



March 7, 2024

Rep. Susan Humphries, Chair  
House Committee on Judiciary  
Kansas Legislature

Via email to [Susan.Humphries@house.ks.gov](mailto:Susan.Humphries@house.ks.gov) and [H.Judiciary@house.ks.gov](mailto:H.Judiciary@house.ks.gov)

Re: Kansas HB 2381 Requiring the court to appoint an attorney to represent a child who is the subject of child in need of care (CINC) proceedings

Chair Humphries and Members of Committee,

The [National Association of Counsel for Children](#) (NACC) strongly supports [House Bill 2381](#) that would guarantee client-directed legal counsel for children. 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.

### **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.

### **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. Appointing client-directed legal counsel to children involved in CINC 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.

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

### **Suggested Changes**

To encourage positive engagement of stakeholders and improve implementation of policy change, we suggest the following:

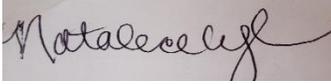
1. Delayed effective date to provide ample time to develop legal services delivery systems
2. Judicial district phase-in schedule to buffer initial fiscal impact and permit the development of resources and systems over time
3. Stakeholder taskforce dedicated to establishing standards of practice, caseload maximums, and mandatory training requirements for client-directed children's attorneys

### **Conclusion**

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 subject to CINC proceedings and urges support of HB 2381.

Sincerely,

A handwritten signature in black ink on a light gray background. The signature is cursive and appears to read "Natalece Washington".

Natalece Washington

Policy Counsel

National Association of Counsel for Children

[Natalece.Washington@NACCchildlaw.org](mailto:Natalece.Washington@NACCchildlaw.org)

[404-954-2427](tel:404-954-2427)

[www.counselforkids.org](http://www.counselforkids.org)