

Approved: 4/3/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Vice Chairperson Terry Presta at 3:30 p.m. on March 12, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Mayans (excused)
Representative Carmody (excused)
Representative Shultz (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Rochelle Chronister, Secretary of SRS
Teresa Markowitz, Commissioner of Children and Family Services, SRS
Sue McKenna, Legal Counsel for Family and Children's Services, SRS
Keith Landis, Christian Science Publication
Jim Clark, County and District Attorneys Association

Others attending: See attached list

Vice Chair Presta called the meeting to order.

HB 3006: **Child in need of care code; notice to foster parents, preadoptive parents and relatives providing care; reintegration; permanent guardianship; extended out of home placement**

Rochelle Chronister, Secretary of Social and Rehabilitation Services, testified in support of **HB 3006**. Conferee Chronister stated the Senate Judiciary Committee placed the provisions of **SB 683** into **HB 2820** yesterday. **SB 683** is basically the same bill as **HB 3006**. The conferee stated that **HB 3006** is same as **HB 2710** with suggested amendments, which was heard in the House Judiciary Subcommittee.

Conferee Chronister stated that this bill is a result of federal legislation, the Adoption Support and Safe Families Act, and it addresses many problems concerning child safety. The conferee stated that this is important legislation for Kansas children who have been abused or neglected. The conferee stated that the bill before the Committee is mainly a result of the adoption of the Safe Families Act. The conferee discussed the three major issues addressed in the federal act. The conferee referred to Attachment C, providing for three things that were not required by the federal act. A new permanent guardianship program, a time frame in which prosecutors would have to file termination proceedings when it is found that re-integration is not viable, and a criminal records check for all adoptions. The main purpose of this bill is to move the process along so the child will have a permanent home. The conferee stated that one of the amendments offered yesterday in the senate committee from the County and District Attorneys' Association concerns time frames and SRS being able to appoint a designee to help in this area. The need for additional attorneys is particularly important when the bill first goes into effect as it is anticipated that there could be from 700 to a 1,000 children needing some kind of motion filed. The conferee stated that this bill will improve the process so a child may have a permanent home. (Attachment 1)

Teresa Markowitz, Commissioner of Children and Family Services, testified in support of **HB 3006**. Conferee Markowitz stated that this bill clarifies that child safety is paramount and that efforts to maintain or reintegrate a child with the family are not appropriate when the court finds the existence of conditions

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m.
on March 12, 1998.

contained in this bill. The conferee reviewed the elements where reasonable effort does not have to be proved. The conferee stated that this bill also provides that when a child has been in foster care for an extended time (defined as 15 out of the last 22 months), and there are no compelling reasons to the contrary, the court may find that reintegration is not a viable alternative. The conferee stated that this bill provides that foster parents, pre adoptive parents and relatives providing care for the child be given notices of hearings and granted the right to be heard. Conferee Markowitz stated that this bill establishes "permanent guardianship" as a relationship which is intended to be permanent and self-sustaining. This bill requires a law enforcement background check for all adoptive parents. The conferee referred to several attachments contained in her written testimony. (Attachment 1)

The Committee members and conferee discussed language contained in the bill and issues concerning establishing a permanent guardianship. Also discussed was the requirement for background checks.

Sue McKenna, SRS, Legal Counsel for Family and Child Services, testified in support of **HB 3006**. Conferee McKenna answered several questions from Committee members. The conferee stated in response to questions on permanent guardianship that a permanent guardian is someone other than a parent who makes a commitment to a child through the age of majority. The conferee stated that this provision provides that the permanent guardian makes decisions. The conferee stated that this provision is aimed at a specific, small population and is aimed specifically at extended kinship situations. The conferee stated that the parent remains the legal parent in name only. The Committee members discussed with the conferee the circumstances where the appointment of a permanent guardianship would be appropriate.

