

**Kansas CASA Testimony in regards to House Bill 2381, Requiring the court to appoint an attorney to represent a child who is the subject of child in need of care proceedings and allowing for the optional appointment of a guardian ad litem.  
House Judiciary Committee  
February 16, 2023**

The Kansas CASA Network fully supports the legal representation of children in a Child in Need of Care Court Proceeding. The Kansas CASA Network fully supports Statute 38-2205, that outlines the assignment of a required guardian ad litem attorney to represent the child's best interest in proceedings with the option to add a secondary attorney if the child's position is not consistent with the guardian ad litem's.

The Kansas CASA Network References Statute 38-2205, "Right to counsel; guardian ad litem. (a) Appointment of guardian ad litem and attorney for child; duties. Upon the filing of a petition, the court shall appoint an attorney to serve as guardian ad litem for a child who is the subject of proceedings under this code. The guardian ad litem shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child. When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the guardian ad litem shall inform the court of the disagreement. The guardian ad litem or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall allow the child and the guardian ad litem to communicate with one another but may require such communications to occur in the attorney's presence."<sup>1</sup>

Court Appointed Special Advocate (CASA) volunteers are everyday citizens who volunteer to advocate for a child's best interests in a Child in Need of Care Proceeding. CASA volunteers complete required screening, training, and certification by the Office of Judicial Administration and in accordance with National CASA/GAL Association Standards.<sup>23</sup> CASA volunteers are assigned by the Judge to advocate for the child's best interest by learning about the case, engaging with the child, collaborating with the family and professionals, making best interest recommendations, and providing a thorough report to the court.<sup>4</sup> A CASA volunteer works in collaboration with the guardian ad litem (GAL) to ensure that the child's wishes and best interests are dually presented during a CINC Court Proceeding. There are two essential differences between a CASA volunteer and a GAL attorney in the state of Kansas; GALs are

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<sup>1</sup> Kansas Office of Revisor of Statutes. Statute 38-2205. Right to Counsel; guardian ad litem.

[https://www.ksrevisor.org/statutes/chapters/ch38/038\\_022\\_0005.html](https://www.ksrevisor.org/statutes/chapters/ch38/038_022_0005.html)

<sup>2</sup> Standards for Local CASA/GAL Program. Structured as a Non-Profit. Standard 8: Volunteer Administration. 2020. National CASA/GAL.

<sup>3</sup> Kansas CASA Standards. Standard I. Sections A-N. Certification of CASA Volunteer. Kansas Supreme Court.

<sup>4</sup> National CASA/GAL Core Model. Best Interest Advocacy. 2020. <https://nationalcasagal.org/our-work/the-casagal-model/>

assigned to every child/case and they must be an attorney.<sup>5</sup> A GAL in Kansas, undergoes similar training as CASA volunteer in the context of education regarding child best interest, child welfare issues, cultural awareness, mental health, substance abuse, adverse childhood experiences, and child development.<sup>6</sup> Kansas' model for the appointment of a GAL attorney and CASA volunteer is similar to some other states but each state has their own model when it comes to child representation and advocacy. In Kansas we do have a requirement for legal representation for children in CINC proceedings.

The Kansas CASA Network is testifying to the need for children in Kansas that are in a Child in Need of Care Court Proceeding to have statutorily required best interest legal representation. The Children's Bureau and Child Welfare Information Gateway help define guidelines for determining the Best Interest of the Child.<sup>7</sup> These guidelines, based on requirements in the Child Abuse Prevention and Treatment Act (CAPTA), recognize the necessity of having statutorily required "best interest" representation which is currently authorized in Kansas statute. Furthermore, First Focus on Children initiative go into greater detail about "ensuring that government policies safeguard the rights and holistic needs of children."<sup>8</sup>

Kansas CASA's questions in regard to language change to CINC Statute in HB 2381:

1. Purpose behind taking away best interest legal representation when there is specification outlined in 38-2205, indicating that a child has the right to a second client directed attorney when necessary?
2. Will these clients directed attorneys be required to obtain the same education and continued educational hours as a GAL?
3. How does a client directed attorney represent a client that is under a certain age and/or unable to speak clearly and concisely?
4. Is it legal in Kansas for those under a certain age to have sole client directed attorney privileges?
5. How will client directed attorneys be compensated for their services?
6. Has there been research conducted within Kansas Counties to assess County Commissioners take on this change and if they will continue to hold the line-item for GAL Services in their budgets?
7. Has there been research conducted within Kansas Counties to assess for Human Resource availability of attorneys to support both a GAL assignment and a court appointed attorney assignment to children, along with all other required attorney appointments?
8. Has there been extensive research in regards to this language change in other states to assess for unintended consequences to the children these statutes impact or for how this proposal has enhanced services to these children?

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<sup>5</sup> Kansas Office of Revisor of Statutes. Statute 38-2205. Right to Counsel; guardian ad litem. [https://www.ksrevisor.org/statutes/chapters/ch38/038\\_022\\_0005.html](https://www.ksrevisor.org/statutes/chapters/ch38/038_022_0005.html)

<sup>6</sup> Rule 110A. Standards for Guardian Ad Litem. 2014. <http://kansas.kvc.org/wp-content/uploads/sites/2/2014/02/STANDARDS-FOR-GUARDIANS-AD-LITEM.pdf>

<sup>7</sup> Determining the Best Interest of the Child. State Statutes. Children's Bureau. Child Welfare Information Gateway. June 2020.

<sup>8</sup> First Focus on Children. Fact Sheet: The "Best Interests of the Child" Standard. Miriam Abaya. August 2, 2022. <https://firstfocus.org/resources/fact-sheet/fact-sheet-the-best-interests-of-the-child-standard>