"). The proposal has been approved by the Juvenile Law Forum and approved by the Family Law Section for circulation outside the CBA.

Background

At meetings and public hearings of the legislature's Task Force on Family Issues during the past year, there has been constant criticism of the present GAL system. Virtually every participant is dissatisfied with the status quo, and for a variety of reasons. The most common complaint was that the GAL did not act independently, either in investigating the case or in presenting the child's position in negotiations or trial.

The Committee decided to set minimum expectations by establishing the Standards as a guide for GALs, courts and other parties and counsel. Presently, the Standards are an informal guide. Nevertheless, they should prove useful to anyone interested in improving the representation of children. The Standards also may help define any proposed legislation being considered by the Task Force.

The Committee encourages the use and review of the proposed Standards and welcomes criticism and suggestions. Written comments should be sent to Donna Schmalberger, 4105 E. Florida Avenue, Suite 300, Denver, Colorado 80222.

Guardian ad Litem Mission Statement

The guardian ad litem plays an important role in legal outcomes affecting children. (Whenever "child" or "children" is used, senior and disabled citizens could be added.) The GAL should take an active role in presenting evidence regarding the child's well being. Therefore, it is appropriate to describe generally the rights and responsibilities of the attorney who assumes this office. The GAL does not necessarily represent a child's desires but should formulate an independent position regarding relevant issues. To safeguard a child's well being, a GAL must render recommendations.

1. Attorney of Record: The GAL assumes a pivotal professional role in litigation. As an attorney of record in the case, the GAL is entitled to be treated professionally with respect and courtesy.

2. Litigation: The GAL shall have the right to and should actively participate and be included in all aspects of litigation including, but not limited to, discovery, motions practice, settlement negotiations, court appearances, jury selection, presentation of evidence and appeals.

3. Education: GAL practice is unique and complex, and, as such, requires special education, training, and experience with regard to the needs of children.

4. Investigation: The GAL shall conduct a thorough and independent investigation. The GAL shall meet with the child. Relevant evidence should be developed and presented to the court. The GAL may conduct interview with other relevant persons and review exhibits as the GAL deems appropriate. Other parties should fully cooperate with the GAL as the investigation is conducted.

5. Recommendations: The GAL should render informed and independent recommendations which serve the child's best interests. The child's wishes should be considered by the GAL, but need not be adopted by the GAL unless doing so serves the child's best interest.

6. Compensation: The GAL shall be entitled to reasonable compensation for services rendered. The court, in recognition of the important role of the GAL, shall encourage timely payment of the fees and costs to the GAL.

1.0. Attorney of Record

The GAL is an attorney of record, and shall be included with all other parties of record on all settings, certificates of mailing and hand delivery. The GAL shall receive copies of all parties' pleadings and participate, where appropriate, in all depositions and negotiations. The GAL shall be given notice of all hearings, depositions, staffings and settings.

2.0. Litigation

- 2.1. When the court appoints a GAL, the court shall enter a written order addressing compensation for the GAL and authorizing the GAL access, without further release, to all privileged information regarding the child. The authorization shall include, but not be limited to: psychiatric records, psychological treatment records, drug and alcohol treatment, medical records, evaluations, law enforcement records and school records.
- 2.2. Discovery: The GAL shall recognize the representation of the best interests of the child as an independent role from all other parties. Thus, the GAL should pursue independent discovery.
- 2.3. Motions Practice: The GAL shall file written motions, responses or objections when necessary to protect the best interest of the child. For example:
 - a. mental or physical examinations of a party or a child (C.R.C.P. Rule 35(a)).
 - b. custody and/or visitation evaluations in domestic cases (CRS §14-10-127).
 - c. suspension of contact or restrictions on visitation (CRS §§14-10-129 and 19-1-114).
 - d. contempt for non-compliance of court orders against any party (C.R.C.P. Rule 107).

