Approved March 22, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:12 on March 21, 2000 in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Jerry Donaldson, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Janet Schalansky, Secretary, SRS
Joyce Allegrucci, Assistant Secretary, SRS
Judge Thomas Graber, Sumner County

Others attending: see attached list

SubSB 633–defining child in need of protection and youth in need of community intervention; creating the family services and community intervention fund

Conferee Schalansky testified in support of **SubSB 633.** She stated, "the primary goal of the bill is to prevent the unnecessary removal of children from their homes." She explained that this could be accomplished by creating two categories under the child in need of care code: one for children in need of protection and one for youth in need of community services (YINCS). She also discussed how this legislation is in compliance with the federal government's regulations in the Adoption and Safe Families ACT of 1997 (ASFA). (attachment 1)

Conferee Allegrucci testified in support of **SubSB 633.** She presented a detailed overview of the legislation and what SRS hopes to accomplish through it's enactment. She discussed: establishment of a family services and community intervention fund; YINCS; implementation of ASFA; and the critical nature of professional expertise and judgment before custody. She provided detailed handouts for each of the topics she discussed. Discussion followed. (attachment 2)

Conferee Graber testified that **SubSB 633** still has some unresolved issues carried over from **SB 633.** He stated that "most judges still doubt that it is necessary or even advisable to separate the CINC code into children in need of protection and children in need of community services." He recommended and discussed two changes in the bill which would allow the court flexibility with regard to not terminating parental rights to unfit parents and addition of language which would require the court to provide SRS with a written copy of the orders. (attachment 3)

Written testimony in support of **SubSB 633** was submitted by Donna Whiteman, Kansas Association of School Boards (attachment 4) and Bruce Linhos, Children's Alliance. (attachment 5)

Written testimony opposing **SubSB 633** was submitted by Karen Langston, Assistant District Attorney, Sedgwick County (attachment 6), Sheryl Bussell, Assistant District Attorney, Wyandotte County (attachment 7), Joan Hamilton, District Attorney, Shawnee County, (attachment 8) and William Kennedy III, Riley County Attorney. (attachment 9)

The meeting adjourned at 11:00 a.m. The next scheduled meeting is March 22, 2000.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 21, 2000

NAME	REPRESENTING
DONNA A. WORLEY	Shawnee Co. D.A.
R.S. McKenna	SRS
Joyce Allegrucci	SRS
Janet Schalansky	SRS
Stacey Herman	SRS
[illegible]	District Court
Bruce Linhos	Children's Alliance
[illegible]	Kaw Valley Center
Gary Tegman	DOB
Melissa Ness	Ks Children's Service League
Don Jordan	SRS
[illegible] Jones	KSC
KEVIN GRAHAM	KSC
Paul Davis	KS Bar Assn.
Jeff Bottenberg	Kansas Sheriffs' Ass'n
Mark Goodwin	Hein & Weir
Marc Langston	Public observer
Karen Langston	Sedgwick Cty DA's Office
[illegible]	JJA

John Peterson — Methodist Youthville

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/21/00

NAME	REPRESENTING
Ellen Piekalkiewicz	Assoc. of CMHCs
Bill Henry	Methodist Youthville
Bob Harder	Independent
Marci Landry	KS Legal Svs
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Donna Whiteman	Kansas Assn. of School Boards
TK Shively	Ks Legal Services
Cindy Emig	Kansas Action for Children
Kathy Porter	OJA
Allen R. Slater	District Judge
Donald W. Hymer Jr	KCDAA - Asst. D.A. Johnson County, Ks
Mark Gleeson	OJA
Judy Moler	Ks. Assn. of Counties
Steve Kearney	KS COUNTY & DIST ATTORNEYS
Sheryl A. Bussell	Wyandotte Co. Dist. Atty's Office
Susan Bechard	KCDAA

5b 3-21 att1

State of Kansas Department of Social and Rehabilitation Services

Janet Schalansky, Secretary

for additional information, contact:

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Senate Judiciary Committee
March 21, 2000

Substitute for Senate Bill 633

Office of the Secretary
Janet Schalansky, Secretary
785-296-3271

Sn Jud
3-21-00
att1

Thank you, Mr. Chairman and committee members, for this opportunity to speak in support of Substitute for Senate Bill 633. We believe this is one of the most important changes in the Child in Need of Care Code in many years, and it calls for the legislature to make important policy decisions. The primary goal of this bill is to prevent the unnecessary removal of children from their homes. This is accomplished by creating two categories under the child in need of care code: one would be children in need of protection, for those children who are abused or neglected and can not be kept safely in their own homes. The second would be youth in need of community services; for children who are safe at home but who need services for themselves and their family to function in their homes, schools, and communities. The second goal is to ensure compliance with the requirements of the Adoption and Safe Families Act of 1997 (ASFA) by assigning responsibility to SRS to provide the courts with the documentation required by ASFA.

SRS asked for this Legislation because we believe it is the right thing to do for children and families. The federal government obviously agrees with us, because they are requiring most of what we are proposing under the recently published regulations to carry out the Adoption and Safe Families ACT of 1997. We are <u>not</u> talking about children and youth who are not safe in their homes. The proposed amendments to the Kansas Code for Care of Children contained in this bill are submitted for your approval and seek to accomplish the following ends:

1. To enhance safety and permanence for children;

2. To ensure that children are only removed from their homes when it is necessary to protect them and that children are served where services can be most effective;

3. To comply with the new federal regulations which require child-by-child documentation of actions taken to avoid out-of-home placement and impose severe financial penalties on states for noncompliance.

