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Comment

**\*1065 THE HEARTBEAT OF TEXAS CHILDREN: THE ROLE OF COURT-APPOINTED SPECIAL ADVOCATES IN THE WAKE OF THE 2005 FAMILY CODE AMENDMENTS** [\[FN a1\]](#)

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**\*1066 I. Introduction**

There is no food in the house. [\[FN1\]](#) A gas leak silently seeps for over a week. [\[FN2\]](#) There is no running water. [\[FN3\]](#) Six-week-old baby Sam does not cry or move as he lies on his bed—a blanket on the floor. [\[FN4\]](#) His skin hangs limply around his tiny bones; over five weeks, he has consumed merely eleven days' quantity of formula. [\[FN5\]](#) His older sisters, two-year-old Sarah and three-year-old Shelly, sit in soiled diapers that leave cuts in their skin. [\[FN6\]](#) The children eat meager meals on the kitchen floor and have not seen a dentist or doctor in over a year. [\[FN7\]](#) Neither girl can speak a word, nor do they recognize common household items, such as a shoe or a fork. [\[FN8\]](#)

This dreadful situation occurs too frequently. Imagine forty sports arenas with all 20,000 seats filled by children like Sam, Sarah, or Shelly. [\[FN9\]](#) This vivid mental picture illustrates the number of children in the United States' foster care system; over a half million children remain victims of abuse and neglect. [\[FN10\]](#) In Texas, data confirmed over 50,000 children as victims of child abuse or neglect in 2004. [\[FN11\]](#) The Texas Department of Family and Protective Services **\*1067** (DFPS), through the Child Protective Services (CPS) division, provided custody for over 35,000 of these children. [\[FN12\]](#) In child abuse and neglect proceedings, the battle rages between parents and the state and often casts the children as the casualties of war. [\[FN13\]](#) The state initiates these proceedings with an allegation and preliminary finding of parental unfitness. [\[FN14\]](#) Upon assessment of the necessity for a dependency, the court enters and seeks to uphold the children's best interests. [\[FN15\]](#) Although CPS intervened for the state in the case of Sam, Sarah, and Shelly described above, no one served as an independent voice for the children. [\[FN16\]](#)

In 1974, the U.S. Congress mandated that courts appoint a guardian ad litem (GAL) in all cases of child abuse and neglect. [\[FN17\]](#) A guardian “has the legal authority and duty to care for another's person or property, esp[ecially] because of the other's infancy, incapacity, or disability.” [\[FN18\]](#) Similarly, a GAL serves as a “guardian, usu[ally] a lawyer, appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party.” [\[FN19\]](#) In this sense, the state created a narrow duty of loyalty for the GAL—to advocate on its behalf for the welfare and best interests of children in a specific proceeding. [\[FN20\]](#) A GAL may be an attorney, a court-appointed special advocate (CASA), or both. [\[FN21\]](#)

Despite this enactment, the law remained vague as to the duties of GALs. [\[FN22\]](#) Accordingly, state laws vary concerning the nature of the roles and the specific details of court appointments. [\[FN23\]](#) Texas amended its laws in 2003 **\*1068** to address the issues surrounding how, when, and who to appoint to represent children in suits affecting the parent-child relationship. [\[FN24\]](#) Several issues remained problematic, however, and the 79th Texas Legislature made widespread amendments and additions to the Texas Family Code through House Bill 307 and Senate Bill 6,

fine-tuning the roles of child representatives and positively impacting the child protection system. [\[FN25\]](#)

Currently, judges may appoint CASA volunteers, who work alongside attorneys ad litem, to advocate for the best interests of children in abuse and neglect proceedings brought by CPS. [\[FN26\]](#) Due to the growing numbers of victimized children, the Texas CASA Association (TCASAA) remains crucial to protecting children's best interests. [\[FN27\]](#) This Comment breaks the association down to its basics, along with the amendments, analyzes each noteworthy change, and opines on the effectiveness of these revisions. [\[FN28\]](#) It also proposes that Texas legislators continue to confine CASA appointments to CPS cases rather than expand them to private proceedings. [\[FN29\]](#)

This Comment evaluates the role of CASA volunteers in Texas court-ordered proceedings in light of the 2005 revisions. [\[FN30\]](#) Part II presents a broad overview of the origins of child representation. [\[FN31\]](#) Next, Part III discusses the history and current state of the National CASA Association (NCASAA) and the TCASAA. [\[FN32\]](#) Then, Part IV addresses the Texas legislative movement, highlighting the former law and its problems, the new amendments and additions, and their impact on child representatives and the child protection system. [\[FN33\]](#) Part V presents a review of the influence CASA and its volunteers have had in the court system and upon children nationwide. [\[FN34\]](#) Finally, before concluding, Part VI explores the reasons why the Texas Legislature should not broaden CASA programs from Texas CPS cases to encompass private \*1069 scenarios, including divorce, termination of parental rights, access, and paternity proceedings. [\[FN35\]](#) Ultimately, the 2005 amendments provide Texas CASA and its volunteers with greater opportunities to mold the hearts of victimized children both in and out of the courtroom. [\[FN36\]](#)

## II. Roots of Legal Representation for Children

From the doctrine of *parens patriae* to increasing constitutional awareness, the American legal system has journeyed far in its quest to provide representation for children. [\[FN37\]](#) Once lawmakers established various representative roles, new issues arose concerning their powers and duties within the scope of their representation. [\[FN38\]](#) Regardless of the debate, the courts, representatives, and scholars concur in seeking to promote children's best interests. [\[FN39\]](#)

### A. Provider of Protection: Doctrine of *Parens Patriae*

The concept of legal guardianship arose from deep historical roots. [\[FN40\]](#) Though the notion originated in ancient Rome and Greece, the U.S. policy flows from English common law, specifically the *parens patriae* principle. [\[FN41\]](#) The principle stems from the king's ownership of the land and his authority over and consideration for infants, "idiots," and "lunatics." [\[FN42\]](#) By delegating his *parens patriae* power to a guardian, the king channeled the doctrine through the judiciary, shifting the burden of solicitude for children to the court. [\[FN43\]](#) The Court of Chancery had the authority to uphold or refuse to support custody rights, thereby appointing a guardian for child custody cases. [\[FN44\]](#) The early English colonists brought the *parens patriae* doctrine with them to America, \*1070 and the United States embraced it as a foundational concept in the American legal system. [\[FN45\]](#) Under the modern doctrine of *parens patriae*, "the state has a right, indeed a duty, to protect children. . . . State officials may interfere in family matters to safeguard the child's health, educational development, and emotional well-being." [\[FN46\]](#) Gradually, the judicial branch fostered the policy of court-ordered appointments for children and created the role of the GAL to protect the child's interest in litigation. [\[FN47\]](#) A GAL serves as an extension of the state, embodying the *parens patriae* doctrine, and becomes the voice of the child in the proceedings. [\[FN48\]](#) Although courts heard children's circumstances through GALs, the judiciary still favored parents' authority over children's rights. [\[FN49\]](#)

### B. Power to the Parents: Federal Constitutional Cases and Legislation on the Parent-Child Relationship

While the U.S. Supreme Court granted certain rights to children, it primarily focused on parents' interests over children's rights. [\[FN50\]](#) In the early twentieth century, the Court held that parents had the right to care for, maintain custody, and exercise control over their children. [\[FN51\]](#) This theme continued into the latter part of the century, when

the Court refused to weigh the child's interest in a healthy family home against the parents' interest in childrearing. [\[FN52\]](#) Similarly, declining to extend children's rights in lieu of parental rights, the Court did not impose liability on the state under the Fourteenth Amendment Due Process Clause when the state could have mitigated a child's injuries. [\[FN53\]](#)

**\*1071** Although the Court's position in these cases demonstrates its focus on the rights of parental autonomy, the Court has extended children-specific rights. [\[FN54\]](#) The seminal case, *In re Gault*, recognized children as persons deserving due process rights under the Fourteenth Amendment. [\[FN55\]](#) Significantly, *Gault* marked the first time the Court mandated legal counsel for children. [\[FN56\]](#) Despite this landmark decision, critics have routinely condemned the Court's spotlight on parental rights over children's interests. [\[FN57\]](#)

Notwithstanding the limited focus on children's rights within judicial decisions, decades of child-centered legislation has granted children increased rights, including various procedural safeguards. [\[FN58\]](#) Because *Gault* limited the constitutional right to the context of delinquency proceedings and the Court failed to extend that right to other situations, Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA), which met the increasing need for legal representation of children in other proceedings. [\[FN59\]](#) CAPTA established a statutory right to counsel for abused or neglected children in judicial proceedings and allocated federal funding to state development of programs reporting child abuse and neglect. [\[FN60\]](#) Under CAPTA, states must appoint a GAL to represent a child; Congress amended the statute in 1996 to clarify that the GAL may “be an attorney or a court appointed special advocate . . . (or both),” who should represent the best interests of the child. [\[FN61\]](#) Correspondingly, the Victims of Child Abuse Act provided that a “court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate,” thereby encouraging the expansion of CASA programs. [\[FN62\]](#) Individuals could advocate for victimized children but determining children's best interests proved a bewildering concept. [\[FN63\]](#)

#### **\*1072 C.** Considering the GAL Role in Light of the “Best Interests” Doctrine

The U.S. Congress mandated the appointment of a best interest-directed GAL in cases involving an abused or neglected child, and the best interests of the child doctrine evolved into a hotly debated legal concept. [\[FN64\]](#) Early American courts regularly applied the principle as a focal point in their adjudication of child custody disputes. [\[FN65\]](#) Although some states bestowed broad judicial discretion, others pinpointed a series of factors necessary for the court's consideration. [\[FN66\]](#) For example, Texas provided a nonexhaustive list of factors in determining a child's best interests. [\[FN67\]](#) These factors include the following:

(A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent. [\[FN68\]](#) Regardless of these factors, the best interests doctrine remains a highly criticized, vague test. [\[FN69\]](#)

At the other end of the spectrum lies the expressed interest, or child-directed, method of representation. [\[FN70\]](#) This model promotes the traditional function for lawyers to pursue the child client's expressed objectives and the ethical obligations to maintain confidentiality and competent representation. [\[FN71\]](#) If the child is competent to direct the litigation, attorneys do not have to substitute their own judgment for the child's position. [\[FN72\]](#)

**\*1073** Proponents of the child-directed standard claim the best interests position of the GAL remains overly paternalistic and crosses the line into grave “cultural bias and middle-class imperialism.” [\[FN73\]](#) Frequently, disinterested third parties speak for the child's best interests, relying on their personal biases and experiences. [\[FN74\]](#) One

legal researcher categorized the best interests standard as a “judicial or quasi-judicial determination of whether society's view of the best interest of the child (as represented by the [s]tate), outweighs the parental interest in making that determination.” [\[FN75\]](#) Others have argued that the system's focus effectively disenfranchised children of their lawful rights, because courts historically promoted informality and relied on nonlegal resources. [\[FN76\]](#) Another chief complaint asserts that the judiciary and legislative branches fail to hold GALs accountable for quality advocacy, as most state legislatures grant them immunity from lawsuits. [\[FN77\]](#) If the GAL is an attorney, the primary objection attacks the attorney's effectiveness and training with regard to understanding a child's best interests. [\[FN78\]](#)

Although the best interests doctrine and the GAL model may contain inefficiencies, many people support the GAL model and claim that it remains preferable to the attorney-client mode of representation in child abuse and neglect proceedings. [\[FN79\]](#) Proponents of this approach argue that children lack the maturity and cognitive understanding to evaluate their own needs and direct an attorney to pursue their interests. [\[FN80\]](#) It would be particularly difficult, if not impossible, for an attorney to ascertain a pre-verbal child's wishes. [\[FN81\]](#) Most likely, this situation leaves the attorney no choice but to resort to the best **\*1074** interests standard. [\[FN82\]](#) Advocating for older children also remains challenging as no bright line exists to separate children who have the capacity necessary to direct the representation from those who lack the ability to direct the representation. [\[FN83\]](#) Thus, the application of the best interests doctrine provides consistent advocacy for all children. [\[FN84\]](#) Additionally, supporters note that society owes an obligation to protect children from the pressures and burdens of misidentifying and misarticulating their own interests. [\[FN85\]](#) Appointing a GAL to carry this burden and advocate for the child's best interests ensures that the court receives ample information to determine the most proper outcome for the child's well-being. [\[FN86\]](#)

Undeniably, pros and cons exist in the debate of the best interests versus the expressed interests of children in court-appointed representation. [\[FN87\]](#) The American Bar Association (ABA) issued the Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases (Standards). [\[FN88\]](#) The ABA Standards posit that although a lawyer may accept an appointment in the dual capacity of a lawyer GAL, the lawyer's primary duty must still focus on the protection of the legal rights of the child client. [\[FN89\]](#) The lawyer GAL should therefore perform all the functions of a “child's attorney.” [\[FN90\]](#) Regardless of the ABA Standards, the typical approach for child abuse and neglect proceedings requires a GAL to give a voice to children to protect their best interests, due to CAPTA requirements. [\[FN91\]](#) The ABA Standards do not apply to CASA volunteers or other nonlawyers appointed as GALs. [\[FN92\]](#) In voicing the child's best interests, both the national association and state CASA programs provide policies and standards to guide CASA workers if appointed as GALs. [\[FN93\]](#)

### **\*1075** III. Court-Appointed Special Advocates: The History and Current State of the National and Texas Associations

The quality and unique role of CASA volunteers resounds in author Anna Quindlen's description of volunteer work in the NCASAA's book titled, *Lighting the Way: Volunteer Child Advocates Speak Out*:

For children whose pasts have been chaotic and whose futures are uncertain, the CASA volunteer may be the most consistent, interested presence in their lives. . . . The lawyers know the statutes; the social workers [know] the regulations. But the CASA volunteer is assigned to know the child, one child at a time. [\[FN94\]](#)

