

February 16, 2023

Rep. Fred Patton, Chair
House Committee on Judiciary
Kansas Legislature
Via email to Kathi.Rakestraw@House.ks.gov

Re: Requiring the court to appoint an attorney to represent a child who is the subject of a child in need of care proceeding and allowing for the optional appointment of a guardian ad litem

Representative Patton and Committee Members:

The [National Association of Counsel for Children](#) (NACC) strongly supports House Bill 2381 that would guarantee client-directed legal counsel for all children in child in need of care (CINC) proceedings. NACC endorses the client-directed model of legal representation as the best means to promote judicial consideration of youth perspective, empower youth and improve their perception of fairness of the proceeding, mitigate potential attorney bias, and properly reserve conclusions on what is in a child's best interest to judicial officers.

From the moment the government places a child in foster care, their right to be with their family, their safety, and their well-being are all at stake and subject to agency policies and judicial decisions. The Department for Children and Families effectively becomes the child's parent as they are placed in foster care. The child must rely completely on the agency for nutrition, clothing, therapeutic services, medical care, housing, access to religious services, visitation with family members -- *everything*. This vulnerable position heightens a child's need for individualized advocacy and system accountability that can only be provided by legal representation. The best way to ensure a child's voice is amplified and considered during these decision-making processes is through the appointment of client-directed legal counsel.

No Decisions for Youth Should Be Made Without Youth

Youth with lived experience in the child protection system overwhelmingly indicate a desire to be [seen, heard](#), and [represented](#). Those represented by a client-directed attorney can meaningfully contribute to the decision-making processes that have long-term impact on their lives. They can tell their attorney where they are safe and where they are not; who they hope to visit and who they do not; their concerns about their siblings and parents; and anything they are experiencing in foster care such as issues they are having with their placement or substitute caregivers.

The children's attorney must ascertain and zealously pursue the child-client's stated objectives. This does *not* mean that the attorney has reflexive, or "robotic allegiance" to each directive of the client. Client counseling and relationship-building are fundamental to the representation of children and

youth in any courtroom. Children’s attorneys are specially trained to advise child-clients in a developmentally appropriate manner on their legal rights, their options, and potential outcomes.

Attorneys are bound by professional rules of conduct and ethical standards inherent to their role. Children’s attorneys, like other attorneys, owe duties of confidentiality, diligence, competence, and loyalty to each child-client. The confidentiality of the attorney-client relationship allows children and youth to feel safe sharing sensitive and deeply personal information with attorneys that they might not otherwise be willing to discuss. As the [federal government](#) has noted, it “allows children to feel safe sharing information with [their] attorneys that otherwise may go unvoiced.” In this way, client-directed legal representation can help enhance child safety. For example, a youth experiencing bullying in their group home might share their intent to run away with their legal counsel. The attorney, in turn, can provide advice about the dangers of this, counsel them on better legal alternatives, and offer the youth other options, (i.e. filing a motion for change in placement), that can more safely address their concerns.

Just as in Juvenile Justice Cases, Children in Child Protection Cases Deserve the Legal Protections of Client-Directed Counsel

In the 1967 case of [In re Gault](#), the United States Supreme court guaranteed children accused of delinquent acts the right to effective assistance of client-directed legal counsel. Right now in courtrooms around the country, a [10 year old accused of theft](#) will be appointed client-directed legal counsel who will ascertain and advance his counseled wishes. Appointing client-directed legal counsel to children involved in child protection proceedings is also critically necessary to protect their life, liberty, and safety. In fact, children involved in the child protection system are often subject to [similar restrictions of liberty](#) as children accused of delinquent acts (including a limited right to association with family, temporary placement in hotels, CPS administrative offices, group homes, institutions, or locked psychiatric facilities, and, at times, even physical confinement).

Client-Directed Legal Counsel Promote Equity and Fairness

A children’s attorney has a direct influence on the child’s courtroom experience and their evaluation of its fairness. A child’s [perception of fairness](#) is significantly shaped by the quality of their experiences-- being treated with dignity and having their viewpoint heard—rather than the outcome alone.

Best-interest legal representation requires an attorney to develop an informed opinion about what is best for a child and then advance that best-interest determination in court. It leaves the attorney at risk for assessing situations based on their own values and experiences which may be starkly different than the child and family involved in the court proceeding. It may also leave a child’s stated desires without a champion in the courtroom. In contrast, client-directed legal representation allows the attorney to establish case objectives in partnership with the child and [avoid](#) making best-interest determinations that could be affected by his or her personal biases. It also requires the attorney to zealously pursue the client’s agenda.

Judges are Responsible for Determining a Child's Best Interest

Determining what is in the best interest of the child is ultimately in the purview of the judge. When each party to a child protection proceeding is represented by counsel, there is a comprehensive flow of information to the judicial officer. Counsel for each party will introduce evidence and advance arguments to inform this finding. As experts about their own lives, children and youth are well-situated to provide comprehensive and accurate information to shape this analysis. Children's attorneys help ensure that the child is [centered](#) in case decisions.

Organizations and Other States Have Adopted a Client-Directed Model of Legal Representation

The proposed changes found in HB 2381 align with the recommendations of [The American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings](#), the [ABA Model Rules of Professional Conduct \(R. 1.2\)](#), and [NACC's Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings](#) which all endorse client-directed representation.

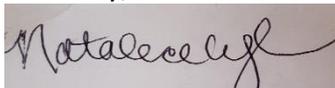
[Alaska](#), [Arizona](#), [Colorado](#), [North Dakota](#), and [Washington](#) have expanded access to client-directed legal counsel in the last two years. These states join Connecticut, Idaho, Louisiana, Massachusetts, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Vermont, and Wisconsin where client-directed [models of legal representation](#) are implemented.

Conclusion

Children and youth with lived experience in the child welfare system have consistently called for earlier and more frequent opportunities to be heard in the decisions that impact their lives. Children are typically the parties most profoundly affected by government interventions and judicial decisions, yet they are least equipped to independently communicate their desires to the court. Client-directed representation centers the youth's voice and perspective, recognizing youth are the experts of their own lives, but with the guidance and support of an attorney.

NACC applauds the committee's efforts to ensure client-directed legal representation for children and youth subject to child in need of care proceedings and urges your support of HB 2381.

Sincerely,



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