Keith Landis, Christian Science Committee on Publication for Kansas, requested that language be changed to give the court the opportunity to order proper placement of a child based on the facts of the case. (Attachment 2)

Jim Clark, County and District Attorneys Association, testified stating his association holds a neutral position on the bill while endorsing the concept. Conferee Clark addressed some concerns his association has with the bill. The conferee stated that his association applauds the concept of the federal act. The conferee stated that his association supports many of the provisions of **HB 3006**, as it does **SB 683**, and **HB 2710**. The conferee stated that the main concern with the bill is that a funded federal mandate is turned into an unfunded state mandate. The conferee discussed specific concerns with the bill as contained in his written testimony. The conferee stated that the speeded-up requirements, which are not required by the federal act, are going to put a huge caseload on the counties, at least in the beginning. This will take additional resources which the county will have to absorb. Conferee Clark stated that the Senate Committee amended into **HB 2820** language to provide that a county attorney *or a designee* may file those actions, thus allowing for more attorneys to assist in moving these cases. The conferee voiced strong support for the provision allowing for the establishment of a permanent guardianship. (Attachment 3)

The Vice Chair closed the hearing on **HB 3006**.

The Vice Chair adjourned the meeting at 5:35 p.m.

The next meeting is scheduled for March 13, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-12-98

NAME	REPRESENTING
KEITH R LANDIS	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
James Clark	KC DAA
Bruce Lutz	Children's Alliance
Shannon Mingsen	SRS / CFS
Teresa Malowitz	SRS / CFS
Beverly F. Brown	KFFK
Jan W. Larkin	WU CS student
Kelly Anderson	WU Social Work Student
Eric Cartman	South Park, CO

#1

**State of Kansas
Department of Social
& Rehabilitation Services**

Rochelle Chronister, Secretary
Janet Schalansky, Deputy Secretary

For additional information, contact:

SRS Office of Research
Suzanne Woods, Director
915 SW Harrison Street, Sixth Floor
Topeka, Kansas 66612-1570
☎785.296.3329 / Fax 785.296.4685

For fiscal information, contact:

SRS Finance Office
Diane Duffy, Director
915 SW Harrison Street, Tenth Floor
Topeka, Kansas 66612-1570
☎785.296.6216 / Fax 785.296.4676



**House Judiciary Committee
March 12, 1998**

Testimony for House Bill 3006

**Children and Family Services
Teresa Markowitz, Commissioner
(785) 368-6448**

House Judiciary
3-12-98
Attachment 1

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

House Judiciary Committee
House Bill 3006

March 12, 1998

Mr. Chairman and members of the committee, I am Rochelle Chronister, Secretary of Social and Rehabilitation Services. I thank you for the opportunity to appear before you today in support of House Bill 3006.

This is a very important legislation for Kansas children who are abused or neglected. This past fall Congress passed and the President signed landmark legislation for child safety and permanence, The Adoption and Safe Families Act, PL 105 -89. . The last major federal child welfare legislation was 18 years ago when the Adoption Assistance and Child Welfare Act, (PL 96-272) gave rise to many of the current provisions in the Kansas Code for Care of Children.

While the impetus for this House Bill 3006 is the new federal legislation, the provisions of the Act mirror experiences of many states as they have worked to improve their child welfare systems and ensure that children have permanent families. A good many of the provisions of the federal act are already reflected in Kansas statutes. The additional provisions, which I will ask Teresa Markowitz to address, will improve current laws to protect children and to provide them with permanent families with out undue delay.

The federal Act addresses three major issues: (1) it put to rest any confusion about preservation or reunification of families when child safety is in question, holding child safety to be paramount; (2) it defines situations where attempts to reunify a family is not reasonable; and (3) it establishes time lines for courts to determine the most appropriate permanency plan for the child.

This bill is very important to the children in Kansas who have come into state custody and are in foster care. These children, who have suffered experiences which no child should ever have had to face, deserve the best from the adults who are responsible for their futures--their families, social services, prosecutors, judges, advocates, and legislators. Making timely decisions, based on a child's sense of time, is critical to the child's well being. Historically it has often taken years for termination proceedings to be concluded to free a child for adoption.

