

## Support House Bill 2381

Requires the court to appoint an attorney to represent a child who is the subject of child in need of care proceeding and allows for the optional appointment of a guardian ad litem.

### In-Person Testimony

Darcy Olsen, CEO and Founder  
The Center for the Rights of Abused Children

House Committee on the Judiciary, Room 582-N

Thursday, February 16, 2023, at 3:30 p.m. CST

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Chair Patton, Vice Chair Schreiber, and Committee Members:

Good afternoon, I am Darcy Olsen, and I serve as the CEO and Founder of The Center for the Rights of Abused Children. Our mission is to protect children, change laws, and inspire people - to ensure every abused child has a bright future.

It should come as no surprise to you that significant swaths of our nation's child protection system need substantial improvement. Our proposed reforms seek to mend flaws in the foster care system. When asked by lawmakers across the country for the single reform that will help protect the most foster children, my answer is always the same – attorney representation for children in the foster system.

And here's why it matters in Kansas.



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- *Kansas children spend more time in foster care than the national average.*
  - Kansas' rate of foster care is above the national average (10.4 v. 5.6 of 1,000 children), with 7,242 children in care on a given day.<sup>1</sup>
  - Children spend an average 22.9 months in foster care, above the 21-month national average.<sup>2</sup>
- *Kansas children experience multiple placements.*
  - Nearly one-third (32%) of children experienced four or more foster care placements.<sup>3</sup>
  - More children age out of foster care (435 emancipated youth) than the national average —12% v. 9%.<sup>4</sup>
- *Many Kansas children are languishing, waiting for adoption.*
  - The 985 children adopted from foster care waited, on average, 38.5 months before adoption (above the 32.2-month national average).<sup>5</sup>
  - Still, 2,303 children were waiting to be adopted from foster care, having already spent an average 39.2 months in care (above the 32.7-month national average).<sup>6</sup>

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<sup>1</sup> Sarah Catherine Williams, "State-level Data for Understanding Child Welfare in the United States," Child Trends (February 28 2022),

<https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>.

Original sourcing as analyzed by Child Trends comes from "Dataset #255, AFCARS Foster Care FY2020," The Administration on Children, Youth and Families and from the National Data Archive on Child Abuse and Neglect and represents Fiscal Year 2020 reporting period.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.



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The current system fails children in Kansas' foster system. Neither the best interests of the child nor the desires of the child are adequately advocated for in Kansas courts.

Currently, Kansas' judges appoint attorneys to serve as guardians ad litem (GAL) in child in need of care (CINC) proceedings. GALs must, "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."<sup>7</sup> In short, their main objective is to collect information and share it with the judge. Although some GALs listen to the child's wishes, GALs do not have an attorney-client relationship with the children in CINC cases. GALs owe children no duty of loyalty, and they have no obligation to advocate for the children's legal rights. Many judges, lawyers, and stakeholders agree that best practice in juvenile courts require that child victims have client-directed legal representation.

What happens in Kansas' courts when children need counsel?

Currently, children have no affirmative right to counsel in Kansas. Kansas law creates *an option* for appointing an attorney for the child to directly represent the child's interests if the child's desires diverge from the best-interest determination of the GAL. However, in operation, this does not occur with any regularity. When used, the GAL *may* request the court provide the child with an attorney, and the court, at its discretion, *may* appoint an attorney to represent the child.<sup>8</sup>

Here are a few stories highlighting the impact of this difference:

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<sup>7</sup> Kan. Stat. § 38-2205(a).

<sup>8</sup> Kan. Stat. § 38-2205(a).



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- In one instance, grandparents alleged, “the state never truly investigated the case and ... the lawyer appointed to argue for the children’s best interests neither knew the kids nor grasped the dynamics that ... put the children in harm’s way.”<sup>9</sup>
- Several foster parents told the Kansas News Service that it can be difficult to see a guardian ad litem and that people in that position rarely see the children they represent.<sup>10</sup>
- A Kansas foster mother stood before state lawmakers in Topeka recently and played a recording of a 10-year-old boy she's raised since 2019. The children's case gained the attention of other foster families, lawmakers, and state officials. Many view it as the difference between what looks good on paper ----keeping biological siblings together ----versus what is best for the children.<sup>11</sup>
- Families report GALs are not coming to court with the background and insight into the cases.<sup>12</sup>

### The Solution

Our solution requires the appointment of a *client-directed* attorney for every child prior to the filing of CINC cases through permanency.

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<sup>9</sup> Blaise Mesa, “Kansas foster families say attorneys representing foster kids in court are failing those children,” KCUR (May 10, 2022), <https://www.kcur.org/news/2022-05-10/kansas-foster-families-say-attorneys-representing-foster-kids-in-court-are-failing>.