- e. termination of parent-child legal relationship in dependency and neglect proceedings (CRS §19-3-601 et seq.).
 - f. child support
 - g. protective orders concerning the child's privileged communications.
 - h. any other creative motions which address the best interest of the child.
- 2.4. **Settlement Negotiations:** The GALs shall participate in settlement negotiations and represent the best interest of the child. The GAL should seek expeditious resolutions when appropriate. A GAL should be knowledgeable of the effect of continuances and delays on the child and advocate accordingly.
- 2.5. **Court Appearance:** The GAL shall attend all hearings and participate in all telephone conferences with the court unless the court waives such appearance/participation. If a particular hearing involves issues completely unrelated to the child, the GAL may request that his appearance be waived. The GAL may request authority from the court to pursue issues on behalf of the child not specifically arising from the court appointment. For example:
- a. child support.
 - b. delinquency matters.
 - c. SSI.
 - d. custody.
 - e. guardianship.
 - f. paternity.
 - g. personal injury.
- 2.6. **Jury Selection:** The GAL should participate in jury selection, and in drafting jury instructions.
- 2.7. **Presentation of Evidence:** The GAL shall prepare for hearings and present witnesses and exhibits when necessary to protect the best interests of the child. The GAL shall advocate a legal position on behalf of the child, rather than use litigation as an investigative tool. The GAL shall seek to admit telephone testimony when necessary.
- 2.8. **Appeals:** The GAL shall participate in all appeals unless the GAL is excused by order of the court or a substitution of GAL is court ordered. The GAL shall initiate and zealously pursue appellate issues on behalf of the child.

3.0. Education

- 3.1. Because children are a special class of client, and do not hire or fire their GAL, inexperienced attorneys who apply for appointment as GALs must complete a minimum of 8 hours of accredited training (live or by tape) on the role of the guardian *ad litem*. If an attorney is unable to obtain this training, he must associate with a mentor and complete the training within three months of appointment. This requirement may be waived with proof of one year of experience as a GAL in another jurisdiction.
- 3.2. The prospective guardian ad litem also must review the applicable statutory code and case law in the area of practice the guardian wishes to pursue, i.e., juvenile, domestic relations, probate and local practice.

- 3.3. If there are experienced guardians ad litem in the jurisdictions where the prospective guardian applies, it is encouraged that a mentor program be established to make experienced guardians available to new guardians for consultation.
- 3.4. A mandatory minimum of ten hours of specialized training or self-education shall be required of all practicing guardians *ad litem* during each three-year professional training period. Such specialized training should focus on the area in which the guardian practices. Such topics would include:
- a. child development.
 - b. sexual abuse.c. domestic violence
 - d. geriatrics.
 - e. mental health.
 - f. criminal law and sentencing standards.
 - g. ethical considerations which are unique to GAL practice.
 - h. school law
 - i. resource availability both as to social services programs and financial assistance programs.
 - j. substance abuse.
 - k. effect of divorce on a child.
 - l. custody-visitation.
 - m. any other topic which the GAL may select as helpful to a given case load.
- 3.5. **Reading List:** It is suggested that the Colorado Bar Association Family and Juvenile Law Sections develop a reading list of suggested books, articles, periodicals and journals which deal with the specialized issues in the GAL practice and make it available to all GALs for a minimal cost.
- 3.6. **Professional Groups:** It is suggested that GALs join and participate in at least one professional group or organization that will be a resource for needed information. Such groups include the National Association of Counsel for Children, local interdisciplinary groups between attorneys and the other professions that work in the GAL's area of practice and the family law or probate or juvenile sections of the CBA or local bar associations.