Nearly thirty years ago, a distinct concept emerged in which judges appointed well-trained lay volunteers to advocate for children in child abuse and neglect proceedings. [\[FN95\]](#) Encouraged by Congress through various legislation, the need for CASA advocacy grew quickly. [\[FN96\]](#) Though each individual program depends on federal, state, and local guidelines, the main difference between each program is whether the CASA volunteer is simultaneously the GAL or remains separate and works alongside an attorney serving as the GAL. [\[FN97\]](#) The history and current state of the national and Texas CASA associations highlight the uniqueness and strength of the CASA mission. [\[FN98\]](#)

#### A. National CASA

In 1976, Superior Court Judge David Soukup of Seattle, Washington, envisioned a better tomorrow for children and launched a program that would evolve to be a bedrock in the foundation of child abuse and neglect proceedings and change the lives of over one million children. [\[FN99\]](#) The following year, the Seattle-based pilot program trained 110 volunteers to serve 498 children in 376 child abuse and neglect cases. [\[FN100\]](#) After receiving accolades from the National Center of State Courts in 1978, the CASA programs expanded across the country, and in 1982, leaders created the National CASA **\*1076** Association. [\[FN101\]](#) The NCASAA seeks to promote “court-appointed volunteer advocacy for abused and neglected children so that they can thrive in safe, permanent homes.” [\[FN102\]](#)

As the national body, the NCASAA aids in implementing state programs and offers technical support, training procedures, fundraising, media, and public awareness resources. [\[FN103\]](#) The NCASAA mandated compliance with administrative practices for all local programs in 1991. [\[FN104\]](#) In 1994, the board of directors formed the Standards for NCASAA Member Programs, and similar standards for state organizations developed in 1998. [\[FN105\]](#) Seeking to maintain superior and reliable training and ethical conduct, the standards committee added a code of ethics in 2000. [\[FN106\]](#) Currently, the NCASAA facilitates over 950 CASA programs across the United States, with at least one program in every state and more than 51,000 active, trained volunteers nationwide. [\[FN107\]](#) Under the NCASAA's leadership, Texas CASA boasts strong state participation. [\[FN108\]](#)

#### B. Texas CASA

Texas joined the national movement in 1979, officially beginning its first CASA program in Dallas and growing to host 64 local CASA programs serving 196 out of 254 Texas counties. [\[FN109\]](#) Remarkably, Texas CASA's growth exceeded every state CASA association in the country. [\[FN110\]](#) In 2005, over 4500 CASA volunteers voiced the best interests of nearly 19,000 abused and neglected Texas children. [\[FN111\]](#) Each of the local programs functions as an independent, nonprofit organization. [\[FN112\]](#) Texas sought to maintain consistency and implemented its own policies in addition to the NCASAA standards. [\[FN113\]](#)

**\*1077** Though Texas CASA imposes strict policies on the local programs, the policies ensure CASA volunteers are well equipped to advocate the best interests of children. [\[FN114\]](#) Volunteers must be at least twenty-one years old and may serve as a GAL or an independent third party “friend of the court.” [\[FN115\]](#) Initially, prospective volunteers must submit a written application, participate in personal interviews, and sign consent and release forms for background investigations. [\[FN116\]](#) They must complete a training program consisting of a minimum of thirty hours of pre-service instruction and twelve hours of in-service training annually. [\[FN117\]](#) The training program must inform volunteers about the nature and effect of child abuse as well as give details of how the court and child welfare system operate. [\[FN118\]](#) A state code of ethics also governs the volunteers in their work capacity. [\[FN119\]](#) After completing pre-service training, the volunteers sign a CASA status acknowledgment form, consisting of an oath, a pledge of confidentiality, a commitment pledge, and a volunteer job description. [\[FN120\]](#) Finally, a local judge swears in the volunteers. [\[FN121\]](#)

Upon completion of the obligations, volunteers may take cases and speak for the child. [\[FN122\]](#) Volunteers may review applicable records, facilitate prompt and thorough case review, interview appropriate parties, attend hearings, and submit recommendations to the court. [\[FN123\]](#) They may not, however, engage in the following activities:

- (i) take a child home for any period of time; (ii) give therapeutic counseling; (iii) make placement arrangements for a child; (iv) give or lend money or expensive gifts to a child or family; (v) take a child on an overnight outing; (vi) or allow a child to come into contact with someone the volunteer knows or should know has a criminal history involving violence, child abuse, neglect, drugs, or a sexual offense. [\[FN124\]](#)

To best serve children, volunteers may not work more than three cases simultaneously unless the local executive director or caseworker supervisor **\*1078** approves the assignment. [\[FN125\]](#) Although Texas CASA governs the local programs and volunteers with policies, the programs and volunteers must still abide by Texas laws in voicing the best interests of children in court appointments. [\[FN126\]](#)

#### IV. Texas Methodology: The Path of Legislation

While CASA volunteers fulfill the CAPTA requirements as best interest-directed representatives, Congress allows states to apply the details of the appointment differently. [\[FN127\]](#) For decades, Texas, along with the majority of other states, remained utterly bewildered in the confusing situation surrounding court appointments for children. [\[FN128\]](#) Illuminating this confusion, the First District Court of Appeals in Houston held in *Samara v. Samara* that an attorney ad litem's primary duty was to uphold the child's best interests. [\[FN129\]](#) Following *Samara* and seeking statutory resolution of the roles of court-appointed representatives for children, the Texas Legislature engaged an ad hoc group of volunteer judges, lawyers, professors, and other field experts to study the procedures of ad litem appointments. [\[FN130\]](#) Although the revisions in 2003 clarified the roles of court-appointed advocates in custody litigation, several important questions remained unanswered. [\[FN131\]](#)

Thus, the 79th Texas Legislature passed drafting improvements and consolidated some of the provisions, explaining the various roles and qualifications of children's advocates. [\[FN132\]](#) The legislature also dramatically revamped the Texas Family Code by adding entirely new chapters, primarily regarding the DFPS and individuals dealing with foster care children. [\[FN133\]](#) Although lawmakers confined the roles of CASA volunteers in certain circumstances, the new additions contain numerous child-friendly and pro-CASA provisions, reflecting the significance of the relationship between the child and the advocate. [\[FN134\]](#)

##### \*1079 A. 2003 Legislation: Clarifying the Roles of Child Representatives

In 2003, the legislature enacted sweeping amendments to the Family Code describing the roles of court appointments in suits affecting the parent-child relationship. [\[FN135\]](#) Texas lawmakers provided options to better represent children and allowed courts to appoint three types of representatives: (1) GAL, (2) attorney ad litem, or (3) amicus attorney. [\[FN136\]](#) A GAL may be a volunteer advocate association or individual, such as a CASA volunteer, that is a sufficiently competent, trained adult or an attorney in a dual role. [\[FN137\]](#) Where an attorney assumes a dual position in proceedings involving a governmental body, such as in cases filed by CPS, the court cannot appoint a GAL unless the court limits the attorney's role to that of an attorney ad litem and appoints another person to act as a GAL for the child. [\[FN138\]](#) Still, an attorney may serve as a GAL without assuming a dual role, so long as the attorney's role is confined to that of a nonlawyer GAL, and the attorney does not perform any legal services or engage in professional activities, such as conducting discovery, questioning witnesses, or giving opening and closing arguments. [\[FN139\]](#) Lastly, the court may appoint an amicus attorney in cases not filed by a governmental entity, such as CPS. [\[FN140\]](#) These amendments greatly clarified the roles of child representatives in court appointments, guiding judges, attorneys, and CASA volunteers in their respective roles, but questions still remained unanswered. [\[FN141\]](#)

##### B. 2005 Legislation: Fine-Tuning the Roles of Child Representatives

Although Texas legislators delineated the duties of court-appointed child representatives, dividing the suits into those filed by CPS, which mandated appointments, and all other suits, which allowed discretionary appointments, the 2003 changes left gaps in the law. [\[FN142\]](#) The amendments failed to recognize that all private custody litigation (non-CPS suits) entails mandatory appointments. [\[FN143\]](#) Similarly, they did not address the other provisions of the \*1080 Family Code that require appointments in specific circumstances. [\[FN144\]](#) For example, the legislature did not consider that the introduction of the role of an attorney in private proceedings would frequently fall to an amicus attorney, or that only nonlawyers, or lawyers not performing in their legal capacity, may be appointed as a GAL. [\[FN145\]](#) As a result, the 79th Texas Legislature ratified new provisions through House Bill 307 and Senate Bill 6, specifying which of the three positions appropriately fit in the context of the statute. [\[FN146\]](#) The court may appoint: (1) a lawyer in the dual role serving as both an attorney ad litem and GAL, or (2) an attorney ad litem and a separate nonlawyer GAL, such as a CASA volunteer, in suits brought by CPS. [\[FN147\]](#) In all other proceedings, the court may appoint either: (1) an amicus attorney, (2) an attorney ad litem, or (3) a nonlawyer GAL. [\[FN148\]](#) Senate Bill 6 largely

reformed the DFPS primarily through extensive amendments to Chapters 261 through 266, focusing on Chapter 264 (Child Welfare Services) and adding Chapter 266 (Medical Care and Educational Services for Children in Foster Care) to the Code. [\[FN149\]](#)

The amendments effectuated on September 1, 2005. [\[FN150\]](#) The legislature modified attorney ad litem and amicus attorney requirements in child representation, but exploring the changes made to GALs and CASA volunteers, including the new chapter additions concerning the DFPS and foster care children, aids in understanding their roles within court-appointed representation. [\[FN151\]](#) Although the legislature limited the roles of CASA volunteers in some instances, it also enhanced some of their powers, providing them with a greater opportunity to help children succeed both in and out of the courtroom. [\[FN152\]](#)

#### **\*1081** 1. Changes Affecting GALs

##### a. No Power to Bind Attorney Ad Litem with Recommendations

In fine-tuning the roles of child representatives, the Texas Legislature restricted some of the powers and duties of GALs. [\[FN153\]](#) One substantially revised provision from 2003 relates to the “substituted judgment” of the attorney for the child in relation to the GAL's recommendations. [\[FN154\]](#) When a child cannot meaningfully participate in forming the child's position (e.g., when a child is pre-verbal), the lawyer must substitute the lawyer's judgment for the child's and present a position that serves the child's interests. [\[FN155\]](#) Section 107.008(c) added:

If a [GAL] has been appointed for the child in a suit filed by a governmental entity requesting termination of the parent-child relationship or appointment of the entity as conservator of the child, an attorney ad litem who determines that the child cannot meaningfully formulate the child's expressed objectives of representation: (1) shall consult with the [GAL] and, without being bound by the [GAL's] opinion or recommendation, ensure that the [GAL's] opinion and basis for any recommendation regarding the best interests of the child are presented to the court; and (2) may present to the court a position that the attorney determines will serve the best interests of the child. [\[FN156\]](#)

Statutory law authorizes amicus attorneys, lawyers appointed in the dual role, and attorneys ad litem to use substituted judgment to weigh these factors and advocate for the child's best interests. [\[FN157\]](#)

Before 2005, the statute required the GAL's recommendations to bind the attorney ad litem's presentation to the court. [\[FN158\]](#) Now an attorney ad litem may provide the court with a position that the attorney ad litem deems serves the best interests of the child; this change limits the power of a GAL over an attorney ad litem's judgment. [\[FN159\]](#) Attorneys ad litem have autonomy to present their own suggestions without submitting to GALs' authority. [\[FN160\]](#) **\*1082** Still, attorneys ad litem must consult with GALs and present GALs' opinions to the court. [\[FN161\]](#) Although this revision decreases GALs' authority over the attorney ad litem, the amendment will not likely change the dynamics between the attorney ad litem and GALs or the outcome of the case. [\[FN162\]](#) Most of the time, the attorney ad litem and GAL work closely together and typically reach the same conclusions. [\[FN163\]](#) In the event they disagree about the child's best interests, the attorney ad litem may present an individual viewpoint separately, while still providing the GAL's recommendations. [\[FN164\]](#) This is a positive change, as the revision ensures that the court will hear both views of the child representatives, which benefits the court and the child, especially when the attorney ad litem and GAL conflict. [\[FN165\]](#) While the amendment narrows the GAL's authority over the attorney ad litem, the GAL's opinion remains critical, as the legislature enlarged the means of presenting information to the court. [\[FN166\]](#)

##### b. Heightened Power to Disclose Information to the Court

Despite the limitation of the GAL's power to bind the attorney ad litem, the legislature did broaden a GAL's ability to disclose information to the court. [\[FN167\]](#) GALs may, in a hearing or in a trial on the merits, testify and present a report concerning the GAL's suggestions for the child's best interests and the basis for the GAL's proposals. [\[FN168\]](#)

Previously, the statute only permitted GALs to do one or the other; now GALs have the opportunity to take both actions. [\[FN169\]](#) The amendment grants the opportunity for nonlawyer GALs, such as CASA volunteers, to provide significant information to the court. [\[FN170\]](#) Testifying and submitting a report adds weight to the CASA worker's courtroom contribution and shows that lawmakers want this information before the court. [\[FN171\]](#)

**\*1083** Though CASA reports remain extremely detailed, the ability to also testify increases volunteers' roles in court. [\[FN172\]](#) Juries would most likely give greater consideration to live testimony. [\[FN173\]](#) Moreover, both the report and testimony of the CASA volunteer will supplement other individuals' findings and testimonies. [\[FN174\]](#) Because CASA workers maintain personal contact and document their observations with their assigned children, their findings will bridge the gaps of the case investigation in a unique and critical way. [\[FN175\]](#) Judges and juries could base their decisions to terminate parental rights on a strong foundation laid by the CASA volunteer's testimony and report, and thus, the amendment is a helpful change that promotes the child's best interests. [\[FN176\]](#) Although the legislative revision does not drastically change much procedurally, it provides assurance that the court will receive CASA volunteers' perspectives and advocacy positions. [\[FN177\]](#) Just as the court wants to collect as much detailed information as possible to best serve all parties involved in the proceedings, it also desires to protect the nonparties who aid in reaching its decision with judicial immunity. [\[FN178\]](#)

