

**Representation and Investigation in Guardianship Proceedings**  
**(as of statutory revisions December 31, 2006)**

| <u>State</u>                        | <u>Right to Counsel</u>  | <u>Counsel Role</u>  | <u>Guardian Ad Litem</u>                                    | <u>Visitor</u>  | <u>Medical Documentation/<br/>Evaluation</u>  |
|-------------------------------------|--|--|---|---|---|
| <b>Alabama:</b><br>Code             | <b>26-2A-135(b)</b><br>shall appoint attorney  | <b>26-2A-135(b),<br/>26-2A-102(b)</b><br>may be GAL  | <b>26-2A-52<br/>26-2A-102(b)</b><br>court representative    | <b>26-2A-102(b)</b><br>court representative<br>interviews ward and<br>petitioner, visits present and<br>proposed abode  | <b>26-2A-102(b)</b><br>must be examined by a<br>physician or other<br>qualified person and<br>submit a written report   |
| <b>Alaska:</b><br>Statute           | <b>13.26.106(b)</b><br>entitled, shall appoint<br>Office of Public<br>Advocacy if no funds   | <b>13.26.111</b><br>represent<br>zealously,<br>determine interest,<br>personally<br>interview, explain<br>rights | <b>13.26.112</b><br>upon request, may<br>appoint GAL        | <b>13.26.106(c)</b><br>visitor arranges evaluations,<br>interviews respondent &<br>proposed guardian<br><b>13.26.108</b><br>visitor's report includes<br>affidavit on process | <b>13.26.106(c)</b><br>expert has expertise in<br>alleged incapacity  |
| <b>Arizona:</b><br>Rev. Stat. Ann.  | <b>14-5303(C)</b><br>shall appoint. May<br>discharge after guardian<br>appointed if no longer<br>necessary based on<br>specific findings | <i>Not stated</i>  | <b>14-5303(C)</b><br>investigator                           | <b>14-5303</b><br>investigator interviews<br>respondent, proposed<br>guardian, visits present,<br>proposed residence, caregiver   | <b>14-5303(C)</b><br>functional assessment by<br>physician, psychologist or<br>RN   |
| <b>Arkansas:</b><br>Code Ann.       | <b>28-65-213(a)(1)</b><br>entitled   | <i>Not stated</i>  | <b>28-65-207(c)(3)</b><br>GAL not necessary in<br>each case | <i>Not stated</i>   | <b>28-65-211(b)(1)</b><br>sworn statement by 1 or<br>more qualified medical<br>witnesses with expertise<br>in alleged incapacity<br><b>28-65-212</b><br>professional evaluation |
| <b>California:</b><br>Prob. Code    | <b>1823(b)(6)</b><br>entitled; right to  | <i>Not stated</i>  | <b>1833<br/>1826</b><br>court investigator                  | <b>1826</b><br>interview respondent, inform<br>of rights; determine<br>attendance at hearing, if<br>contests or objects, wants<br>counsel; review allegations in<br>petition  | <b>1801(e)</b><br>medical evidence &<br>specific impairments  |
| <b>Colorado:</b><br>Rev. Stat. Ann. | <b>15-14-305(2)</b><br>appoint if request<br><b>15-14-305(3)(c)</b><br>Right to lawyer; right to<br>request court-appointed<br>lawyer    | <i>Not stated</i>  | <b>15-14-115</b>  | <b>15-14-305 (1) &amp; (3)</b><br>meet respondent, explain<br>rights, interview proposed<br>guardian, visit new/old<br>abode, interview dr. or care<br>provider               | <b>15-14-306</b><br>Court may order<br>evaluation by physician,<br>psychologist, other<br>qualified individual  |