We believe the provisions of this bill will accomplish these objectives. This legislation comes from the realization that damage does occur to children when they are removed from their homes, even if the removal is brief. Therefore, the action to remove a child from his or her family should only take place when there are no possible alternatives. This bill, along with the Governor's budget, provides for an expansion of services available to children at the community level to ensure more children are served in their homes and communities.

Substitute for Senate Bill 633 brings to this committee three major policy questions:

1. Should the Kansas Code for Care of Children define a "Child in Need of Protection" and a "Youth in Need of Community Services" to recognize special service needs in order that only children who need foster care are removed from their homes?

2. **When safety is not an issue**, should the Kansas Code for Care of Children define the opportunity for SRS and the community to provide services to prevent the need for state custody?

3. In order to protect federal Title IV-E eligibility for children who might later come into foster care, should the Kansas Code for Care of Children be changed to require specific documentation by the Department of Social and Rehabilitation Services (SRS) and written findings by the Courts before any such child comes into state custody?

State of Kansas Department of Social and Rehabilitation Services

Janet Schalansky, Secretary

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Senate Judiciary Committee
March 21, 2000

Substitute for Senate Bill 633

Children and Family Policy
Joyce Allegrucci, Assistant Secretary
785-368-6448

Sn Jud
3-21-00
att 2

Mr. Chairman and members of the committee, I am very pleased to have the opportunity to come before you today to explain the proposals set out in the Substitute for Senate Bill 633.

In the Senate Ways and Means Committee Report of the 1999 legislative session, the committee called for SRS to "consider diverting additional children into family preservation instead of foster care." This proposal allows us to strengthen all services available to children and their families, including family preservation. **I am asking you to note that this bill does not preclude a single child from being taken into SRS custody when necessary for his or her protection.** This bill has several parts:

Family Services and Community Intervention Fund

Mr. Chairman, this bill has already been heard in the Senate Ways and Means Committee, as first the bill establishes a separate fund to receive money to support services in the communities for children and families. In his budget, Governor Graves recommended an investment of $5.1 million for this initiative. **SRS offered up $6 million SGF dollars from foster care which I will be begging to have restored if this bill does not pass.** SRS was chosen as the convening and administering agency of the initiative for Youth in Need of Community Services because it is the state's Medicaid agency and has the experience and expertise required for determining eligibility for federal funding and drawing down federal matching dollars for services to eligible youth and families. **SRS is also the state agency responsible for drawing down and administering federal Title IV-E funds and since those are the state's foster care dollars, that role is critical in this proposal.**

Youth in Need of Community Services (YINCS)

Next the bill creates two categories of Child in Need of Care – Child in Need of Protection and Youth in Need of Community Services. This bill would require the Courts <u>to consider the Secretary's documentation of reasonable efforts</u> to prevent the need for custody before awarding custody to the Secretary. As originally drafted Senate Bill 633 <u>would have required the Secretary's recommendation</u> before a Youth in Need of Community Services could be placed in custody. The courts and others saw this as an inappropriate override of the Court's discretion, and we have worked with a committee of Judges and personnel from the Office of Judicial Administration (OJA) to write language that is satisfactory to the judges, yet still allows for action by SRS and others to provide and document services to protect each child's eligibility for federal Title IV-E funds.

It is very important that you note that, with appropriate documentation as required by the Adoption and Safe Families Act (ASFA), a judge could find any child in either category to be in need of protection and place them in the custody of the Secretary. Mr. Chair, I would ask that special recognition be given to Judge Thomas Graber of Sumner County, Judge Michael Grosko of Wyandotte County, Judge Jean Shepherd of Douglas County, and Judge Michael Freelove of Ford County--along with Kathy Porter and Mark Gleeson of OJA–especially Judge Graber, who worked many, many hours with other judges and with SRS staff to craft a workable solution to the complexities of this bill.

So, why create two categories?

Over the past five years, Kansas has significantly expanded funding for services to children as evidenced by the children's budget. However, there is one group of young people who have not yet been served well. We usually think of them as older children who have been identified by a variety of labels including status offenders, truants, runaways, children without parental control, children with severe emotional disturbances, and other descriptions. However, actual data shows us they are all ages and their presenting problems encompass a wide range of behavioral and family issues.

They come into foster care for reasons other than abuse or neglect in their home. Often parents have told us they "gave up custody" of these children in order to get services; sometimes judges and district attorneys told us they put these children into custody in order to get services and often SRS recommended custody in order to provide services.

Description of Population

In a sample survey of this population conducted on November 12, 1999, we were somewhat surprised to discover that a majority of these youth are girls. We were not surprised to find that these young people have a variety of problems. Some are medically fragile; some have substance abuse problems, severe emotional disturbances, conduct disorders or other disabilities; many have issues with education; some have a combination of these; and many have suffered past abuse or neglect. They come to us through police protective custody, juvenile intake, or reports to SRS, and they become children in need of care--non abuse/neglect (CINC-NAN).

More than 1800 of these young people were placed in foster care during FY 1999 because we have not known what else to do with them. However, most of them are not well-served in foster care because the foster care system is designed to serve children who are in need of protection. We believe that approximately 1200 of those 1800

Children in Need of Care (CINC) would fall into the category of Youth in Need of Community Services (YINCS). The other 600 were children or youth who came to us as non abuse/neglect, but for whom we found significant safety issues and they would be children in need of protection who need to be in foster care. Mr. Chairman, throughout the evolvement of this bill, some judges and district or county attorneys have consistently raised questions and concerns about children who might "fall through the cracks" between the definitions. Every example they gave, including crack-addicted babies, chronic runaways, children who are abandoned, etc. could all be determined to be children in need of protection. The judge will have discretion in every case, and SRS supports placement of children in need of protection.