4.0. Investigation

- 4.1. The GAL shall conduct a thorough and independent investigation. Such investigation may include:
- a. obtain and review a copy of the court file, DSS records in D/N cases, prior custody or psychological evaluations within two weeks of appointment.
 - b. contact attorneys of record for background information.
 - c. obtain permission for GAL to contact and meet with the parents (or arrange meeting with party's attorney).
 - d. obtain necessary releases, and interview other professionals and school personnel.
- 4.2. The GAL shall meet with the child. It is recommended that the GAL or a representative from the GAL's office meet with or observe the child in each placement. The GAL shall assess the appropriateness and safety of the child's environment. The GAL or

GAL's representative should observe parent-child interaction. All children should have the GAL's office phone number.

Children old enough to communicate should be interviewed. The GAL has the right to interview the child alone. However, the interview may be an informal conversation with the child. The GAL may or may not choose to discuss the specific allegations of the case. The GAL's interview should take into account prior investigations or evaluations by Social Services, therapists or law enforcement. The GAL should be sensitive to the comfort level of the child, and recognize that repeated interviews can be abusive.

The GAL should assist in easing the trauma for a child in placement by exploring a child's concerns about issues like visitation with relatives, participation in specific sports or activities and access to pets.

- 4.3. The GAL may conduct interviews with potential witnesses and shall review relevant exhibits and reports. The GAL must have access to the child's privileged information through a court order or parental releases. The GAL should conduct interviews with social workers, therapists, counselors, school personnel and mental health professionals. If any injuries or abuse have occurred or are alleged, the GAL should review photographs, video or audio tape (when available) and contact hospitals and/or health care providers. Other information may be obtained from homemakers and parent aides, neighbors, ministers, babysitters and day care providers, foster parents and relatives. The GAL or a representative from the GAL's office should attend or obtain a report from treatment, placement and school staffings concerning the child. The GAL should identify appropriate community resources and advocate for such resources when necessary. For example:
- drug and alcohol treatment.
 - parenting education.
 - counseling alternatives.
 - programs for special needs children.
- 4.4. The GAL shall develop and present evidence to the court. Prior to court hearings, the GAL shall interview relevant witnesses and issue subpoenas.

5.0 Recommendations

- 5.1. The GAL should formulate an independent position after considering all relevant information including, but not limited to, the desires of the child and the parents. The GAL's recommendations should result from his independent investigation as specified in section 4.0. The GAL does not necessarily adopt or advocate for the child's desires unless it would serve the child's best interests. Unless there are compelling reasons concerning the child's welfare, the GAL shall communicate the child's desires to the court or arrange for the child to do so directly. The cases in which the GAL becomes involved usually evoke strong feelings in the parties and their family and friends. The GAL should attempt to understand the emotional dynamics of the situation and should not be un-

duly influenced by concern that his position is offensive to one side or by pressure or threats from anyone. The GAL is not required to tolerate harassment, assault or other criminal behavior.

The GAL should avoid even the appearance of bias or impropriety. The GAL has a responsibility to commence his role in a neutral posture. At some point in the proceedings, the GAL must form an opinion concerning the child's best interests. An attempt to persuade the court to that view and to do so does not indicate bias.

- 5.2. The GAL should make clear recommendations to the court concerning the best interests of the child at every stage of litigation, including all placement decisions.
- 5.3. The GAL need not file written reports or recommendations unless required by law or court order, but may do so if it will promote the best interests of the child. If a written report or recommendations is to be filed, due consideration should be given to the timing of the report. In some cases, clear recommendations by the GAL in advance may promote settlement in the child's best interests. However, it is inappropriate for the GAL to make recommendations if information will be developed in a hearing which will bear on the child's best interests and that information is not available to the GAL until the evidence is presented.
- 5.4. It is the GAL's choice to present evidence through other witnesses or through his own testimony or report. If the GAL chooses to present evidence which otherwise has not been presented to the court, due process requires that the GAL be available for cross-examination. If the GAL presents all his evidence through other witnesses, he should not testify or submit to cross-examination. The GAL, like other counsel, is free to comment on the evidence.

The law and commentaries are unsettled on the issue of whether the GAL, as a general rule, can, should or must testify, and Colorado has no cases on point.

