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Children and Youth

D-4 Child in Need of Care Proceedings

The Revised Kansas Code for the Care of Children (KCCC), KSA 38-2201 to KSA 38-2283, governs the “Child in Need of Care” (CINC) process in Kansas. CINC proceedings can be divided into two categories: (1) those concerning children who lack adequate parental care or control or have been abused or abandoned; and (2) those concerning children who commit certain offenses listed in KSA 38-2202(d)(6)-(10). The focus of this article is on the first group.

Preliminary Issues

CINC proceedings typically begin with a report to the Department for Children and Families (DCF), which may be made by anyone who suspects a child may be in need of care. The following types of people, however, are required to report any suspicions that a child is in need of care:

- Persons providing medical care or treatment;
- Persons licensed by the State to provide mental health services;
- Teachers and other employees of educational institutions;
- Licensed child care providers;
- Firefighters, emergency medical services personnel, and law enforcement officers;
- Juvenile intake and assessment workers, court services officers, and community corrections officers;
- Case managers (see KSA 23-3507 to KSA 23-3509) and mediators appointed to help resolve any contested issue of child custody, residency, visitation, parenting time, division of property, or other issue; and
- Persons employed by or working for an organization that provides social services to pregnant teenagers.

Reports can be made to local law enforcement when DCF is not open for business. A person who, without malice, participates in the making of a report; participates in any activity or investigation relating to the report; or participates in any judicial proceeding resulting from the report is immune from civil liability that might otherwise be incurred or imposed. It is a class B misdemeanor, however, to willfully and knowingly fail to make a report or to make a false report, as well as to intentionally prevent or interfere with the making of a report. KSA 38-2223.

Once a report is received, KSA 38-2226 requires DCF and law enforcement to investigate the validity of the claim and determine whether action is required to protect the child. When a report indicates that there is serious physical harm to, serious deterioration of, or sexual abuse of the child and that action may be required to protect the child, DCF and law enforcement conduct a joint investigation. As part of its preliminary inquiry, KSA 38-2230 provides that DCF must, when practicable, look at the circumstances reported to DCF suggesting that the child is in need of care, including the home and environmental situation and the previous history of the child. If there are reasonable grounds to believe abuse or neglect exist, DCF must take immediate steps to protect the health and welfare of the abused or neglected child, in addition to that of other children under the same care.

KSA 38-2231 requires law enforcement to place a child in protective custody when an officer reasonably believes the child will be harmed if not immediately removed from the situation where the child was found, or has probable cause to believe the child is a missing person and a verified missing person entry for the child is found in the national crime information center missing person system. Additionally, it requires law enforcement and court services officers to take a child into custody when an order commands it or there is probable cause to believe such an order has been issued in Kansas or another jurisdiction. KSA 38-2242 governs the issuance of one such order, an *ex parte* order for protective custody.

A court cannot enter an initial order removing a child from parental custody unless it finds there is probable cause to believe:

- The child is likely to sustain harm if not immediately removed from the home;
- Allowing the child to remain in home is contrary to the welfare of the child; or
- Immediate placement of the child is in the best interest of the child.

The court also must find there is probable cause to believe that reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's

home, or that an emergency exists which threatens the safety of the child. These findings must be included in any such order. Additional findings also may be necessary depending on the order. To issue an *ex parte* order, for example, the court also must find, based on the facts supplied in the application for an *ex parte* order, there is probable cause to believe the child is in need of care.

An *ex parte* order for protective custody must be served on the child's parents and any other person having legal custody of the child. At the time the order is issued, the court also may enter an order restraining any alleged perpetrator of physical, sexual, mental, or emotional abuse from residing in the child's home; visiting, contacting, harassing, or intimidating the child, another family member, or witness; or attempting to visit, contact, harass, or intimidate the child, another family member, or witness. This order also must be served on the alleged perpetrator.

The court may place the child in the protective custody of a parent or other person having custody of the child; another person, who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary of DCF. Once issued, an *ex parte* order will typically remain in effect until the temporary custody hearing, which must be held within 72 hours, excluding weekends, holidays, and other days when the clerk of the court is not accessible. KSA 38-2242(b)(2).