#### c. Judicial Immunity

In addition to expanding a GAL's ability to disclose information to the court, lawmakers increased judicial immunity for GALs. [\[FN179\]](#) While judicial immunity has long applied to amicus attorneys, protection for attorneys ad litem or GALs has remained unclear. [\[FN180\]](#) Besides waiving civil liability for a recommendation made or an opinion given, the amendment waives liability for "an action taken" in the capacity of an attorney ad litem or GAL, unless the action is taken with conscious indifference or reckless disregard for the safety of another, in bad faith or with malice, or the action is grossly negligent or willfully wrongful. [\[FN181\]](#) The amendment clarifies that all attorneys in this role may receive protection when acting in their official capacity, regardless of the appointment. [\[FN182\]](#) The provision elevates the role of CASA volunteers to **\*1084** receiving the same quasi-judicial immunity safeguards that attorneys receive. [\[FN183\]](#) CASA workers assume an important role in CPS cases, and the legislature rightly afforded them increased procedural protection in carrying out their duties. [\[FN184\]](#) In the event a parent filed an improper suit against a CASA volunteer, the judicial immunity protects these volunteers from unmeritorious suits. [\[FN185\]](#) As a result, the amendment saves the legal system needless litigation, time, and expense. [\[FN186\]](#) Though it protects CASA volunteers in their duties, the amendment will not bear on the quality of their advocacy. [\[FN187\]](#) Local CASA programs instigate training sessions on the procedural aspects governing reports and testimonies, which minimizes the chance that a volunteer will intentionally submit false information. [\[FN188\]](#) Further, because of these internal safeguards, workers will not grow complacent in their roles by relying on this civil-liability safety net. [\[FN189\]](#) The revision is an affirmative change, clarifying the application of judicial immunity among child representatives, but the amendments also delineate the appropriateness of each child's representative in certain proceedings. [\[FN190\]](#)

#### d. Context of Appointments of Child Representatives

While establishing judicial immunity for all representatives of children, Texas lawmakers further defined the context of appointments, enabling the court to appoint a single representative (amicus attorney, attorney ad litem, or GAL) in suits not filed by CPS when the child's best interests are at issue. [\[FN191\]](#) In a private matter requesting termination of the parent-child relationship, the court must appoint either an amicus attorney or an attorney ad litem, unless it finds the child's interests "will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests." [\[FN192\]](#) CASA volunteers may only be appointed in child abuse and neglect suits, unless the volunteer advocate training is designed for participation in other private proceedings. [\[FN193\]](#)

**\*1085** Even though the legislature essentially confined CASA volunteers to CPS cases, it promoted the CASA program expansion within this realm, directing the DFPS to help CASA programs reach unserved counties. [\[FN194\]](#) By establishing communal support and deriving private financing from communities to the greatest extent, new pro-

grams must strive for autonomy. [\[FN195\]](#) The statute also admonishes the DFPS to work with local communities to spur on the growth of children's advocacy centers in areas in which they currently do not exist. [\[FN196\]](#)

These amendments highlight the important differences between CPS cases and other suits affecting the parent-child relationship and reflect positive changes in the law. [\[FN197\]](#) The changes facilitate the appointment of lawyers, rather than GALs or CASA volunteers, in private proceedings. [\[FN198\]](#) Inherently different instruction must guarantee that CASA volunteers recognize the unique dynamics involved in private custody suits. [\[FN199\]](#) Because the law mandates specialized training for private suits, local CASA programs need to initiate new instruction procedures, increasing expenses, time commitments, and stretching a plummeting number of volunteer efforts. [\[FN200\]](#) CASA training may be inadequate or completely unavailable in particular regions of the state, thus limiting CASA appointments in cases other than CPS litigation. [\[FN201\]](#) Not only do rural areas need local CASA programs, but large urban communities, such as Abilene, still lack CASA programs. [\[FN202\]](#) Though the legislature confined CASA appointments, this provision promotes the mission of both the NCASAA and TCASAA, in that it prioritizes serving victimized children caught in CPS proceedings. [\[FN203\]](#)

Currently, the TCASAA volunteers working in the sixty-four local programs across the state cannot reach every abused or neglected child in need, and the legislature recognizes the importance of helping these children first. [\[FN204\]](#) The amendments reinforce that Texas lawmakers desire to see the TCASAA attain its goal of voicing the best interests of every child within the child protection system. [\[FN205\]](#) The general revisions to child representatives affected CASA volunteers as a type of GAL, but also the legislature made a particular \*1086 change to CASA and its volunteers by reinstating their ability to assume the role of surrogate parents. [\[FN206\]](#)

## 2. Change Affecting CASA Volunteers: Surrogate Parent Role Reinstated

In addition to altering the obligations of GALs generally, the amendments made specific changes to CASA and its volunteers by reinstating volunteers' ability to serve as surrogate parents. [\[FN207\]](#) The revision reflects positively upon CASA volunteers, enhancing their impact on children's educational needs. [\[FN208\]](#)

Although CASA volunteers primarily serve in a narrow appointment capacity, a school district may assign CASA volunteers to act as a surrogate parent for the child. [\[FN209\]](#) The requirements are as follows: (1) the child is in the conservatorship of the DFPS; (2) the volunteer advocate is serving as a GAL for the child; and (3) a foster parent of the child is not acting as the child's parent under [Section 29.015 of the Texas Education Code](#). [\[FN210\]](#) The amendment serves as a technical addition because the legislature reinstated language accidentally omitted during the 2003 legislative amendments. [\[FN211\]](#)

Even so, the reinstatement expands the authority of a CASA volunteer in that an individual serving as the surrogate parent has important powers in fostering a child's educational needs. [\[FN212\]](#) Enabling CASA workers to serve in a parental role implies strong legislative affirmation for the program and its volunteers. [\[FN213\]](#) The surrogate parent must know significant information, such as the available special education services and programs that school districts offer and whether Medicaid will provide funding for these services and programs. [\[FN214\]](#) To ensure a child progresses in school, the surrogate parent can participate in the Admission, Review, or Dismissal (ARD) meetings with the school district. [\[FN215\]](#) As a member of the ARD meetings, one has a voting right to determine whether the child's individual educational needs are being met. [\[FN216\]](#) For example, if the CASA volunteer served as the surrogate parent, the volunteer could call a review of the child's special education program and \*1087 argue that the child needs program services only once a week, rather than daily. [\[FN217\]](#)

The foster parent serves as the surrogate parent in the majority of cases, but situations arise in which it would be appropriate for the CASA volunteer to assume this role. [\[FN218\]](#) Sometimes the foster parent suffers extreme burnout and simply does not want to take on the position. [\[FN219\]](#) Additionally, many school districts view CASA volunteers positively and desire their service in this capacity. [\[FN220\]](#) Local CASA volunteers may participate in training

through local school districts to become surrogate parents. [\[FN221\]](#) Also, local programs and the TCASAA provide supplementary training related to the educational needs of foster children. [\[FN222\]](#) The reinstatement of statutory language is helpful because it enables CASA volunteers to play an influential part in promoting children's educational foundation. [\[FN223\]](#) Not only did the legislative revisions clarify the role of CASA volunteers and other child representatives, but they also substantially changed the laws governing the DFPS system. [\[FN224\]](#)

### 3. DFPS Changes Affecting Child Representatives

Besides the fine-tuning of the roles of child representatives, including CASA workers, the legislature implemented new requirements to better meet the needs of abused and neglected children in foster care. [\[FN225\]](#) The major revamping of the DFPS included significant changes regarding medical care and education for children in the foster care system. [\[FN226\]](#) The revisions and additions assist CASA volunteers to assume a more prominent role in the lives of children. [\[FN227\]](#)

#### a. Medical Care

Before a child may receive medical services, an individual or the DFPS must grant express authorization. [\[FN228\]](#) The statute lists the persons that the court **\*1088** may authorize to provide consent for medical care, including the following: (1) an individual designated by name in a court order, which may entail the child's foster parent or the child's parent, if parental rights have not been terminated and the court decides it is in the child's best interests, or (2) the DFPS or one of its agents. [\[FN229\]](#) The statute also allows a GAL, including a CASA volunteer, an attorney ad litem, or foster care provider to petition the court for an order if that person believes the authorized individual or department failed to give informed consent, or if that person finds that specific medical care would promote the child's best interests. [\[FN230\]](#)

In addition to the consent requirement, statutory law mandates that the DFPS, health care providers, and various others collaborate and issue a health passport for each foster child. [\[FN231\]](#) Passport information may encompass: (1) the child's physicians' and health care providers' names and addresses; (2) a record of each visit, including routine checkups; (3) an immunization record; (4) a list of the child's known health complications and allergies; (5) adequately detailed information on all prescribed medications; and (6) any other available, significant health history. [\[FN232\]](#) As long as the child remains in foster care, the health passport must remain confidential and filed in DFPS records. [\[FN233\]](#)

At each hearing, the court must analyze a summary of the medical services provided to the foster child since the last proceeding and may also issue an order related to the child's medical care if the court deems it in the child's best interests. [\[FN234\]](#) The summary, which the DFPS must present, includes extensive information, such as medications prescribed, progress made, side effects, and compliance with the treatment. [\[FN235\]](#) Not only must the DFPS provide this report to the court, but a copy must also be given to the parties that are deemed necessary or appropriate to review the child's medical care, such as the attorney ad litem or GAL. [\[FN236\]](#)

**\*1089** Although these legislative additions regarding medical services provided to foster care children might make hearings longer and more complicated, it will ultimately render them more successful, and CASA volunteers can play a greater instrumental role in helping foster care children receive appropriate health care. [\[FN237\]](#) Court hearings have failed to address children's medical needs, and lawmakers fear that children are being overmedicated, especially with psychotropic medications. [\[FN238\]](#) CASA workers may now petition the court when there is a problem with a child's medication. [\[FN239\]](#) They can determine whether the person authorized to consent for the child has given informed consent for the appropriate medication, see that lab testing for the medication is completed, review the medication as administered to the child, and request an in-depth review of the medication by a medical team. [\[FN240\]](#) These changes, however, will necessitate more instruction to prepare CASA volunteers for their responsibilities. [\[FN241\]](#)

In response to these provisions, the TCASAA initiated training sessions to educate and equip volunteers and presented practical tips for advocating the foster children's medical needs. [\[FN242\]](#) The TCASAA encourages its volunteers to take an active role by speaking with children regarding their feelings about the medication and watching for changes in their appearance or mood. [\[FN243\]](#) If the child's treating physician is not a psychiatrist and the child's health fails to improve, CASA workers may request that the child see a child psychiatrist. [\[FN244\]](#) Each of these concerns or changes is documented in a new section of the CASA volunteer's report to the judge at every review hearing. [\[FN245\]](#)

Because these cases will now be governed privately, there will be greater review, as private companies have a profit motive. [\[FN246\]](#) The underlying notion that drove the legislative movement to privatize these cases is that over two hundred children died in 2004 due to abuse and neglect; lawmakers believed revamping the system to be imperative to stopping these needless deaths. [\[FN247\]](#) Privatization implies a mistrust of the former system, and yet balances the necessity for drastic reform with a procedure to evaluate each regional privatization progress, allowing Texas to learn from the best methods and then implement those practices into further regional areas. [\[FN248\]](#) Although extended **\*1090** review might draw out the cases and make them even more difficult, this is a positive change, as someone needs to have the ability to ask the tough questions to ensure that children receive appropriate medical services. [\[FN249\]](#) The new law enables greater effectiveness for determining the child's needs, as those who work consistently with each child would make the case decisions. [\[FN250\]](#) Besides enlarging CASA volunteers' role in reviewing medical services, lawmakers renovated some of the requirements for recognizing and serving children's educational needs. [\[FN251\]](#)

#### b. Education

In addition to reviewing the child's health care, the legislature also mandated the development of an education passport. [\[FN252\]](#) This passport must contain the child's educational records, including, but not limited to, the names and addresses of educational providers and the child's grade-level performance. [\[FN253\]](#) Like the health passport, the education passport must remain a part of DFPS records until the child leaves foster care. [\[FN254\]](#) Similarly, the person authorized to consent to medical care, a medical care provider, and other individuals may review the passport if necessary. [\[FN255\]](#)

The legislative implementation of the education passport will aid in addressing specific developmental issues for foster children. [\[FN256\]](#) Because foster children tend to move between home placements, they also change schools frequently and undergo constant adjustment challenges. [\[FN257\]](#) Specifically, the abused and neglected foster children typically experience greater difficulty adjusting, have learning disabilities, and often qualify for special education services. [\[FN258\]](#) Not only will the passport help CASA volunteers understand the child's best interests, but it will also ease the access into the child's educational environment. [\[FN259\]](#) Workers may meet at school to help determine whether children's special education needs are being met, increasing communication lines between schools and workers. [\[FN260\]](#) The TCASAA issued a memorandum of understanding with the Texas Education Agency and also with local school districts so that schools will know the identity of CASA **\*1091** volunteers when they visit children at school. [\[FN261\]](#) Overall, the education passport will promote the child's educational development and outcome, and CASA workers will serve an integral role in this process. [\[FN262\]](#)

In sum, the 2005 amendments to the Texas Family Code fine-tuned the duties of child representatives in suits affecting the parent-child relationship and dramatically reorganized the child welfare system. [\[FN263\]](#) Although the legislature narrowed the role of CASA volunteers in some ways, the revisions, as a whole, reflect positively upon the TCASAA programs and volunteers. [\[FN264\]](#) Still, these amendments do not fully analyze how local programs and volunteers influence case outcomes and children's lives. [\[FN265\]](#)