I urge your careful attention to this bill. I am asking Teresa Markowitz, Commissioner of Children and Family Services to address more specifically provisions of amendments.

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

House Judiciary Committee
House Bill 3006

March 12, 1998

Mr. Chairman and members of the committee, I am Teresa Markowitz, Commissioner of Children and Family Services, I appreciate the opportunity to address the specific provisions of House Bill 3006.

As Secretary Chronister has said, this bill is important to the children of Kansas who are in the custody of the state and in foster care. For a long time we have talked the talk about the importance of permanency for children. This legislation is now asking us to walk the walk. The passage of this legislation sends a clear message to all players in the child welfare system--families, social services, prosecutors, judges,-- that it is no longer acceptable to dawdle along in an adult sense of time when a child's future is at stake.

House Bill 3006 contains the Kansas legislative actions needed to come into compliance with the Adoption and Safe Families Act.

1. Clarifies that child safety is paramount and that efforts to maintain or reintegrate a child with the family is not appropriate when the court has found:
 - o a child has ben subjected to torture, chronic abuse or sexual abuse;
 - o a child has been abandoned;
 - o a parent has assaulted this child or another child;
 - o a parent has killed a child; or
 - o apparent's rights to a sibling have been involuntarily terminated.
2. When the court has found that any of the above is true or that a child has been in foster care for an extended time (defined as 15 out of the last 22 months), and there are no compelling reasons to the contrary, the court may find that reintegration is not a viable alternative. Compelling reasons not to proceed with termination or permanent guardianship include a child is in a stable placement with a relative or that services contained in the case plan as necessary for the safe return for the child have not been made available to the parent with whom reintegration is planned.
3. Provides that foster parents, pre adoptive parents and relatives providing care for the child be given notices of hearings and granted the right to be heard.

4. Establishes “permanent guardianship” as a relationship which is intended to be permanent and self-sustaining. This is not a provision of the Adoption and Safe Families Act, but we believe it is an important permanency provision for a small number of children for whom adoption is not the best plan.
5. Requires a law enforcement background check for adoptive parents. This is currently a requirement for foster parents but not adoptive parents.

In your packet you have:

Attachment A, brief summary of the Adoption and Safe Families Act,

Attachment B, a quick reference of the Adoption and Safe Families Act and corresponding provisions of HB-3006.

Attachment C, a description of the three provisions that are included in HB-3006 but are not required in the federal Act.

Attachment D, a chart that briefly describes the basis for amendments and where they can be found.

I join in urging your favorable consideration of this legislation.

Adoption and Safe Families Act

Congress has passed and the president has signed the Adoption Support and Safe Families Act - P.L. 105-89. This amends Titles IV-B and IV-E of the social security act related to child welfare, foster care and adoption assistance. The Adoption Support and Safe Families Act emphasizes that child safety is paramount, clarifies that re-unification efforts are not always reasonable and recognizes the urgency of making decisions related to children timely. In Kansas many of the provisions of the act are already in state law and we can be proud that once again Kansas has set the pace for the federal initiatives.

Briefly the Adoption and Safe Families Act has four Titles.

Title I - Reasonable Efforts and Child Safety provisions:

- Child health and safety is paramount.
- Reasonable efforts to preserve and reunify families - when a court finds re-unification is not a reasonable goal the court must conduct a permanency hearing within 30 days. Efforts to re-unify are not required when a child has been subjected to torture, chronic abuse or sexual abuse, the child has been abandoned, a parent has assaulted this child or another child, the parents have killed a child, or parental rights to a sibling has been involuntarily terminated.
- Efforts to adopt - the state must concurrently make reasonable efforts to recruit and approve qualified families and must document efforts to place children in a permanent home (adoption or guardianship).
- Termination of Parental rights - states are required to file a petition to terminate parental rights when the court has determined a child has been in out-of-home placement 15 of the last 22 months or when the court finds reunification is not viable for the reasons listed above.

