

MONTANA

<p>Structure, organization, and delivery of Child Representation</p> <p>State-by-state, county-by-county, etc.</p>	<p>Statewide public defender/contract system:</p> <p>(1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the commission and administered by the office.</p> <p>(2) The commission shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The commission may establish a regional office to provide public defender services in each region, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate ...</p> <p>(3) When a court orders the office or the office of appellate defender to assign counsel, the appropriate office shall immediately assign a public defender qualified to provide the required services. The commission shall establish protocols to ensure that the offices make appropriate assignments in a timely manner. MCA 47-1-104</p> <p>(5)(a) A public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in an abuse and neglect proceeding; 5(b) however a private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest. MCA 47-1-104</p>
<p>Funding Child Representation</p>	<p>The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived. MCA 41-3-112(4)</p> <p>(a) In Judicial Districts with an established Court-Appointed Special Advocate (CASA) program, the preferred method of appointing an advocate for the child or sibling group shall be by obtaining a volunteer child advocate provided through the established CASA program. A Judicial District with a CASA program must have a memorandum of understanding between the judge(s) or a designee) and the CASA program defining the services to be provided to the Judicial District by the CASA program. The Office of Court Administrator (OCA) shall enter into fixed costs contracts with these CASA programs to provide financial support to the programs for providing services to the Judicial Districts.</p> <p>(b) In Judicial Districts where a CASA-provided child advocate is not available or at the judge's discretion, the judge may appoint a guardian ad litem who is under contract with the OCA. The OCA will enter into contracts with qualified attorneys to provide guardian ad litem services. All contracting</p>

must comply with the state procurement process and the Judicial Branch Procurement Policy #750. Payments will be made as detailed in the contracts.

(c) If a CASA volunteer or a contracted guardian ad litem is not available or at the judge's discretion, the judge may appoint an attorney guardian ad litem on an hourly basis. Compensation for an appointed attorney guardian ad litem may not exceed \$62.00 per hour. In most cases, the judge will appoint a single attorney guardian ad litem for a child or sibling group. In these cases, one hour of work is presumed to be any hour that the guardian ad litem spends on the case. (For example, a guardian ad litem who spent one hour with three children from a family would bill only one hour.)

(d) A claim for reimbursement from a contracted guardian ad litem or an appointed guardian ad litem must be submitted using the standard payment form provided by the OCA and must be accompanied by a court order appointing the guardian ad litem. CASA programs will be reimbursed as outlined in the agreement between the OCA and the individual CASA program.

(e) The OCA will pay expenses within 30 days of receipt of an approved claim. Payment may be delayed if the claim is returned for clarifications or corrections ... [Montana Judicial Procedures Policy No. 820\(3.1\)](#)

(a) Except as provided for in subsection 3.2 d, when appropriate a judge may appoint an attorney on an hourly basis to represent a CASA volunteer in a child abuse and neglect proceeding. The decision to appoint an attorney shall be by written order and must be made on a case-by-case basis taking into consideration the nature of the proceeding, the circumstances of the CASA volunteer, and other relevant factors. The written order must outline the reasons for the appointment.

(b) Compensation for an appointed attorney may not exceed \$62.00 per hour.

(c) To receive compensation, the attorney must submit an approved claim for services to the OCA using the standard payment form provided by the OCA. The initial claim must be accompanied by the court order appointing the attorney.

(d) The OCA will pay expenses within 30 days of receipt of an approved claim. Payment may be delayed if the claim is returned for clarifications or corrections.