Today, we are asking you to help us create a new collaboration to serve these children—Youth in Need of Community Services. This is not a new program or a new bureaucracy; it is a system of services—an improved way to serve children, youth, and families using the same services, the same programs, and the same expertise of our communities in a new way AND filling in service gaps that exist for particular children. Mr. Chairman, we ask you to note that the Adoption and Safe Families Act sets outcomes for these children and families that must be met to maintain a state's eligibility to draw down federal Title IV-E dollars. Those outcomes recognize the role of many participants in the lives of these children and families, including the state agency such as SRS, the courts, education, the mental and physical health systems. The juvenile justice system is impacted in exactly the same way in being able to draw down Title IV-E dollars.

The initiative we are proposing will involve the youth and his/her family and all of the community systems available to impact that youth and help prevent the need for state custody of children who are safe in their homes.

Why now?

First, Mr. Chairman, the reason to do this is that it is the right thing to do for children and families and the reason to do it now is two-fold: (1) Kansas **can** do it, and (2) ASFA demands that we do **something.** I ask your patience for me to share with the committee the reasons for my optimism that this can be accomplished now. New four-year contracts for family preservation, foster care, and adoption have been offered—within budget. That system is stabilized—even with some transitions that will take place between contractors and even as we work out cash flow problems created by our method of payment under the old contracts.

We have no intention of trying to implement this in all 105 counties at the same time. The framework for Youth in Need of Community Services is specifically intended to provide communities and judges with new options beyond the foster care system (which is designed to remove and protect children who have been abused and neglected) or the juvenile justice system (which is designed to lock up violent adolescents to protect the public safety). We believe it is also a huge step toward building community capacity for earlier intervention and the prevention that we have all sought for so many years. Mr. Chairman, this is Connect Kansas.

Adoption and Safe Families Act (ASFA) Implementation

So, how does the Substitute for Senate Bill 633 relate to ASFA? Judge Jean Shepherd of Lawrence summed up the implications of the Adoption and Safe Families Act this way: "Leave it to the federal government to make one branch of government's funding (the Executive's Title IV-E dollars) dependent upon the actions of another branch of government (the Judiciary)." That is exactly what ASFA (and the regulations promulgated to implement it) does.

Currently the state is in jeopardy of violating the Adoption and Safe Families Act of 1997. Public Law 96-272 of 1980 required effective "reasonable efforts" to prevent the out-of-home placement of children. Judges needed to note in their orders and journal entries that those reasonable efforts had taken place. Because states have not effectively complied, after March 27, 2000, those journal entries must state what those efforts were and states must be able to document that those efforts actually took place child by child.

On January 25, 2000, the final regulations to implement AFSA were published in the Federal Register—while we were working with the collaborative work groups to design the community services framework for Youth In Need of Community Services. The regulations and the initiative for community services took on a direct link. The regulations, which take effect next week, provide very strict requirements for court orders to reflect child by child documentation of efforts made to prevent out-of-home placement for children either in the custody of the Secretary of SRS or the Commissioner of the JJA. The regulations also impose severe loss of federal Title IV-E dollars for states who do not comply with the requirements. If we do not meet the requirements for each child up front and document those efforts appropriately, that failure will result in the child's not being eligible for federal Title IV-E funding for the duration of that foster care episode. We cannot recover or correct that child's eligibility.

Previously, all that was required to meet the reasonable efforts standard was language that is now set out in Kansas statute to be incorporated by reference into the court order. The new regulations go deeper and require the Federal Department of Health and Human Services to perform audits and determine, not only that court orders now document reasonable efforts, but that the efforts actually occurred.

We have been notified that Kansas will be the first state in federal Region VII to have Title IV-E eligibility audited under these new requirements. That audit will take place this year between July 1 and September 30. Child in Need of Care court files must contain documentation of the required judicial determination.

After March 27, 2000, if a child comes into foster care without our having made "reasonable efforts" to prevent out-of-home placement, or if the judges do not adequately set out those efforts in their court orders, the child loses eligibility for Title IV-E federal funding, and we cannot recover that eligibility AND if it happens too frequently, the state must also pay a penalty in addition to the loss of dollars.

Substitute for Senate Bill 633 addresses these concerns by putting in place a system to assure that efforts to maintain children in their homes are undertaken in all situations except where the safety risks warrant immediate removal. Further, the bill places on SRS the responsibility for documenting the efforts that have been attempted to allow the child to remain at home or to document that remaining in the home is contrary to the welfare of the child as required by ASFA. This will provide the Courts with the necessary evidence and documentation for the specific findings they are required to make and document. The Courts may accept our documentation or order additional efforts by SRS and others responsible for services such as JJA, education or mental health, but each child's Title IV-E eligibility will be protected by the documentation.

Professional Expertise and Judgment Critical Before Custody

The Senate Ways and Means Committee heard from judges, county and district attorneys and other advocates about their concerns with this bill. As you listen to all of us, I hope you will consider the roles and responsibilities of all of us. When I first came to SRS a year ago, I was astounded to discover how little SRS and the courts and the attorneys and even the legislature understood about each other's role in these children's lives. First, I found that many of us do not understand how much damage is done to a child when we remove her/him from home and family. **For all of us, every child's safety is paramount without question.** However, we need to understand that even in the most severe cases and even when a child is not safe, there is harm to that child's sense of self and belonging and attachment. Once damaged, those pieces are not easily repaired. We must make sure we cause the least additional trauma possible as we help the child.