Title II - Adoption Promotion Provisions

Adoption incentive payments of \$4000.00 per child will be paid to the state for all foster children adopted over a base line number. For children with special needs, an additional \$2,000.00 will be paid.

States must provide medical care for foster children who receive adoption support. Kansas does that now.

A child's eligibility for adoption support will continue if an adoption dissolves due to the death of adoptive parent or for any other reason.

States are not to deny or delay inter-state adoptions.

Title III - System Accountability and Reform Provisions

Permanency Hearing - States must have a permanency hearing within 12 months of date of entry into foster care (current Kansas law) to determine if child should:

- return home;
- be placed for adoption; or
- be referred for legal guardianship or other permanency plan.

HHS will develop performance outcomes by which the state will be measured.

The number of demonstration grants to states is increased to 10.

Title IV - Additional Provisions

The act re-authorizes the Family Preservation and Family Support Act (IV-B part 2) with additional funding for time limited re-integration services and adoption services. It also re-authorizes the funding for the court improvement project.

The act authorizes:

- a Kinship Care study,
- child welfare agencies to use the federal parental locator services to locate absent parents,
- a study of the relationship of substance abuse to child abuse
- increases to \$5000.00 the amount of savings a youth with an independent living plan can conserve.

Additionally it suggests states should consider standby guardianship provisions for chronically ill parents.

This is a major step forward for children. We are proud that the federal statutes reflect many of the provisions in current Kansas law.

**Adoption and Safe Families Act
AND
Corresponding Kansas Action (HB-3006)**

Summary PL 105-89	Kansas Action Needed (HB-3006)
1. Child Health and Safety Paramount	1. Amend K.S.A. 38-1502 (definitions) page 4
2. Reasonable Efforts to Preserve, Reunify Families • If not reasonable, permanency hearing within 30 days	2. Amend K.S.A. 38-1563(h) page 7, 38-1565(a) page 8 & 9, 38-1565(c) page 10, 38-1581(a) page 10, and 38-1583 (g) page 13
3. Documentation of Efforts to Adopt	3. No statute changes needed
4. Termination of Parental Rights; File to Terminate When: • out-of-home 15 of most recent 22 • abandonment • parent assaulting child or other child	4. Amend K.S.A. 38-1502 page 4 Amend K.S.A. 38-1565 (a) and (c) page 8 & 10 Amend K.S.A. 38-1581 (c) page 10 & 11
5. Criminal Records Check • check for foster and adoptive parent (governor or legislature may opt out)	5. Amend K.S.A. 59-2132 page 13 & 14
6. Quality Standard of Care	6. No statute changes needed
7. Adoption Incentive Payments	7. No statute changes needed
8. Technical Assistance to Promote Adoptions	8. No statute changes needed
9. Adoption Assistance in Cases of Dissolved Adoptions	9. No statute changes needed
10. Health Care for Adopted Children with Special Needs	10. No statute changes needed
11. Interjurisdictional Adoption	11. No statute changes needed
12. Permanency Hearings	12. Amend K.S.A. 38-1502 page 4 Amend K.S.A. 38-1561 page 4 Amend K.S.A. 38-1562 page 5 Amend K.S.A. 38-1565 page 9
13. Participation in Case Reviews/hearings	13. Amend K.S.A. 38-1562 (b) page 5 Amend K.S.A. 38-1582 (b) page 11
14. Performance Measures	14. No statute changes needed
15. Child Welfare Demonstrations	15. No statute changes needed
16. Reauthorization and Expansion of Family Preservation Program (IV-B part 2)	16. No statute changes needed
17. Kinship Care Report	17. No statute changes needed
18. Federal Parent Locator Service	18. No statute changes needed
19. Coordination of Substance Abuse and Child Protection	19. No statute changes needed
20. Eligibility for Independent Living Services	20. No statute changes needed
21. Standby Guardianship	21. No statute changes needed

Adoption and Safe Families Act (PL 105-89)
and
Kansas House Bill 3006

House Bill 3006 brings Kansas into compliance with the Federal Adoption and Safe Families Act.