(e) Funding for appointments of attorneys for CASA volunteers is limited to no more than \$40,000 per fiscal year. If during a fiscal year the OCA projects that total annual payments will exceed \$32,000, it shall notify the District Court Council. If the District Court Council accepts the OCA's projection, the Council shall direct judges to reduce or make no additional appointments for the remainder of the fiscal year. [Montana Judicial Procedures Policy No. 820\(3.2\)](#)

<p>1. General Duties: Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</p>	<p>-In every judicial proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense. MCA 41-3-112(1)</p> <p>-The guardian ad litem is charged with the representation of the child's best interests. MCA 41-3-112(3)</p> <p>A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. MCA 41-3-607(4)</p> <p>-If the guardian ad litem is an attorney, he or she may file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights. MCA 41-3-112(3)(g)</p> <p>-The court must appoint counsel for a child in an abuse and neglect proceeding when a guardian ad litem is not appointed for the child or youth. MCA 41-3-425(2)(b). When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding when a guardian ad litem is appointed for the child or youth. MCA 41-3-425(3). In addition, when appropriate, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding MCA 41-3-425(4).</p>
<p>2. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</p>	<p>-The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties:</p> <ul style="list-style-type: none"> (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect; (b) to interview or observe the child who is the subject of the proceeding; (c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians; (d) to make written reports to the court concerning the child's welfare; ... (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights. MCA 41-3-112(3)
<p>3. In Court – Active Participation in</p>	<p>-The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties: ...</p>

<p>Hearings: Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.</p>	<p>(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; (f) to perform other duties as directed by the court. MCA 41-3-112(3)</p> <p>-Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child. MCA 41-3-112(4)</p> <p>-At least 3 working days prior to the permanency hearing the guardian ad litem may submit an informational report to the entity that will be conducting the hearing for review. MCA 41-3-445</p>
<p>4. Post-Hearing: Review courts order, communicate order to child, and monitor implementation of orders</p>	<p>No explicit legal authority</p>
<p>5. Appellate Advocacy: Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>-An appeal does not stay the order or decree appealed from and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.</p> <p>-If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise. MCA 41-3-113(2)-(3)</p> <p>Note, however, that there is no explicit legal authority regarding the role of the attorney guardian ad litem on appeal</p>
<p>6. Cessation of</p>	<p>-Any party may petition the court for the removal and replacement of the guardian ad litem if the</p>

<p>Representation: Contacts post representation, if any</p>	<p>guardian ad litem fails to perform the duties of the appointment. MCA 41-3-112(5)</p> <p>-The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent. MCA 41-3-607(4)</p>
<p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</p>	<p>-In every judicial proceeding, the court shall appoint a guardian ad litem for any child alleged to be abused or neglected. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense. MCA 41-3-112(1)</p> <p>-The court shall immediately appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding when a guardian ad litem is not appointed for the child or youth MCA 41-3-425(2)(b)</p> <p>-The Court Appointed Special Advocate/Guardian ad Litem (CASA/GAL) program provides support to statewide non-profit groups that train volunteer advocates. These advocates are appointed by judges to provide information and advice about a child to the courts. State statutes require the appointment of a Guardian ad Litem (GAL) in abuse and neglect proceedings. http://courts.mt.gov/cao/ct_services/casa.mcp</p>
<p>8. Lawyer Training: Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</p>	<p>The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative. MCA 41-3-112(2)</p> <p>The Court Appointed Special Advocate/Guardian ad Litem (CASA/GAL) program provides support to statewide non-profit groups that train volunteer advocates . . . CASA volunteers go through an intensive 30-hour training program to become a Guardian ad Litem before being appointed by a district court judge. http://courts.mt.gov/cao/ct_services/casa.mcp</p>
<p>9. Lawyer Compensation: Adequate and timely compensation, reimbursement provided for expenses.</p>	<p>-The office of court administrator shall fund all district court costs, including expenses associated with appointment of a guardian ad litem or child advocate for the youth. MCA 41-5-111(3); MCA 3-5-901(e)(iv)</p> <p>-Compensation for services and related expenses for counsel assigned for a party must be paid by the</p>

	office of state public defender. MCA 41-5-111(1) ; MCA 47-1-201 .
10. Caseload Levels: Caseloads are of a manageable size	There is no explicit legal authority regarding the role of the attorney guardian ad litem; however, the Montana Public Defender's Office recommends that an attorney have no more than 20 dependent and neglect at any one time. http://publicdefender.mt.gov/forms/pdf/caseloadsuggestions.pdf