Mr. Chairman, I again ask your indulgence to give an example: In your folder you will find short discussion papers on two disorders that are common in the children identified as Youth In Need of Community Services. One of these disorders is Reactive Attachment Disorder and the other is Conduct Disorder. It is important that you note that the behaviors manifest by these disorders is very similar—often identical—but the treatment is very different.

Almost never should a child with reactive attachment disorder be removed from his family and familiar surroundings if he is safe in those surroundings. On the other hand, a child or youth with a conduct disorder needs to be removed quickly when a violent episode takes place and just as quickly returned home to reinforce appropriate behavior. Both disorders need to be treated within the family and community. It takes real expertise to distinguish between these two, and numerous other, disorders for which children and youth exhibit very similar behaviors. These children and families need a team of SRS, mental health, education, and sometimes other professionals to work cooperatively with them. The reason I point this out is that it highlights the component that has been missing from the system for these children and families—a careful assessment and services by skilled professionals BEFORE a child comes into custody. One simply cannot determine what these children need by reading a file.

The second thing I have been surprised to learn is how differently the Code for Care of Children is applied in different jurisdictions around the state and how each of us considers ourselves as a system around these children and family, but we have a much more difficult time seeing all of us at the same time as THE CHILD WELFARE SYSTEM. Quite recently I was told by a District Attorney that SRS just doesn't "get it" and that judges see things
only from their perspective and that only district attorneys look after the "best interests" of these children. That lack of understanding, questioning of motives, and hostility is incredibly damaging to these children and families. I have not found one single person whether it is an SRS worker, a service provider, a judge, a district attorney, a guardian ad litem, or any other advocate who intended harm to one of these children. I have found too many instances where actions taken by any one of these individuals, because they thought they were the only ones who knew best or were the only ones who held the best interests of the child, or because they had too little knowledge or were overwhelmed with other circumstances, did in fact cause harm to a child or children.

We all need to understand that the **Court** is responsible only for the child and the case in front of it at the moment. Every case should be decided on its own merits and in the best interests of the child. To make those decisions, the Courts rely on all of the rest of us connected with the child for complete, accurate and timely information and for our best professional skills and judgment regarding that child and that situation at the moment. Judges should not have to concern themselves with our budgets or our

contracts; but neither are judges expected to be social workers or therapists who should have to make clinical decisions about what is best for a child. Their responsibility is to follow and apply the law.

Likewise, **County/District Attorneys** are concerned about the safety of children but they also are not therapists or social workers with clinical skills to know a child with reactive attachment disorder from a child with conduct disorder and what to do about that difference. They must prepare a legal case that will stand up to the scrutiny of the law as applied by the judge. They need to rely on the expertise of the people who assess the child and family for safety and risk to determine if circumstances warrant a child being put into custody. County and District Attorneys also have the pressure of responding to the public that elects them.

Social Workers must focus first on the safety of the child and on the best interest of the child and family and their needs at the moment, but social workers also have to respond to the department for which they work and the forces impacting it from the outside. Requirements for law and policy implementation and best practice of social work including application of clinical knowledge, documentation, communication, delivery, and coordination of services all have a bearing on the social worker every day.

At the state department of **SRS**, we are not only responsible for the safety and best interests of the individual child and family, but to our social workers for the tools and support they need to do their job, to the Courts, to the Governor and to the Legislature and to the federal government for administration and policy implementation and sound management, including fiscal management.

You, the **Legislators,** are concerned about the best interests of children and families. You are responsible to the citizens and taxpayers for balanced laws and sound program and fiscal policy and for adequate appropriations to carry out assigned responsibilities. You also have the task to coordinate and implement state laws and policies with federal laws and policies. In this case, the federal government has spoken with its policy, and law and regulations, regarding the right thing to do for children and families.

The primary concern of judges and social workers every day should be what is in the best interest of each child. In addition to those concerns for children, you and I also have to concern ourselves with being responsive to the taxpayers and to the federal government and to any other source of funds for the child welfare system.

Mr. Chairman and members of the committee, I want to reiterate that SRS first considered asking the Legislature to create two categories of Child in Need of Care because we believe that keeping children—who are safe—in their homes and communities is the right and best thing to do for children and families. One system does not fit all of these children. As of January 25, we believe the ASFA regulations added impetus, even urgency, to our mission. This bill and ASFA means that we must all work harder–Courts, District/County Attorneys, service providers, **and especially SRS.** We must work harder to keep families together, work harder to prevent foster care for children who are safe in their homes, and work harder to move children from foster care to reintegration or other permanency.

Mr. Chairman, the Substitute for Senate Bill 633 is the language worked out with the committee of Judges. Individual Judges and individual County or District Attorneys wanted more–or less. We are asking for reasonable and responsible changes that provide for the protection of children, that will help prevent children coming into foster care needlessly, that provide for children and families to receive services in their home and community, and that allow SRS reasonable opportunity to protect the integrity and ability of the state to draw down federal dollars. We urge your favorable consideration of this bill.

I thank you for your patience and will stand for questions.

Youth in Need of Community Services

February 10, 2000

Over the past five years, the State of Kansas has invested more than $736 million **additional** dollars in Kansas children:

Program	SGF①	Tobacco①	All Funds①
Child Care	6.3		18.5
Early Head Start	0.0		5.1
HealthWave	10.8		38.6
Medicaid/Medikan	13.2	1.8	31.0
Developmental Disability Services	5.0	3.0	10.0
Children's Mental Health Services	0.8	6.0	8.4
Custody/Adoption	0.3		56.0
Family Preservation/Family Services	2.7		2.5
Operating Aid to USD's②	531.9		576.8
Special Education Services	45.1		64.1
Medicaid for Special Education Services	0.0		19.0
JJA Prevention	0.0		4.2
JJA Community Services	10.4		11.3
JJA Community Corrections	0.2	10.8	0.2
All Other③	14.8		-109.7
Total	641.5		736.0

① Numbers listed are figures in millions of dollars.