<sup>10</sup> Ibid.

<sup>11</sup> “‘Listen to the Children.’ Kansas Adoption Case Expands as Three More Kids May be Moved,” Kansas City Star, November 08, 2022, <https://www.kansascity.com/news/politics-government/article268458507.html>.

<sup>12</sup> Ibid.



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These proceedings are typically initiated when a child is alleged to be abandoned, abused, or neglected, and the state may seek to remove the child from the home and place them in foster care or with other relatives. An attorney can help ensure that the child's rights and interests are protected throughout the process and that the child's needs are considered in any decisions made about their care and placement. Additionally, an attorney can provide a child with legal representation, advice, and guidance during the proceedings, which is important as children are unable to defend themselves as an adult could.

### Funding

Undoubtedly, most policymakers are curious about how attorneys for children in foster care would be funded. Kansas law says an attorney appointed in CINC proceedings, “shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in K.S.A. 2021 Supp. 38-2215,” which highlights that, “fees and expenses approved by the court for appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.”<sup>13</sup> In short, these funds are already allocated at the county level for GALs in CINC cases.

The only difference we’re discussing is the attorney-client relationship vis-à-vis the child in care. The funding mechanism for GALs should be converted to fund attorneys for children in care. Operationally, the number of GALs will go down, and the number of attorneys for children in care will increase.

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<sup>13</sup> Kan. Stat. § 38-2205(a); Kan. Stat. § 38-2215.



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Further, federal funds are available for representation in CINC proceedings. This includes competitive grants to nonprofits and courts and pass-through funds to states and local governments. See Appendix A for grant opportunities.

Also, federal matching funds through Title IV-E of the Social Security Act help pay the costs of attorneys representing certain children and their parents in child welfare legal proceedings.<sup>14</sup>

A federal information memorandum, [Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being](#), explains how Title IV-E agencies can claim federal financial participation (FFP) for administrative costs of independent legal representation provided by attorneys representing children in Title IV-E foster care, children who are candidates for Title IV-E foster care, and their parents for “preparation for and participation in judicial determinations” in all stages of foster care legal proceedings. See Appendix B.

Why should you support client-directed counsel for children in foster care?

A developing body of research shows that attorneys for children improve case outcomes for children in foster care and saves the state money.

These findings are notable:

- *Children with counsel exit foster care for family up to 3.5 times faster.*<sup>15</sup>

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<sup>14</sup> “Title IV-E Reimbursement for Lawyers Representing Children, Parents, and Pre-Petition Prevention Opportunities,” National Center for State Courts, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0027/79524/Title-IV-E-Reimbursement.pdf](https://www.ncsc.org/_data/assets/pdf_file/0027/79524/Title-IV-E-Reimbursement.pdf); “Title IV-E Funding for Legal Representation,” National Association of Counsel for Children, <https://www.naccchildlaw.org/page/TitleIVforLegalRepresentation>; “Utilizing Title IV-E Funding to Support High-Quality Legal Representation and Promote Child and Family Well-Being,” The Office of the Administration for Children and Families (January 20, 2021), <https://www.acf.hhs.gov/cb/policy-guidance/im-21-06>.

<sup>15</sup> Andrew E. Zinn and Jack Slowriver, “Expediting Permanency: Legal Representation for Foster Children in Palm Beach County,” Chapin Hall Center for Children at the University of Chicago (May 21, 2008),



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- o Represented children exited to *any type of permanency* at rates 1.4 and 1.6 times higher than comparison children.<sup>16</sup>
- o Most of this difference appears driven by higher rates of adoption (between 2.8 to 2.9) and long-term custody (between 1.7 to 3.5) as permanency outcome compared to comparison children. Represented children were also slightly more likely to be reunified (up to 1.23 times higher than comparison).<sup>17</sup>
- *Children and parents with legal representation obtain better results than those who do not, including less time in foster care or group settings, shorter time to adoption or guardianship, and more successful reunifications.*
  - o Children represented by specially trained legal counsel were:
    - o 40% more likely to leave the foster care within six months;<sup>18</sup>
    - o 45% higher reunification rate with their biological parents;<sup>19</sup>
    - o 30% reduction in the rate of placement moves;<sup>20</sup> and
    - o 65% reduction in the rate of unnecessary school moves.<sup>21</sup>
  - o Further, a cost-benefit analysis of a Washington program offering legal representation to dependent youth found a hypothetical cost savings of over \$1.2 million, without accounting for potential cost savings outside of the

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<https://search.issueab.org/resource/expediting-permanency-legal-representation-for-foster-children-in-palm-beach-county.html>.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Natalece Washington, "Counsel for Kids Information Sheet," National Association of Counsel for Children (2022), <https://zmcc18.p3cdn1.secureserver.net/wp-content/uploads/2022/02/Counsel-for-Kids-Information-Sheet-2022.pdf>.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.