When a court evaluates what custody, visitation, or residency arrangements are in the best interest of a child who has been removed from custody of a parent and not placed with the child's other parent, KSA 38-2286, enacted in 2012 as SB 262, requires substantial consideration of a grandparent who requests custody. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. The court is required to state this evaluation on the record. If the court does not give custody to a grandparent, but places the child in the custody of the Secretary of DCF for placement,

then a grandparent who requests placement shall receive substantial consideration in the evaluation for placement. If the grandparent is not selected for placement, the Secretary shall prepare and maintain a written report with specific reasons for the finding.

Court Proceedings

CINC Petition

If DCF determines it is not otherwise possible to provide services necessary to protect the interests of the child, it must recommend that the county or district attorney file a CINC petition. Next, the county or district attorney must review the facts, recommendations, and any other evidence available and determine whether the circumstances warrant filing a petition. If warranted, the county or district attorney prepares and files the petition, the contents of which are outlined in KSA 38-2234, and appears and presents evidence at all subsequent proceedings. KSA 38-2214; KSA 38-2233. An individual also may file a CINC petition and be represented by the individual's own attorney in the presentation of the case. KSA 38-2233.

After a petition is filed, the court will do one of two things. If the child is in protective custody, the court can serve a copy of the petition to all parties and interested parties in attendance at the temporary custody hearing or issue summons to all those persons if not present. Otherwise, the court will serve the guardian *ad litem* (GAL) appointed to the child, custodial parents, persons with whom the child is residing, and any other person designated by the county or district attorney with a summons and a copy of the petition, scheduling a hearing within 30 days of when the petition is filed (grandparents are sent a copy of the petition by first class mail). KSA 38-2235; KSA 38-2236. KSA 38-2241 provides that in addition to receiving notice of hearings, parties and interested parties have a right to present oral or written evidence and argument, to call and cross-examine witnesses, and to be represented by an attorney. Grandparents are interested parties in CINC proceedings and have the participatory rights of parties, subject to the court's restriction on participation if such restriction

is found to be in the best interest of the child. Other interested parties may include persons with whom the child has resided or that share close emotional ties to the child, and other persons as the court allows based on the child's best interests.

Jurisdiction

A court's jurisdiction is established by the filing of a CINC petition and, if a child is found to be in need of care, continues until: the child is 18, or, if the child is participating in a court-approved transition plan, 21; is adopted; or is discharged by the court. KSA 38-2203. The Indian Child Welfare Act, 25 U.S.C. § 1901 to 1963 and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 23-37,101 to KSA 23-37,405, also may affect jurisdiction. The UCCJEA governs jurisdiction in child custody proceedings and allows the state where a custody order is initially issued to exercise continuing jurisdiction until a court of that state determines that the child, the child's parents, and any person acting as a parent either:

- No longer have a significant connection with the issuing state and substantial evidence is no longer available there concerning the child's care, protection, training, and personal relationships; or
- A court of the issuing state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the issuing state.

Pursuant to KSA 23-37,204(a), however, a Kansas court may exercise temporary emergency jurisdiction if the child is present in this state and has been abandoned or it is necessary to protect the child because the child, or a sibling or parent of the child, is subject to or threatened with mistreatment or abuse.

Initial Court Proceedings

KSA 38-2247 provides that all CINC proceedings leading up to and including adjudication may be attended by anyone unless the court determines that closed proceedings or the exclusion of an

individual would be in the best interests of the child or is necessary to protect the privacy rights of the parents. Dispositional proceedings for a child determined to be in need of care, however, may be attended only by the GAL, interested parties and their attorneys, officers of the court, a court-appointed special advocate, the custodian, and any other person the parties agree to or the court orders to admit. Likewise, the court may exclude a person if it determines it would be in the best interests of the child or the conduct of the proceedings.

