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Hearing on House Bill 2381

Thursday March 7, 2024, at 3:30 p.m.

Testimony of Kansas District Judges Association by
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KANSAS DISTRICT JUDGES ASSOCIATION TESTIMONY REGARDING HB 2381

Thank you for the opportunity to present neutral testimony regarding HB 2381. This testimony is being presented by Nicholas St. Peter, Chief Judge of the Nineteenth Judicial District (Cowley County) on behalf of the Executive Committee of the Kansas District Judges Association (KDJA). For the past nineteen years, I have served as a District Court Judge and have at all times been the presiding judge over a Child in Need of Care (CINC) and Juvenile Offender docket. I also have been the presiding judge of the Cowley County Drug Court Program since 2009 and preside over an Assisted Outpatient Treatment docket in Care and Treatment cases. Since 2010, I have served as the Chief Judge of the 19th Judicial District. Part of my duties include establishing and maintaining a list of attorneys to serve as appointed counsel in (CINC) cases and establishing a budget with the county to pay attorneys for their professional services.

KDJA wishes to highlight for the committee some procedural considerations that would result from the proposed changes contained in HB 2381. The primary concern is establishing the mandatory requirement for the court to appoint an attorney for a child who is subject to a child in need of care proceeding. This proposed legislation creates several issues, some of which are addressed in the current model with the work of GALs and CASA volunteers.

Our organization supports efforts to improve outcomes for all children in Child in Need of

Care cases. I think that all of us who work with the Kansas child welfare system believe that changes should be considered to help improve outcomes for children. We are concerned with some of the practical and legal implications of the proposed changes in this bill.

We believe the remedies sought in this proposed legislation may likely delay outcomes for children. In addition, these revisions will create many practical issues for district courts, especially in rural areas where there is a shortage of attorneys available to serve in child in need of care cases.

As judges, we respect and acknowledge the responsibility and authority of the Kansas Legislature to establish public policy and law in CINC cases. Our sworn duty is to follow the law as established by the legislature. We are concerned about our practical ability to meet the legal requirements that will result from passage of this bill.

Rule 1.7 of the Kansas Rules of Professional Responsibility for Attorneys provides ethical mandates for attorneys in cases where they may represent concurrent clients in litigation. Essentially, an attorney cannot represent concurrent clients in the same litigation if the representation of one client will be directly adverse to another.

When a child in need of care case is filed, the court is typically not in a position to determine if the interests of multiple children in the case would be adverse to one another. As a result, the court would likely have to appoint a separate attorney for each child. If the court appointed one attorney for multiple children and there is an ethical conflict, then that attorney would have to withdraw from representation of all children and separate attorneys would have to be appointed. This would likely cause significant delay in the initial stages of the case to locate counsel for each child.

While the issue is more acute in rural and frontier judicial districts throughout our state, at a recent meeting of Chief Judges, judges from all 31 judicial districts expressed difficulty in finding attorneys to serve as court appointed counsel in CINC cases. It has been my experience that seeing retained attorneys in these cases is rare. Typically, all attorneys that appear in the cases are court appointed.

A common example in CINC cases would involve two attorneys representing the mother and father of six children. If it were required to appoint counsel for each child, it would be nearly impossible to find enough attorneys in our judicial district to represent the children. I would likely look outside of our judicial district, which would add delay in the adjudication phase of the cases. When required to seek counsel outside of our district, it may take several days to locate an attorney able to take on the case. Complying with the statutory time frame for the temporary custody hearings would be difficult.

Not only would this increase the time aspect of adjudicating the cases, but it would also add substantial expense to our local county budget for attorney's fees because we would be paying for additional attorneys in each case. Any in-person proceeding would require reimbursement of necessary travel expenses including time and mileage for attorneys outside our county.

KDJA would ask the committee to consider other alternatives that would highlight the obligations of a Guardian ad Litem and may increase advocacy for children. First, it is important to

consider the obligation of the (GAL) as set forth in Kansas Supreme Court Rule 110A. This rule requires the GAL to conduct an independent investigation of the facts; determine the best interest of the child by considering several factors; represent the child in court; explain the court proceedings and the GAL role to the child; make recommendations to the court and the case workers for additional services for the child; monitor case progress and notify the court when the recommendations of the GAL conflict with the child's wishes. Simply codifying this rule in the statute along with a requirement that the judge examine the record and make findings that the GAL has complied with the obligations would highlight the importance of these duties without creating the many practical hurdles that would result from appointing an attorney for each child under the proposed legislation.

It is also important to note that many CINC judges, either orally or in writing, have adopted strict guidelines or protocol regarding their expectations for the participants in CINC cases. An example can be provided upon request.

We would point out that for the first time in memory, the Kansas Legislature along with the Kansas Judicial Branch, will be conducting a Child Welfare Summit next month. Teams of child welfare advocates from all 31 judicial districts will assemble to examine critical issues impacting child welfare in Kansas. These dedicated professionals will explore different policies and procedures that can be utilized to improve case outcomes for children and families that come into the child welfare system. Each team will be tasked with creating a written plan detailing the implementation of adopted changes in their district. Through this process, additional ideas that result in greater court advocacy for children may be explored. It is possible that this could aid this honorable body in determining the best public policy for the future welfare of all children in Kansas.

We encourage this committee to consider the practical effects of the suggested alterations to the procedural requirements for conducting CINC matters, and to explore other alternatives that might accomplish policy goals without the adverse impact that we believe will result from this bill.

Respectfully submitted,

Nicholas M. St. Peter, Chief Judge