#### V. The Heart of the Matter: The Impact of CASA Programs

The recent legislative changes affecting child representatives and the child welfare system provide judges, attorneys, CASA volunteers, and those individuals engaged in a child's welfare with guidance and statutory obligations, but they do not measure the impact these individuals have upon the court system and children's lives. [\[FN266\]](#) Judges and commissioners across the nation regard CASA volunteers as integral figures in the children's lives throughout the entire legal process. [\[FN267\]](#) An overview of the impact of CASA and its volunteers in the court system and upon children demonstrates their invaluable contribution. [\[FN268\]](#)

## A. Judicial Impression

### 1. Support from the National Council of Juvenile and Family Court Judges

With the sheer number of children, and rigid federal and state laws imposing time limits on decision-making, judges face significant challenges as they seek the best solution for both children and families. [\[FN269\]](#) In 1937, a group of judges founded the National Council of Juvenile and Family Court Judges, seeking to advance the legal system and increase awareness of core child and family issues including child abuse and neglect, adoption and foster care, termination of parental rights, and custody and visitation. [\[FN270\]](#) The National \*1092 Council of Juvenile and Family Court Judges provides training, technical assistance, and the latest research to aid judges and court personnel in carrying out their duties. [\[FN271\]](#) CASA's advent gave judges a neutral person upon whom they could rely to glean the child's best interests, and the National Council of Juvenile and Family Court Judges drafted several resolutions specifically endorsing CASA volunteers. [\[FN272\]](#) Resolution Number 6 states:

[They] assist the court . . . by making independent investigations of the particular needs of each individual child; . . . seeking out available resources to address the individual needs for each child, both while the child's case is before the court and for his longer term need of a safe and permanent home; . . . submitting well-reasoned and researched reports containing valuable information and recommendations to the court for its consideration; . . . befriending the child and providing a consistent support throughout the often extended period of court jurisdiction; and saving substantial funds for the taxpayers by providing at little cost a valuable service for the child and one that is more and more being required by appellate courts and legislatures. [\[FN273\]](#)

This resolution strongly supports judicial assistance in the creation and expansion of CASA programs, and the National Council of Juvenile and Family Court Judges credits CASA volunteers by detailing their contributions to the court system. [\[FN274\]](#) Moreover, the NCASAA sought internal review of its programs to measure their effectiveness nationwide. [\[FN275\]](#)

### 2. Judicial Survey: NCASAA Evaluation of Volunteer Impact

In addition to the National Council of Juvenile and Family Court Judges endorsement, the NCASAA contracted with a private evaluative research group to review the influence of CASA volunteers and program activities on judicial decision-making, court processes, and case outcomes. [\[FN276\]](#) The survey \*1093 requested the following information from judges: (1) demographic characteristics of the respondents and the jurisdictions in which they serve; (2) processes used when selecting cases to assign CASA advocacy; (3) the role CASA volunteers play in supporting judicial decision-making and court procedure; and (4) satisfaction with local CASA programs and volunteers. [\[FN277\]](#)

The survey yielded positive results, noting favorable judicial impressions and confirming areas in need of improvement. [\[FN278\]](#) Judges and commissioners assigned nearly half of their dependency cases to CASA volunteers, and around thirty percent of judges and commissioners assigned over seventy-five percent of their cases to volunteers. [\[FN279\]](#) Although survey respondents weigh a variety of factors in making these assignments, they mainly consider the presence of conflicting case information or highly adversarial parties, issues with implementation of services, cases involving abuse or neglect, and instability of current placements. [\[FN280\]](#)

Upon case assignment, judges and commissioners agreed that CASA volunteers have provided the greatest input on issues relating to “placement stability and permanence, safety of children while in placement, service provision, and placement with siblings.” [\[FN281\]](#) They particularly valued help from volunteers in promoting the child's best interests, desires, or wishes and in addressing conflicts between involved parties, such as a social worker and parent or the Bureau of Child Welfare. [\[FN282\]](#) Further, interviews and written reports regarding the child's best interests have proved most useful, and judges repeatedly incorporated volunteers' recommendations into court orders. [\[FN283\]](#) Over ninety percent of the judges and commissioners reported high satisfaction with the CASA volunteers and local programs, classifying workers as “very effective” in voicing the best interests of children, monitoring the cases, and serving children and families. [\[FN284\]](#)

The judges and commissioners also provided comments and suggestions regarding the following: (1) increased finances for programs to boost volunteer numbers and develop recruitment and retention; (2) CASA's positive service as an objective resource for the court (i.e., the eyes and ears of the court regarding the needs of the child); (3) enhanced volunteer training in regard to \*1094 how volunteers' proposals fit within the law; (4) sporadic conflicts between CASA volunteers and other parties to cases; and (5) the necessity for policies, measures, and managerial supervision regarding the delegation of CASA volunteers and further information on how courts can more effectively utilize CASA. [\[FN285\]](#) While the survey results give CASA staff important feedback on the judicial impression of CASA volunteers, the direct impact volunteers have on children remains crucial. [\[FN286\]](#)

#### B. Systematic Review of CASA in Child Abuse and Neglect Proceedings

The National Council of Juvenile and Family Court Judges' support and the NCASAA survey generated a significant judicial impression of CASA, but evidence of how the services impact children remains critical to meeting children's needs. [\[FN287\]](#) In 2004, the Journal of the Center for Families, Children and the Courts published a systematic review of CASA's and its volunteers' effect upon children in abuse and neglect proceedings. [\[FN288\]](#) The report assessed CASA's influence on “(1) the activities of child representatives, (2) the dependency process, and (3) case outcomes and reentry into foster care,” based on determinations from twenty independent studies. [\[FN289\]](#) Although the compilation does not provide irrefutable evidence, it provides important information concerning the role of CASA volunteers. [\[FN290\]](#)

Significantly, the study noted that CASA volunteers positively impacted the children's needs and case proceedings. [\[FN291\]](#) First, researchers found that CASA volunteers' involvement appeared to improve child representation, as compared to lawyers' involvement alone. [\[FN292\]](#) Volunteer advocates tend to engage in consistent personal contact with children and their care providers. [\[FN293\]](#) Although attorneys ethically must provide competent representation, they often fall short when representing child clients. [\[FN294\]](#) Lawyers typically do not spend as much time working for the children, but they also have abundant caseloads while CASA volunteers usually only have one or two cases. [\[FN295\]](#) Still, CASA volunteers usually receive more complex and difficult case assignments \*1095 with higher rates of abuse and institutionalization. [\[FN296\]](#) Second, the report determined that CASA-supported children had more services ordered and eventually executed and also slightly fewer placements. [\[FN297\]](#) Though results varied, the researchers believed that when children receive CASA volunteers early in their cases, children spend less time in the welfare system. [\[FN298\]](#) Third, adoptions of children represented by CASA volunteers occur more frequently than those children with other representation. [\[FN299\]](#) Significantly, CASA-represented children were about fifty percent less likely to reenter the foster care system upon their case dismissal. [\[FN300\]](#) Overall, CASA workers provide effective representation for children and positively affect both case outcomes and child welfare. [\[FN301\]](#)

Even though no indisputable evidence of child welfare outcomes exists, the overview of CASA volunteers nationwide provides a good indication of their value in child abuse and neglect suits. [\[FN302\]](#) Because CASA workers remain critical figures in victimized children's lives, the Texas Legislature should promote CASA volunteers' service within the context of abuse and neglect proceedings, rather than expand it to the arena of private litigation. [\[FN303\]](#)

## VI. The Future of CASA: Why The Texas Legislature Should Not Expand CASA to Include Private Proceedings

Although the NCASAA defines the applicable child population as abused and neglected children, the NCASAA adopted a resolution regarding the use of CASA volunteers in domestic relations custody cases, stating that upon strict evaluation and compliance of set conditions, a program may elect to provide child advocacy in private proceedings involving abused and neglected children. [\[FN304\]](#) Likewise, Texas law permits CASA volunteers to serve in private matters but only if they meet detailed qualifications; even so, these instances remain few in number. [\[FN305\]](#) Although the 2005 amendments authorize the \*1096 expansion of CASA into unserved counties, they do not reference encompassing private litigation. [\[FN306\]](#)

Promoting CASA volunteers to serve in all types of litigation would grant every child a voice and maximize the probability that the outcome will be decided based on the child's best interests. [\[FN307\]](#) In the majority of private custody disputes, the focus centers on the issues between the fighting parents, overshadowing children's voices and needs. [\[FN308\]](#) CASA workers could submit an independent investigation that might not otherwise be presented in the courtroom dynamic due to the parents' conflicting self-interests. [\[FN309\]](#) An investigation would provide the court with insight into the child's environment, including the child's school, neighborhood, and relatives or care providers. [\[FN310\]](#) Because CASA volunteers advocate for the best interests of the children, they do not serve the interests of the parents, CPS, or the state. [\[FN311\]](#) Further, judges trust their objective viewpoints. [\[FN312\]](#) Unlike attorneys, CASA workers do not receive compensation for their time and case involvement. [\[FN313\]](#) Economically, it might prove less expensive for the state government to fund local programs, effectively paying for volunteers to safeguard children's welfare, than to finance children's needs in foster care for years and years. [\[FN314\]](#)

Despite these potential positive reasons and widespread support for CASA programs, the Texas Legislature should continue to confine the role of CASA volunteers to primarily serving in CPS child abuse and neglect proceedings. [\[FN315\]](#) Private suits surely present inherent conflicts between parents and children and the potential for harm to children. [\[FN316\]](#) On the other hand, CPS litigation, by its nature, involves dramatic risks. [\[FN317\]](#) Children remain completely vulnerable, as they could lose their entire support system, get lost in governmental bureaucracy, and experience unbearable physical and emotional harm. [\[FN318\]](#) Thus, Texas lawmakers should not expand CASA to encompass private suits, including divorce, paternity proceedings, access, and termination of parental rights. [\[FN319\]](#) If the program expanded, drawbacks consist of the following: state considerations regarding child welfare and economic \*1097 feasibility, lack of volunteers for every child in need, lack of outreach to every county, new training requirements, and a moral dilemma for judges. [\[FN320\]](#)

### A. State Considerations: Child Welfare and Economic Feasibility

If the legislature promoted the expansion of CASA to private scenarios, the state's competing interests-child welfare and economic feasibility-would not be properly served. [\[FN321\]](#) Through the DFPS, Texas administers the CPS system and ensures that every child receives its services. [\[FN322\]](#) Despite the services of CPS, the only person that truly knows the child and the child's circumstances is often the CASA worker. [\[FN323\]](#) This consistent role and personal contact suggests an ideal means of focusing on each child's well-being, rather than permitting the child welfare system to swallow a mass of children, thereby missing their individual needs. [\[FN324\]](#) On the other hand, the state must consider economic feasibility. [\[FN325\]](#) Even though the current system costs the state a great deal, if the state instead wholly paid for individual CASA programs and permitted them to actually oversee the child welfare system, rather than use the DFPS, the state could not effectively control the programs. [\[FN326\]](#) Segregating funds, administering this process through more skilled managers, and ensuring that funds actually go to the designated areas would generate even more problems. [\[FN327\]](#) Furthermore, state and federal funding already struggles to keep up with the increasing Texas child population and inflation. [\[FN328\]](#)

Instead of funding the program as a state entity, local Texas CASA programs operate as independent, nonprofit

501(c)(3) organizations. [\[FN329\]](#) CASA programs in other states, such as North Carolina, Arizona, and Florida, do not operate as nonprofit entities, but under state government. [\[FN330\]](#) Texas prioritizes serving the abused and neglected children within the CPS system and allocates resources to these needs first. [\[FN331\]](#) In turn, the TCASAA distributes funds to local programs for CPS cases only. [\[FN332\]](#) Even though the current system creates \*1098 financial burdens on the state, it remains the better option to ensure that all resources target CPS children first. [\[FN333\]](#) Not only do financial resources remain tight, but also the volunteer number does not reach the number of victimized children. [\[FN334\]](#)

#### B. Lack of Volunteers for Every Child

Welfare and economic issues aside, local CASA programs constantly struggle to recruit and retain volunteers to serve all of the CPS children. [\[FN335\]](#) Volunteers remain vital to the survival of CASA programs, as CASA only functions when volunteers assume cases and advocate for children. [\[FN336\]](#) In larger cities, such as San Antonio, Houston, and Dallas, the child population in need of advocacy greatly outnumbers the current number of volunteers. [\[FN337\]](#) The nature of CASA requires more commitment than most charitable organizations, as volunteers must write reports, testify at trials, and become emotionally involved. [\[FN338\]](#) The barriers to the position may be attributable to the following: demands of the CASA role, indifference or ignorance of the issues regarding abused and neglected children, lack of time to give, the wide range of volunteer activities available, intimidation by professionals, emotional burnout, or concurrent balancing of this role with a full-time job. [\[FN339\]](#)

In addition to increasing the number of volunteers for needy children, the NCASAA also seeks to enhance the diversity of volunteers. [\[FN340\]](#) Females comprise approximately eighty percent of the volunteer ratio; programs need more males, especially given that half of the foster care children are boys and young men. [\[FN341\]](#) Moreover, the NCASAA desires to expand program diversity racially and culturally to better influence children from various backgrounds. [\[FN342\]](#) Because the TCASAA cannot physically serve all of the CPS children currently in need, the legislature should continue to prioritize these children, and encourage program expansion throughout the state. [\[FN343\]](#)

