



State of Kansas

**Office of Judicial Administration**

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

House Committee on Children and Families

February 21, 2013

Testimony in Opposition to HB 2233

Mark Gleeson

Office of Judicial Administration

Thank you for the opportunity to testify in opposition to House Bill 2233. My name is Mark Gleeson and I am the Director of Trial Court Programs for the Kansas Office of Judicial Administration.

House Bill 2233 presents a number of significant challenges to the Judicial Branch in meeting policies of the state, as provided in K.S.A. 38-2201 *et seq.* The first section of the Kansas Code for the Care of Children requires the court to consider the safety and welfare of a child to be paramount in all proceedings, establishes that the child's home is the preferred placement, and that the child's relationship with family is important to the child's well-being. The Kansas Code for the Care of Children encourages the reporting of suspected abuse and neglect and holds that reports of suspected abuse and neglect are to be thoroughly and promptly investigated. Parents are also protected through their representation by appointed counsel and by the court's duty to assure that their due process rights are protected throughout the court process.

My objections are to the proposed changes in the role of the guardian *ad litem* (GAL); allowing access to the underlying data and notes of mental health professionals; requiring credible and admissible evidence independent of a mental health professionals' testimony that a parent intends to flee; what appears to be the intent to limit law enforcement and the Department for Children and Families (DCF) from conducting a complete and thorough investigation; and allowing a perpetrator of family violence to be awarded custody and visitation of the children even when the court has issued a protection order to the contrary.

Under current law, a guardian *ad litem* appointed for each child "shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child." K.S.A. 2012 Supp. 38-2205. Under New Section 1(b)(4) of the bill, the role of the guardian *ad litem* "shall be limited to advocating for the desires of the child." Eliminating the "best interests of the child" role of the GAL represents a fundamental change in the child welfare process that has worked in Kansas and throughout the country. In 2003, the Kansas Supreme Court amended Administrative Order No. 100, which establishes guidelines for GALs. Kansas Supreme Court Administrative Order No. 100, a copy

of which is attached, recognizes that most children do not possess the capacity to understand the proceedings and their desires may be in conflict with their best interests. This new section would require an attorney to argue for the desires of a three year old who probably wants to be anywhere but the courthouse. It would also require an attorney to present evidence and advocate that a 13 year old should be allowed to live with her 18 year old boyfriend. The authority to appoint a separate attorney to act as the child's attorney already exists in the child in need of care code (CINC) at K.S.A. 2012 Supp. 38-2205(a), and although it is rarely necessary, it does occur.

My second objection is to Section 1(a)(11), which could compromise the safety of adult and child victims of family violence. This section is also not necessary in that K.S.A. 2012 Supp. 38-2264(i) gives the custody orders issued in CINC cases primacy over orders issued in all other civil cases. This section should be eliminated because the courts already have an effective mechanism for considering a victim's safety when issuing orders involving perpetrators of family violence and when protection orders exist in other jurisdictions.

Although these are my primary objections, I am also concerned about the remaining sections which include the expansion of access to mental health and drug and alcohol evaluations, and all underlying data for such evaluations and reports, and the additional credentials proposed for professionals who investigate cases of child abuse and neglect. I concur with the intent to have highly qualified and experienced investigators serving to protect children. I would ask, however, that committee members carefully consider whether the proposed access to reports and evaluations would improve decision making. I would also encourage the committee to weigh whether the proposed standards for investigators are likely to improve investigations and if they are, whether state and local governments would be able to absorb the cost of meeting those standards.

Attachment