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Health and Social Services

F-1 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). This article focuses 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, DCF contracts with two service providers in four regions for foster care placements, adoptions, and family preservation services: Saint Francis Community Services, which provides service to the West and Wichita regions; and KVC Health Systems, Inc., which provides service to the East and Kansas City regions. The service providers subcontract with other providers. Several other agencies throughout the state are involved with foster care, 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 current 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 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 to 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 be harmed if not immediately removed from the home; allowing the child to remain in the home is contrary to the welfare of the child; or immediate placement is in the child's best interests. 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 child's safety.

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 (Secretary). Once issued, an *ex parte* order typically will remain in effect until the temporary custody hearing.

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 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 placement (rather than a grandparent), the law requires substantial consideration of a grandparent who requests placement in the evaluation for placement. If the grandparent is not selected, the Secretary must

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

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. Pursuant to KSA 38-2233, the county or district attorney will then review the facts, recommendations, and any other evidence available and determine whether the circumstances warrant filing a petition. If warranted, KSA 38-2214 provides 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 38-2233 also allows an individual to file a CINC petition and be represented by the individual's own attorney in the presentation of the case.

Once filed, if the child is in protective custody, KSA 38-2235 allows the court to 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, KSA 38-2236 instructs the court to serve the guardian *ad litem*² (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.

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 participatory rights, subject to the court's restriction on participation if it is in the child's best interests. Other interested parties may include persons with whom the child has resided or shares close emotional ties and other persons as the court allows based on the child's best interests.

KSA 38-2247 allows anyone to attend CINC proceedings leading up to and including adjudication, unless the court determines closed proceedings or the exclusion of an individual would be in the child's best interests or is necessary to protect the parents' privacy rights. 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

KSA 38-2243 governs temporary custody hearings, which must be held within three business days of a child being placed in protective custody. 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 a temporary custody order if there is probable cause to believe the child is a danger to self or others, is not likely to be available within the jurisdiction of the court for future proceedings, or the child's health or welfare 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 can enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. The court may place the child with 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.

² For more information on the role of the GAL, see KSA 38-2205.

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 discussed above.

Adjudication and Disposition

KSA 38-2251 requires the court to 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 38-2250 specifies the petitioner must prove by clear and convincing evidence the child is in need of care. Otherwise, KSA 38-2251 requires the court to dismiss the proceedings. If the child is found to be in need of care, however, pursuant to KSA 38-2253 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.

Prior to entering an order of disposition, KSA 38-2255 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 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. This placement will continue until further order of the court. Along with the dispositional order, the court may grant reasonable visitation rights upon finding visitation would be in the child's best interests or may enter

a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse.

Permanency

If the child is placed with a parent, KSA 38-2255 allows the court to 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. 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 child's best interests and must complete a parenting plan pursuant to KSA 60-1625.

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. KSA 38-2263 outlines the required contents of the plan, including 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. 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 38-2255 lists the relevant factors in determining whether reintegration is a viable alternative, including, among others, whether the parent has committed certain crimes, previously been found unfit, and worked towards reintegration. 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 38-2269 allows courts to terminate parental rights if it finds by 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. Further, it lists factors the court can consider to determine parental unfitness and provides 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. 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. When the court finds a parent is unfit, it can authorize an adoption if parental rights were terminated, appoint a permanent custodian, or continue permanency planning. Preference for placement is given to relatives and persons with whom the child has close emotional ties.

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 2016 Statewide Foster Care Statistics

An average of 329 children were removed from the home and placed into foster care each month with a total number of 3,952 children placed during fiscal year (FY) 2016. An average of 312 children exited

foster care placement outside of their home each month, with a total of 3,745 children exiting. In 61 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, standing and special legislative committees also have considered changes in recent years.

Legislation

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 was heard by the Senate Judiciary Committee; however, the Committee did not take action on the bill.

In 2016, the House and Senate Judiciary Committees discussed variations on legislation introduced in 2015 concerning use of a power of attorney to delegate care and custody of a child

to another, which had been referred to the Judicial Council for further study. The 2016 Legislature ultimately enacted SB 418, the Host Families Act, which allows a child placement agency or charitable organization to provide temporary care of children by placing a child with a host family. Host families are subject to screening and background checks and do not receive payment other than reimbursement for actual expenses. The Act also allows DCF to provide information about respite care, voluntary guardianship, and support services, including organizations operating programs under the Act, to families experiencing financial distress, unemployment, homelessness, or other crises and to parents or custodians during a child protective investigation that does not result in an out-of-home placement due to abuse of a child.

Placement must be voluntary and shall not be considered an out-of-home placement, supersede any court order, or preclude any investigation of suspected abuse or neglect. A parent may place a child by executing a power of attorney that delegates to a host family any powers regarding the care and custody of the child, except power to consent to marriage or adoption, performance or inducement of an abortion, or termination of parental rights. The power of attorney may not be executed without the consent of all individuals with legal custody of the child, and execution is not evidence of abandonment, abuse, or neglect.

The power of attorney may not exceed one year but may be renewed for one additional year. The bill includes an exception, however, for parents serving in the military, who may delegate powers for a period longer than one year if on active duty service, but no more than the term of active duty service plus 30 days. A parent executing a power of attorney under the Act can revoke or withdraw the power of attorney at any time. Upon such withdrawal or revocation, the child must be returned to the parent as soon as reasonably possible.

Similarly, 2016 SB 418 specified nothing in the CINC Code compels a parent to medicate a child if the parent is acting in accordance with a physician's medical advice, and in these circumstances, absent a specific showing of a causal relation between the actions and harm to the child, a parent's actions

do not constitute a basis for determination that a child is a CINC, removal of custody of a child, or termination of parental rights. Further, the bill allowed county or district attorneys from another jurisdiction to access the official file and social file in a CINC proceeding when involved with a pending CINC case involving any of the same parties or interested parties.

Special Committee on Foster Care Adequacy

The Legislative Coordinating Council created the Special Committee on Foster Care Adequacy in 2015 to study 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. The Committee recommended evidence-based, peer-reviewed research on family structure be given high priority when considering best interests and making foster care placement decisions. Additionally, it recommended introduction of legislation creating a joint committee to oversee foster care or alternatively, that a Senate committee and a House committee be charged with reviewing the topic of foster care.

During the 2016 Interim, the Committee was to study similar issues and consider a two-part report of DCF released by the Legislative Division of Post Audit (LPA).

LPA Reports on Foster Care and Adoption

Parts 1 and 2 of the report entitled "Foster Care and Adoption in Kansas: Reviewing Various Issues Related to the State's Foster Care and Adoption System," are available at <http://kslpa.org/index.php>. Part 1 identified concerns and made recommendations related to ongoing efforts to improve child protective services; failure to consistently perform background checks for foster parents and to conduct monthly in-person visits; and foster homes with insufficient sleeping space and insufficient financial resources.

Part 2 looked at compliance with state and federal law and found DCF had not followed some of the safety and living condition requirements reviewed

in Part 1. Further, it found DCF had materially complied with most, but not all, federal requirements in 2014 and 2015 and had exceeded half of the federal outcome requirements in FY 2016 but did not meet others. Finally, it found DCF must implement a program improvement plan to address issues identified by a 2015 federal review.

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