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Children and Youth

D-3 Foster Care Services and Child in Need of Care Proceedings

Foster Care Services

Foster care services are provided when the court finds a child to be in need of care pursuant to the Revised Kansas Code for the Care of Children, KSA 38-2201 to 38-2283. “Child in Need of Care” (CINC) proceedings can be divided into two categories: those concerning children who lack adequate parental care or control, or have been abused or abandoned; and 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.

Foster care services in Kansas were privatized in 1997 due in part to longstanding concerns about the quality of services for children in state custody, in addition to a 1989 class action lawsuit alleging the Department of Social and Rehabilitation Services (SRS), now known as the Department for Children and Families (DCF), failed to care adequately for children who may have been victims of abuse or neglect. The court approved a settlement in 1993 containing 153 requirements with which SRS was required to comply within certain time frames. SRS did not achieve compliance with many of the settlement requirements for handling cases, and in early 1996, SRS officials informed the Legislature they were moving toward privatization to improve the quality and efficiency of services. After what contractors conceded was a chaotic transition, SRS was found to have successfully completed its terms in 2002.

Currently, the State, through DCF, contracts with two different service providers in four regions for foster care placements, adoptions, and family preservation services. The service providers are Saint Francis Community Services, which provides service to the West and Wichita regions, and KVC Health Systems, Inc. (KVC Kansas), which provides service to the East and Kansas City regions. The service providers subcontract with other providers. Several other agencies are involved in the area of foster care throughout the state, such as the Kansas Children’s Service League and the Children’s Alliance of Kansas. These agencies and others provide a variety of services, including information and resources, for foster parents and prospective foster parents.

Preliminary Issues for CINC Proceedings

CINC proceedings typically begin with a report to DCF, which may be made by anyone who suspects a child may be in need of care. Additionally, the following are required to report any suspicion of abuse or neglect:

- 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. 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 there is serious physical harm to, serious deterioration of, or sexual abuse of the child and action may be required to protect the child, DCF and law enforcement conduct a joint investigation. If there are reasonable grounds to believe abuse or neglect exist, DCF must take immediate steps to¹ protect the health and welfare of the child, as well as 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 the child is a missing person. A court may not remove 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 reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or an emergency exists that threatens the safety of the child.

To issue an *ex parte*¹ order for protective custody, the court also must find there is probable cause to believe the child is in need of care. An *ex parte* order must be served on the child's parents and any other person having legal custody of the child. Along with the order, the court 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. A restraining order 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 for Children and Families. Once issued, an *ex parte* order typically will remain in effect until the temporary custody hearing, which must be held within three business days. KSA 38-2242(b)(2).

When a court evaluates what custody, visitation, or residency arrangements are in the best interest of a child no longer residing with a parent, KSA 38-2286 requires substantial consideration of a grandparent who requests custody, which must be included in the record. 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

¹ Ex parte orders are orders issued involving one party, usually for temporary or emergency relief.

which the child is placed with the grandparent; and the physical and mental health of all involved individuals. If the court places the child in the custody of the Secretary for Children and Families for placement, rather than a grandparent, the law requires substantial consideration of a grandparent who requests placement in the evaluation for placement, and if the grandparent is not selected, the Secretary must 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 will 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.

Once the petition is filed, 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*²² (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 was filed. Grandparents are sent a copy of the petition by first class mail. KSA 38-2235; KSA 38-2236.

²² Guardian *ad litem* For more information on the role of the GAL, see KSA 38-2205

Interested Parties and Attendance at Court Proceedings

In addition to receiving notice of hearings, KSA 38-2241 gives parties and interested parties the right to present oral or written evidence and argument, call and cross-examine witnesses, and 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 it is in the best interest of the child. Other interested parties may include persons with whom the child has resided or share close emotional ties to the child and other persons as the court allows based on the child's best interests.

KSA 38-2247 allows anyone to attend all CINC proceedings leading up to and including adjudication, unless the court determines 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.

Temporary Custody Hearing

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 for Children and Families.

Order of Informal Supervision

At any time after the petition is filed and prior to an adjudication, a court can enter an order for continuance and informal supervision pursuant to KSA 38-2244, placing conditions on the parties and entering restraining orders as needed. The order can continue for up to six months but may be extended for an additional six months. If the child is not placed with a parent, the court must give substantial consideration to a grandparent who requests custody, as outlined in KSA 38-2286 and discussed above.

Adjudication and Disposition

The court must enter a final adjudication or dismissal of a CINC petition within 60 days of the filing of the petition, 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 the child is 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 wellbeing 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.

Prior to entering an order of disposition, KSA 38-2255(a) requires the court to consider the child's physical, mental, and emotional condition and 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 wellbeing. 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 for Children and Families. 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).

Permanency

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, determined 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.

The standard for determining unfitness is clear and convincing evidence 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.

KSA 38-2269 lists factors the court will consider to determine parental unfitness. Additionally, a parent may be found unfit if the court finds the parent has abandoned the child, 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 a permanency hearing to 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.

Fiscal Year 2015 Statewide Foster Care Statistics

An average of 317 children were removed from the home and placed into foster care each month with a total number of 3,799 children placed during FY 2015. An average of 286 children exited foster care placement outside of their home each month, with a total of 3,430 children exiting. In 59 percent of cases, the primary reason for removal was abuse or neglect. A majority of children in out-of-home settings were placed in family foster homes, and the most common permanency goal was reunification. The total average out-of-home placement length of stay was 18.2 months with emancipation as the leading reason for ending placement. Further information on statistics, as well as current figures and regional data, can be found at <http://www.dcf.ks.gov/services/PPS/Pages/FosterCareDemographicReports.aspx>.

Recent Legislation and Reform Efforts

In addition to many existing workgroups, task forces, and committees that consider possible reforms to the CINC process and the delivery of foster care services, in recent years standing and special legislative committees also have considered changes.

Beginning in 2011, the Legislature made changes to the law to expand the rights of grandparents, designating them as interested parties (2011 House Sub. for SB 23) and requiring substantial consideration of grandparents who request custody when a child is removed from parental custody (2012 SB 262).

In 2014, a foster parents' bill of rights, Sub. for SB 394, was introduced, considered, and ultimately referred to the Judicial Council and to the Special Committee on Judiciary for interim study. The Special Committee recommended introduction of a bill proposed by the Judicial Council and that additional consideration be given to the grievance process. That bill was introduced in 2015 as SB 37, which could be considered further in the 2016 Legislative Session.

In addition to SB 37, the Safe Families Act was introduced in 2015 and would allow parents to delegate care and custody of a child to another using power of attorney. Following consideration in the Senate, its contents were added to SB 159,

a bill that would allow law enforcement to take a child into custody when drugs are present. SB 159 currently is in House Judiciary. The Safe Families Act was referred to the Judicial Council for further study.

Following the 2015 Legislative Session, the Legislative Coordinating Council created the Special Committee on Foster Care Adequacy to study some of these issues, including the grandparents' rights legislation and the Safe Families Act, as well as DCF oversight of foster care contractors; whether a working group would aid in addressing foster care concerns; and the selection, qualification, and responsibilities of foster parents.

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