#### \*1099 C. Lack of Outreach to Every Texas County

Along with volunteer recruitment and retention, the TCASAA critically needs CASA programs to reach every Texas county with local programs. [\[FN344\]](#) Although the TCASAA serves 254 counties through the efforts of sixty-four local programs, 71 counties remain unserved. [\[FN345\]](#) Currently, the largest metropolitan city without a CASA program is Abilene. [\[FN346\]](#) Programs can expand either by new program development or existing program expansion, whereby a local CASA program takes in a nearby county based on population or through cluster courts. [\[FN347\]](#) Cluster courts, which have specialized judges that travel to various counties and hear only CPS cases, greatly aid CASA programs that serve multiple counties. [\[FN348\]](#) These courts have proven to better serve CPS children by ensuring that their cases are heard. [\[FN349\]](#) With the help of cluster courts and through grassroots community program development, CASA volunteers voiced the best interests of over half of foster care children in 2004. [\[FN350\]](#) Despite this achievement, the TCASAA desires to provide access to a CASA volunteer to every child abuse and neglect victim. [\[FN351\]](#) Legislative intent mirrors this mission, as the 2005 amendments encouraged the expansion of CASA programs into unserved counties. [\[FN352\]](#) Still, the focus centers on distinctly serving in CPS cases and not in private litigation. [\[FN353\]](#) Private proceedings vary dramatically from CPS matters, and CASA would have to revamp its volunteer training to account for these differences. [\[FN354\]](#)

#### D. New Training Requirements

As Texas law dictates, if CASA volunteers represent children in private custody suits, they must meet training requirements. [\[FN355\]](#) This training would be entirely different because the underlying issues vary greatly between private \*1100 proceedings and abuse and neglect proceedings. [\[FN356\]](#) Thus, new training would require additional

funding, resources, administrators, and volunteers, burdening organizations and workers whose resources remain scarce. [FN357] Also, CPS would not be involved in private matters; rather, volunteers would engage primarily with lawyers. [FN358] CASA volunteers currently work with attorneys ad litem in CPS cases, but also with numerous other nonlawyer individuals. [FN359] The change in personnel and the nature of the litigation might deter people from serving, as they might not want to work solely with attorneys, feeling inferiority or animosity toward them. [FN360] Besides the administrative burdens to divide resources between training regimens, if the legislature promulgated expanding CASA representatives to private suits, judges would face serious dilemmas. [FN361]

#### E. Dilemmas for Judges

Not only would expanding CASA to private scenarios increase the organizational load for CASA programs outside of court, it would also present judges with serious issues inside the courtroom. [FN362] Judges currently do not have the luxury to assign every child CASA support. [FN363] District Judge John J. Specia Jr. stated that “[w]hen the court has to ration CASAs because of a lack of volunteers, the children lose.” [FN364] If CASA encompassed all custody matters, judges would then face the issue of deciding which child would receive CASA representation. [FN365] With merely the case file upon which to base this decision, it would not likely be evident as to which child has the greater need. [FN366] Another dilemma judges would face is that they might favor the advocate's opinion and discount the parents' desires. [FN367] Despite widespread judicial support for CASA and its volunteers, their role would better fit if they only served CPS children. [FN368]

Ideally, CASA programs would overflow with volunteers, possess ample resources to provide adequate training, and reach out to every child in every county in need. The delicate balance of concern for child welfare, economics, \*1101 and practicality, however, calls for these programs to serve only those children in abuse and neglect cases. [FN369] While private custody cases involve familial conflicts and physical or emotional strains, they do not always require the appointment of a child representative. [FN370] The stakes in CPS cases remain overwhelmingly high, however, as children risk losing their families, caretakers, and environment. [FN371] Moreover, physical and emotional harm endanger children in these situations, and they desperately need someone to advocate for their best interests. [FN372] Both the NCASAA and the TCASAA favor this approach. [FN373] Lawmakers should continue to focus on providing CASA appointments to children in CPS suits and allow them in private matters only in limited circumstances. [FN374]

#### VII. Conclusion

Although CPS intervened in the case of Sam, Sarah, and Shelly, no one voiced the best interests of the children. [FN375] If the court had assigned a CASA volunteer to these children, the CASA volunteer could have submitted a report and testified of the extreme abuse and neglect. [FN376] The CASA worker's solid testimony, detailed notes, and ability to see the parents and the children bi-weekly throughout the case would help the jury reach a decision to terminate parental rights. [FN377] Though other professionals could testify, such as an attorney ad litem or CPS officials, the CASA volunteer's testimony supplies the court with critical information, bridging some gaps in the case. [FN378] Without the CASA volunteer's participation, the jury might not decide to terminate parental rights. [FN379]

The Texas Legislature recognizes that Texas needs CASA volunteers to advocate the best interests of children like Sam, Sarah, and Shelly. [FN380] The state has journeyed too far to let these children fall through the cracks of the child welfare system. [FN381] Not only do the 2005 amendments refine the nature and \*1102 duties of child representatives, but they also revamp the child protection system to better protect abused and neglected children. [FN382]

Overall, the Texas legislative changes effectively describe the obligations of CASA workers as GALs in case proceedings and in working with CPS. [FN383] Some of the amendments narrow the authority of CASA volunteers. [FN384] These restrictions on CASA volunteers appear harsh, but reflect positive changes and will not likely have a tremendous effect on their current involvement. [FN385] The legislature confined CASA appointments to CPS liti-

gation, only allowing volunteers to serve in private suits affecting the parent-child relationship in extremely limited circumstances. [\[FN386\]](#) Although all children deserve someone to voice their best interests in any matter, the case against expanding the role of CASA individuals outweighs the advantages. [\[FN387\]](#) In contrast to private proceedings, abuse and neglect litigation dramatically elevates the risks at stake for the children involved. [\[FN388\]](#)

CASA cannot meet the existing needs of children in CPS proceedings, and thus, the Texas Legislature should not expand the role of CASA volunteers to serving as advocates in private litigation. [\[FN389\]](#) Lawmakers realize the inherent differences between these proceedings, and the stringent training requirements show legislative intent to confine CASA volunteers to mainly serving in CPS litigation. [\[FN390\]](#) The legislature directed the DFPS to coordinate statewide CASA program expansion, demonstrating its concern that volunteers reach every abused or neglected child in Texas. [\[FN391\]](#) The amendment, however, did not reference expanding the program to target serving in private matters. [\[FN392\]](#) By reinforcing the importance of CASA individuals' roles in abuse and neglect suits, legislative intent promotes the mission of both the NCASAA and the TCASAA in prioritizing victimized children in CPS proceedings. [\[FN393\]](#) Restricting CASA volunteers in this manner reflects a positive change. [\[FN394\]](#)

The 2005 amendments pave the way for CASA workers to serve as a stronger, more influential presence in the lives of abused and neglected Texas \*1103 children. [\[FN395\]](#) The goal of CASA is to advocate the best interests of victimized children in court. [\[FN396\]](#) As volunteers, CASA workers remain set apart from all other elements in child custody proceedings, such as self-centered parents, the DFPS and CPS, heavy caseloads, personal agendas, and bureaucratic policy. [\[FN397\]](#) Truly, they maintain the children's best interests as their supreme concern. [\[FN398\]](#) Poet Ina J. Hughes, in her Children's Prayer, shared, "We pray for children who want to be carried and those who must be, for those we never give up on and for those who don't get a second chance, for those we smother . . . and for those who will grab the hand of anybody kind enough to offer it." [\[FN399\]](#) CASA volunteers exemplify this prayer, and the legislature should continue to promote them as the heartbeat of Texas children.

[\[FN101\]](#). The Volume 38 Board of Editors selected this Article as the Outstanding Student Article of Book 4, Volume 38. The award, presented to the author, Rebecca E. Ellis, was sponsored by Orgain, Bell & Tucker.

[\[FN1\]](#). *In re S.G.S.*, 130 S.W.3d 223, 232 (Tex. App.-Beaumont 2004, no pet. h.). This fact pattern is loosely based on the extreme abuse in *In re S.G.S.* See *id.* The court used the children's initials to protect them, but this Comment substitutes names for readability purposes. See *id.*

[\[FN2\]](#). *Id.*

[\[FN3\]](#). *Id.*

[\[FN4\]](#). *Id.*

[\[FN5\]](#). *Id.*

[\[FN6\]](#). *Id.*

[\[FN7\]](#). *Id.*

[\[FN8\]](#). *Id.*

[\[FN9\]](#). Glenda Hatchett, Closing Words from Judge Hatchett, *The Connection*, Summer 2005, at 30.

[\[FN10\]](#). *Id.*; Nat'l Council of Juvenile & Family Court Judges, [http:// www.ncjfcj.org/](http://www.ncjfcj.org/) (follow "Child Abuse and

Neglect” hyperlink) (last visited June 5, 2006). Texas defines “abuse” and “neglect” broadly, encompassing mental, physical, or emotional injury and failing to provide certain needs for the child. [Tex. Fam. Code. Ann. § 261.001\(1\), \(4\)](#) (Vernon 2004).

[FN11]. Texas Court Appointed Special Advocate, <http://texascasa.org/> (follow “Aware & Informed” hyperlink; then follow “Statistical Reserves” hyperlink; then follow “Texas CASA Fact Sheet” hyperlink) (last visited June 5, 2006) [hereinafter Texas CASA Statistics].

[FN12]. Id.

[FN13]. See Debra H. Lehrmann, Who Are We Protecting? An Analysis of the Law Regarding the Duties of Attorneys and Guardians Ad Litem, [63 Tex. B.J. 123, 126 \(2000\)](#) (labeling the nature of the litigation as a “militant clash,” and noting that innocent children become “pawns in the conflict”); see also Michelle Markowitz, Is A [Lawyer Who Represents the “Best Interests” Really the Best for Pennsylvania's Children?](#), [64 U. Pitt. L. Rev. 615 \(2003\)](#) (noting children, a vulnerable social group, rely on the state's protection when their parents abuse or neglect them).

[FN14]. Raven C. Lidman & Betsy R. Hollingsworth, The [Guardian Ad Litem in Child Custody Cases: The Contours of Our Judicial System Stretched Beyond Recognition](#), [6 Geo. Mason L. Rev. 255, 293 \(1998\)](#) (discussing the process of child custody cases commenced by the state).

[FN15]. See George S. Mahaffey Jr., Role Duality and the Issue of Immunity for the Guardian Ad Litem in the District of Columbia, [4. J.L. & Fam. Stud. 279, 280 \(2002\)](#) (relating that courts have historically engaged in appointments to provide representation for minors' best interests).

[FN16]. [In re S.G.S., 130 S.W.3d 223, 234 \(Tex. App.-Beaumont 2004, no pet. h.\)](#).

[FN17]. Child Abuse Prevention and Treatment Act of 1974, [Pub L. No. 93-247, § 4\(b\)\(2\)\(G\)](#), 88 Stat. 4, 7 (1974) (codified as amended at [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(xiii\) \(2000 & Supp. 2004\)](#)).

[FN18]. Black's Law Dictionary 712 (7th ed. 1999).

[FN19]. Id. at 713; see discussion supra note 136 (providing the Texas statutory definition of GAL).

[FN20]. Charles T. Cromley Jr., “[A]s Guardian Ad Litem I'm in a Rather Difficult Position”, [24 Ohio N.U. L. Rev. 567, 592 \(1998\)](#).

[FN21]. [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(ix\)\(II\) \(2003\)](#).

[FN22]. See [45 C.F.R. § 1340.14\(g\) \(1997\)](#) (declaring that the “[s]tate must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child”).

[FN23]. See, e.g., [Conn. Gen. Stat. Ann. § 46b-54\(b\)](#) (West 2004) (stating that the court may appoint counsel for a child for the child's best interest or “when the court finds that the custody, care, education, visitation or support of a minor child is in actual controversy”); [Iowa Code Ann. § 598.12](#) (West 2005) (amended) (determining that the court may appoint an attorney to act for the minor child's legal interests, as well as a guardian ad litem representing the minor child's best interests; the attorney may serve in a dual capacity); [Tenn. Code Ann. § 37-1-149\(a\)\(i\)](#) (West 2004) (declaring the court shall appoint a guardian ad litem for the child when the “child has no parent, guardian or custodian appearing on such child's behalf or such parent's, guardian's or custodian's interest conflict with the child's,” and the

court may also appoint a nonlawyer special advocate).

[FN24]. Mary E. Hazlewood, [The New Texas Ad Litem Statute : Is It Really Protecting the Best Interests of Minor Children?](#), 35 *St. Mary's L.J.* 1035, 1050 (2004).

[FN25]. See discussion *infra* Part IV (discussing these changes in detail).

[FN26]. [Tex. Fam. Code Ann. § 107.001](#) (Vernon Supp. 2005). As an attorney ad litem, an attorney “provides legal services to a person, including a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent representation.” [Id. § 107.001\(2\)](#); see discussion *infra* Part III.

[FN27]. Texas CASA Statistics, *supra* note 11, at 1.

[FN28]. See discussion *infra* Parts III-IV.

[FN29]. See discussion *infra* Part VI.

[FN30]. See discussion *infra* Parts II-VI.

[FN31]. See discussion *infra* Part II.

[FN32]. See discussion *infra* Part III.

[FN33]. See discussion *infra* Part IV.

[FN34]. See discussion *infra* Part V.

[FN35]. See discussion *infra* Part VI.

[FN36]. See discussion *infra* Part VII.

[FN37]. See discussion *infra* Part II.A-B.

[FN38]. See discussion *infra* Part II.C.

[FN39]. See discussion *infra* Part II.C.

[FN40]. See A. Frank Johns, [Guardianship Folly: The Misgovernment of Parens Patriae and the Forecast of Its Crumbling Linkage to Unprotected Older Americans in the Twenty-First Century-A March of Folly? Or Just A Mask of Virtual Reality?](#), 27 *Stetson L. Rev.* 1, 8 (1997) (providing that the Romans and Greeks incorporated guardianship to monitor incompetent persons' assets).

[FN41]. Mahaffey, *supra* note 15, at 280.

[FN42]. Lidman & Hollingsworth, *supra* note 14, at 290 (discussing how courts historically viewed children as lacking capacity to make legal decisions); Mahaffey, *supra* note 15, at 280 (noting parens patriae regarding minor children was initially mentioned in the matter of *Falkland v. Bertie* and later in *Shaftsbury v. Shaftsbury*); see Sarah Abramowicz, Note, [English Child Custody Law, 1660-1839: The Origins of Judicial Intervention in Paternal Custody](#), 99 *Colum. L.*

[Rev. 1344, 1346 \(1999\)](#) (acknowledging that the doctrine provides that the “[k]ing, as the father of the nation, has the power to act in protection of the nation’s weak and powerless, namely infants, idiots, and lunatics”).

