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Via email to: [kathi.rakestraw@house.ks.gov](mailto:kathi.rakestraw@house.ks.gov)

Re: Testimony in opposition to House Bill No. 2381

Dear House Judiciary Committee:

Thank you for the opportunity to offer my testimony regarding House Bill No. 2381 and its proposed changes to the guardian ad litem definitions and duties.

In a nutshell, it appears that the intent of the bill is to give children in the CINC system an appointed attorney to “serve as counsel and represent” the child, instead of the existing Code which appoints a guardian ad litem. The court may still appoint a guardian ad litem for the child as well, but in addition to the already appointed attorney.

I have been a court appointed Guardian Ad Litem for children in the CINC system in Sedgwick County, Kansas since at least 2016. I am offering my testimony from that perspective.

I do not understand the intent of the proposed legislation. I believe the existing guardian ad litem already has the powers, duties and abilities to advocate for the child effectively. I do not understand what the change to an attorney to represent the child accomplishes which is better for the child than the existing guardian ad litem arrangement. But I do see potential adverse consequences, possibly unintended, if this change is made.

The proposed change to K.S.A 38-2205 (page 6 of the House Bill) would have the court appoint an attorney to “counsel and represent” the child.

Under the current law, the guardian ad litem’s job is to:

- i) Make an independent investigation of the facts on which the petition is based; and
- ii) Appear for and represent the best interests of the child.

Some hypotheticals illustrate why the change might be worse for the child:

1. Communication issues.

In an attorney -client role with the child, the attorney would be bound to keep confidential communications privileged.

A GAL would not be so bound. A wise GAL would first advise the child that he is acting for them and will inform the court of the child's desires. But he is also duty bound to tell the court what he as GAL believes is best for the child. And this could include telling the court things the child has said , if it is in the best interests of the child to do so.

So with a GAL, a child who discloses abuse, or drug use, or feelings of animosity or fear towards a parent – could have that information conveyed to the court ( in private or otherwise to protect the child), even over the child's objection. I am not sure whether an attorney could do that.

Similarly, a child who discloses potential self-harm feelings or desires to do something against their interests (like run or leave a placement, etc.) --- one conversation would be privileged; the other (to a GAL) would be available to the court.

2. Representation issues.

In the proposed bill, the attorney must take direction from the child, more so as the child has more capacity to “direct the attorney”.

A GAL can have the same communication and convey the child's desires to the court, just as the attorney above is bound to do. But the GAL has the additional duty / advantage to act in the best interests of the child. So he can additionally convey what he believes is in the child's best interests, even if contrary to the child's direction as to what the child wants.

I do not know if the attorney could do that.

This could come into play in many ways. A child could “direct” his attorney that: a) I do not want therapy; b) I do not want drug treatment; c) I want you to increase my visits and send me home; d) I want you to make a motion to change my placement; e) I don't want you to disclose that my parents communicate with me outside of visitation times, etc.

The GAL would have more discretion with respect to these things as his charge is to act in the child's best interests, rather than follow the direction of the child.

3. Access to court information.

If a child directed his attorney to keep him informed of everything, I think the attorney might have no choice but to allow the child to attend all proceedings, and be informed of all reports and information.

So, while there would be times this would be good and appropriate, there can be times where it is not best for a child to hear that a) parents continue to test positive for drugs; or b) parents have stated they do not want the child; or c) placement has said they are getting tired of the child; or d) a therapist has diagnosed (child or parent) with a disorder, etc.

A GAL would have the discretion to allow the child as much or as little information as would be in the child's interest and ability to hear and process this information. A GAL could ask the court to hear from the child in private, but also have the child excused from hearings as appropriate.

I am not sure the attorney could do that.

4. Multiple clients.

Based on the wording of the proposed amendment, each child would get an attorney. I suppose it is possible that the same attorney could represent all the children in the same family, but there are clearly issues of confidentiality at play with an attorney, that would not be there with a GAL.

Does the attorney have to speak to each child separately? What if one child discloses something another child is adamantly against disclosing? Or what if the children have different versions (extreme example, but – you were not abused, quit saying that, its hurting our parents, etc. vs. you know I was; etc.)

A GAL would have more flexibility in all of these situations.

5. The procedure for appointment of an attorney already exists.

There is already a procedure for the GAL and child to request an attorney for the child, if needed. (This could come into play if the child is a suspect in a juvenile offender matter, etc. )

6. The whole standard of “as the child is capable” is very vague and imposes unexpected and I believe unwanted judgment calls on the attorney.

Each child is unique and two 14 year olds for example may have very different levels of experience, education and maturity. Does the attorney follow the child’s direction in each case, no matter how ill advised?

The GAL standard of acting in the best interests of the child is much more flexible. The child’s wishes – even if ill advised – can always be conveyed. But the extra level of the GAL then also stating what he believes is in the child’s best interest, offers better information, and better protection for the child.

7. Adversarial proceedings .

As GAL I am able to make arguments, for or against parents based on their performance in a case, because I am acting for the child’s best interests.

As the child’s attorney, I may be forced to not make an argument that is best for the child (like reintegration is not viable) if the child directs me to not make such an argument.

As GAL I can discuss the child’s position with the child on such an issue, and assure the child that I will make their wishes known. But I will also say what I think is best. I am not the judge so both sides will be heard.

I do not think children should be put in the position of decision maker. They do not know as much as they need to to make proper decisions on a very very important part of their lives.

They need a GAL who is acting for their best interest, rather than an attorney who is representing them. Because the latter may be forced to take positions even he does not believe are well advised. The GAL may have to make those positions known as well, but can offer his own opinions and experience – which the child , by definition, does not have.

I also think that children do not necessarily want to be the decision maker. They certainly do not want to hurt their parents. They need an independent adult, a GAL, to do this for them. It takes away much stress and guilt when I (as GAL) assure them that things are not their fault; we are working towards whats best for you, etc.

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An attorney has way LESS (not more) discretion in doing what is best for the child. He is basically limited to what the inexperienced, often traumatized, child tells him to do. But the child does not know, and in fact is looking for help from the adult – not the other way around.

Thank you for the opportunity to offer these comments and this perspective. I would be glad to discuss further or in more detail, if the Committee thought it helpful.

Sincerely,

  
Michael Lazzo