② The Division of Budget indicated that per pupil state aid has increased $144 per student during this time. Various educators have stated that most of this increase went to relieve local property taxes and that this increase went to the taxpayers--not to the students.

③ The all funds number is a result of a decrease in AFDC and a change in reporting Food Stamps in the Children's Budget.

With all of this investment, there is one group of young people who have not yet been served well–the throwaway kids of Kansas. We usually think of them as older children who have been identified by a variety of labels including status offenders, truants, runaways, children out of parental control, children with severe emotional disturbances and other descriptions. However, actual data shows us they are all ages and their present problems encompass a wide range of behavioral and family issues. Nearly 1,800 of these young people are currently in foster care because we have not known what else to do with them. However, most of them are not well-served in foster care because foster care is a system designed to serve children who are in need of protection and these are youth in need of community services.

Today we want to create a new collaboration to save the throwaway kids–these youth in need of community services. This is not a new program or a new bureaucracy; it is a system–an improved way to serve children, youth and families using the same services, the same programs, and the same expertise of our communities in a new way.

This collaboration will involve the youth and his/her family and all of the community systems that are needed to impact that youth's life to make positive changes. It may include SRS with its family support services, economic support services, health care system, and child care/early education system; the juvenile justice system; the educational system; mental health and substance abuse services; the private provider system; and the business and faith communities.

Every cabinet secretary and the Commissioners of Education and the Juvenile Justice Authority will be asked to pledge their department's participation in this collaboration; and the local private non-profit or for-profit contracting partners of any cabinet department will be expected to participate in this collaboration. Local communities, law enforcement, education, the courts, prosecutors and service providers will be requested and encouraged to participate.

This initiative is targeted to assist the young people of Kansas for whom we have not yet made the right decisions nor a productive investment of resources. These young people have a variety of problems and often a complex set of complications in their lives. Some have substance abuse problems; some have severe emotional disturbances or conduct disorders; some have mental retardation or mental illness; some have developmental or physical disabilities; some have a combination of these and many have suffered past abuse or neglect. They come to us through police protective custody, or through juvenile intake, or through reports to SRS, and become children in need of care–who are not being abused or neglected.

At the present time, these young people are often served–or mis-served–in the custody of the Commissioner of the Juvenile Justice Authority or the Secretary of Social and Rehabilitation Services. They are often removed from their homes and their communities because either the parents, schools, SRS, juvenile justice system, courts, law enforcement, or mental health centers do not know what to do with them and do not know how to serve them.

We have tried to serve these children in systems not designed to serve them--and we have largely failed. We have all tried—most parents do the best they can, schools try special education or alternative learning centers, SRS tries family services, law enforcement puts them in police protective custody, district and county attorneys often try diversion or informal supervision, and finally, they

end up in foster care or detention centers or state hospitals and often suspended from school. We have failed because we tried to address the problems of children outside of their family, home and community. Our solutions were dictated, not by what the child needed, but by the child's presenting behavior at the moment or the funding stream we were accessing. We have served them removed from their family and community when the very thing they needed most was to be served with their family and within their community.

In addition we have failed our courts because we offered them either inadequate alternatives or no alternatives. When we give judges only a choice of systems designed to remove children who have been abused and neglected, or designed to lock up violent adolescents to protect the public safety; we have ignored an entire group of Kansas children who will not get better in foster care or in detention or in a state hospital. And we are in jeopardy of violating the Adoption and Safe Families Act of 1997 that demands "reasonable efforts" to prevent the out-of-home placement of children.

These youngsters have become the throwaway youth of Kansas. We must find a way to help them become responsible, contributing members of our communities today or we will surely find them in our state institutions—prisons and state hospitals—tomorrow, because their behaviors will have become truly out of control and they will have harmed someone or themselves.

To continue to serve these youth as we have means to rob foster care services of funds needed for children who are abused and neglected, or to rob the juvenile justice system of funds it needs for violent offenders, or to place them in state hospitals and leave no room for children and youth who are seriously mentally ill. The system these youth need is to be found in their home community, with various services from a variety of sources. Existing funding streams for these services must be coordinated efficiently and brought together to serve the youth.

To underscore our commitment to children, youth and families, this administration will recommend an investment of dollars to be used by the Secretary of Social and Rehabilitation Services to provide a match with local resources brought to the collaboration by other partners--including city and county funds, court services, school district funds and special education funds, health department resources, community foundation, private foundation or corporate funds, juvenile justice prevention funds, substance abuse services, SRS family services, mental health center services, faith community and other charitable funds--pooled together specifically to provide the services needed for children who will be described as children and youth in need of community services. SRS has been chosen as the convening and administering agency

of the community collaboration initiative because it is the state's Medicaid agency and has the experience and expertise required for determining eligibility for federal funding and for drawing down federal matching dollars for services to eligible youth and families.

The matching of these funds should not be confused with community collaborative funds for primary prevention efforts around the state. Youth in need of services funds are for services to a specific population of youth and will be distributed on a proportionate county-by-county basis. The purpose of the community collaboration will be to establish a network of services needed by each youth who require services but do not require the protection of the state.

In the Senate Ways and Means Committee Report of the 1999 legislative session, the committee called for SRS to "consider diverting additional children into family preservation instead of foster care". This proposal will strengthen all family services–including family preservation.