[FN43]. Hazlewood, *supra* note 24, at 1041-42; Lidman & Hollingsworth, *supra* note 14, at 290.

[FN44]. See Hazlewood, *supra* note 24, at 1041-42.

[FN45]. See Mahaffey, *supra* note 15, at 280.

[FN46]. Robyn-Marie Lyon, Comment, [Speaking for a Child: The Role of Independent Counsel for Minors](#), 75 Cal. L. Rev. 681, 684 (1987) (quoting *In re Phillip B.*, 445 U.S. 949 (1980)); see Black’s Law Dictionary 1137 (7th ed. 1999) (defining the *parens patriae* doctrine as literally “parent of his or her country”).

[FN47]. Jennifer L. Anton, Comment, The [Ambiguous Role and Responsibilities of a Guardian Ad Litem in Texas in Personal Injury Litigation](#), 51 SMU L. Rev. 161, 163 (1997).

[FN48]. Cromley, *supra* note 20, at 592.

[FN49]. See discussion *infra* Part II.B.

[FN50]. Bridget A. Blinn, Note, [Focusing on Children: Providing Counsel to Children in Expedited Proceedings to Terminate Parental Rights](#), 61 Wash. & Lee L. Rev. 789, 799 (2004); see Raymond C. O’Brien, An [Analysis of Realistic Due Process Rights of Children Versus Parents](#), 26 Conn. L. Rev. 1209, 1211 (1994) (positing that the Court perceives that “the child’s best interest subsists within the best interest of the parent”).

[FN51]. See [Pierce v. Soc’y of Sisters](#), 268 U.S. 510, 534-35 (1925) (observing the constitutional right for parents to direct the education of their children); [Meyer v. Nebraska](#), 262 U.S. 390, 400 (1923) (granting the constitutional right for parents to educate their children as they see fit); Blinn, *supra* note 50, at 799.

[FN52]. [Santosky v. Kramer](#), 455 U.S. 745, 759 (1982). The Supreme Court reversed the New York court’s decision to terminate parental rights, holding that the state court must follow a clear and convincing, rather than a preponderance, evidence standard. [Id.](#) at 768. The private interest concerned the parent’s right to the care, custody, and child-rearing, which outweighed the state’s countervailing interest. [Id.](#) at 758.

[FN53]. [DeShaney v. Winnebago County Dep’t of Soc. Servs.](#), 489 U.S. 189, 196-97 (1989). The Court reasoned that if the state had removed the child from his father’s custody too soon, it would have risked inappropriate invasion into the parent-child relationship. See [id.](#) at 203.

[FN54]. Blinn, *supra* note 50, at 803.

[FN55]. [In re Gault](#), 387 U.S. 1, 27-28 (1967) (holding that a juvenile in delinquency proceedings has the right to an attorney).

[FN56]. Richard Ducote, [Guardians Ad Litem in Private Custody Litigation: The Case for Abolition](#), 3 Loy. J. Pub. Int. L. 106, 109-10 (2002) (noting that Gault launched the heightened role of children’s attorneys).

[FN57]. See Blinn, *supra* note 50, at 808-11 (describing criticisms to the Court’s approach, including that it failed to recognize children as individuals with unique interests deserving of respect and a voice).

[FN58]. John C. Duncan Jr., [The Ultimate Best Interest of the Child Enures from Parental Reinforcement: The Journey to Family Integrity](#), 83 Neb. L. Rev. 1240, 1253 (2005); see supra notes 50-57 and accompanying text.

[FN59]. [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(xiii\) \(2000 & Supp. 2004\)](#); Markowitz, supra note 13, at 617-18 (noting that the Court has not granted a constitutional right to legal representation to children in a termination of parental rights case).

[FN60]. [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(xiii\)](#). Though judicial proceedings are not limited to only CPS suits, federal grants are contingent upon state implementation of specific reporting obligations. Id.

[FN61]. Id.

[FN62]. Victims of Child Abuse Act of 1990, [Pub. L. No. 101-647, § 216, 104 Stat. 4789, 4794](#) (codified at [42 U.S.C. § 13012 \(2000 & Supp. 2004\)](#)).

[FN63]. See discussion infra Part II.C.

[FN64]. Gregory Firestone & Janet Weinstein, In the [Best Interests of Children: A Proposal to Transform the Adversarial System](#), 42 Fam. Ct. Rev. 203, 203 (Apr. 2004); see also Duncan, supra note 58, at 1250 (discussing the evolution of the best interest of the child doctrine).

[FN65]. Duncan, supra note 58, at 1250.

[FN66]. Andrea Charlow, Awarding Custody: The Best Interests of the Child and Other Fictions, in *Child, Parent & State: Law and Policy Reader 3, 4* (S. Randall Humm et al. eds., 1994).

[FN67]. [Holley v. Adams](#), 544 S.W.2d 367, 371-72 (Tex. 1976).

[FN68]. Id. at 372 (citations omitted).

[FN69]. See Firestone & Weinstein, supra note 64, at 203 (arguing that children's best interests have become a “‘legalization’ of human problems”).

[FN70]. Randi Mandelbaum, [Revisiting the Question of Whether Young Children in Child Protection Should Be Represented by Lawyers](#), 32 Loy. U. Chi. L.J. 1, 32 (2000).

[FN71]. Id. Texas labels the child representative in this model the attorney ad litem. [Tex. Fam. Code Ann. § 107.001\(2\)](#) (Vernon 2004).

[FN72]. See id. § 107.008 (discussing when an attorney ad litem may substitute judgment for the child); Debra H. Lehrmann, Court-Appointed Legal Representation of Children, in *Texas Family Law Cases: A Practical Guide for Attorneys 1-1, 2-13* (Matthew Bender & Co., Inc. 2005-2006 ed.).

[FN73]. Frances Gall Hill, [Clinical Education and the “Best Interest” Representation of Children in Custody Disputes: Challenges and Opportunities in Lawyering and Pedagogy](#), 73 Ind. L.J. 605, 621 (1998).

[FN74]. Duncan, supra note 58, at 1254 (including judges as ones who rule on the child's best interests based on their individual propensities). Other critics note that some judges give too much latitude to those GALs who advocate for a child's best interests, thereby essentially usurping the judicial role in the case determination. Hill, supra note 73, at 621.

[FN75]. Duncan, *supra* note 58, at 1252 (citing Elizabeth J. Sher, Note, [Choosing for Children: Adjudicating Medical Care Disputes Between Parents and the State](#), 58 N.Y.U. L. Rev. 157, 169 (1983)).

[FN76]. Robert E. Shepherd Jr. & Sharon S. England, “[I Know the Child Is My Client, But Who Am I?](#)”, 64 *Fordham L. Rev.* 1917, 1919 (1996); see Anthony M. Platt, *The Child Savers* 130, 137 (2d ed. 1977) (discussing how the “child savers” failed to promulgate legal regulations).

[FN77]. See [Tex. Fam. Code Ann. § 107.009](#) (Vernon Supp. 2005) (granting GALs immunity); Hill, *supra* note 73, at 621; *infra* notes 79-81 and accompanying text.

[FN78]. Hill, *supra* note 73, at 621 (noting that attorneys may not understand the best interest determination, as it is outside the scope of the traditional legal curricula). Texas, however, requires training for child representation in abuse and neglect proceedings. [Tex. Fam. Code Ann. § 107.022](#) (Vernon Supp. 2005); see discussion *infra* Part IV.B.1.d.

[FN79]. Emily Buss, “[You're My What?](#)” *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 *Fordham L. Rev.* 1699, 1699 (1996); Hill, *supra* note 73, at 621 (stating that the GAL model may be the best method by process of elimination).

[FN80]. Buss, *supra* note 79, at 1702.

[FN81]. Markowitz, *supra* note 13, at 627.

[FN82]. *Id.*

[FN83]. *Id.* Admittedly, the expressed interest approach may be more practicable for older children; however, additional concerns arise in this scenario, including the attorney-client confidentiality impairing the attorney from providing imperative safety information to others involved in the proceedings. Hill, *supra* note 73, at 622. Also, zealous advocacy could prevent the attorney from pursuing a result that might, in fact, benefit the child (e.g., illogical decision-making from child or parental manipulation could lead to negative consequences). *Id.*

[FN84]. Markowitz, *supra* note 13, at 627.

[FN85]. Buss, *supra* note 79, at 1702-03. Children face intense stress from their families, the court process, and their surrounding circumstances. *Id.*

[FN86]. *Id.*

[FN87]. Hill, *supra* note 73, at 605.

[FN88]. American Bar Association Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases 1, 1 (1996) [hereinafter ABA Standards].

[FN89]. *Id.* at A-2.

[FN90]. *Id.* at 1.

[FN91]. Hill, *supra* note 73, at 612. CAPTA preconditions state welfare funding for abused and neglected children. [42](#)

[U.S.C. § 5106a\(b\)\(2\)\(A\)\(ix\) \(2000\)](#); see supra notes 59-61 and accompanying text.

[\[FN92\]](#). ABA Standards, supra note 88, at A-2.

[\[FN93\]](#). Standards for State CASA/GAL Organizations, A National CASA Association Resource Library Publication 1, 4 (2004) [hereinafter Standards]; see discussion infra Part III.

[\[FN94\]](#). Heartbeat, Newsletter of Tex. CASA (Tex. CASA, Austin, Tex.), Fall 2004, at 16 [hereinafter Heartbeat Fall 2004].

[\[FN95\]](#). David Youngclarke et al., A Systematic Review of the Impact of Court Appointed Special Advocates, 5 J. Center for Families, Child. & Cts. 109, 110 (2004).

[\[FN96\]](#). Id.; see supra notes 59-63 and accompanying text.

[\[FN97\]](#). Youngclarke et al., supra note 95, at 111. If the court appoints a CASA volunteer in a Texas CPS case, an attorney ad litem must work jointly with the CASA volunteer. [Tex. Fam. Code Ann. § 107.001](#) (Vernon 2005).

[\[FN98\]](#). See discussion infra Part III.A-B.

[\[FN99\]](#). Nat'l CASA Ass'n, History of CASA (updated 2003) (on file with Author) [hereinafter History].

[\[FN100\]](#). Id.

[\[FN101\]](#). Id.

[\[FN102\]](#). Standards, supra note 93, at 4.

[\[FN103\]](#). History, supra note 99.

[\[FN104\]](#). Standards, supra note 93, at 1.

[\[FN105\]](#). Id.

[\[FN106\]](#). Id.

[\[FN107\]](#). Court Appointed Special Advocates, Inside the Connection, The Connection, Summer 2005, at 3. Aside from winning the President's Volunteer Action Award from President Ronald Reagan in 1985 and obtaining congressional promotion through the Victims of Child Abuse Act of 1990, CASA and its volunteers received official endorsement from the ABA in 1989 in working with attorneys to serve as the voice for victimized children of abuse and neglect. History, supra note 99, at 1.

[\[FN108\]](#). See discussion infra Part III.B.

[\[FN109\]](#). Telephone Interview with Cathy Cockerham, Program Operations Director, Tex. CASA, in Austin, Tex. (Jan. 9, 2006) [hereinafter Cockerham Interview 2006].

[\[FN110\]](#). Texas CASA Fact Sheet, [http://texascasa.org/new/About\\_Us/About\\_Us.asp](http://texascasa.org/new/About_Us/About_Us.asp) (last visited April 3, 2006).

[\[FN111\]](#). Id.

[\[FN112\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN113\]](#). Id. Currently, Texas CASA leaders are in the process of revising the state standards. Id.

[\[FN114\]](#). See *infra* notes 115-21 and accompanying text.

[\[FN115\]](#). [1 Tex. Admin. Code § 64.13\(a\)\(1\)\(A\)](#) (West 2001). A “friend of the court,” or *amicus curiae*, is “[a] by-stander (usually a counselor) who interposes and volunteers information upon some matter of law in regard to which the judge is doubtful or mistaken.” *Black's Law Dictionary* 83 (7th ed. 1999); Cockerham Interview 2006, *supra* note 109 (explaining that the minimum age for a volunteer has changed to twenty-one years old).

[\[FN116\]](#). [1 Tex. Admin. Code § 64.13\(d\)\(2\)](#).

[\[FN117\]](#). [Id. § 64.13\(b\)\(2\)](#).

[\[FN118\]](#). Id.

[\[FN119\]](#). [Id. § 64.13\(e\)](#).

[\[FN120\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN121\]](#). Id.

[\[FN122\]](#). See [1 Tex. Admin. Code § 64.13](#).

[\[FN123\]](#). [Id. § 64.13\(a\)\(1\)\(C\)](#).

[\[FN124\]](#). [Id. § 64.13\(a\)\(1\)\(D\)](#).

[\[FN125\]](#). [Id. § 64.13\(a\)\(1\)\(E\)](#).

[\[FN126\]](#). See discussion *infra* Part IV.

[\[FN127\]](#). [42 U.S.C. § 5106a\(b\)\(2\)\(A\)\(xiii\) \(2000 & Supp. 2004\)](#).

[\[FN128\]](#). Id.; Hazlewood, *supra* note 24, at 1038.

[\[FN129\]](#). [Samara v. Samara, 52 S.W.3d 455, 458](#) (Tex. App.-Houston [1st Dist.] 2001, *pet. denied*).

[\[FN130\]](#). John J. Sampson, [Family Law: Top 10 Things that Happened in 2003, 66 Tex. B.J. 684, 686 \(2003\)](#); see House Comm. on Juvenile Justice and Family Issues, Bill Analysis, Tex. H.B. 1815, 78th Leg., R.S. (2003) (noting the confusion and the need for clarification).

[\[FN131\]](#). Hazlewood, *supra* note 24, at 1040 (noting that the legislation failed to specify when to appoint a given representative over another and to list the qualifications of these advocates).