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child welfare system, such as in the educational, employment, health, or criminal justice domains.<sup>22</sup>

- *Children’s fundamental rights are at stake in CINC proceedings.*

The fundamental rights of children are at stake in Kansas’ CINC proceedings. These cases have the power to remove children from their homes, to determine with whom they reside and for how long, and to decide whether they will ever see their families again. And yet, in Kansas, every party in a CINC case is represented, except the most vulnerable party who needs it the most --- the child.

- *The criminally accused have a constitutional right to an attorney; their child victims do not.*

The Constitution entitles the accused to an attorney, the state gets an attorney, but the child victims of abuse and neglect are not currently entitled to that same representation. And too often, it is their future, and in many cases, their lives, that are on the line. This is an affront to justice, to equity, and to due process.

Further, attorneys for children serve as a critically important backstop in cases when children are wrongly taken. They protect the integrity of our judicial process.

- *Only client-directed counsel can zealously represent children.*

Legal representation guarantees the child’s right to be heard and affords the best means of protecting the child’s fundamental rights. Lawyers are obligated to file

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<sup>22</sup> “Evaluation of the Washington State Dependent Child Legal Representation Program, 2021,” Washington State Center for Court Research (2021), <https://www.courts.wa.gov/subsite/wscrr/docs/DCLR%20Report%202021.pdf>.



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motions and pleadings advocating for the child's legal rights. Lawyers owe their clients duties of loyalty and zealous advocacy and are subject to state bar discipline.

- *What if the child is very young?*

The best-interest model presumes child incapacity and relies on the judgment of an adult to determine what the child needs. A client-directed or expressed-interest model flips the presumption on its head. It presumes the child capable and relies on the attorney to determine the extent of incapacity.

Attorneys are already accustomed, in a traditional attorney-client relationship to ethically representing clients with diminished capacity. Kansas Rules of Professional Conduct, Kan. R. Rel. Disc. Att. 1.14, states:

When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.<sup>23</sup>

Children—like adults—have the right, and deserve the dignity, to voice their own opinions, concerns, and desires in their cases. Providing children with legal counsel is the only way to effectuate that right. Ultimately, it is the *court's* responsibility to determine what is in a child's best interest. A court might reject a child's views for any number of reasons, but to refuse the child the opportunity to express their views, and have someone advocate for their wishes, is completely inconsistent with America's guarantee of due process and a fair hearing.

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<sup>23</sup> Kan. R. Rel. Disc. Att. 1.14(a).



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### Data Informed and Experienced

It's important to remember child welfare data informs our position.

- Children with legal representation are more likely to be adopted if they are unable to safely return home.<sup>24</sup>
- Children have more visits with family and have better case outcomes.<sup>25</sup>

In 2021, in my home state of Arizona, The Center backed a bill, like this one, that provided an attorney to every child in foster care. The bill passed unanimously and was signed into law by the Governor. There was discussion, of course, but every lawmaker agreed abused children need access to justice. In fact, they deserve it. And Kansas' children in the foster system are no different. They deserve justice and a fighting chance for a safe home, a loving family, and a bright future.

Thank you for your time and for your consideration. It is a privilege to address you on such an important topic, and I look forward to answering any questions you may have.

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<sup>24</sup> Andrew E. Zinn and Jack Slowriver, "Expediting Permanency: Legal Representation for Foster Children in Palm Beach County," Chapin Hall Center for Children at the University of Chicago (May 21, 2008), <https://search.issuelab.org/resource/expediting-permanency-legal-representation-for-foster-children-in-palm-beach-county.html>; "Evaluation of the Washington State Dependent Child Legal Representation Program, 2021," Washington State Center for Court Research (2021), <https://www.courts.wa.gov/subsite/wscrr/docs/DCLR%20Report%202021.pdf>; Britany Orlebeke et al., "Evaluation of the QIC-Child Rep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System," Chapin Hall at the University of Chicago (2016), [https://www.chapinhall.org/wp-content/uploads/QIC-ChildRep\\_Chapin\\_Hall\\_Evaluation.pdf](https://www.chapinhall.org/wp-content/uploads/QIC-ChildRep_Chapin_Hall_Evaluation.pdf).

<sup>25</sup> Ibid.