Community collaboration in prevention services for very young children and for appropriate services for older children provides an opportunity for strengthening Kansas families and communities.

Truants, Runaways, Youth Not Under Parental Control
What Do Other States Do?

States label youth who exhibit problem behaviors by a variety of names: Troubled youth, status offenders, non-serious offenders, runaway and at-risk youth, children in need of services, and dependent children. The statutes generally identify behavior such as truancy, early sexual activity, runaway, and failure to respond to parental control and directives. In Kansas these behaviors plus a short list of others [e.g., certain acts prohibited by state law, city ordinance, or county resolution; firearms violations; gaming violations] are identified in statute as children in need of care, as are children who have been abused or neglected. The term non-abuse and neglect "NAN" is not a statutory term but a term of convenience used by the Department of Social and Rehabilitation Services to distinguish between these basically dissimilar (albeit sometimes overlapping) statutory categories of children. In Kansas statutes children who have been abused or neglected plus abandoned children, children illegally placed for adoption, or residing with other abused or neglected children are generally understood to have been harmed or placed at risk of harm by parents or other persons responsible for their care. The NANs on the other hand (referred to in the department's current initiative by the more descriptive label, "youth in need of community intervention"), are at risk because of their own behaviors.

Eleven states who deliver services to children and families for problem behavior by the child do not allow the transfer of custody and removal from the child's home for these behaviors. These states and the responsible agency or service delivery mode are:

Arkansas	Serves families in need of services through the juvenile justice agency.
Kentucky	Provides community based services granted to counties by the Cabinet for Families and Children [the Kentucky equivalent of SRS/CFP].
Massachusetts	Mandates the provision of services to at-risk youth which are overseen by the courts. Community Connections Coalition Boards specify the service plan and make recommendations to the district attorneys.
Minnesota	The Children's Initiative established community teams to provide services to non-abused/neglected families. A special population is identified for a children's mental health initiative for severely emotionally disturbed children.
New Jersey	Provides school-based services to troubled youth by the child welfare agency.
Ohio	Provides community services to high risk and severely emotionally disturbed youth through county Children's Service Boards.
Oklahoma	Provides services to families in need of support.
Pennsylvania	Mandates that status offenders be served by local social services agencies. The juvenile court has no jurisdiction, only the state child welfare agency.
Tennessee	Provides services through the Governor's Office Communities that Care. Family Crisis Intervention programs builds community resources for truants, runaways, and children beyond parental control through community collaborative partnerships (somewhat like Connect Kansas).

Vermont
Has a traditional agency based service delivery. Mandates the referral of status offenders to services but does not provide for state custody.

Washington
Provides family reconciliation services from a non-adversarial mediation process administered by the state child welfare agency

Five states allow for services and the transfer of custody of status offenders to the state juvenile justice agency: Georgia, Louisiana, South Carolina, Wisconsin and Wyoming.

At the time of the review information was not obtained for Idaho, Mississippi, Virginia, and Washington, D.C.

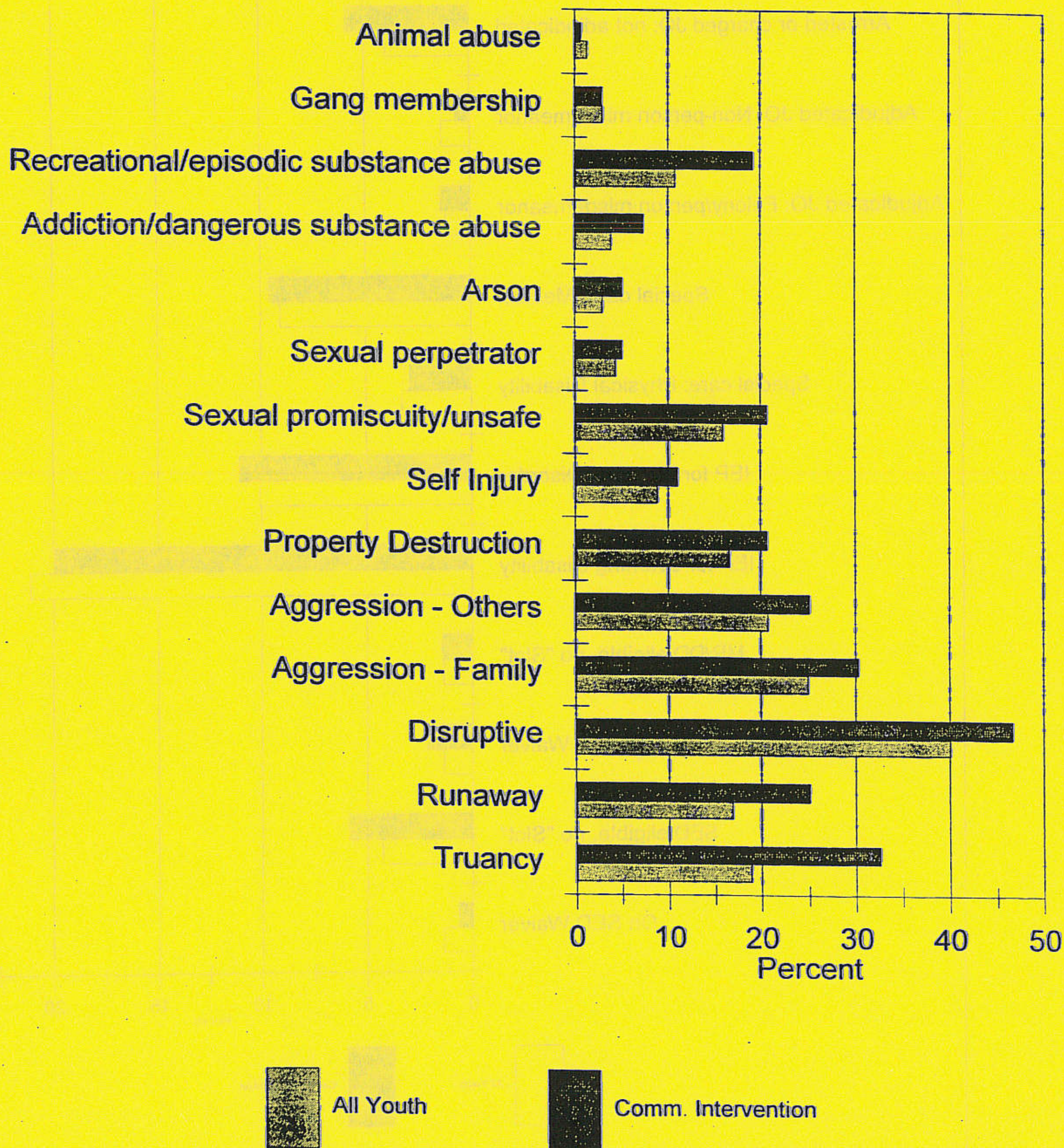
The remaining thirty states allow for services and the transfer of custody of status offenders to the state child welfare agency.

