



March 6, 2024

Judiciary Committee
Kansas House of Representatives

RE: HB 2381, regarding the child’s right to client-directed counsel

The National Coalition for a Civil Right to Counsel (NCCRC) supports HB 2381’s provisions that would provide children in abuse/neglect, termination of parental rights, and truancy proceedings with the right to client-directed attorney in all proceedings, where they were previously entitled only to an attorney ad litem.

Founded in 2003, the NCCRC is a coalition of over 600 participants and partners from 45 states, including Kansas. We seek to advance the recognition of a right to counsel in civil cases involving fundamental interests and basic human needs. Much of our work has been in the child welfare sphere on behalf of both parents and children, and we have supported successful legislative efforts in Washington State, North Dakota, and Minnesota, among other places.

Both the American Bar Association (via its [Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings](#)) and the [U.S. Department of Health and Human Services’ Administration for Children and Families](#) have called upon jurisdictions to provide legal representation to children in child welfare proceedings. More than 30 states guarantee that all children are represented by a lawyer in child abuse, neglect, and dependency proceedings, while more than a dozen states (including Nevada and Arizona) guarantee the child the right to client-directed counsel.

Child welfare proceedings are difficult civil cases governed by exacting federal, state and local statutes and regulations, decades of case law, and detailed rules of evidence and procedure. For these reasons, the State of Kansas, which brings these cases, is always represented by counsel with access to vast resources and power, but the child is not guaranteed the same. It is not enough for children to have a “best interests” representative; a client-directed lawyer for the child is essential. Lawyers with a confidential, “traditional” lawyer-client relationship with the child can assess and advocate a child’s changing positions on important decisions including visitation, placement, schooling, services, and so on. Additionally, only the lawyer can properly counsel and advise the child around other legal issues such as testimony, cross-examination, evidence gathering and presentation, as well as compliance with any court orders.

In these proceedings, the stakes for children are high. Short and long-term decisions are made about where and with whom a child can reside, how often they can see a sibling, parent or other important family member, who they can generally interact with and in what setting, what

services they have to participate in, and so on. Child welfare proceedings have serious, lasting effects on the relationships and well-being of the very children the child welfare system is meant to help. And these consequential decisions arise out of cases that are themselves often fluctuating – from who the caseworker is, to what the goal is, to who is adjudicating the matter. Appointment of counsel at the beginning stages of the proceedings and for the duration of every case can be an important stabilizer for a child. Attorneys improve outcomes for children: when reviewing the provision of legal representation for parents and children, the Administration for Children and Families found numerous identifiable benefits including an enhanced sense of procedural fairness, better case planning, increased visitation, and expedited permanency. And child representation has been linked to a variety of outcomes (such as expedited permanency and more stable schooling) that not only benefit children and families but also reduce State costs.

Representation has also proven essential when crises, such as the COVID-19 pandemic, disrupt or prevent the child welfare system from functioning properly. Anecdotal reports show that throughout the pandemic, attorneys for children, in states where those roles are specifically established, have zealously advocated to have their clients return to their families when there are no safety concerns, and have opposed blanket visitation halts.

Children do not choose to become entangled in the system. Yet they bear the brunt of these proceedings: they are moved, prevented from seeing important family members, and required to engage in services determined to be in their best interest. At a minimum, they need an attorney to help them navigate this system, and to represent their stated interests. Attorneys for children, who bear an ethical and professional responsibility to zealously advocate for their clients, improve outcomes for children. They advance children’s legal interests and rights in crucial decisions, including those about placement, medical and mental healthcare, services, education, housing, visitation, and so on. The ABA Model Act states that “Our notion of basic civil rights, and ABA Policy and Standards, demand that children and youth have a trained legal advocate to speak on their behalf and to protect their legal rights ... Attorneys can identify legal issues regarding their child clients, use their legal skills to ensure the protection of their clients’ rights and needs, and advocate for their clients.”

For these reasons, the NCCRC supports the client-directed right to counsel provisions of HB 2381. Thank you and please let us know if there is any additional information we could provide.

Sincerely,



John Pollock
Coordinator, NCCRC