



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

MARC BENNETT
District Attorney

AARON BREITENBACH
Deputy District Attorney, Administration

RON PASCHAL
*Deputy District Attorney, Juvenile
Division and Ethics Coordinator*

February 15, 2023

**Testimony Regarding HB 2381
Submitted by Mark Jordan and Pamela Parker, Assistant District Attorneys
Eighteenth Judicial District**

Chairman Patton and members of the House Judiciary Committee, thank you for the opportunity to address HB 2381 regarding K.S.A. 38-2205, right to counsel; guardian ad litem

House Bill 2381 would require the appointment of an attorney to represent and advocate the position of each child in a child in need of care case and to make the appointment of a Guardian Ad Litem discretionary. It is the position of the Office of the District Attorney for the 18th Judicial District that HB2381 would not further the best interests of children in the State of Kansas and would create an unnecessary burden on already strained court budgets. The overarching purpose of the Kansas Code for Care of Children is to serve the best interest of each individual child. Numerous provisions of the code require that the child's best interest be considered, thereby making the role of the Guardian Ad Litem a necessary and unbiased voice throughout the duration of the case.

House Bill 2381 is a solution to a problem that does not exist. K.S.A. 38-2205(a) already grants the Court the authority to appoint an attorney to represent the child in those instances where the child's position is not consistent with what the Guardian Ad Litem believes to be in the best interest of the child. Guardians Ad Litem currently appointed to represent children in foster care are well versed in existing law and experienced in handling those situations where the child's wishes and the child's best interest diverge. In those situations, the Guardian Ad Litem will let the Judge know both the particular outcome that the child wants and what outcome the Guardian Ad Litem believes is in the best interest of the child. The court then has the discretion to appoint an attorney to represent the child if necessary. Additionally, the desires of the children can be expressed in open court through the appointment of a Court Appointed Special Advocate volunteer. The Courts also frequently invites the child to speak on their own behalf on those occasions when they are present in court.

Sedgwick County Courthouse, 535 N. Main, Wichita, Kansas 67203
Telephone: 316-660-3600; Toll Free: 1-800-432-6878; Fax: 316-660-3674

Juvenile Division – 1900 E. Morris, Wichita, Kansas 67211
Telephone: 316-660-9700; Fax: 316-660-1860

House Bill 2381 would impose a significant strain on court budgets. As written, this bill requires the court to appoint an attorney to serve as counsel and represent each child “who is the subject of proceeding under this code”. An attorney appointed solely to advocate the child’s position would be required to strictly adhere to all ethical rules related to client confidentiality and conflicts of interest. The reality is that a significant percentage of child in need of care cases involve sibling groups and not an individual child. Thus, in order to protect client confidentiality and avoid conflicts, there would have to be multiple attorneys appointed within a single case. It is not uncommon in Sedgwick County for child in need of care cases to have four, five, or even more children in the sibling group. There have been cases in Sedgwick County with as many as nine children in a sibling group. The costs involved with giving each child individual legal representation, in addition to the appointment of a Guardian Ad Litem could be astronomical. Finding trained Guardians Ad Litem and attorneys to represent parents, especially in rural counties, is already difficult. Requiring attorneys to be appointed for each child in a child in need of care case only compounds this problem and further strains the system.

House Bill 2381 will create significant ethical dilemmas for attorneys, even if appointed to represent a single child. If a child tells his lawyer that he wants to go back to a home where the lawyer knows this child has been physically and/or sexually abused, the lawyer would be required to zealously advocate for the child’s position, even though the lawyer knows that if the child is sent home, he will most assuredly be subject to more abuse. There is a long and robust body of law that absolves criminal defense attorneys from the ethical implications of making arguments that are contrary to objectively true facts when it is done in defense of a client to whom they owe a rigorous defense. There is no such body of law to protect the lawyers who would be appointed as this newly defined “counsel”.

The policy of the state of Kansas with regard to children in need of care as set forth in K.S.A. 38-2201 is to assure that “the safety and welfare of a child to be paramount in all proceedings under the code” and ensure “that each child who comes within the provision of the code shall receive the care, custody, and guidance control and discipline that will best serve the child’s welfare...” Existing law best serves the policies of this state by requiring the appointment of a Guardian Ad Litem to represent the child’s best welfare. In most instances, the appointment of an individual attorney to advocate the child’s position does nothing to advance the best interest of the child or further the interests of the state of Kansas. It would add an undue burden on existing budgets and create ethical pitfalls for the attorney appointed.

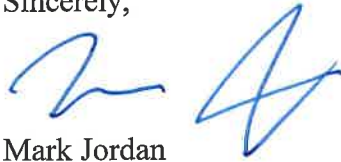
Thank you to Chairman Patton and the members of the Judiciary Committee for giving us the opportunity to present this written testimony to the committee.

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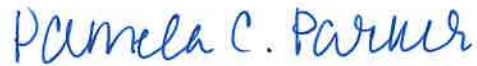
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Thank you for your time and attention.

Sincerely,



Mark Jordan
Chief Attorney – Child in Need of Care Division



Pamela Parker
Assistant District Attorney

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