[Choosing to testify may place the GAL in an ethical quandary because DR 5-102 requires the "attorney" who becomes a witness to withdraw from the case *See also*, EC 5-9 and 7-24. However, the role of the GAL is a quasi-judicial one. *See, Short v. Short*, 730 F.Supp. 1037 (D. Colo. 1990) and cases cited therein. It can be argued that the GAL is not subject to DR 5-102 when acting as a witness in that quasi-judicial role. In addition, DR 5-101(B)(4) permits testimony by the "attorney" where refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case. This distinctive value might lie in the GAL's relationship with the child, knowledge of the case, and the GAL's knowledge and skill.]

In deciding to call witnesses, the GAL should consider the time, cost and impact of a personal appearance, rather than a telephone conference with a witness. It would seem prudent for the GAL to attempt to present factual information through other witnesses if feasible and economical. However, the independent investigation of the GAL may reveal crucial information which cannot be presented to the court in any other way, or

which may be impractical (due to time and financial reasons.)

If other parties seek discovery of the GAL's file or seek to call the GAL as a trial or deposition witness, the GAL must determine whether such disclosure or testimony would serve the child's best interests.

6.0 Compensation

- 6.1. The representation of children requires special expertise. A GAL is entitled to receive reasonable compensation for services rendered in a case. Unless governed by State Judicial Department rates, the court should set an hourly rate considering the factors in DR 2-106, including current attorney fees in the community and the experience of the GAL. This rate may be increased by the court considering such factors as, but not limited to, the number of children, the complexity of the case, the financial status of the parties and the hourly rate of other counsel in the case. A contract rate, when necessary, should consider the same factors as described above and the overall GAL standards.

The court should emphasize the need of the parties to pay court ordered fees on a timely basis. The court should order payment of an appropriate retainer fee directly to the GAL by a date certain. Except in an emergency or as ordered by the court, the GAL shall have no obligation to commence work until full payment of the retainer fee.

- 6.2. The GAL shall be entitled to enforce payment of the attorney fees as any judgment creditor. The GAL shall use his sole discretion in executing on a judgment. The GAL is entitled to use all legal remedies for collection. A citation for contempt of court for non-payment of GAL fees should be available.

The GAL shall be entitled to charge the non-paying party for his time spent collecting the fee. A GAL need not withdraw from a case because he has become a judgment creditor against any party.

- 6.3. The GAL shall seek prior court approval before incurring extraordinary expenses such as expert witness fees.
- 6.4. If a GAL chooses to use support staff as appropriate under these standards, the GAL should be compensated for that person's time.

THE DUTIES OF A GUARDIAN AD LITEM (GAL)

The guardian ad litem (GAL) is a full participant in the court proceeding and is the only party whose sole duty is to protect the child's needs and interests. The GAL assumes the role of an advocate for the child's interests and in no way represents the petitioner (usually an agency) or the respondents (usually the parents or custodians). A GAL is appointed because of the child's immaturity and lack of judgment. Therefore, the GAL stands in the child's shoes and exercises substitute judgment for the child.

In fulfilling this child-centered role, the GAL performs ten important and interrelated duties. The GAL:

1. Acts as an independent fact finder (or investigator) whose task it is to review all relevant records and interview the child, parents, social workers, teachers and other persons to ascertain the facts and circumstances of the child's situation.
2. Ascertains the interests of the child taking into account the child's age, maturity, culture and ethnicity including maintaining a trusting meaningful relationship with the child via face-to-face contact.
3. Seeks cooperative resolutions to the child's situation within the scope of the child's interest and welfare.
4. Provides written reports of findings and recommendations to the court at each hearing to assure that all the relevant facts are before the court.
5. Appears at all hearings to represent the child's interest, providing testimony when required.
6. Explains the court proceedings to the child in language and terms that the child can understand.
7. Asks that clear and specific orders are entered for the evaluation, assessment, services, and treatment of the child and the child's family.
8. Monitors implementation of service plans and dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and are accomplishing their desired goal.
9. Informs the court promptly in writing or orally if the services are not being made available to the child and/or families, if the family fails to take advantage of such services, or if such services are not achieving their purpose and brings to the court's attention any violation of orders, new developments or changes.
10. Advocates for the child's best interests in mental health, educational, family court, juvenile justice, criminal justice, and other community systems.

