KANSAS BAR ASSOCIATION

TO: The Honorable Connie O'Brien, Chair
And Members of the Committee on Children and Seniors

FROM: Joseph N. Molina
On behalf of the Kansas Bar Association

RE: HB 2233 – Enacting the Protective Parent Reform Act

DATE: February 21, 2013

Good Morning Madam Chair and members of the House Committee on Children and Family. I am Joseph Molina of the Kansas Bar Association, and I provide this written testimony is opposition to HB 2233, which would enact the Protective Parent Reform Act.

The Kansas Bar Association is an organization made up of a number of legal professionals that specialize in family disputes, domestic relations, and Children in Need of Care cases. These dedicated professionals are all members of the KBA Family Law Section who have reviewed HB 2233 and strongly oppose the bill. They believe that the provisions in this bill, while perhaps well intentioned, would create problems rather than solve them, harm children's interests rather than help them, and create more conflict in already problematic cases. The KBA believes the HB 2233 is misguided for the following reasons:

1) This bill uses terminology that is imprecise and which does not fit Kansas law or practice. For example, children do not have "visitation" with a parent. Similarly, "custody" is a general term that includes multiple concepts better expressed by more precise language. Kansas law speaks in terms of "legal custody," "parenting time," and decision-making.
2) New Section 1(b)(1) encourages, rather than discourages, false allegations of child abuse and neglect. It immunizes bad conduct and ill will. The section – and indeed the entire bill – casts cases dealing with issues of child placement as simplistic situations.
3) New Section 1(b)(2) encourages allegations of child abuse and neglect and would inject into many more cases those allegations by parents seeking to "win at all costs."
4) New Section 1(b)(4) would improperly shift the guardian ad litem's duty from representing a child's best interests to being an advocate for the "desires" of the child – no matter the child's age, no matter how the child came to that "desire," no matter how much pressure or improper influence had been visited upon the child to obtain the expressed "desire," and no matter whether the position was good or harmful to the child;

5) New Section 1(b)(5), calling for release of any custody and mental health evaluations to parents does not consider – and does not allow the courts to consider – individual situations or circumstances, the safety of the parties involved, the need for confidentiality, potential dangers to the child, or the varying capacities or mental states of the parents involved. While parents and their attorneys should have appropriate access to evaluations, this section provides a blunt instrument to address situations that cannot be anticipated from case-to-case. A requirement for blanket disclosure of all of these reports would not only potentially deprive the court of good and valuable information, but would also have a chilling effect on the child's candor with evaluators;
6) New Section 1(b)(6), in tandem with 1(b)(2), would encourage rather than discourage, false allegations. This section would impose far-reaching limits on evidence that might "attempt" to discredit a parent's motivations – which is what all evidence and testimony in trials over children's placement seeks to do.
7) New Section 1(b)(7) would put into law a provision that directly contradicts studies of past interstate and international child abductions by parents. Again, as with other provisions in this bill, it would encourage rather than discourage bad actions and bad intentions by parents, use and manipulation of children, and deprive the courts of important information needed to protect children from the severe abuse that is child abduction.
8) New Section 1(b)(8) is unnecessary and is already addressed in the law.
9) New Section 1(b)(10) doesn't say anything and doesn't mean anything. Evidence is considered and admitted under the rules of evidence, and the court considers evidence admitted before it when making decisions on the issues.
10) New Section 1(b)(11) doesn't make any sense and is not in any properly grammatical structure.
11) New Section 2 would have the potential effect of enshrining a bad, rather than a good, interview of a child who is alleged to have been subjected to abuse. The section does not consider best practices in the legal or mental health field, but instead imposes a random requirement.

In closing, the current process for evaluation physical, mental, and emotional abuse has a long-standing support system based in the law. Years of case law have allowed specialized legal professionals to use these laws in the best interest of the child. To alter these rules, as HB 2233 provides, would be to damage the system designed to protect the most innocent among us. As such, the KBA opposes HB 2233 in the strongest terms.

On behalf of the Kansas Bar Association, I thank you for this opportunity to consider our thoughts on this important issue.

The Kansas Bar Association was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals. www.ksbar.org