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|---|--|--|---|--|---|
| <b>Connecticut:</b><br>Gen. Stat. Ann.    | <b>45a-649(b)(2)</b><br>shall appoint in any proceeding  | <i>Not stated</i>  | <i>Not stated</i>   | <i>Not stated</i>  | <b>45a-650(a)</b><br>statement by 1 or more physicians; report from social worker                                   |
| <b>Delaware:</b><br>Code Ann.             | <b>12 3901(c)</b><br>entitled to representation  | <i>Not stated</i>  | <i>Not stated</i>   | <i>Not stated</i>  | <i>Not stated</i>   |
| <b>District of Columbia:</b><br>Code Ann. | <b>21-2041(h)</b><br>shall appoint   | <b>21-2033(b)</b><br>Zealously represent interests of individual | <b>21-2033(a)</b><br>may appoint to assist respondent in determining interest. Not fact finder, investigator or ombudsman | <b>21-2033(c)</b><br>before hearing  | <b>21-2041(d)</b>   |
| <b>Florida:</b><br>Stat. Ann.             | <b>744.331(2)(a),<br/>744.3215(1)</b><br>shall appoint   | <i>Not stated</i>  | <i>Not stated</i>   | <i>Not stated</i>  | <b>744.331(3)(a)</b><br>3-member examining committee; attending dr. may not be member, each shall examine           |
| <b>Georgia:</b><br>Code Ann.              | <b>29-4-11(c)</b><br>right to court appointment unless retained                                | <i>Not stated</i>  | <b>29-4-11</b><br>upon motion by any interested party or court's own motion   | <i>Not stated</i>  | <b>29-4-11(d)</b><br>physician, psychologist or licensed clinical social worker                                     |
| <b>Hawaii:</b><br>Rev. Stat.              | <b>560:5-305(b)</b><br>if request, recommended by kokua kanawai, or court determines is needed | <i>Not stated</i>  | <b>560:5-115</b><br>at any stage if interests inadequately represented  | <b>560:5-102, -305(c), -406(c)</b><br>may appoint kokua kanawai officer to explain, determine views, costs, interview petitioner and proposed guardian, visit dwelling, get information from physician | <b>560:5-306, -406</b><br>may request by physician, psychologist & other qualified, shall if demanded by respondent |

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|---|--|---|---|---|--|
| <b>Idaho:</b><br>Code                             | <b>15-5-303(b)</b><br>shall appoint attorney   | <b>15-5-303(b)</b><br>attorney with GAL<br>duties | <b>15-5-315</b><br>GAL conducts<br>independent<br>investigation, reports<br>results, makes<br>recommendation, acts<br>as advocate, general<br>representation of ward,<br>negotiates, monitors<br><b>15-5-308(3)</b><br>GAL and visitor must<br>be separate and<br>independent | <b>15-5-303(b)</b><br>visitor shall interview<br>petitioner, respondent,<br>proposed guardian, visit both<br>abodes   | <b>15-5-303(b)</b><br>physician & visitor,<br>mental health professional   |
| <b>Illinois:</b><br>Ann. Stat.<br><b>755 ILCS</b> | <b>5/11a-10(b)</b><br>appointed if requested<br>or respondent adverse<br>to GAL<br><b>5/11a-11(a)</b><br>entitled to<br>representation | <i>Not stated</i>                                 | <b>5/11a-10(a)</b><br>shall appoint, report on<br>best interests, observe,<br>inform of rights  |   | <b>5/11a-11(c)</b><br>1 or more independent<br>experts   |
| <b>Indiana:</b><br>Code Ann.                      | <b>29-3-5-1(c)</b><br>may appoint  | <i>Not stated</i>                                 | <b>29-3-2-3(a)</b><br>shall appoint if not<br>represented   | <i>Not stated</i>   | <i>Not stated</i>  |
| <b>Iowa:</b><br>Code Ann.                         | <b>633.561(1)(a);</b><br><b>633.575(1)(a)</b><br>court shall appoint<br>attorney   | <i>Not stated</i>                                 | <b>Iowa R. Civ. Pro. 14</b>   | <i>Not stated</i>   | <i>Not stated</i>  |
| <b>Kansas:</b><br>Rev. Stat. Ann.                 | <b>59-3063(3)</b><br>shall appoint   | <i>Not stated</i>                                 | <i>Not stated</i>   | <b>59-3065</b><br>may order investigation and<br>report on family<br>relationships, past conduct,<br>nature & extent of property<br>or income, if likely to injure<br>self or others, other matters | <b>59-3064</b><br>shall order exam and<br>evaluation at hospital,<br>psychiatric hospital,<br>community mental health,<br>community DD, private<br>physician, psychiatrist,<br>psychologist, other<br>qualified professional |