[FN132]. See Sampson, *supra* note 130, at 712.

[FN133]. See [Tex. Fam. Code Ann. §§ 266.001-.011](#) (Vernon Supp. 2005).

[FN134]. See Heartbeat, Newsletter of Tex. CASA (Tex. CASA, Austin, Tex.), Summer 2005, at 4 [hereinafter Heartbeat Summer 2005].

[FN135]. See [Tex. Fam. Code Ann. §§ 107.001-.056](#) (Vernon 2002 & Supp. 2005); Hazlewood, *supra* note 24, at 1050.

[FN136]. See [Tex. Fam. Code Ann. § 107.021](#) (Vernon Supp. 2005). A GAL advocates for the best interests of the child. *Id.* [§ 107.001\(5\)](#). An amicus attorney provides legal services for the child's best interests, without being bound by the child's expressed desires. *Id.* [§ 107.001\(1\)](#). Although the legislature did not define "legal services," an amicus attorney must "participate in the conduct of the litigation to the same extent as an attorney for a party." *Id.* [§ 107.003\(1\)\(F\)](#).

[FN137]. *Id.* [§ 107.011\(b\)](#).

[FN138]. *Id.* [§ 107.011\(c\)](#).

[FN139]. *Id.* [§ 107.011\(d\)](#).

[FN140]. *Id.* [§ 107.001\(1\)](#).

[FN141]. See *infra* notes 142-45 and accompanying text.

[FN142]. See Hazlewood, *supra* note 24, at 1040 (discussing ambiguous areas in the law that remained unanswered by statutory or case law).

[FN143]. See [Tex. Fam. Code Ann. §§ 107.001-.056](#) (Vernon 2002); Lehrmann, *supra* note 72, at 3-46.

[FN144]. See [Tex. Fam. Code Ann. §§ 107.001-.056](#); Lehrmann, *supra* note 72, at 3-46.

[FN145]. See [Tex. Fam. Code Ann. §§ 107.001-.056](#); John J. Sampson, State Bar Section Report: Family Law, Vol. 2005-2, 1, 18 (Spring 2005).

[FN146]. See [Tex. Fam. Code Ann. §§ 107.001-.056](#); Sampson, *supra* note 145, at 18.

[FN147]. [Tex. Fam. Code Ann. § 107.001](#).

[FN148]. *Id.*

[FN149]. See *id.* §§ 261.001-.011. The amendments privatized substitute care and case management services, including caseworker-child visits, family group conferences, the development of the case plan, the coordination and monitoring of services needed by the child and family, assumption of court-related duties such as preparing court reports and attending hearings, and assurance that the child is progressing toward permanency within state and federal mandates. See *id.*; Heartbeat Summer 2005, *supra* note 134, at 5. Privatization means that private companies will

manage cases, not the governmental agencies. Telephone Interview with Andrea Sparks, Expansion Specialist, Tex. CASA, in Austin, Tex. (Jan. 2, 2006) [hereinafter Sparks Interview].

[FN150]. 2005 Tex. Sess. Law Serv. ch. 172 (Vernon 2005).

[FN151]. See discussion *infra* Part IV.B.1-3. For further information regarding the amendments to attorney ad litem and amicus attorney obligations, see [Texas Family Code sections 107.003](#) and [107.004](#).

[FN152]. See discussion *infra* Part IV.B.1-3.

[FN153]. See [Tex. Fam. Code Ann. § 107.002](#); discussion *infra* Part IV.B.2 (providing separate information on CASA volunteers).

[FN154]. [Tex. Fam. Code Ann. § 107.008\(c\)](#).

[FN155]. Lehrmann, *supra* note 72, at I-19 Commentary.

[FN156]. [Tex. Fam. Code Ann. § 107.008\(c\)](#). Based on the National Association of Counsel for Children Revised Abuse and Neglect Standards, Texas codified the concept of substituted judgment. *Id.*; see also Lehrmann, *supra* note 72, at I-19 Commentary.

[FN157]. See [Tex. Fam. Code Ann. §§ 107.001, 107.008\(b\)](#) (Vernon 2003 & Supp. 2005).

[FN158]. [Id. § 107.008\(c\)](#) (Vernon 2003).

[FN159]. See *id.*; Telephone Interview with Judge Debra H. Lehrmann, 360th District Judge (Oct. 11, 2005) (noting the prior laws and the GAL's power over the attorney ad litem's representation).

[FN160]. See [Tex. Fam. Code Ann. § 107.008\(c\)](#) (Vernon Supp. 2005); Interview with Stephen Ellis, 35th District Judge, in Brownwood, Tex. (Dec. 27, 2005) [hereinafter Ellis Interview].

[FN161]. See [Tex. Fam. Code Ann. § 107.008\(c\)](#); Lehrmann, *supra* note 72, at 3-45.

[FN162]. Ellis Interview, *supra* note 160.

[FN163]. *Id.*

[FN164]. [Tex. Fam. Code Ann. § 107.008\(c\)](#).

[FN165]. See *id.*; Ellis Interview, *supra* note 160.

[FN166]. See discussion *infra* Part IV.B.1.b.

[FN167]. Compare [Tex. Fam. Code Ann. § 107.002\(e\)](#) (Vernon 2002), with [Tex. Fam. Code Ann. § 107.002\(a\)](#) (Vernon Supp. 2005) (illustrating the legislative changes).

[FN168]. [Tex. Fam. Code Ann. § 107.002\(e\)](#) (Vernon Supp. 2005). This provision only applies to nonlawyer GALs. *Id.*

[FN169]. Heartbeat Summer 2005, *supra* note 134, at 4.

[FN170]. See [Tex. Fam. Code Ann. § 107.002\(e\)](#); Lehrmann, *supra* note 72, at 3-101.

[FN171]. Cockerham Interview 2006, *supra* note 109. Internally, CASA will need to make certain that volunteers' reports remain well written, concise, and complete. *Id.* Local volunteers typically meet with local judges to discuss the report format and timeline of presenting the reports to the court. *Id.* This discussion, coupled with continued training on CASA court reports, should persist in light of this revision. *Id.*

[FN172]. *Id.*

[FN173]. Telephone Interview with Georgianna Newburg, Volunteer Coordinator, Amarillo Area CASA Program, in Amarillo, Tex. (Jan. 13, 2006) [hereinafter Newburg Interview].

[FN174]. *Id.*

[FN175]. *Id.*

[FN176]. *Id.*

[FN177]. Cockerham Interview 2006, *supra* note 109.

[FN178]. See discussion *infra* Part IV.B.1.c.

[FN179]. [Tex. Fam. Code Ann. § 107.009](#) (Vernon Supp. 2005). Attorneys ad litem also received heightened judicial immunity under this change. *Id.*

[FN180]. See [Byrd v. Woodruff, 891 S.W.2d 689 \(Tex. App.-Dallas 1994, writ denied\)](#) (denying immunity to a GAL appointed pursuant to [Texas Rule of Civil Procedure 173](#) in a personal injury case, as the GAL serves as the minor's representative, not as an arm of the court).

[FN181]. [Tex. Fam. Code Ann. § 107.009 \(a\)](#).

[FN182]. Lehrmann, *supra* note 72, at 3-82.

[FN183]. See [Tex. Fam. Code Ann. § 107.009](#).

[FN184]. Cockerham Interview 2006, *supra* note 109.

[FN185]. See *id.*

[FN186]. See *id.*

[FN187]. *Id.*

[FN188]. *Id.*

[\[FN189\]](#). *Id.*

[\[FN190\]](#). See discussion *infra* Part IV.B.1.d.

[\[FN191\]](#). [Tex. Fam. Code Ann. § 107.021](#) (Vernon Supp. 2005).

[\[FN192\]](#). *Id.* [§ 107.021\(a-1\)](#).

[\[FN193\]](#). *Id.* [§ 107.022](#). Significantly, the legislature also added the court-appointed role of a parent coordinator in high-conflict private suits affecting the parent-child relationship. See *id.* §§ 153.601-.611. This person serves as an impartial third party to assist the resolution of family issues. *Id.* § 153.601(3). Although the parenting coordinator is not a CASA volunteer, the individual's function would seem to further impede the appointment of a CASA volunteer in a private suit. See *id.* §§ 153.601-.611.

[\[FN194\]](#). *Id.* § 264.602; see discussion *infra* Part V.

[\[FN195\]](#). [Tex. Fam. Code Ann. § 264.602](#).

[\[FN196\]](#). *Id.* § 261.3126.

[\[FN197\]](#). Lehrmann, *supra* note 72, at I-32 Commentary.

[\[FN198\]](#). See discussion *infra* Part V.

[\[FN199\]](#). Lehrmann, *supra* note 72, at I-32 Commentary; see discussion *infra* Part VI.

[\[FN200\]](#). Lehrmann, *supra* note 72, at I-28 to I-29 Commentary.

[\[FN201\]](#). *Id.*

[\[FN202\]](#). Heartbeat, Newsletter of Tex. CASA (Tex. CASA, Austin, Tex.), Fall 2005, at 4 [hereinafter Heartbeat Fall 2005].

[\[FN203\]](#). Sparks Interview, *supra* note 149.

[\[FN204\]](#). *Id.*

[\[FN205\]](#). Heartbeat Fall 2005, *supra* note 202, at 4.

[\[FN206\]](#). See discussion *infra* Part VI.B.2.

[\[FN207\]](#). [Tex. Fam. Code Ann. § 107.022](#) (Vernon Supp. 2005).

[\[FN208\]](#). See *infra* notes 212-23 and accompanying text.

[\[FN209\]](#). [20 U.S.C.A. § 1415\(b\) \(2005\)](#) (listing the procedures that must be met); [Tex. Fam. Code Ann. § 107.031\(c\)](#).

[\[FN210\]](#). [Tex. Educ. Code Ann. § 29.015](#) (Vernon 2005 & Supp. 2005) (referencing when a foster parent serves as the

surrogate parent); [Tex. Fam. Code Ann. § 107.031\(c\)](#).

[FN211]. [Tex. Fam. Code Ann. § 107.031\(c\)](#); Telephone Interview with John J. Sampson, Professor of Law, University of Texas School of Law, in Austin, Tex. (Sept. 15, 2005).

[FN212]. See *infra* notes 213-17 and accompanying text.

[FN213]. Sparks Interview, *supra* note 149.

[FN214]. *Id.*

[FN215]. *Id.* ARD meetings consider whether the child should be admitted to a special education program, review a child's progress in this program, or dismiss the child from the program. *Id.*

[FN216]. *Id.*

[FN217]. *Id.* CASA volunteers usually attend the ARD meetings, but they do not have authority at these meetings unless they are surrogate parents. *Id.*

[FN218]. *Id.*

[FN219]. *Id.*

[FN220]. *Id.*

[FN221]. Cockerham Interview 2006, *supra* note 109.

[FN222]. *Id.* Some of the larger programs in Texas, such as in Dallas, Houston, or San Antonio, have discussed having an education specialist, that is, one volunteer to be the surrogate parent for the CASA children. Sparks Interview, *supra* note 149.

[FN223]. Sparks Interview, *supra* note 149.

[FN224]. See discussion *infra* Part IV.B.3.

[FN225]. See [Tex. Fam. Code Ann. §§ 266.001-.011](#) (Vernon Supp. 2005).

[FN226]. See *id.*; discussion *infra* Part IV.B.3.a-b.

[FN227]. See discussion *infra* Part IV.B.3.a-b.

[FN228]. [Tex. Fam. Code Ann. § 266.004\(a\)](#). In the event of emergency medical care, consent or court authorization normally required is not necessary. *Id.* § 266.009(a). The treating physician must notify the person authorized to grant consent to medical services and document it in the child's health passport. *Id.* § 266.009(b).

[FN229]. [Id. § 266.004\(b\)](#). Foster children at least sixteen years of age may consent to medical care provision, so long as the court determines that they have the capacity to consent. *Id.* § 266.010(a). A nonparent must complete a department-approved training program concerning informed consent and medical care provision. [Id. § 266.004\(h\)](#).

[\[FN230\]](#). [Id. § 266.004\(e\)](#).

[\[FN231\]](#). [Id. § 266.006\(a\)](#).

[\[FN232\]](#). [Id. § 266.006\(b\)](#).

[\[FN233\]](#). [Id. § 266.006\(c\)-\(d\)](#).

[\[FN234\]](#). [Id. § 266.007\(a\)](#). Previously, judges were disinclined to question or overrule the expert opinion of psychiatrists and other health care specialists regarding a child's medical care. Sparks Interview, *supra* note 149. Currently, judges can make any order *sua sponte* for the child's medical care, enabling the court to hold the DFPS responsible for the child's medical care by assessing the mandatory report before each hearing. *Id.*

[\[FN235\]](#). [Tex. Fam. Code Ann. § 266.007\(a\)\(1\)-\(8\)](#). Foster children must also have the chance to express their views at the hearing on the medical treatment they will receive. [Id. § 266.007\(c\)](#).

[\[FN236\]](#). [Id. § 266.007\(a\)\(1\)-\(8\), \(b\)\(1\)-\(5\)](#).

[\[FN237\]](#). See *infra* notes 238-45 and accompanying text.

[\[FN238\]](#). Sparks Interview, *supra* note 149.

[\[FN239\]](#). *Id.*

[\[FN240\]](#). Heartbeat Fall 2005, *supra* note 202, at 6.

[\[FN241\]](#). Sparks Interview, *supra* note 149.

[\[FN242\]](#). *Id.*

[\[FN243\]](#). Heartbeat Fall 2005, *supra* note 202, at 6.

[\[FN244\]](#). *Id.*

[\[FN245\]](#). *Id.*

[\[FN246\]](#). Sparks Interview, *supra* note 149; see *supra* note 149 and accompanying text.

[\[FN247\]](#). Sparks Interview, *supra* note 149; see *supra* note 149 and accompanying text.

