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Testimony in Support of HB 2381 via WebEx
House Committee on Judiciary

Good afternoon, Chair Humphries, Vice Chair Lewis, Ranking Member Highberger, and Members of the House Committee on Judiciary. My name is Mike Fonkert and I am Deputy Director at the Kansas Appleseed Center for Law and Justice.

Thank you for the opportunity to provide this testimony. I am testifying in support of House Bill 2381, which would require a court appointed attorney to represent a child who is the subject of a child in need of care (CINC) case. It would also allow for the optional appointment of a guardian ad litem attorney to the child.

Kansas Appleseed has a long history of unwavering commitment to advocating for the rights and well-being of children, including improving our state's foster care system. Despite some improvements to the foster care system in recent years, it remains a system in crisis that is not always serving the children in its care. HB 2381 is a step to improve that system. It will provide children with a much needed advocate to solely represent them—not the interests of the court, state, or any other parties involved.

Removing a child from their family and placing them in foster care is a traumatic event that has long-lasting safety and developmental effects on the child. Yet, Kansas children who are the subject of a CINC case, currently have no guarantee that someone will advocate and represent them in the courts:

- Guardian *ad litem*s (GALs) are the current way Kansas provides representation to children in CINC cases, however, they do not actually represent the child. GALs represent “the best interest of the child.”¹ That is a concept or idea, not the actual child. In this sense, GALs act more as court investigators who assist the court in determining what the child’s best interest is, as opposed to being a legal advocate for the child. Meanwhile, all other parties in a CINC case typically have legal representation, including DCF and parents. Legal representation allows those parties to present and challenge evidence while the child—the one who the court’s decision will fall on—may not have the opportunity to do the same.²
- Current law does have an option for appointing an attorney directly for the child, but only when the GAL determines that the child’s desires diverge from the best interests determination of the GAL. In practice, this is not occurring in Kansas courts.³

¹ K.S.A. 38-2205(a).

² Kendall Seal. “Child Representation: The Move to Client-Directed Counsel for Children.” The Center for the Rights of Abused Children. 2023.

https://www.kslegislature.org/li/b2023_24/committees/ctte_it_child_welfare_ovst_1/documents/testimony/20231004_16.pdf and National Association of Counsel for Children. “Seen, Heard, and Represented: A Policymaker’s Guide to Counsel for Kids.” 2023.

<https://counselforkids.org/wp-content/uploads/2023/04/C4K-PolicyPaper-FINAL-DIGITAL-2.pdf>

³ Kendall Seal. “Child Representation: The Move to Client-Directed Counsel for Children.” The Center for the Rights of Abused Children. 2023.

When the appointed counsel for a child is only representing the idea of the best interest of the child and not the actual child, children may be put into harm's way or not heard. For example:

- In one case grandparents of children in a CINC case alleged that the lawyer appointed to argue for the children's best interest did not know the children and the relationships at play, allowing the children to end up in a dangerous situation.
- In other instances families and foster parents have said the GALs rarely see the children they are advocating for or simply do not come to court with any background on the cases.⁴

No matter the reasons for these failures, one thing is clear, the children at the heart of the cases are not being heard and are bearing the negative and harmful outcomes from it.

The scale of the Kansas foster care system and where it is failing children speaks to the importance of providing the children who are part of it their own legal representation:

- We know children thrive best with their families. Every effort should be made to ensure that children can safely stay with their families. Still, the most recent federal review of Kansas' child welfare system shows that more can and should be done in the state to keep children and families together. Federal reviewers found in a case review that less than 50% of cases indicated that the agency made efforts to provide appropriate services to prevent the children from entry or reentry into the foster care system.⁵
- Once in foster care, Kansas children in foster care are moved from placement to placement at higher rates than other states. A federal review of Kansas' system reveals that the state continues to decline in their ability to provide stable placements to children in foster care. Federal reviewers found that the number of moves a child experiences per 1,000 days in foster care has increased. Kansas children in foster care experience a rate of over 6 moves per 1000 days in care. Monitoring of DCF's performance for our settlement agreement with them confirmed these results.⁶
- Further, once children are in foster care, they languish there. The recent federal review found that Kansas is performing worse than other states at ensuring children are reuniting with their families or achieving another permanent living arrangement in a timely manner. The federal review found cases only achieved timely reunification 27% of the time. The longer a child is in foster care, the more at-risk the child is for poor outcomes and to never reunite with their family.⁷

https://www.kslegislature.org/li/b2023_24/committees/cte_it_child_welfare_ovst_1/documents/testimony/20231004_16.pdf

⁴ Mesa, B. "Kansas foster families say attorneys representing foster kids in court are failing those children." KCUR. 2022.