Sample

STATE OF HAWAII FAMILY COURT FIRST CIRCUIT	ORDER SUBSTITUTING GUARDIAN AD LITEM	CASE NUMBER FC- NO.
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	GUARDIAN AD LITEM (Name, Address, & Phone No.)
	GUARDIAN AD LITEM FOR (Name)

Good cause appearing, IT IS ORDERED that pursuant to HRS Sections 560:5-105, 571-8.5(8), 571-24, 571-46(8), 571-47, 578-17, 584-9, 587-34 and/or Family Court Rules 17(c) and 152, the person indicated above be appointed to substitute as guardian ad litem to protect the interests of the minor child named above until final disposition of the case or unless sooner discharged by the court subject to the "Duties of a Guardian Ad Litem (GAL)" set forth on the reverse of this order and incorporated herein.

IT IS ALSO ORDERED that said guardian ad litem shall serve effective: _____

- without bond
- without compensation but shall receive reasonable costs
- as a volunteer of the Volunteer Guardian Ad Litem Program, said Program having the authority to act on behalf of the volunteer
- and shall receive reasonable fees and costs
- fees and/or cost may be payable in whole or in part by an individual or agency, or by the court as the circumstances may justify
- _____ may be required to reimburse the court for fees and costs paid as circumstances may justify and in an amount to be determined by the court.

IT IS FURTHER ORDERED that the guardian ad litem shall:

- (1) Be allowed access to the child by the caretakers of the child whether caretakers are individuals, authorized agencies, or health care providers;
- (2) Have upon presentation of this order to any agency, hospital, organization, school, individual or office, including but not limited to the Clerk of this Court, human services and/or child caring agencies, public or private institutions and/or facilities, medical and mental health professionals, law enforcement agencies and the Attorney General, the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child that are relevant to the proceedings filed under this chapter without the consent of the child or individuals and authorized agencies who have control of the child;
- (3) Hold any information received from any such source as confidential, and shall not disclose the same except to the court and where allowed by the court, to other parties to this case and where provided by law;
- (4) Be given notice of all hearings and proceedings including but not limited to administrative, family, civil, criminal, grand juries or appellate; and all conferences including but not limited to multi-disciplinary team meetings, individual educational program meetings or interagency cluster meetings, involving the child and shall protect the best interest of the child therein, unless otherwise ordered by the court;
- (5) Appear at all hearings, proceedings and conferences to protect the best interest of the child unless otherwise directed by the court; and
- (6) Have party status in any agreement or plan entered into on behalf of the child.

DATE Honolulu, Hawaii	JUDGE	
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cc: GAL
Child Concerned
Child's Parents