Within three business days of a child being placed in protective custody, a court must conduct a temporary custody hearing. KSA 28-2235. Notice of the hearing must be provided to all parties and nonparties at least 24 hours prior to the hearing. After the hearing, the court may enter an order directing who will have temporary custody if there is probable cause to believe the child is a danger to self or others, the child is not likely to be available within the jurisdiction of the court for future proceedings, or the health or welfare of the child may be endangered without further care. The court may modify this order during the pendency of the proceedings to best serve the child's welfare and, further, is allowed to enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. KSA 38-2243.

The court may place the child in the temporary custody of a parent or other person having custody of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary of DCF. If the child is placed with a person other than the parent, the court will make a child support determination to provide for the child while in the nonparent's custody.

Short of removing the child, pursuant to KSA 38-2244, if no party objects, a court can enter an order for continuance and informal supervision at any time after the petition is filed, but prior to an adjudication. At that time, the court may place conditions on the parties, and may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. Initially, the order can continue for up to six months, but may be extended for an

additional six months. If the child is placed with a person other than a parent, the court will make a child support determination to provide for the child while in the nonparent's custody. Additionally, this custody determination will be subject to the requirements of KSA 38-2286, concerning substantial consideration of a grandparent who requests custody, as outlined above.

Adjudication, Disposition, and Permanency

A final adjudication or dismissal of a CINC petition must be entered within 60 days of when the petition was filed, unless good cause for a continuance is shown on the record. KSA 38-2251(c). At this stage, the petitioner must prove by clear and convincing evidence that the child is a child in need of care. KSA 38-2250. If that burden is not met, the court must dismiss the proceedings. KSA 38-2251.

If the child is found to be in need of care, however, the court will receive and consider information concerning the child's safety and well being and enter orders concerning custody and a case plan, which governs the responsibilities and timelines necessary to achieve permanency for the child. KSA 38-2253. This can be done either at a dispositional hearing, which must be held within 30 days of the adjudication, or at the time of adjudication, so long as, within ten days of the hearing, notice of the time and place of the hearing has been provided to the person having custody of the child, any foster parents, permanent custodians, or preadoptive parents; grandparents or the closest relative of each of the child's parents; and any person having close emotional ties with the child who is deemed by the court to be essential to the deliberations before the court. The dispositional hearing also may serve as a permanency hearing if, within ten days of the hearing, the persons listed above receive notice this will take place. KSA 38-2254.

KSA 38-2255(a) requires that prior to entering an order of disposition, the court must consider:

- The child's physical, mental, and emotional condition;
- The child's need for assistance;

- The manner in which the parent participated in the abuse, neglect, or abandonment of the child;
- Any relevant information from the intake and assessment process; and
- Evidence received at disposition concerning the child's safety and well-being.

Based on these factors, the court may place the child with a parent; a relative of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; any other suitable person; a shelter facility; a youth residential facility; or, under certain circumstances, the Secretary of DCF. This placement will continue until further order of the court. Along with the dispositional order, the court may grant any person reasonable rights to visit the child upon finding that the visitation rights would be in the best interests of the child or may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. KSA 38-2255(d).

If the child is placed with a parent, the court may impose terms and conditions to assure the proper care and protection of the child, including supervision of the child and parent, participation in available programs, and any special treatment the child requires. KSA 38-2255(b). If permanency is achieved with one parent without terminating the other's parental rights, the court may enter child custody orders, including residency and parenting time, that the court determines to be in the best interests of the child and must complete a parenting plan pursuant to KSA 60-1625. Orders issued pursuant to a CINC proceeding take precedence over an order entered in a civil custody case. KSA 38-2264(i).

If not placed with a parent, a permanency plan must be developed and submitted to the court within 30 days of the dispositional order by the person with custody of the child or a court services officer, ideally in consultation with the child's parents. The required contents of the plan are outlined in KSA 38-2263(c) and (d), and include descriptions of the child's needs and services to be provided in addition to whether the child can be "reintegrated," *i.e.* reunited with a parent or parents. Relevant factors in determining whether

reintegration is a viable alternative include, among others, whether the parent has committed certain crimes, previously been found unfit, and worked towards reintegration. KSA 38-2255(e). If there is disagreement among the persons necessary to the success of the plan, a hearing will be held to consider the merits of the plan. KSA 38-2263(e).

