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**Written Proponent Testimony to House Committee on Judiciary:
HB 2381 Requiring the Appointment of an Attorney to Represent a Child Who is the
Subject of Child in Need of Care Proceedings.
March 7, 2024**

Chair Humphries, Vice Chair Lewis, Ranking Minority Member Highberger, and Members of the Committee, I am writing as the Child Advocate with the Kansas Division of the Child Advocate, Office of Public Advocates, as a proponent in support of HB 2381 requiring the appointment of an attorney to represent a child who is the subject of child in need of care proceedings. The Division of the Child Advocate (KDCA) provides independent oversight and increased accountability to ensure that children who are alleged to be a child in need of care or adjudicated as a child in need of care and their families receive adequate coordination of child welfare services, for child maltreatment prevention, protection and care through services offered by the Department for Children and Families, the Department for Aging and Disability Services, the Department of Corrections, the Department of Health and Environment and juvenile courts.

As noted in the KDCA 2023 Annual Report, a common theme shared with KDCA is the dissatisfaction with appointed legal representation, including that of the Guardian ad Litem (GAL), attorney appointed to represent the best interests of the child. As this Committee is aware, the Kansas Code for Care of Children, KSA 38-2205, requires the Court to appoint a GAL for every child in a case and that in Kansas a GAL is an attorney. A GAL is tasked not only by statute to complete an independent investigation but is also subject to Supreme Court Rule 110A Standards for Guardians ad Litem and the Kansas Rules of Professional Conduct for Attorneys. The GAL has a duty to advocate for the child's best interest, a subjective concept, that is often the source of contention. A GAL has the duty to communicate with the child and to notify the Court of the child's position, even when contrary to what the GAL believes is in the child's best interest. In this situation, the Court "may" appoint the child an attorney to represent the child and the child's position in such circumstances. HB 2381 flips this in the reverse.

KDCA supports the primary premise that a child's voice is paramount and should be at the center of the child and family well-being system and decisions made. All parties in a case, including children, deserve equal access and the right to legal counsel and advocacy. Client-directed child representation ensures access and that these rights are protected. It also triggers additional ethical duties on the part of the client-directed attorney, including confidentiality, privilege, and other duties to the client pertaining to communication and more. Research supports that high-quality legal representation directly impacts perception of fairness in the process, increases the

rate of reintegration, decreases the length of time a child awaits permanency, and reduces the overall time in care.^{i, ii, iii} To ensure high-quality legal representation for Kansas children, then it is also imperative to ensure that Kansas attorneys have specialized training in child welfare law, including education on child development and other child related matters, as well as the skills to work and communicate directly with children.

KDCA recognizes the high-quality advocacy that many GALs are providing across the state. However, KDCA must also acknowledge the present landscape in Kansas with attorney shortages, particularly in our rural and frontier jurisdictions. These shortages grow more concerning when looking to best practice standards and child welfare law training for GALs and client-directed children's counsel. As Kansas considers HB 2381, capacity is an essential consideration. It will be critical that jurisdictions have the ability to fulfill any legislative mandate. Therefore, it will also be critical to take measure of the potential impact on those who presently accept appointments as a GAL and their ability and willingness to transition to client-directed child representation. Many states are presently grappling with similar questions and considerations, including capacity, training, support, and compensation.

KDCA recommends the Committee refer HB 2381 to the Kansas Judicial Council and appropriate Advisory Committee(s) to consider the following:

- Create a workgroup or process to ensure the inclusion of the Supreme Court Taskforce on Permanency Planning, the Kansas Bar Association, Kansas District Court Judges Association, Kansas Association of Counties, and other identified legal stakeholders to provide a framework to address capacity issues, that includes a deep understanding of the current compensation tables and identify what necessary changes would be required to promote best practices, case load management, supervision, support and meet best practice training needs, as well as attorney capacity across the state in each judicial district.
- Identify and explore other federal, state, local, and grant funding opportunities and models, including drawing down Title IV-E funding for legal representation.
- Consider other models adopted that include age identifiers (although recognizably arbitrary) as to when a GAL is appointed as the primary versus when a client-directed attorney shall be appointed as the primary.

KDCA appreciates your time and attention in recognizing the importance of ensuring a child's voice remains at the center and looks forward to further exploring the foundational impact of HB 2381.

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- ⁱ Sankaran, V., & Lander, I. (2007). Procedural Injustice: How the Practices and Procedures Of The Child Welfare System Disempower Parents And Why It Matters. *Mich. Child Welfare L.* Retrieved from <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1774&context=articles>
- ⁱⁱ Guggenheim , M., & Jacobs, S. (2019, December). Providing Parents Multidisciplinary Legal Representation Significantly Reduces Children’s Time in Foster Care. *Child Law Practice Today*. Retrieved from https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2019/providing-parents-multidisciplinary-legal-representation-signifi/
- ⁱⁱⁱ Family Justice Initiative. (2019). *Parent/Child Representation Research Overview*. Retrieved from <https://familyjusticeinitiative.org/data/research/>