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|---|--|---|--|--|--|
| <b>Kentucky:</b><br>Rev. Stat. Ann.   | <b>387.560(1)</b><br>shall appoint   | <i>Not stated</i>   | <i>Not stated</i>                                      | <i>Not stated</i>  | <b>387.540(1)</b><br>interdisciplinary<br>evaluation by physician,<br>psychologist & social<br>worker    |
| <b>Louisiana</b><br>Civ. Code Ann. &<br>Code of Civ. Pro.;<br>Rev. Stat. Ann. | <b>CCP Art. 4544</b><br>shall appoint  | <b>CCP 4544(B)</b><br>Personally visit<br>respondent; discuss<br>allegations,<br>relevant facts, law,<br>rights & options | <i>Not stated</i>                                      | <i>Not stated</i>  | <b>CCP 4545</b><br>may appoint examiner<br>with training &<br>experience in type of<br>infirmity alleged |
| <b>Maine:</b><br>Rev. Stat. Ann.  | <b>18-A 5-303(b)</b><br>shall appoint 1 or more:<br>attorney, GAL or<br>visitor; must appoint<br>attorney if respondent<br>wishes to object  | <i>Not stated</i>   | <b>18-A 5-303(b)</b><br>appointment when<br>necessary  | <b>18-A 5-303(b)</b><br>shall interview respondent,<br>proposed guardian; explain<br>petition/proceeding, indicate<br>need for counsel | <b>18-A 5-303(b)</b> physician<br>or licensed psychologist   |
| <b>Maryland:</b><br>Ann. Code;<br>MD Rules                                    | <b>13-705(d)</b><br>shall appoint  | MD Rules<br>Attorney is<br>advocate   | <i>Not stated</i>                                      | MD Rules<br>Independent investigator, not<br>an attorney, may be<br>appointed if necessary   | <b>R73(b)(1)</b> 2 physicians,<br>or physician and<br>psychologist                                       |
| <b>Massachusetts:</b><br>Ann. Laws  | <i>Not stated</i>  | <i>Not stated</i>   | <b>201 34</b>  | <i>Not stated</i>  | <b>201 6</b><br>physician, psychologist ,<br>certified psychiatric nurse<br>clinical specialist          |
| <b>Michigan:</b><br>Comp. Laws Ann.   | <b>700.5304(5)</b><br>entitled to counsel<br><b>700.5305(3) &amp;(4)</b><br>shall appoint if contests<br>petition or proposed<br>guardian, seeks limits<br>on order; or if guardian<br>ad litem recommends | <i>Not stated</i>   | <b>700.5303(2)</b><br><b>700.5305</b><br>shall appoint | <i>Not stated</i>  | <b>700.5304(1)</b><br>physician or mental health<br>professional   |