If reintegration is not a viable alternative, within 30 days proceedings will be initiated to terminate parental rights, place the child for adoption, or appoint a permanent custodian. A hearing on the termination of parental rights or appointment of a permanent custodian will be held within 90 days. An exception exists when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian. KSA 38-2255(f). For more information, see KSA 38-2268. Notice of the hearing must be given at least ten days before the hearing to parties and interested parties; grandparents or the closest relative of each of the child's parents; and to foster parents, preadoptive parents, or relatives providing care. Additionally, the court is required to appoint an attorney to represent any parent who fails to appear. KSA38-2267.

The standard for determining fitness is by clear and convincing evidence that the parent is unfit by reason of conduct or condition that renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. When the court determines a parent is unfit, it can authorize an adoption if parental rights were terminated, appoint a permanent custodian, or continue permanency planning. KSA 38-2270; KSA 38-2272; KSA 38-2269. Preference for placement is given to relatives and persons with whom the child has close emotional ties. KSA 38-2272.

Factors the court will consider to determine parental fitness are listed in KSA 38-2269. Additionally, a parent may be found unfit if the court finds that the parent has abandoned the child, the custody of the child was surrendered or the child was left under such circumstances that the identity of the parents is unknown and cannot be determined, in spite of diligent searching, and the parents have not come forward to claim the child within three months after the child is found. KSA 38-2269; KSA 38-2282.

Finally, KSA 38-2271 outlines circumstances that create a presumption of unfitness, including a previous finding of unfitness; two or more occasions in which a child in the parent's custody has been adjudicated a child in need of care; failure to comply with a reasonable reintegration plan; and conviction of certain crimes. Parents bear the burden of rebutting these presumptions by a preponderance of the evidence.

A permanency plan may be amended at any time upon agreement of the plan participants. If the permanency goal changes, however, a permanency hearing will be held within 30 days, as outlined in KSA 38-2264 and 38-2265. Even without a change in the permanency goal, KSA 38-2264 requires that a permanency hearing be held within 12 months after a child is removed from home and at least annually thereafter. If parental rights are terminated or relinquished, the requirements for permanency hearings will continue until the child is adopted or a permanent custodian is appointed. When permanency has been achieved with either a parent or nonparent to the satisfaction of the court, the court will close the case.

Children Subjected to Human Trafficking

2013 Senate Sub. for HB 2034 created a new section in and made amendments to the KCCC, which will take effect January 1, 2014. Specifically, when any child is in custody who has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or who has committed an act which, if committed by an adult, would constitute the crime of selling sexual relations, the court is required to refer the child to the Secretary of DCF. The Secretary is required to use a research-based assessment tool to assess the safety, placement, and treatment needs of the child, and make appropriate recommendations to the court.

The bill allows a law enforcement officer to take a child into custody if the officer reasonably believes the child is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child. The officer is required to place the child in protective custody and is allowed to deliver the child to a staff secure facility.

The officer is required to contact DCF to begin an assessment of the child via a rapid response team to determine appropriate and timely placement.

The requirements for a "staff secure facility" are added to statutes and include: no construction features designed to physically restrict the movements and activities of residents; written policies and procedures that include the use of supervision, inspection, and accountability to promote safe and orderly operations; locked entrances and delayed-exit mechanisms to secure the facility; 24-hour-a-day staff observation of all entrances and exits by a retired or off-duty law enforcement officer; screening and searching of residents and visitors; policies and procedures for knowing resident whereabouts, handling runaways and unauthorized absences; and restricting or controlling resident movement or activity for treatment purposes. Such a facility will provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and other appropriate services to children placed there. Service providers in the facility will be trained to counsel and assist victims of human trafficking and sexual exploitation.

The bill also allows the court to issue an *ex parte* order placing a child in a staff secure facility when the court determines the necessity for an order of temporary custody and there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. If the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

The bill allows the court to enter an order of temporary custody following a hearing if the court determines there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. Under such circumstances, the court is authorized to

place the child in a staff secure facility. Similarly, if the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

If a child has been removed from the custody of a parent, the court may award custody to a staff secure facility if the circumstances described above exist.

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