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LEGISLATURE *of* THE STATE *of* KANSAS
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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 16, 2023
Subject: HB 2381: Requiring the court to appoint an attorney to represent a child who is the subject of child in need of care proceedings and allowing for the optional appointment of a guardian ad litem.

House bill 2381 amends K.S.A. 38-2205, the statute that establishes a guardian ad litem and identifies the duties of a GAL. In that section, the bill proposes establishing an appointed attorney for a child who is the subject of a child in need of care proceeding. The court is directed to appoint such attorney when the petition is filed. This attorney shall serve as counsel and represent the child. If the child is unable to direct the representation, the attorney shall determine what the child would decide if the child were capable of making a decision and represent the child in such manner. As a child develops capacity, the attorney shall take direction from the child.

The bill amends the appointment of a guardian ad litem, allowing for the optional appointment of such guardian ad litem upon the filing of the petition or any time thereafter. The section would no longer require the guardian ad litem to inform the court when there is a disagreement between the guardian ad litem and the child, which, under current law, would lead to an appointment of a second attorney.

To implement this change, the bill amends multiple statutes related to the representation of the child in a child in need of care proceeding. House bill 2381 amends the definition of a court-appointed special advocate in K.S.A. 38-2202, to clarify that a court-appointed special advocate does not include an appointed attorney or a guardian ad litem.

K.S.A. 38-2211 is amended to include a child's attorney as a person who may access the child's official and social file. K.S.A. 38-2212 is amended to allow a child's attorney to have access to agency records. K.S.A. 38-2219 is amended to allow a child's attorney to motion for an evaluation and written report of the psychological or emotional development or needs of the

child. K.S.A. 8-2229 would include a child's attorney as a person who has the privilege or right of confidentiality who may request in writing to quash a subpoena issued for such person. K.S.A. 38-2236 would require a summons and copy of the petition be served to the child's attorney. K.S.A. 38-2247 would prohibit a court from excluding a child's attorney in adjudication or disposition proceedings. K.S.A.38-2248 would allow a child's attorney to stipulate or enter into no contest statements. K.S.A. 38-2249 would allow the child's attorney to be present during testimony and question the child when such child is testifying. K.S.A. 38-2258 would require that notice of a placement change when the child has been in the same placement for more than 6 months to the attorney.

K.S.A. 38-2260 governs proceedings and orders relating to placement. The amendment to the statute would require the attorney to attend certain hearings and, when the court enters orders, the court would be required to send notices of placement changes to the attorney. K.S.A. 38-2268 would require the appointed attorney's participation in proceedings related to voluntary relinquishment and consent to adoption or a permanent custodian. K.S.A. 38-2275 would allow the court to fix fees for attorneys when such attorney takes an appeal under the child in need of care code. K.S.A. 38-2291 would require that when notice of a child being placed in a qualified residential treatment facility is sent out, such notice shall be sent to the child's attorney.