**Cost By Locality of Guardians ad Litem
Representation in Virginia in Fiscal Year 1993**

Locality Counties	Circuit Court	No. Attys Paid	JDRC and District Court	No. Attys Paid	Total Cost
	Dollars Spent *		Dollars Spent *		
Accomac	633	3	100	1	733
Albemarle	3,033	3	228	2	3,261
Amherst	1,583	5	8,113	8	9,696
Alleghany			535	2	535
Arlington	5,580	10	13,880	37	19,460
Augusta	92	1	3,370	12	3,462
Bath			500	1	500
Bedford			2,735	8	2,735
Botetourt			456	2	456
Buchanan	323		190	2	513
Buckingham	390	1	500	1	890
Campbell	1,324	6	7,096	7	8,420
Caroline			1,765	7	1,765
Carroll	2,338	6	290	2	2,628
Charlotte			100	1	100
Chesterfield	2,030	6	4,376	20	6,406
Clarke	518	2	1,054	5	1,572
Culpepper	422	2	400	4	822
Cumberland			1,070	1	1,070
Dickenson	360	1			360
Dinwiddie	420	2	1,850	6	2,270
Fairfax	27,897	25	46,031	99	73,928
Fauquier	822	2	100	1	922
Floyd	132	1			132
Fluvanna	250	1	200	1	450
Franklin	945	4			945
Frederick	1,389	3	1,067	3	2,456
Giles	109	1			109
Gloucester	825	1	500	3	1,325
Grayson	1,975	6	855	2	2,830
Greensville			100	1	100
Halifax	777	1	1,326	7	2,103
Hanover	240	2	3,526	11	3,766
Henrico	1,553	7			1,553
Henry			250	1	250
Isle of Wight			913	4	913
King and Queen			100	1	100
King George	1,556	3			1,556
King William	400	1			400
Lee	864	4	3,925	6	4,789
Loudon	140	1	1,433	4	1,573
Louisa	342	3	150	1	492
Lunenburg			500	1	500
Mathews			285	1	285

Locality	Dollars Spent *	No. Attys Paid	Dollars Spent *	No. Attys Paid	Total Cost
Middlesex	132	1			132
Montgomery	555	2	4,300	14	4,855
Nelson	967	2	160	2	1,127
New Kent	364	1			364
Orange	100	1	100	1	200
Page	320	1	380	3	700
Pittsylvania	210	2	1,335	3	1,545
Powhatan	320	1	60	1	380
Prince Edward	180	1	302	1	482
Prince George	700	2	100	1	800
Prince William			23,540	40	23,540
Pulaski	2,277	4	2,610	5	4,887
Roanoke	1,554	4	1,736	11	3,290
Rockbridge	75	1	1,504	5	1,579
Rockingham/Harrisonburg	8,490	13	5,777	8	14,267
Russell	837	2	1,680	2	2,517
Scott	594	2	1,410	5	2,004
Shenandoah	400	2	560	2	960
Southampton	415	2	620	4	1,035
Spotsylvania	1,124	4	1,919	7	3,043
Stafford	2,805	6	4,127	10	6,932
Surry			96	1	96
Tazewell	269	1	3,538	6	3,807
Warren	3,104	2	412	3	3,516
Washington			823	3	823
Westmoreland	70	1			70
Wise/Norton	700	5	5,535	11	6,235
Wythe	312	1	200	2	512
York	1,205	2	200	2	1,405
Cities					
Alexandria	1,210	6	14,800	46	16,010
Bristol			424	2	424
Buena Vista	310	1	200	2	510
Charlottesville	952	3	2,188	5	3,140
Chesapeake	1,254	4	200	2	1,454
Clifton Forge			300	3	300
Colonial Heights	132	1	300	1	432
Danville	100	1	1,408	5	1,508
Falls Church			310	1	310
Franklin			2,030	3	2,030
Fredericksburg	200	1	3,728	14	3,928
Galax			350	1	350
Hampton	330	3	2,410	8	2,740
Hopewell	341	2	900	3	1,241
Lynchburg	1,460	6	5,906	17	7,366
Martinsville	100	1	100	1	200
Newport News	3,202	7	14,524	25	17,726
Norfolk	1,340	3	4,960	27	6,300
Petersburg	278	2	6,694	10	6,972
Portsmouth	4,857	14	1,630	12	6,487
Radford	680	3			680
Richmond	5,251	15	30,472	46	35,723
Roanoke	7,172	12	990	5	8,162
Salem	265	1	200	2	465
Staunton	1,250	2	3,360	12	4,610

Locality	Dollars Spent *	No. Attys Paid	Dollars Spent *	No. Attys Paid	Total Cost
Suffolk	988	4	6,073	9	7,061
Virginia Beach	2,768	9	7,954	34	10,722
Waynesboro			100	1	100
Williamsburg			920	3	920
Winchester	3,966	6	1,683	6	5,659
Total					\$14,152

