



*The Kansas District Judges' Association*



**HOUSE COMMITTEE ON CHILDREN AND SENIORS**

**Hon. Rep. Erin Davis, Chair  
Hon. Rep. Linda Gallagher, Vice Chair  
Hon. Rep. Jarrod Ousley, R. M. Member  
March 20, 2018 at 9:00 a.m.  
Room 218-N**

Chief Judge Merlin G. Wheeler

Fifth Judicial District

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**WRITTEN TESTIMONY IN OPPOSITION TO HOUSE BILL 2751**

As one of the co-chairs of the Kansas District Judges Association's Legislative Committee, I have been asked to address concerns expressed by our members regarding portions of this bill. We wish to make clear that we do not express any opinion on the question of whether the Office of Child Advocate should be created. That is a policy decision which lies within the sound discretion of the Kansas Legislature and upon which we offer no comment. As judges, we always welcome any input properly offered which will enable us to make better or more timely decisions regarding the welfare of our children. Our objections are to provisions which create potential problems and may be addressed without great difficulty. We do not believe these suggestions to impair the concepts expressed in the bill.

We begin with an expression of concern as to the fiscal impact on the Judicial Branch. Our Office of Judicial Administration has indicated that the bill has the potential of: 1. increasing the number of juvenile offender and child in need of care cases; 2. requiring additional supervision by court services officers; and 3.

impacting the Supreme Court by requiring attention to the appointment of a Child Advocate and addressing issues arising from establishing the new office. While the fiscal note is not readily quantifiable, any legislation increasing the burden on the courts should carry with it appropriations necessary to reasonably support the additional costs involved.

Our members have further pointed out that New Section 5 permits the Child Advocate to address complaints relating to the actions or inactions of...any juvenile court. This provision, as written, would allow a dissatisfied individual or agency to complain of and seek investigation of factual and legal findings that are properly the subject of appeal. We suggest that, at the least, clarifying language be included that precludes interference with the normal process of appeals of factual and legal decisions by a court.

Language contained in New Section 6 and 7 also permits independent review of any entity experiencing three or more reports of abuse or neglect in a calendar year. While we believe that the intent of the legislation is to permit review of agencies involved in the child welfare system, the language used is sufficiently broad to allow investigation of a separate branch of government, the Judicial Branch. Our Office of Judicial Administration along with the Commission on Judicial Qualifications has the responsibility and power to investigate and remedy concerns about the efficiency of court operations or conduct of a particular judge. Therefore, there is no need for or authority under which an investigation of a court may be undertaken.

Even more of our members have commented that if adopted in the present format, actions by a Child Advocate may present significant ethical concerns under our Code of Judicial Conduct. For example, the bill would allow the Child Advocate to seek completely private conversations with a presiding judge concerning a pending case. Our Rule 2.9 makes it clear that a judge cannot initiate, permit or consider *ex parte* communications or consider other communications to a judge outside the presence of the parties or their lawyers, concerning a pending or impending matter. In plain language, it would be a direct violation of the Code of Judicial Conduct to even meet with the Child Advocate in a private setting.

We wish to reiterate that we do not take a position regarding the policy of creation of the Child Advocacy position. Our only request is that, if enacted, this bill be modified to address the concerns raised in this testimony.

Thank you,  
Hon. Merlin G. Wheeler  
Chief Judge 5<sup>th</sup> Judicial District