



State of Kansas

**Office of Judicial Administration**

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House Committee on Children and Families

February 16, 2012

Testimony in Opposition to HB 2137

Mark Gleeson

Office of Judicial Administration

Thank you for the opportunity to testify in opposition to House Bill 2137. My name is Mark Gleeson and I am the Director of Trial Court Programs for the Kansas Office of Judicial Administration.

House Bill 2137 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 the by 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 of Social and Rehabilitation Services (SRS) 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. 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

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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. 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. 2010 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, what state and local governments would be able to absorb the cost of meeting those standards within the proposed time frame.

IN THE SUPREME COURT OF THE STATE OF KANSAS

Amended  
Administrative Order No. 100

Guidelines for Guardians Ad Litem

The Supreme Court guidelines are recommended for the representation of children by guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501 et seq.; the Parentage Act, K.S.A. 38-1110 et seq.; and Domestic Relations, K.S.A. 60-1601 et seq. Unless departure is authorized by the presiding judge or designee for good cause shown. The appointing judge or designee should:

- 1) issue an Order appointing the guardian *ad litem* on a form substantially as attached, and
- 2) insure compliance with this Administrative Order.

A guardian *ad litem* should:

(1) Conduct an independent investigation consisting of the review of all relevant documents and records including those of social service agencies, police, courts, physicians (including mental health), and schools. Interviews either in person or by telephone with the child, parents, social workers, relatives, school personnel, court appointed special advocates (CASAs), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and ongoing contact with the child are mandatory.

(2) Determine the best interests of the child by considering such factors as the child's age and sense of time; level of maturity; culture and ethnicity; degree of attachment to family members, including siblings; as well as continuity, consistency, permanency and the child's sense of belonging and identity.

(3) File appropriate pleadings on behalf of the child. Appear for and represent the best interests of the child at all hearings. All relevant facts should be presented to the court, including the child's position. If the child disagrees with the guardian *ad litem's* recommendations, the guardian *ad litem* must inform the court of the disagreement. The court may, on good cause shown, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney for the child, that individual serves in addition to the guardian *ad litem*. The attorney must allow the child

and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

(4) Not submit reports and recommendations to the court, act as a witness or testify in any proceeding in which he or she serves as guardian *ad litem*, except as permitted by the exceptions to Kansas Rules of Professional Conduct 3.7(a). The guardian *ad litem* should submit the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents a case on behalf of a client: by calling, examining and cross-examining witnesses, submitting and responding to other evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented."

(5) Explain the court proceedings and the role of the guardian *ad litem* in terms the child can understand.

(6) Make recommendations for specific appropriate services for the child and the child's family.

(7) Monitor implementation of service plans and court orders.

(8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which consists of not less than six (6) hours including one (1) hour of professional responsibility, and participate in annual continuing education consisting of not less than six (6) hours. Areas of education should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the code for the care of children. Such hours of continuing education, if approved by the Continuing Legal Education Commission, shall apply to the continuing legal education requirements of Supreme Court Rule 802 and the minimum total hours annually required by that rule are not modified by these guidelines. The appointing judge or designee shall have the authority to approve the prerequisite education and continuing education not otherwise approved by the Continuing Legal Education Commission. Guardians *ad litem* shall be responsible for maintaining a record of their own participation in prerequisite and continuing education programs. Upon the request of the appointing judge or designee, the guardian *ad litem* shall be required to provide evidence of compliance with this order. Such prerequisite education may be waived by the appointing Judge or designee upon showing of a need for emergency temporary appointment. The educational

requirements shall be completed within six (6) months of appointment. These educational requirements shall not be effective for a period of six (6) months from April 19, 1995.

This order shall be effective upon the date it is entered.

BY ORDER OF THE COURT this 16<sup>th</sup> day of July 2003.

  
KAY McFARLAND  
Chief Justice