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| <b>Minnesota:</b><br>Stat. Ann.  | <b>524.5-304(b) &amp; 406(b)</b><br>shall appoint immediately if not provided unless respondent waives right via visitor        | <b>524.5-304(b) &amp; 406(b)</b><br>consult; have time to prepare; representation continues until appeal expires | <b>524.5-115</b><br>may appoint at any stage if other representation inadequate   | <b>524.5-304(a) &amp; 406(a)</b><br>may appoint; <b>404(c) &amp; 406(c)</b><br>personally serve notice; offer to read petition; interview in person; explain substance, rights; obtain view on guardian, duties, scope; explain right to attorney & that costs come from estate | <b>524.5-304(f)</b><br>co. social service agency may create screening committee to determine if less restrictive alternative |
| <b>Mississippi:</b><br>Code Ann. | <i>Not stated</i>   | <i>Not stated</i>  | <b>93-13-255</b><br>may appoint, shall be present, present interest of respondent | <b>93-13-255</b><br>before hearing  | <b>93-13-255</b><br>2 physicians, personal exam  |
| <b>Missouri:</b><br>Ann. Stat.   | <b>475.075(3)</b><br>court shall appoint  | <b>475.075(3)</b>  | <i>Not stated</i>   | <i>Not stated</i>   | <b>475.075(4)</b><br>court may direct that respondent be examined  |
| <b>Montana:</b><br>Code Ann.     | <b>72-5-315(2)</b><br>may have counsel of own choice or appointed counsel; or court may order Public Defender to assign counsel | <b>72-5-315(2)</b><br>has duties of GAL  | <b>72-5-314(2)</b><br>representation by GAL not necessary                         | <b>72-5-315(3)</b><br>special court appointee shall interview respondent, petitioner, proposed guardian, visit present and proposed abode   | <b>72-5-315(3)</b><br>shall be examined by court appointed physician   |
| <b>Nebraska:</b><br>Rev. Stat.   | <b>30-2619(b)</b><br>court may appoint if person indicates a desire for an attorney   | <i>Not stated</i>  | <b>30-2619(b)</b><br>court may appoint, advocates for best interest               | <b>30-2619.01</b><br>visitor evaluates incapacity, shall interview proposed guardian, service agencies, respondent, visit present and proposed abode  | <b>30-2619(c)</b><br>may be examined by court appointed physician  |
| <b>Nevada:</b><br>Rev. Stat.     | <b>159.0485</b><br>court shall appoint legal aid or private attorney if unable to retain & requests                             | <i>Not stated</i>  | <b>159.0455</b><br>may appoint, order sets duties                                 | <b>159.046</b><br>may appoint investigator to locate needed services & resources available, competing interests, allegations or claims  | <b>159.044(2)(j)</b><br>certificate by physician   |

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|--|--|---------------------|---|--|--|
| <b>New Hampshire:</b><br>Rev. Stat. Ann. | <b>464-A:6</b><br>absolute, unconditional<br>right   | <i>Not stated</i>   | <b>464-A:41</b><br>may appoint if rights<br>are not fully<br>represented; shall<br>appoint if requested | <i>Not stated</i>  | <i>Not stated</i>  |
| <b>New Jersey:</b><br>Stat. Ann.         | <b>3B:12-24.1( c )(5)</b><br>attorney appointed by<br>court for temporary<br>guardianship  | <i>Not stated</i>   | <i>Not stated</i>   | <i>Not stated</i>  | <b>3B:12-24.1(d)</b><br>Physicians &<br>psychologists  |
| <b>New Mexico:</b><br>Stat. Ann.         | <b>45-5-303(C)</b><br><b>45-5-309(c)</b><br>court shall appoint if<br>not represented  | <i>Not stated</i>   | <b>45-5-303.1</b><br>shall interview<br>respondents; review<br>medical and visitor<br>reports           | <b>45-5-303(E)</b><br>shall appoint a visitor to<br>interview respondent,<br>proposed guardian, present<br>and proposed abode, evaluate<br>needs                               | <b>45-5-303(D)</b><br>shall be examined by<br>qualified health care<br>professional appointed by<br>the court  |
| <b>New York:</b><br>Mental Hyg. Law      | <b>81.10</b><br>shall have right to<br>chose counsel if choice<br>is freely and<br>independently made;<br>court appoints counsel<br>if requested, contested,<br>need major medical<br>decision, temporary<br>power requested,<br>conflict of interest, if<br>helpful | <i>Not stated</i>   | <i>Not stated</i>   | <b>81.09</b><br>shall appoint court evaluator,<br>interview respondent &<br>petitioner, explain rights,<br>proceeding, evaluate need for<br>counsel, if understands<br>English | <b>81.09</b><br>court evaluator, including<br>mental hygiene legal<br>service in the judicial<br>department where the<br>person resides, a not-for-<br>profit corporation, an<br>attorney-at-law, physician,<br>psychologist, accountant,<br>social worker, or nurse |