Of the states surveyed, additional information will be sought from the following states: Massachusetts, Minnesota, New Jersey, Tennessee, and Vermont (all discussed above) which appear to have features (service or fiscal) which may be of interest in developing a Kansas strategy. Two states not discussed above include Iowa, which delivers services through community teams and has a long-standing "decategorization" project which blends funding sources including a county mill levy, and Wyoming which has community teams including the state child welfare agency and the juvenile justice agency, which oversees the programs.

YOUTH BEHAVIORS

History of Behavior

	All Youth	Comm. Intervention
Truancy	18.93	32.59
Runaway	16.94	25.19
Disruptive	40.09	46.67
Aggression - Family	25.06	30.37
Aggression - Others	20.84	25.19
Property Destruction	16.63	20.74
Self Injury	8.9	11.11
Sexual promiscuity/unsafe	15.97	20.74
Sexual perpetrator	4.39	5.19
Arson	3.02	5.19
Addiction/dangerous substance abuse	3.95	7.41
Recreational/episodic substance abuse	10.88	19.26
Gang membership	3.04	2.96
Animal abuse	1.39	0.74



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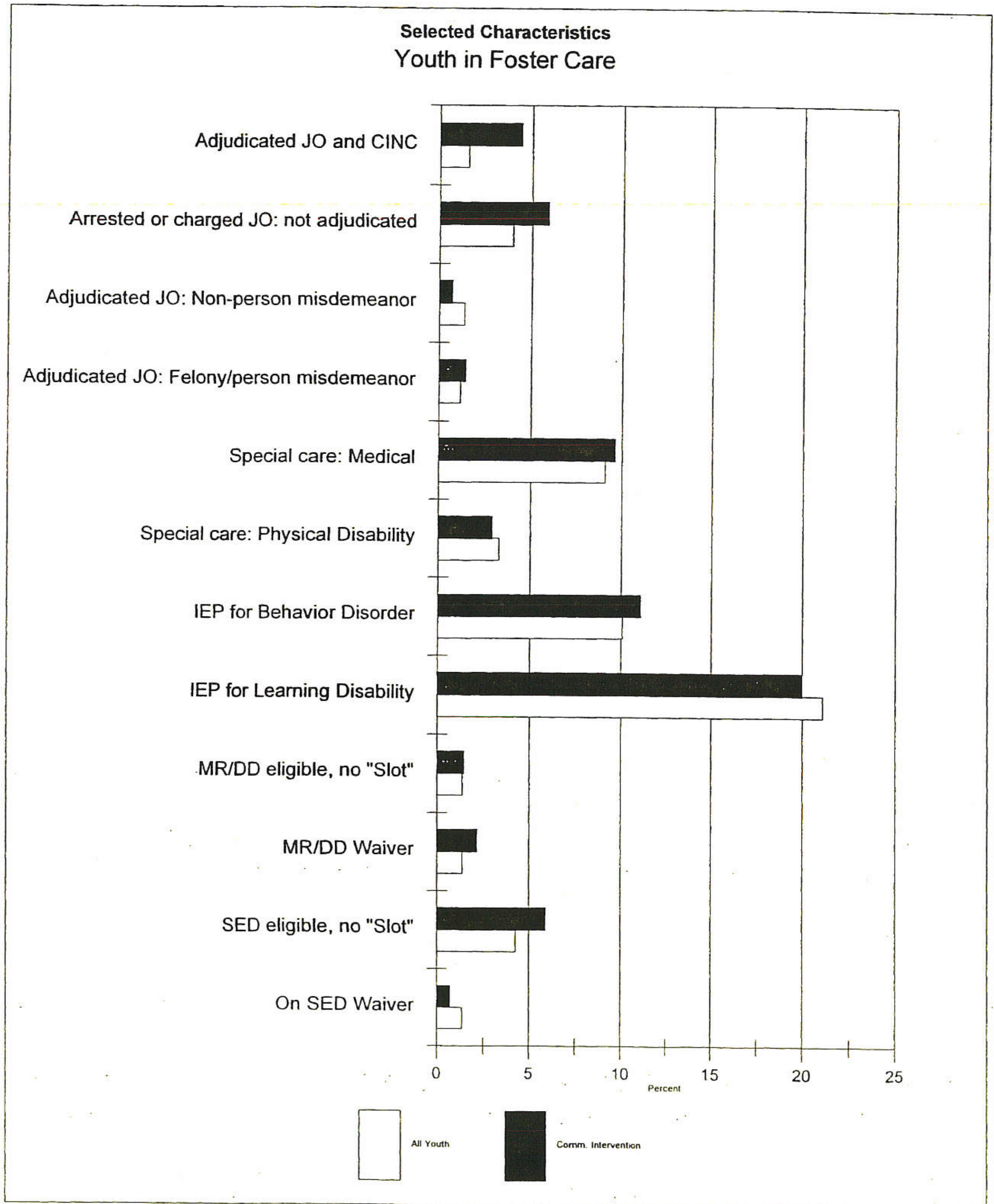
COMPARISON: All youth in foster care with youth in need of community intervention