<https://www.kcur.org/news/2022-05-10/kansas-foster-families-say-attorneys-representing-foster-kids-in-court-are-failing>

⁵ Administration for Children and Families. "Child and Family Services Reviews: Kansas Final Report." 2023.

<https://www.acf.hhs.gov/sites/default/files/documents/cb/ks-cfsr-r4-final.pdf>

⁶ Administration for Children and Families. "Child and Family Services Reviews: Kansas Final Report." 2023.

<https://www.acf.hhs.gov/sites/default/files/documents/cb/ks-cfsr-r4-final.pdf> and Center for the Study of Social Policy.

"*McIntyre v. Howard*: Progress Report, Period 2." 2023.

<https://cssp.org/wp-content/uploads/2023/08/McIntyre-v.-Howard-Period-2-Progress-Report.pdf>

⁷ Administration for Children and Families. "Child and Family Services Reviews: Kansas Final Report." 2023.

<https://www.acf.hhs.gov/sites/default/files/documents/cb/ks-cfsr-r4-final.pdf>



- Kansas' rate of children in foster care is almost twice the national average. On any given day in Kansas over 6,000 kids are in foster care and 250 more enter foster care.⁸

Requiring an attorney so their voices are advocated for and represented as they navigate this complex and traumatizing system will lessen the harm they face. Research shows that direct counsel for children in foster care cases helps improve outcomes and address areas that Kansas lags behind in:

- Children with counsel exit foster care up to 3.5 times quicker than those without.
- Children with counsel are 40% more likely to exit foster care within six months.
- Children with counsel have a 45% higher reunification rate.
- Children with counsel have 30% less placement moves.
- Children with counsel have 65% less school moves.
- Children with counsel are more likely to be adopted, if that is their permanency goal.
- Children with council have more visits with their family while in foster care.⁹

The improvement to outcomes and stability is because the voice of the child is being heard in the court system. The U.S. Children's Bureau notes that one of the barriers to successful outcomes for children in foster care is lack of trained and effective legal representation for children in the case. When the child has legal representative advocating for them, someone is in the court ensuring the timeliness of the case and looking out for the best interests of the child.¹⁰

Requiring legal representation to children in CINC cases is a necessary first step. We know that there are currently multiple factors that prevent quality and effective representation of children in CINC cases, including a lack of trained attorneys in large portions of the state. However, with improved outcomes and children spending less time in foster care, the state can reinvest funds in quality education and pay for attorneys representing children.¹¹ As such, I urge you to vote in favor of HB 2381. In doing so, you will be making a promise to Kansas youth that their voices must and will be heard. Thank you for your time.

⁸ DCF, FY 2023 Removals, Exits, and Out of Home Summary (FACTS). 2023.

https://www.dcf.ks.gov/services/PPS/Documents/FY2023DataReports/FCAD_Summary/FACTSRemovalsExitsOOHSFY23.pdf

⁹ Zinn, A. E. and Slowriver, J. "Expediting Permanency: Legal Representation for Foster Children in Palm Beach County," Chapin Hall Center for Children at the University of Chicago. 2008.

<https://search.issuelab.org/resource/expediting-permanency-legal-representation-for-foster-children-in-palmbeach-county.html> ; Washington, N. "Counsel for Kids Information Sheet," National Association of Counsel for Children. 2022.

<https://zmcc18.p3cdn1.secureserver.net/wp-content/uploads/2022/02/Counsel-for-Kids-InformationSheet-2022.pdf> ; Orlebeke, B., Zhou, Z., Skyles, A., and Zinn, A. "Evaluation of the QIC-ChildRep Best Practices Model Training for Attorneys Representing Children in the Child Welfare System." Chapin Hall at the University of Chicago. 2016.

<https://www.improvechildrep.org/Portals/0/QIC-ChildRep%20Chapin%20Hall%20Evaluation.pdf> ; Washington State Center for Research. "Evaluation of the Washington State Dependent Child Legal Representation Program." 2021.

<https://secureservercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/11/DCLR-Report-2021.pdf>

¹⁰ Duquette, D., Orlebeke, B., Zinn, A., Pott, R., and Skyles, A. "Children's Justice: How to Improve Legal Representation in the Child Welfare System." University of Michigan Law School Scholarship Repository. 2021.

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1109&context=books>

¹¹ National Association of Counsel for Children. "Seen, Heard, and Represented: A Policymaker's Guide to Counsel for Kids." 2023. <https://counselforkids.org/wp-content/uploads/2023/04/C4K-PolicyPaper-FINAL-DIGITAL-2.pdf>