**Dollars Spent amounts are rounded to the nearest dollar.*

Source: Financial Records of the Accounting Department of the Office of the Executive Secretary of the Supreme Court of Virginia

BIBLIOGRAPHY

- American Bar Association. *America's Children at Risk—A National Agenda for Legal Action*. July 1993.
- Center for Child Protection. "Kids in Court" Program Information. Children's Hospital and Health Center. San Diego, California.
- CSR, Inc. *National Study of Guardian ad Litem Representation*. Washington, 1990.
- Ellis, Claire. "Philadelphia's Court School Program." *Roundtable*. Pennsylvania, 1990.
- Feller, J. N. and H. A. Davidson. *Working with the Courts in Child Protection*. McLean: U.S. Department of Health and Human Services, 1992.
- Fraser, Merri L. "Kids in Court School Lesson Plan." Isle of Wight Victim and Witness Assistance, Virginia.
- Heartz, Rebecca H. *Guardians ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*. Seattle: National CASA Association, April 1993.
- Hofford, Meredith. *Families In Court*. Reno: National Council of Juvenile and Family Court Judges, 1991.
- Judicial Council of Virginia. *Virginia Courthouse Facility Guidelines*. Richmond, 1987.
- Lange, Linda. *Making Reasonable Efforts: Steps for Keeping Families Together*. National Council of Juvenile and Family Court Judges, Child Welfare League of America, Youth Law Center, National Center for Youth Law.
- Melton, Gary B. *Legal Reforms Affecting Child and Youth Services*. New York: Haworth Press, 1982.
- National CASA Association. "Roles and Responsibilities of Guardians ad Litem." Seattle, 1992.
- National Center for Missing and Exploited Children. *Selected State Legislation: A Guide for Effective State Laws to Protect Children*. Washington, 1993.
- National Center on Child Abuse and Neglect. *A Coordinated Response to Child Abuse and Neglect: A Basic Manual*. Washington, 1992.

National Center on Child Abuse and Neglect. "The Child as a Witness." *Working with the Courts in Child Protection*. Washington, 1992.

Peterson, Marilyn. *The Role of Mental Health Professionals in the Prevention and Treatment of Child Abuse and Neglect*. U.S. Department of Health and Human Services. Washington, 1993.

Penie, Donna. *The Role of Law Enforcement in the Response to Child Abuse and Neglect*. McLean, Virginia: U.S. Department of Health and Human Services, 1992.

Shepherd, Robert E., Jr. "Guardians ad Litem in Child Protection Proceedings." Richmond: University of Richmond Law School, 1992.

---. "What If Your Client Is a Kid?" Richmond: University of Richmond Law School, 1992.

United States. Advisory Board on Child Abuse and Neglect. *Child Abuse and Neglect: Critical First Steps in Response to a National Emergency*. Washington, 1990.

---. Department of Health and Human Services. *National Child Abuse and Neglect Data System Working Papers 1 and 2*. 1992, 1993.

---. Department of Health and Human Services. *Study Findings – National Study of the Incidence and Severity of Child Abuse and Neglect*, 1981.

---. Department of Justice. "Child Victim as a Witness." Office of Juvenile Justice and Delinquency Prevention Update on Research SNI214. May/June 1989.

Virginia. Department of Criminal Justice Services. *Use of Closed-Circuit Television in Child Abuse Cases in Virginia*. Richmond, 1993.

---. Department of Social Services. *1991-1992 Annual Report*. Richmond, 1992.

Whitcomb, D. *Child Victims as Witnesses: What the Research Says*. Washington: National Institute of Justice, 1993.

---. *Guardians ad Litem in Criminal Courts*. Washington: National Institute of Justice, 1988.

---. *When the Victim Is a Child*. Washington: National Institute of Justice, 1992.