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| <b>North Carolina:</b><br>Gen. Stat. | <b>35A-1107</b><br>entitled to counsel of own choice; an attorney shall be appointed unless respondent retains own counsel   | <b>35A-1107</b><br>has duties of GAL   | <b>35A-1107</b><br>shall personally visit, make every reasonable effort to determine respondent's wishes; present respondent's express wishes; may make recommendations as to best interest if differ from express wishes; shall consider limited guardianship; shall recommend rights, powers, privileges to be retained | <i>Not stated</i>  | <b>35A-1111</b><br>multi-disciplinary evaluation  |
| <b>North Dakota:</b><br>Cent. Code   | <b>30.1-28-03</b><br>shall appoint attorney to act as GAL  | <b>30.1-28-03</b><br>Act as guardian ad litem, interview, explain rights and proceeding. | <i>Not stated</i>   | <b>30.1-28-03(3)</b><br>shall appoint, Interview proposed guardian and ward, ascertain views, visit present abode, prepare alternative resource plan   | <b>30.1-28-03(3)</b><br>ct appointed physicians or psychologist   |
| <b>Ohio:</b><br>Rev. Code Ann.       | <b>2111.02(C)(7)(a)</b><br>right to be represented by counsel of choice<br><b>2111.02( C )(7)(d)</b><br>right to have counsel appointed at court expense if indigent                                     | <i>Not stated</i>  | <i>Not stated</i>   | <b>2111.041</b><br>shall require a probate court investigator; investigate circumstances of alleged incapacity, communicate with alleged incapacitated | <b>2111.031</b><br>physicians or other qualified persons  |
| <b>Oklahoma:</b><br>Stat. Ann.       | <b>30-3-107</b><br>court may appoint attorney; may be public defender; if respondent present & after explanation requests attorney or if court determines in best interest, court shall appoint attorney | <i>Not stated</i>  | <b>30- 1-117(B)</b><br>any person or court on own may file for appointment of GAL<br><b>30 3-106.1</b><br>ct. may appoint volunteer advocate or GAL who advocates objectively for best interest   | <i>Not stated</i>  | <b>30 3-108</b><br>court on its own motion or at request of any party where capacity of person is material issue.<br>Physician, psychologist, or social worker. |

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|--|--|--|--|---|--|
| <b>Oregon:</b><br>Rev. Stat.               | <b>125.070(2)(e)(A)</b><br>right to be represented<br>by attorney  | <i>Not stated</i>  | <i>Not stated</i>  | <b>125.150</b><br>court shall appoint officer of<br>court or special appointee;<br>shall exercise powers of<br>guardian; shall interview<br>proposed guardian,<br>respondent where located;<br>may interview caregiver,<br>physician; must be present at<br>hearing   | <i>Not stated</i>  |
| <b>Pennsylvania:</b><br>Cons. Stat. Ann.   | <b>20-5511(a)</b><br>shall be appointed in<br>appropriate cases  | <i>Not stated</i>  | <b>20-5511(a)(2)</b><br>shall not be necessary   | <b>20-5511(d)</b><br>shall on good cause shown<br>have independent evaluation   | <b>20-5518</b><br>individuals qualified by<br>training & experience in<br>evaluating incapacity      |
| <b>Rhode Island:</b><br>Gen. Laws          | <b>33-15-7(d), (e)</b><br>Court shall appoint if<br>wishes to contest, limit<br>powers, object to<br>person nominated as<br>guardian | <i>Not stated</i>  | <b>33-15-7</b><br>shall be appointed,<br>visit, explain rights &<br>procedure, review<br>decision making<br>assessment tool,<br>interview proposed<br>guardian | <i>Not stated</i>   | <b>33-15-4</b><br>physician must complete<br>decision making<br>assessment tool found in<br>33-15-47 |
| <b>South Carolina:</b><br>Code Ann.        | <b>62-5-303(6)</b><br>court shall appoint<br>unless has own counsel  | <b>62-5-303(b)</b><br>has duties of<br>guardian ad litem | <i>Not stated</i>  | <b>62-5-303(b)</b><br>court shall send visitor to<br>observe conditions<br><b>62-5-308</b>  | <b>62-5-303(b)</b><br>shall be examined by 2<br>examiners; one of which<br>shall be a physician      |
| <b>South Dakota:</b><br>Codified Laws Ann. | <b>29A-5-309</b><br>court shall appoint if<br>requested, contested,<br>needed  | <i>Not stated</i>  | <i>Not stated</i>  | <b>29A-5-309</b><br>if no counsel, shall appoint<br>court representative to<br>investigate and make<br>recommendation on or order<br>person to attend.<br><b>29A-5-310</b><br>shall interview petitioner,<br>proposed guardian,<br>respondent; explain notice<br>and make report to court on<br>need for protection | <b>29A-5-306</b><br>evaluation of mental and<br>physical condition                                   |