The following amendments are not required by the federal act but are in the spirit of the Act and benefit children and families:

- 1) **Permanent Guardianship:** Permanent guardianship while not a part of the federal act, provides an alternative for a permanent family for children when reintegration is not a viable alternative and adoption is not in the best interests of the child.

Amendments: K.S.A. 38-1502 (w) and (y) [Page 4, lines 14-27], 38-1562 (c) [Page 5, lines 20-43], 38-1565 (c) [Page 10, lines 11-29], 38-1581 (a) [Page 10, lines 36-38], 38-1582 (a) [Page 11, line 8] and 38-1583 (g) [Page 13, lines 10-17].

- 2) **Requirement That Prosecutors File Termination Proceedings Within 30 Days of the Court Finding That Reintegration Is Not a Viable Alternative:** The timeline of 30 days to file a petition to terminate parental rights following a finding by the court the reintegration is not a viable alternative is not in the federal act but supports the spirit of both federal and state statutes to reduce delay in achieving permanency for children.

Amendments: K.S.A. 38-1562 (c) [Page 5, lines 20-43], 38-1565 (c) [Page 10, lines 11-29], 38-1581 (c) [Page 10, line 43 and Page 11, lines 1-5].

- 3) **Criminal Records Check:** The federal legislation allows the Governor or the legislature to opt out of the requirement to require criminal records checks for foster care and adoptive parents. Kansas statutes currently require such checks for licensed foster parents. SRS, through policy, requires Criminal Record Checks for families adopting children in the custody of the state. The amendment offered in K.S.A. 59-2132 (e) [Page 13, lines 40-43 and Page 14, lines 1-3] extends the provision to all adoptions.

House Bill 3006

Section	HB-3006	Basis for Amendment
38-1502 <i>(v) (w) (x)(y)(z)</i>	Page 4 Lines 12-31	Amendments (v) through (z) brings us into compliance with federal requirements. (y) reflects input from OJA, Prosecutors and others.
38-1561	Page 4 Lines 35-37	Amendment based on input from OJA and others to more clearly identify the dispositional hearing as a permanency hearing.
38-1562 <i>(b)</i>	Page 5 Lines 6-7, 12-14;	Compliance with federal statute. Reflects response to concerns from OJA, Representative Pauls and Prosecutors. Note: The 30 day filing requirement is not a federal requirement.
38-1562 <i>(c)</i>	Page 5, Lines 20-43	Compliance with federal statute. Reflects response to concerns from OJA, Representative Pauls and Prosecutors. Note: The 30 day filing requirement is not a federal requirement.
38-1563 <i>(h)</i>	Page 7 Lines 26-41	Compliance with federal statute. Reflects input from the Judiciary.
38-1565 <i>(a)</i>	Page 8 Lines 40-43 Page 9 Lines 1-10	Compliance with federal statute. Reflects input from the Judiciary.
38-1565 <i>(b)</i>	Page 9 Lines 36-39	Compliance with federal statute. Reflects input from Prosecutors.
38-1565 <i>(c)</i>	Page 10 Lines 11-29	Compliance with federal statute. Reflects input from Prosecutors. Note: The 30 day filing requirement is not a federal requirement.
38-1581 <i>(a)</i>	Page 10 Lines 36-38	Compliance with federal statute. Reflects input from Prosecutors.
38-1581 <i>(c)</i>	Page 10 Line 43 Page 11 Lines 1-5	Reflects input from Prosecutors. Note: The 30 day filing requirement is not a federal requirement.

b-1

House Bill 3006

Section	HB-3006	Basis for Amendment
38-1582 (b)	Page 11 Lines 14-15, 17-19	Compliance with federal statute. Reflects input from OJA.
38-1583 (g)	Page 13 Lines 10-17	Permanent guardianship is not required by the federal statute, but is authorized. Reflects input from the Supreme Court Task Force on Permanency Planning, Judiciary and Prosecutors as an alternative to adoption which provides children with safe permanent families.
59-2132 (e)	Page 13 Lines 40-43 Page 14 Lines 1-3	This provision is optional for the states. This amendment would expand current practice for families adopting children in the custody of the Secretary to include all children being adopted. Reflects input from child advocates.