[\[FN248\]](#). [Tex. S.B. 6, 79th Leg., R.S. \(2005\)](#). The former system paved the way, as about seventy-five percent of foster care services were privately provided. *Id.*

[\[FN249\]](#). Sparks Interview, *supra* note 149.

[\[FN250\]](#). [Tex. S.B. 6](#).

[\[FN251\]](#). See discussion *infra* Part IV.B.3.b.

[\[FN252\]](#). [Tex. Fam. Code Ann. § 266.008\(a\)](#) (Vernon Supp. 2005).

[\[FN253\]](#). *Id.*

[\[FN254\]](#). [Id. § 266.008\(b\)](#).

[\[FN255\]](#). [Id. § 266.008\(c\)](#).

[\[FN256\]](#). See *infra* notes 257-62 and accompanying text.

[\[FN257\]](#). Heartbeat Fall 2005, *supra* note 202, at 13.

[\[FN258\]](#). *Id.*

[\[FN259\]](#). Sparks Interview, *supra* note 149.

[\[FN260\]](#). *Id.*

[\[FN261\]](#). *Id.*

[\[FN262\]](#). Heartbeat Fall 2005, *supra* note 202, at 13.

[\[FN263\]](#). See *supra* notes 142-262 and accompanying text.

[\[FN264\]](#). See *supra* notes 142-262 and accompanying text.

[\[FN265\]](#). See discussion *infra* Part V.

[\[FN266\]](#). See discussion *infra* Part V.A-B.

[\[FN267\]](#). See discussion *infra* Part V.A.

[\[FN268\]](#). See discussion *infra* Part V.A-B.

[\[FN269\]](#). National Council of Juvenile & Family Court Judges, *supra* note 10, at 1.

[\[FN270\]](#). National Council of Juvenile & Family Court Judges, [http:// www.ncjfcj.org/](http://www.ncjfcj.org/) (follow “About Us” hyperlink) (last visited June 5, 2006).

[\[FN271\]](#). *Id.* In 2004, the National Council of Juvenile and Family Court Judges offered and conducted over 200 educational programs for more than 25,000 judges, court supervisors, social and mental health workers, police, probation officers, and various others working in juvenile and family courts. *Id.*

[\[FN272\]](#). *Id.*

[FN273]. National Council of Juvenile & Family Court Judges, Resolution in Support of the Judges Assisting in the Creation and Expansion of Court Appointed Special Advocates/Guardian Ad Litem Programs, <http://www.ncjfcj.org/> (follow “About Us” hyperlink; then follow “NCJFCJ Resolutions” hyperlink; then follow “In Support of Judges Assisting in the Creation of CASA Programs” hyperlink). The National Council of Juvenile and Family Court Judges adopted the resolution on July 20, 2005, at a membership convention in Pittsburgh, Pennsylvania. *Id.*

[FN274]. *Id.*

[FN275]. Organizational Research Services, Evaluation of Court-Appointed Special Advocates/Guardians Ad Litem Volunteer Impact: Judicial Survey, Sept. 2005, at 1, available at [http://www.casenet.org/download/casa-surveys/0510\\_casa\\_eval\\_report\\_0024.pdf](http://www.casenet.org/download/casa-surveys/0510_casa_eval_report_0024.pdf) [hereinafter Judicial Survey].

[FN276]. *Id.* Organizational Research Services collected the data by surveying active judges and juvenile court commissioners who hear juvenile dependency cases and are currently, or within the past two years, have been linked to a local CASA program, worked with CASA volunteers, or both. *Id.* at 1-2. The NCASAA mailed out a total of 2288 surveys in May 2005 throughout the United States, and 564 judges completed the survey. *Id.* at 2-3.

[FN277]. *Id.* at A-2 to A-5. The NCASAA will use the survey's results to improve the CASA programs, volunteers, and services and to provide information on how courts utilize CASA volunteers throughout the country. *Id.* at A-1.

[FN278]. See *infra* notes 281-86 and accompanying text.

[FN279]. Judicial Survey, *supra* note 275, at 15-16.

[FN280]. *Id.* at 16-17.

[FN281]. *Id.* at 24 (emphasis omitted).

[FN282]. *Id.* at 24-25.

[FN283]. *Id.* at 25.

[FN284]. *Id.* at 28.

[FN285]. *Id.* at 33-34.

[FN286]. See *id.* at 1.

[FN287]. See discussion *supra* Part V.A.

[FN288]. Youngclarke et al., *supra* note 95, at 109.

[FN289]. *Id.*

[FN290]. *Id.* at 123.

[FN291]. See *id.* at 121.

[\[FN292\]](#). Id.

[\[FN293\]](#). Id.

[\[FN294\]](#). See *infra* note 295 and accompanying text.

[\[FN295\]](#). Youngclarke et al., *supra* note 95, at 121. One of the 2005 amendments mandates that lawyers meet with the child before each hearing; this difference in consistency and personal contact could improve lawyers' representation in Texas. See [Tex. Fam. Code Ann. § 107.004\(d\)](#) (Vernon Supp. 2005).

[\[FN296\]](#). Youngclarke et al., *supra* note 95, at 122. Texas CASA mandates that volunteers not simultaneously serve in more than three cases, unless specifically approved by supervisors. See *supra* note 125 and accompanying text. This internal limitation on case loads ensures that children remain best served. See *supra* note 114 and accompanying text.

[\[FN297\]](#). Youngclarke et al., *supra* note 95, at 121.

[\[FN298\]](#). Id.

[\[FN299\]](#). Id.

[\[FN300\]](#). Id. at 122.

[\[FN301\]](#). See *id.*

[\[FN302\]](#). See *supra* notes 272-301 and accompanying text.

[\[FN303\]](#). See discussion *infra* Part VI.

[\[FN304\]](#). Nat'l CASA Ass'n, Resolution Regarding the Use of CASA Volunteers, (adopted 1999), <http://www.casenet.org/> (follow "Program management" hyperlink; then follow "Volunteer management" hyperlink; then follow "Resolution Regarding the Use of CASA Volunteers in Domestic Relations Custody Cases"). Domestic custody relations cases are private proceedings not brought by the state entity. Id.

[\[FN305\]](#). See *supra* notes 191-93 and accompanying text.

[\[FN306\]](#). See *supra* notes 194-96 and accompanying text.

[\[FN307\]](#). Sparks Interview, *supra* note 149.

[\[FN308\]](#). See Hill, *supra* note 73, at 613.

[\[FN309\]](#). Id.

[\[FN310\]](#). Ellis Interview, *supra* note 160.

[\[FN311\]](#). Youngclarke et al., *supra* note 95, at 110.

[\[FN312\]](#). Sparks Interview, *supra* note 149.

[\[FN313\]](#). *Id.*

[\[FN314\]](#). Ellis Interview, *supra* note 160; see also Texas CASA Statistics, *supra* note 11, at 1 (listing foster care expenditures in Texas at around \$315 billion in 2003).

[\[FN315\]](#). See discussion *infra* Part VI.A-E.

[\[FN316\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN317\]](#). *Id.*

[\[FN318\]](#). Lehrmann, *supra* note 72, at 2-24.

[\[FN319\]](#). See discussion *infra* Part VI.A-E.

[\[FN320\]](#). See discussion *infra* Part VI.A-E.

[\[FN321\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN322\]](#). Telephone Interview with Chris Hubner, Policy & Grants Management Director, Tex. CASA, in Austin, Tex. (January 3, 2006).

[\[FN323\]](#). Texas CASA Statistics, *supra* note 11, at 1.

[\[FN324\]](#). Sparks Interview, *supra* note 149.

[\[FN325\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN326\]](#). *Id.*

[\[FN327\]](#). *Id.*

[\[FN328\]](#). Heartbeat, Newsletter of Tex. CASA (Tex. CASA, Austin, Tex.), Summer 2004, at 6 [hereinafter Heartbeat Summer 2004].

[\[FN329\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN330\]](#). *Id.*

[\[FN331\]](#). *Id.*

[\[FN332\]](#). *Id.*

[\[FN333\]](#). *Id.*

[\[FN334\]](#). Id.; see discussion *infra* Part VI.B.

[\[FN335\]](#). Sparks Interview, *supra* note 149.

[\[FN336\]](#). Id.

[\[FN337\]](#). Id.

[\[FN338\]](#). Id.

[\[FN339\]](#). Ellis Interview, *supra* note 160.

[\[FN340\]](#). Id.

[\[FN341\]](#). Id.

[\[FN342\]](#). Id.

[\[FN343\]](#). Id. As a side note, the role might already be fulfilled due to the new mandate of the parenting coordinator in private, high-conflict matters. See [Tex. Fam. Code Ann. §§ 153.601-.611](#) (Vernon 2005); *supra* note 193 and accompanying text. Although parenting coordinators and CASA volunteers are distinctly individualized roles, the rationale behind CASA volunteers' presence in private custody litigation is strikingly similar, and the roles might blur. Ellis Interview, *supra* note 160.

[\[FN344\]](#). Sparks Interview, *supra* note 149.

[\[FN345\]](#). Texas CASA Statistics, *supra* note 11, at 1.

[\[FN346\]](#). Heartbeat Fall 2005, *supra* note 202, at 19. As of 2004, Abilene's population totaled over 125,000. Real Estate Center, Mays Business School, Texas A&M University, <http://recenter.tamu.edu/data/popm/pm0040.htm> (last visited June 5, 2006). Although the Texas CASA Expansion Specialist visited Abilene and many people have promoted initiating a local program in Abilene, the district judge has expressed her desires to not have the program. Sparks Interview, *supra* note 149. Thus, the CASA expansion team is seeking to provide services in the surrounding areas until a program can begin. Id.

[\[FN347\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN348\]](#). Id.

[\[FN349\]](#). Id.

[\[FN350\]](#). Heartbeat Fall 2004, *supra* note 94, at 16.

[\[FN351\]](#). Sparks Interview, *supra* note 149.

[\[FN352\]](#). See *supra* notes 194-96 and accompanying text.

[\[FN353\]](#). See *supra* notes 194-96 and accompanying text.

[\[FN354\]](#). See discussion *infra* Part VI.D.

[\[FN355\]](#). See *supra* notes 197-206 and accompanying text.

[\[FN356\]](#). See *supra* notes 197-206 and accompanying text.

[\[FN357\]](#). Cockerham Interview 2006, *supra* note 109.

[\[FN358\]](#). Sparks Interview, *supra* note 149.

[\[FN359\]](#). *Id.*

[\[FN360\]](#). *Id.*

[\[FN361\]](#). See discussion *infra* Part VI.E.

[\[FN362\]](#). See *infra* notes 363-68 and accompanying text.

[\[FN363\]](#). Youngclarke et al., *supra* note 95, at 122.

[\[FN364\]](#). Heartbeat, Newsletter of Tex. CASA (Tex. CASA, Austin, Tex.), Fall 2003, at 4 [*hereinafter* Heartbeat Fall 2003].

[\[FN365\]](#). Ellis Interview, *supra* note 160.

[\[FN366\]](#). *Id.*

[\[FN367\]](#). Ducote, *supra* note 56, at 119.

[\[FN368\]](#). Ellis Interview, *supra* note 160.

[\[FN369\]](#). See *supra* notes 315-68 and accompanying text.

[\[FN370\]](#). Lehrmann, *supra* note 72, at 2-24.

[\[FN371\]](#). *Id.*

[\[FN372\]](#). *Id.*

[\[FN373\]](#). Texas CASA Statistics, *supra* note 11, at 1; see *supra* notes 304-06 and accompanying text.

[\[FN374\]](#). See *supra* notes 315-68 and accompanying text.

[\[FN375\]](#). [In re S.G.S., 130 S.W.3d 223, 232 \(Tex. App.-Beaumont 2004, no pet. h.\)](#). This case is used for purposes of its facts regarding the children's abuse. See *id.*; see *supra* notes 1-16 and accompanying text.

[\[FN376\]](#). Newburg Interview, *supra* note 173.

[\[FN377\]](#). *Id.* Indeed, other cases involving CASA volunteers led courts to terminate parental rights. *Id.*

[\[FN378\]](#). *Id.*

[\[FN379\]](#). *Id.*

[\[FN380\]](#). See discussion *supra* Part IV.

[\[FN381\]](#). See discussion *supra* Part IV.

[\[FN382\]](#). See discussion *supra* Part IV.

[\[FN383\]](#). See discussion *supra* Part IV.

[\[FN384\]](#). See [Tex. Fam. Code Ann. § 107.008\(c\)](#) (Vernon Supp. 2005); discussion *supra* Part IV.B.1.a.

[\[FN385\]](#). See discussion *supra* Part IV.B.

[\[FN386\]](#). [Tex. Fam. Code Ann. § 107.022](#) (noting CASA volunteers may serve if they meet the training requirements); see discussion *supra* Part IV.B.1.d.

[\[FN387\]](#). See discussion *supra* Part VI.

[\[FN388\]](#). Cockerham Interview 2006, *supra* note 109. Not only could children lose their families, caretakers, and environment, but also they typically experience extreme physical and emotional abuse and neglect. Lehrmann, *supra* note 72, at 2-24.

[\[FN389\]](#). See discussion *supra* Part VI.B.1.d.

[\[FN390\]](#). See discussion *supra* Part IV.B.1.d.

[\[FN391\]](#). [Tex. Fam. Code Ann. § 264.602](#).

[\[FN392\]](#). See *id.*

[\[FN393\]](#). Texas CASA Statistics, *supra* note 11, at 1.

[\[FN394\]](#). See discussion *supra* Part IV.B.1.d.

[\[FN395\]](#). See *supra* notes 383-94 and accompanying text.

[\[FN396\]](#). Heartbeat Summer 2004, *supra* note 328, at 10.

[\[FN397\]](#). *Id.*

[\[FN398\]](#). Id.

[\[FN399\]](#). Heartbeat Fall 2003, supra note 364, at 3.

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