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TESTIMONY REGARDING HOUSE BILL 2381

Members of the House Committee on Judiciary:

My name is Heather Alwin. I have been a Kansas attorney for nearly 12 years, practicing in the rural northwest 15th Judicial District. A large portion of my time is devoted to representing children as a guardian ad litem (GAL) in Child in Need of Care (CINC) cases. I am currently a member of the Kansas Supreme Court Task Force for Permanency Planning, but I want to be clear that this testimony is not provided on behalf of that organization.

I am writing to you today because I anticipate HB 2381 will have significant negative unintended impacts on children in CINC cases, the legal system, and Kansas taxpayers.

Currently, a GAL is appointed in every CINC case to represent the child's best interests. These GALs are always attorneys, and they are governed by Kansas Supreme Court Rule 110A, including requirements for the GAL to perform an ongoing independent investigation of the facts and circumstances of the case to determine what is in the child's best interests. The GAL must also be in contact with the child at least to explain the court proceedings and the GAL's role in an age-appropriate way.

Under our current statute, when a GAL's recommendations conflict with the child's wishes, the GAL is required to inform the court about the disagreement. The court can then appoint an attorney to represent that child. In my experience, only a small percentage of cases require the appointment of an attorney. Most of the time, the GAL is able to effectively communicate the child's wishes to the court along with the GAL's recommendations even if those differ.

HB 2381 would flip this representation structure to appoint only an attorney for the child unless the court also appointed a GAL. On its face, this seems like a good idea to ensure that the child's wishes are heard by the court, but in practice it is unlikely to accomplish anything but more confusion and expense.

If an attorney is only permitted to represent a child's wishes, as HB 2381 would require, the child's best interests are wholly unrepresented unless the court also appoints a GAL. For example, if a young child wants to live with a parent because she always lets him do what he wants, the attorney would have to advocate for that position even if there are many indications the parent is dangerous for that child. Similarly, if a teenager wants to leave home because the rules there are too strict, the child's attorney would be required to advocate for the child to be removed from the home. The attorney's advocacy would not be changed at all by what is *best* for the child, nor could she ethically present evidence that would contradict the child's wishes.

Because statutes require our judges to make rulings consistent with a child's best interests, it is likely that HB 2381 would prompt judges to attempt to appoint both an attorney and a GAL for the majority of CINC children. This would create a need for many more attorneys for CINC cases, most of whom are paid for by Kansas taxpayers. Thus, HB 2381 will almost certainly result in a substantial cost increase in CINC cases— if attorneys are even available to accept those additional appointments.

Attorneys appointed to represent a child have an attorney-client relationship with that child, meaning that all of the same ethical responsibilities apply to that attorney just as they would if the attorney were representing an adult. Thus, a child's attorney cannot disclose privileged information. For example, if a child were to disclose to her attorney that her parent is providing her with drugs, the child's attorney could not disclose that information under most circumstances. By contrast, the child's GAL could disclose that information, hopefully leading to additional treatment and protection options.

Functionally, this attorney-client relationship also means HB 2381 will create a need for multiple attorneys to be appointed for cases involving multiple children. Currently, siblings who want different things can be represented by the same GAL because she can communicate each of their wishes and their best interests to the Court. However, under HB 2381, if siblings want different things, they will each need their own attorney. A four-sibling case that currently requires one GAL may require five attorneys under HB 2381 if each sibling needs his own attorney and the court also appoints a GAL to represent the children's best interests. These attorneys and GAL would all be paid for by tax dollars.

We have a limited attorney pool from which to draw for these cases. Particularly in rural districts, courts are already extremely limited on how many attorneys will accept appointments to CINC cases. Even in urban districts, few attorneys are willing to take these types of cases. HB 2381 would sharply increase the need for such attorneys without any way to fill that need. At least some portion of the current attorneys who serve as GALs have already determined they will not accept appointments as attorneys for children should HB 2381 pass, thereby further shrinking the pool of available attorneys.

Finally, I am concerned about the unchecked power HB 2381 is likely to deliver to a child's social workers. Most of our social workers are well-intentioned, if overworked, but we do occasionally see cases that are not handled adequately to meet the child's needs. Currently, we have a system of checks and balances whereby a social worker's recommendations are balanced by a GAL who is tasked with investigating the child's circumstances and then presenting evidence on topics such as whether the social worker

is providing resources to the family and whether the child's placement family is providing for the child's needs. Under HB 2381, without any attorney looking after that child's best interests, our children may be left in very vulnerable situations simply because the child's wishes are the only topic being represented by the child's attorney.

Thank you for your consideration. I encourage you to vote against this bill because of the harmful impacts it will most certainly have on our children, the functionality of the legal system, and our county budgets.

A handwritten signature in black ink, appearing to read 'H. Alwin', with a stylized flourish at the end.

Heather F. Alwin