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**Christian Science Committee on Publication
For Kansas**

820 Quincy Suite K
Topeka, Kansas 66612

Office Phone
913/233-7483

To: House Committee on Judiciary

Re: HB 3006

A study of recent federal changes in CAPTA and ASFA legislation results in the conclusion that the amendments in HB 3006 on page 7, lines 28-41, and page 8, line 40 to page 9, line 10, go beyond requirements mandated by the federal legislation. These amendments would prevent a finding that reintegration is a viable alternative in placement of a child if one of several specified actions has occurred.

It is our understanding from the federal legislation that reintegration still may be a viable alternative in some cases and that the option to make such a decision should remain available.

We request that page 7, line 28, and page 8, line 40, be amended as follows:

"Reintegration is ~~not~~ may not be a viable alternative ~~when~~ if the."

This change will give the court the opportunity to order proper placement of a child based on the facts of the case.

Except for appropriate changes in line numbers, this is the same request as that made for HB 2710.



Keith R. Landis
Committee on Publication
for Kansas

House Judiciary
3-12-98
Attachment 2

#3

William E. Kennedy III, President
 Julie McKenna, Vice-President
 David L. Miller, Sec.-Treasurer
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DIRECTORS

William B. Elliott
 Jerome A. Gorman
 James T. Pringle
 Gerald W. Woolwine

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
 (785) 357-6351 • FAX (785) 357-6352 • e-mail kcdaa01@ink.org
 EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

March 12, 1998

TO: House Judiciary Committee

FROM: James Clark, Executive Director, KCDA

RE: House Bill No. 3006

The Kansas County and District Attorneys Association supports many of the provisions of **HB 3006**, as it does **SB 683**, and as it did **HB 2710**: as they appear to be identical bills in response to federal mandates found in the federal Adoption and Safe Families Act, and as several million federal dollars are dependent on compliance with the Act. Our main concern with the bill(s) is that a funded federal mandate is turned into an unfunded state mandate. The bill is an exercise in reverse alchemy, spinning federal gold into a lump of coal for the counties. For example:

Sec. 2, Line 35, requires a permanency hearing within 30 days of determination that reintegration not an option. **Who sets hearing, who presents evidence, where is the funding?**

Sec. 3, Line 42, mandates the county or district attorney to file a motion to terminate parental rights or permanent guardianship (even though permanent guardianship is offered as one of the new options in the bill) within 30 days. **Where is the funding?. Why, when anyone can file a child in need of care petition, does the bill limit the filing of a motion to terminate?**

Sec. 5, Line 36, another mandate for hearing upon a request from the Secretary for all children in SRS custody prior to July 1, 1998. **Where is the funding, not only for counties to build more courtrooms but for OJA to hire more judges?**

Sec. 5, Line 24, another mandate for county or district attorney to file motion within 30 days to terminate parental rights or for permanent guardianship. **No funding, and additional duty of establishing permanent guardianship added to county or district attorneys.**

Sec. 6, Line 43, again mandates the county or district attorney to file pleadings alleging parent unfit and for termination of parental rights or permanent guardianship within 30 days after court determination reintegration not viable option, even though without initial CINC petition, no such finding occurs. **No funding for county, arbitrary limitation on who can file such pleading** (especially where Sec. 6, Line 35 shows current law allows any interested party to file such pleadings).

Summary: The bill attempts to speed the process of permanency by mandating new duties and a 30-day time line on the county and district attorneys, without providing funding to the counties. More importantly, none of these mandates are required by the federal mandate.

House Judiciary
 3-12-98
 Attachment 3