

HOUSE BILL No. 2035

AN ACT concerning children in need of care; relating to the right to counsel; amending K.S.A. 2002 Supp. 38-1505 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 38-1505 is hereby amended to read as follows: 38-1505. (a) *Appointment of guardian ad litem; duties.* Upon the filing of a petition the court shall appoint a person who is an attorney to serve as guardian *ad litem* for a child who is the subject of proceedings under this code. The guardian *ad litem* shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the ~~child~~ *best interests of the child*. *When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interest, the guardian ad litem shall inform the court of the disagreement. The guardian ad litem or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall 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.*

(b) *Attorney for parent or custodian.* A parent or custodian of a child alleged or adjudged to be a child in need of care may be represented by an attorney, other than the guardian *ad litem* or a second attorney appointed for the child *as provided in subsection (a)*, in connection with all proceedings under this code. If at any stage of the proceedings a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend the hearing after having been properly served with process in accordance with K.S.A. 38-1534 and amendments thereto. A parent or custodian who is not a minor, a mentally ill person as defined in K.S.A. 2002 Supp. 59-2946 and amendments thereto or a disabled person as defined in K.S.A. 77-201 and amendments thereto may waive counsel either in writing or on the record.

(c) *Attorney for parent who is a minor, mentally ill or disabled.* The court shall appoint an attorney for a parent who is a minor, a mentally ill person as defined in K.S.A. 2002 Supp. 59-2946 and amendments thereto or a disabled person as defined in K.S.A. 77-201 and amendments thereto, unless the court determines that there is an attorney retained who will appear and represent the interests of the person in the proceedings under this code.

(d) *Continuation of representation.* A guardian *ad litem* appointed ~~for~~ *to represent the best interests of a child or a second attorney appointed for a child as provided in subsection (a)*, or an attorney appointed for a parent or custodian shall continue to represent the client at all subsequent hearings in proceedings under this code, including any appellate proceedings, unless relieved by the court upon a showing of good cause or upon transfer of venue.

(e) *Fees for counsel.* A guardian *ad litem*, second attorney appointed pursuant to subsection (a) or attorney appointed for parties to proceedings under this section shall be allowed a reasonable fee for their services, which may be assessed as an expense in the proceedings as provided in K.S.A. 38-1511 and amendments thereto.

Sec. 2. K.S.A. 2002 Supp. 38-1505 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.