

South Dakota	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p>1. General Duties: <i>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.</i></p>	<p>- Appointment of counsel--Compensation--Assistance. Notwithstanding the provisions of § 26-7A-31 and 26-8A-9, the court shall appoint an attorney for any child alleged to be abused or neglected in any judicial proceeding. The court shall appoint an attorney in the manner the county in which the action is being conducted has chosen to provide indigent counsel under § 23A-40-7. The attorney for the child shall represent the child's best interests and may not be the attorney for any other party involved in the judicial proceedings. The court may designate other persons, including a guardian ad litem or special advocate, who may or may not be attorneys licensed to practice law, to assist the attorney of the child in the performance of the attorney's duties. S.D. CODIFIED LAWS § 26-8A-18.</p> <p>- Appointment of representative of child's best interest--Duties. If a child is an apparent or alleged abused or neglected child, the court may appoint a special advocate to represent the best interests of the child and to assist the child's attorney. If a child has been adjudicated an abused or neglected child and is removed from the child's home with the child's parents, guardian or custodian, the court shall appoint a guardian ad litem or a special advocate to represent the best interests of the child and to assist the child's attorney. The guardian ad litem or special advocate is an officer of the court for the purpose of representing the child's best interests. The guardian ad litem or special advocate shall receive all reports concerning the child and may cause the case to be reviewed by the court pursuant to § 26-8A-24. S.D. CODIFIED LAWS § 26-8A-20.</p> <p>- Investigation of oral report--Other action permitted--Appointment of attorney--Compensation. Upon receipt of a report pursuant to § 26-8A-8, the Department of Social Services or law enforcement officers shall investigate. Investigating personnel may personally interview a child out of the presence of the child's parents, guardian, or custodian without advance notice or consent. The investigation does not prohibit any other lawful action. If the investigation and report indicate that child abuse or neglect has occurred, the state's attorney shall take appropriate action immediately. The court may appoint an attorney, guardian ad litem, or special advocate to assist in representing the best interests of the child. Any such appointment shall occur in the manner the county in which the action is being conducted has chosen to provide indigent counsel under § 23A-40-7. Compensation and expense allowances for the child's attorney, guardian ad litem, or special advocate shall be determined and paid according to § 26-7A-31. S.D. CODIFIED LAWS § 26-8A-9.</p>
<p>2. Out of Court - Actions to be Taken: <i>Meet with</i></p>	<p>- Confidentiality of abuse or neglect information--Violation as misdemeanor--Release to certain parties. All investigative case records and files relating to reports of child abuse or neglect are confidential, and no disclosure</p>

<p><i>child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>of any such records, files, or other information may be made except as authorized in chapter 26-7A or this chapter. Any person who knowingly violates the confidential nature of the records, files, or information is guilty of a Class 1 misdemeanor. The Department of Social Services may release records, files, or other information to the following parties upon receipt of a request showing that it is necessary for the parties to have such information in the performance of official functions relating to child abuse or neglect:</p> <p>...</p> <p>(2) The attorney or guardian ad litem of the child who is the subject of the information... S.D. CODIFIED LAWS § 26-8A-13.</p>
<p>3. In Court - Active Participation in Hearings: <i>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.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>
<p>4. Post-Hearing: <i>Review courts order, communicate order to child, and monitor implementation of orders.</i></p>	<p>- Rights of child and parents, guardian, or custodian--Representation by attorney--Motion for new hearing--Appeal. The court shall advise the child and the child's parents, guardian, or custodian involved in any action or proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C of their constitutional and statutory rights, including the right to be represented by an attorney, at the first appearance of the parties before the court. The court shall also advise them of the right of the parties to file, at the conclusion of the proceedings, a motion for a new hearing and, if the motion is denied, the right to appeal according to the rules of appellate procedure governing civil actions. S.D. CODIFIED LAWS § 26-7A-30.</p>

<p>5. Appellate Advocacy: <i>Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</i></p>	<p>- Notice of order or final decree--Service--Appeal. Notice of entry of order of adjudication or final decree of disposition issued by the court in any action involving an abused or neglected child shall be served on the child's attorney and the child's guardian ad litem or special advocate, if any, and on all respondent parents and other respondent parties in any manner authorized by the rules of civil procedure. The notice of entry may be served by publication in the same manner as service of the summons in the action as provided in § 26-7A-48. If the notice of entry is served by publication, the service is completed five days after the date of publication. The time for appeal commences on the day following the date of completed service of the notice of entry regardless of the manner in which the notice of entry is served. S.D. CODIFIED LAWS § 26-8A-28.</p> <p>- Rights of child and parents, guardian, or custodian--Representation by attorney--Motion for new hearing--Appeal. The court shall advise the child and the child's parents, guardian, or custodian involved in any action or proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C of their constitutional and statutory rights, including the right to be represented by an attorney, at the first appearance of the parties before the court. The court shall also advise them of the right of the parties to file, at the conclusion of the proceedings, a motion for a new hearing and, if the motion is denied, the right to appeal according to the rules of appellate procedure governing civil actions. S.D. CODIFIED LAWS § 26-7A-30.</p>
<p>6. Cessation of Representation: <i>Contacts post representation, if any.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>
	<p>Organizational and Administrative Supports for the Child Representative</p>
<p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the "court"</i></p>	<p>- Abused and neglected child defense fund--Distribution to counties--Pro rata. There is hereby created in the office of the state treasurer an abused and neglected child defense fund. All moneys in the abused and neglected child defense fund shall be annually distributed by the state treasurer to the counties on a pro rata basis. The state treasurer shall, within sixty days of the end of the fiscal year, determine and verify from receipts and expenditure records the total expenditures by all counties in the state for the representation of abused and neglected children. He shall then establish a percentage ratio between moneys collected in the fund for the past fiscal year and the total expenditures by counties for the representation of abused and neglected children. That percentage ratio shall then be applied to each county's expenditure for the representation of abused and neglected children to determine its respective payment from the fund. S.D. CODIFIED LAWS § 26-8A-19.</p>

<p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<ul style="list-style-type: none"> - A CASA volunteer has to: Complete a written application; Provided three personal and/or professional references; Authorize a criminal check, motor vehicles record check and a child protective services check; Participate in a personal interview; Complete the 35 hours of required training; and Participate in the CASA swearing in before District Court. - An attorney appointed to represent abused or neglect children, including those appointed as guardian ad litem, shall certify that they have viewed and completed the A&N attorney training developed by the South Dakota Unified Judicial System. UJS Presiding Judge Policy 3-PJ-05. The following video developed by the South Dakota Unified Judicial System satisfies this training requirement.
<p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<ul style="list-style-type: none"> - Reasonable and just compensation for services of a court-appointed attorney and for necessary expenses and costs incident to the proceedings shall be determined by the court within guidelines established by the presiding judge of the circuit court and shall be paid by the county in which the action is being conducted according to the manner prescribed by the court. If the court-appointed attorney is a party to a contract with the county to provide indigent counsel pursuant to subdivision 23A-40-7(3), the compensation for that attorney shall be that which the attorney would receive under the contract. This section does not preclude the court from appointment of an attorney for a child as required by provisions of chapter 26-8A. S.D. CODIFIED LAWS § 26-7A-31. Compensation and expense allowances for the child's attorney shall be determined and paid according to § 26-7A-31. S.D. CODIFIED LAWS § 26-8A-18.
<p>10. Caseload Levels: <i>Caseloads are of a manageable size.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>