



Thank you for the opportunity to present written testimony regarding HB 2381. The proposed legislation will require a court-appointed attorney to be provided to each child, individually, in a Child in Need of Care action. Additionally, HB 2381 will make the appointment of a Guardian Ad Litem for these children discretionary, where it is currently mandated by statute. We offer this written testimony on behalf of the Kansas District Magistrate Judges Association.

HB 2381 is well-intentioned. Upon a deeper examination however, there appears to be a misunderstanding of the difference between what an attorney does for his/her client over the lifespan of a Child in Need of Care (CINC) case and what a Guardian Ad Litem (GAL) does. In any litigation, an attorney represents the lawful position of the client to the court and gives legal advice to that client to aid in the legal action. In a CINC case, a GAL gathers information about the child, the child's circumstances, special needs, etc., and uses that information to present to the child and the court what would serve their best interests. A GAL can further advocate for the child's total needs in school settings, therapeutic settings, and provide information to the court.

Proponents of HB 2381 allege that a GAL is there only to represent the ideal of the child's best interest and not the actual child. This vastly understates the role of a GAL. Kansas Supreme Court Rule 110A establishes the standards and requirements that must be adhered to by attorneys appointed to fill the role of a GAL under the Revised Kansas Code for Care of Children. Rule 110A establishes the following:

- that a GAL complete specific training in matters which impact children and families in CINC cases;
- that a GAL has specific duties and responsibilities to conduct independent investigations;
- that a GAL make recommendations to the court not only regarding the children, but the families as well.

Further, Rule 110A(3)(C) demands that a GAL "present all relevant facts, including the child's position." A GAL performs a service to the Court, the children and the families that is much greater than just presenting what is in the child's best interest.

An attorney's role in a CINC case is, and will continue to be, vastly *less* than that of a GAL. In a CINC case, an attorney will provide legal expertise to promote the child's position in court regardless of whether the child's desires are in its best interest. Because the child is now a client, like any other client, the attorney will not be expected to assist the child in other aspects of the child's life (i.e. outside of the courthouse). These kids need the advocacy role at schools, in foster homes and other placements, at case management meetings, etc., that a GAL provides. Most of these services will fall outside of the scope of representation of the child's legal interest at a hearing in a CINC case. Accordingly, directing the courts to make the court-appointed attorney mandatory and the GAL discretionary is not going to help the vast majority of the children in these cases.

Like adults with impairments, young children lack the capacity to play the role of client in this traditional sense of court-appointed legal representation. This is ultimately why GALs were created to represent the interests of the child in court. Well-trained GALs can and often do help children present

their positions and then articulate what the GAL believes is in the best interest of the child. This “both/and” information is much more useful in court.

In those extremely rare cases where a child needs both a GAL and a court-appointed attorney, it is often the GAL that first recognizes the conflict of interests and brings it to the Court’s attention. It is important to note that a GAL is a practicing attorney, and as such, possesses a duty to immediately inform the court any time a conflict of interest arises. This duty is not set aside when an attorney accepts an appointment as a GAL in a CINC case. Often, it is this recognition of an inherent conflict that leads to the appointment of an attorney to represent the child. As an example, a teenager wants to be returned home to a parent that fails or refuses to provide reasonable safety measures for the child, such as curfews or prohibiting the use of drugs or alcohol. Of course, for some teenagers, such an environment, free from parental interference, would be ideal but clearly, not in their best interest. In such a case, the GAL cannot present the “both/and” information and the child should have an attorney appointed to represent those interests, separate and apart from the interests in favor of the child’s welfare being represented by the GAL. While older children should have their preferences heard, children lack functional maturity and are generally incapable of making these types of decisions and deserve protection from themselves. The GAL provides that protection. By taking a “one-size-fits-all” approach to representation, HB 2381, as proposed, will prevent judges from evaluating the individual needs of each child and family in deciding on what kind of legal representation is needed.

Moving away from the representation concerns, implementation of the proposed legislation will create operational challenges due to a sheer lack of attorneys, particularly in rural counties. In any CINC case, the parents are entitled to court-appointed counsel if they cannot afford to hire an attorney. If the parents are not together, or if their interests are diverse from one another, which is often the case when domestic violence or substance abuse are the underlying reason(s) for the removal of the children from the home, each parent is appointed separate counsel. Additionally, most CINC cases do not involve traditional, nuclear families. Rather, you often have multiple children and multiple parents. Scenarios with one mother and multiple children from multiple fathers or, conversely, one father and multiple children from multiple mothers, are not uncommon. It can often take 4-5 attorneys just to make sure there is a GAL for the sibling unit and each parent has appropriate representation.

The Rural Justice Initiative Committee reported in November 2022 that 80% of active Kansas attorneys practice in the 6 metropolitan counties (Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte). This leaves 20% of active Kansas attorneys to serve the remaining 99 counties. Two of those 99 counties reported zero registered attorneys and sixteen reported only 1 or 2. In these 99 underserved counties, administering CINC cases is already challenging without the need to appoint separate and distinct attorneys for individual children, as proposed by HB 2381. Simply stated, there are not enough attorneys to go around.

Assuming enough attorneys could be appointed to provide the representation contemplated in HB 2381, this will dramatically slow down the Court’s ability to have hearings in a timely manner as it struggles to accommodate the calendars of the numerous attorneys in setting hearings. The amount of



actual docket time for each proceeding will also necessarily increase as each attorney will want to add questions, arguments, evidence, etc., that are specific to his/her client. This slowdown will ultimately lead to a need for more judges and staff to hear the same number of cases in the same amount of time. Additionally, a requirement that courts appoint separate and distinct counsel for each child in CINC cases will add an enormous cost to their administration. All court appointments for children will always be paid for by the counties, as children are not financially able to contribute.

In conclusion, thank you for allowing KDMJA to present this written testimony and for your service and dedication to the citizens of Kansas. We recognize that HB 2381 seeks to increase access to justice for our most vulnerable citizens, our children. However, the operational and administrative barriers to its implementation, in increased costs, the slowing down of the CINC case lifespan and the sheer lack of attorneys most rural Kansas counties currently experience, cannot be overlooked. We should not lose sight of the fact that even without legislation such as HB 2381, GAL's serve our children extremely well in CINC cases. Making their presence discretionary in favor of a court-appointed attorney that most children lack the capacity to adequately assist in the presentation of the case, ultimately may not provide these children and families with the services they need most.

Respectfully submitted,

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