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| <b>Tennessee:</b><br>Code Ann.        | <b>34-1-125</b><br>shall appoint attorney ad litem on recommendation of GAL, or if necessary to protect rights or interests<br><b>34-3-106</b><br>right to have attorney ad litem appointed | <b>34-1-125</b><br>advocate in resisting requested relief       | <b>34-1-107</b><br>court shall appoint unless represented by adversary counsel, waive if best interest, verify notice, consult in person, explain rights, determine if proposed guardian is appropriate, investigate capability, if property guardianship investigate nature of property, fiduciary, and management plan | <i>Not stated</i>  | <b>34-1-105</b><br>physician or psychologist   |
| <b>Texas:</b><br>Prob. Code Ann.      | <b>646</b><br>shall appoint attorney ad litem   | <b>647</b><br>interview proposed ward, discuss laws and options | <b>645</b><br>may be appointed by judge  | <b>648</b><br>shall operate visitor program  | <b>686</b><br>medical, psychological, intellectual records<br><b>687</b><br>physician;<br>if mental retardation, physician or psychologist |
| <b>Utah:</b><br>Code Ann.             | <b>75-5-303(4)</b><br>court shall appoint if none   | <b>75-5-303(4)</b><br>has powers of GAL                         | <i>Not stated</i>  | <b>75-5-303(3)</b><br>may appoint, may be GAL; visit current and proposed residence; interview petitioner and incapacitated person | <b>75-5-303(3)</b><br>may be examined by court doctor  |
| <b>Vermont:</b><br>Stat. Ann. tit. 14 | <b>14-3065(a)</b><br>shall be appointed   | <b>14-3065(b)</b><br>consult and explain                        | <b>14-3066</b><br>on motion by counsel or court may on its own motion  | <i>Not stated</i>  | <b>14-3067</b><br>qualified mental health professional   |
| <b>Virginia:</b><br>Code Ann.         | <b>37.2-1006</b><br>right to representation, may appoint on request of GAL, respondent or if court determines is needed   | <i>Not stated</i>   | <b>37.2-1003</b><br>shall appoint, personally visit, advise of rights, investigate petition  | <i>Not stated</i>  | <b>37.2-1005</b><br>physician or psychologist; professionals skilled in assessment & treatment of alleged conditions                       |

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| <u>State</u>                         | <u>Right to Counsel</u>   | <u>Counsel Role</u>  | <u>Guardian Ad Litem</u>                                  | <u>Visitor</u>    | <u>Medical Documentation/<br/>Evaluation</u>       |
|--------------------------------------|---|--|---|-------------------|--|
| <b>Washington:</b><br>Rev. Code Ann. | <b>11.88.045(1)(a)</b><br>right to be represented by willing counsel of choice, shall appoint when cannot afford  | <b>11.88.045(1)(b)</b><br>advocate; shall act of distinct from GAL   | <b>11.88.090(2)</b><br>expected to promote best interests | <i>Not stated</i> | <b>11.88.045(4)</b><br>physician or psychologist   |
| <b>West Virginia:</b><br>Code        | <b>44A-2-7(a)</b><br>shall appoint  | <b>44A-2-7(b)</b><br>extensive list of duties                        | <i>Not stated</i>   | <i>Not stated</i> | <b>44A-2-3</b><br>Physician or psychologist        |
| <b>Wisconsin:</b><br>Stat. Ann.)     | <b>54.42(1)(c)</b><br>Shall appoint if proposed ward requests, ward opposes petition or court determines required | <b>54.42(1)(b)</b><br>advocate for expressed wishes of proposed ward | <b>54.40(i)</b><br>court shall appoint GAL                | <i>Not stated</i> | <b>54.36</b><br>licensed physician or psychologist |
| <b>Wyoming:</b><br>Stat.             | <b>3-1-205(a)(iv)</b><br>if ordered by court  | <i>Not stated</i>  | <b>3-1-205(a)(iv)</b><br>right to GAL                     | <i>Not stated</i> | <i>Not stated</i>                                  |

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