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March 16, 2015

Kansas House Committee on Judiciary
Representative John Barker, Chair

RE: 2015 SB 157: Child in Need of Care: Specifying that the child in need of care code does not permit any person to compel a parent to medicate a child if the parent is acting in accordance with medical advice from a physician

Hearing Date: March 17, 2015

TESTIMONY OF RONALD W. NELSON
OPPOSING SB 157

Chairman Barker and Members of the Committee:

I am a family law attorney in Johnson County. I've practiced family law for over 25 years. My practice is focused on complex issues in family law and high conflict child custody litigation. In addition to our family law practice, my firm is also involved in handling Child In Need of Care (CINC) cases, with my associate handling cases sometimes as the child's attorney (guardian ad litem), sometimes as a parent's attorney, and in a few instances as special prosecutor.

I strongly oppose SB 157, which would add into the Revised Code for Care of Children a provision that:

(d) Nothing in this code shall be construed to permit any person to compel a parent to medicate a child if the parent is acting in accordance with medical advice from a physician. The actions of a parent in such circumstances shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the actions and harm to the child.

Purportedly, the bill was drafted to prevent schools from 'overmedicating' students; except that the language in the bill doesn't address schools — at all. Instead, because the amended statute is in the Revised Code for Care of Children, the bill addresses children who have been – or might be – removed from a parent's care because the child has been abused or neglected, is truant, or the parent is unable or unfit to care for the child.

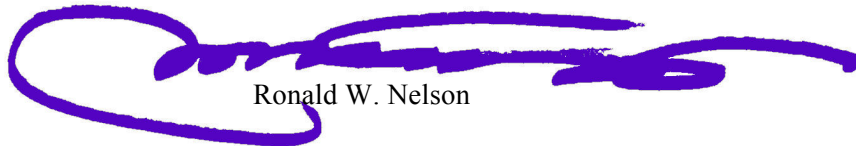
RE: 2015 SB 157: Child In Need of Care; Limitation on Medication Against Parent Wishes
Ronald W. Nelson Testimony in Opposition

Because the amended language is placed in the CINC act, if enacted, it would mean that the State and the professionals contracted by it to take care of children while the child is in state custody after removal from a parent's home for abuse or neglect could NOT medicate the child if the parent from whom the child was removed objected to the treatment. Although, legitimately, this provision might mean that a parent with beliefs in faith healing or who had other objections to treatment could object to the institution of treatment or giving medication that is contrary to that parent's beliefs, it would also mean that a parent who had medically neglected a child (e.g. failing to adequately treat a child with diabetes, severe mental health disorder, significant depression, cancer, etc) would be able to prevent the proper treatment of a child for those beliefs.

The limitation in the bill that the State cannot compel the treatment if "the parent is acting in accordance with medical advice from a physician, that limitation does not necessarily put any real limits on the parent's direction — because as we all know, if you want someone to say something you can usually find someone to say it (or at least keep looking until you find someone who does).

The provision that, "The actions of a parent in such circumstances shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the actions and harm to the child" is directly tied to concerns expressed in the last paragraph. The bill appears to be directly written to stop the State from stepping into a situation to treat a child who is not being adequately treated by a parent because that parent is following that parent's view of what is best for the child (supported by that parent's self-selected physician).

The provisions of the bill do not seem well thought out. The provisions do not consider what really happens in Child in Need of Care cases, but seems based on a reaction to a few cases based on limited information. This Committee should not approve this bill. It has the potential of being more harmful to children who need care than to the rights of the parents it purports to help.



Ronald W. Nelson