Characteristic	All Youth	Comm. Intervention
On SED Waiver	1.4	0.74
SED eligible, no "Slot"	4.3	5.93
MR/DD Waiver	1.4	2.22
MR/DD eligible, no "Slot"	1.4	1.48
IEP for Learning Disability	21.1	20
IEP for Behavior Disorder	10.1	11.11
Special care: Physical Disability	3.3	2.96
Special care: Medical	9.1	9.63
Adjudicated JO: Felony/person misdemeanor	1.2	1.48
Adjudicated JO: Non-person misdemeanor	1.4	0.74
Arrested or charged JO: not adjudicated	4	5.93
Adjudicated JO and CINC	1.6	4.44



SELECTED PRELIMINARY FINDINGS*
CHARACTERISTICS OF CHILDREN IN FOSTER CARE, NOVEMBER, 1999

GENDER, RACE/ETHNICITY

All youth	55% are female	45% are male
Community intervention	52% are female	48% are male
All youth	69% are White	31% are Non white
Community intervention	73% are White	27% are Nonwhite
All youth	19% are African American	
Community intervention	15% are African American	
All youth	38% are White females	
Community intervention	38% are White females	

AGE

All youth	34% are pre-first grade age (0-6)
	29% are grade school age (7-12)
	21% are middle school age (13-15)
	15% are high school age (15-18)
	0.7% are over 18
Community intervention	33% are pre-first grade age (0-6)
	24% are grade school age (7-12)
	24% are middle school age (13-15)
	18% are high school age (15-18)
	0% are over 18

The greatest "bulge" in both populations occurs in the ages 14, 15, and 16. However the proportion of the youth is different:

All youth age 14-16	22%
Community intervention	30%

1/20/00

* These data and statistics are preliminary calculations. The final numbers may vary from these but we believe they will not vary much and are presented for the purpose of generating discussion about this population of children and youth.

Why Collaborate for Youth in Need of Community Services?

February 10, 2000

- It is the right action to take for children, youth and families–everyone needs to recognize the negative impact of out-of-home placement on children and families.

- Any time a child is removed from his/her home, the child:
  - loses a sense of belonging and identity
  - suffers loss of individual and family memories/rituals
  - loses the security and familiarity of their home, neighborhood, school and friends
  - often blame themselves
  - may experience induced anxiety behavior regression, rebellious behavior, and/or new or existing negative behaviors can intensify
  - may experience denial and fantasy, delayed expression of feelings and a persistent attachment to rejecting or unreliable parents
  - may struggle with the feelings this disruption caused them, impacting their relationship with new families with whom they are placed, or their own families as they age out of the system.

- Parents of the youth may also experience:
  - loss of control over their own life and family
  - be overwhelmed with multiple intervention strategies
  - suffer financial hardship, thus causing financial as well as emotional crisis and making reintegration difficult

- Costs to the community:
  - court involvement and out-of-home care is very expensive
  - criminal activity, property damage, and problems with their ability to parent their own children in the future

- Removal of children from their community through out-of-home placement only serves to impose the problems on another community. "Problem swapping" is often the result.
- Supports state and federal requirement for "reasonable efforts" to avoid removal of child from home – necessary to collect federal IV-E dollars.
- Children in need of care system designed for children who have been abused and/or neglected.
- Youth are best assessed for appropriate services within their family and community.

- Children with behavioral problems require the involvement of the family and community to help them deal with those behaviors. Separation from home and/or community enables all to avoid responsibility and may also serve to reinforce the child's behavior.
- Community collaborations provide judges and schools with solutions for their concerns about services for youth and families.
- Juveniles who commit minor offenses need some kind of consequences– balance and restorative justice.
- Out-of-home placement/services are not the most effective for youth and families, while it is the most costly for taxpayers.
- 11 states have community service options for youth who are not being abused or neglected. Some serve through juvenile justice, some through social services.
- Out-of-home placement should be reserved to address significant safety issues.

Adoption and Safe Families Act (ASFA)

Outcomes

1. The Administration for Children and Families will review State programs in two areas: (1) Outcomes for children and families in the areas of safety and permanency, and child and family well-being; and (2) systemic factors that directly impact the State's capacity to deliver services leading to improved outcomes. The outcomes are as follows:

Safety Outcomes

2. Children are, first and foremost, protected from abuse and neglect.
3. Children are safely maintained in their homes whenever possible and appropriate.

Permanency Outcomes

1. Children have permanency and stability in their living situations.
2. The continuity of family relationships and connections is preserved for children.

Child and Family Well-Being Outcomes

1. Families have enhanced capacity to provide for their children's needs.
2. Children receive appropriate services to meet their educational needs.
3. Children receive adequate services to meet their physical and mental health needs.

Each outcome is evaluated by using specific performance indicators and two outcomes are evaluated using data indicators as well.

State Department of Social and Rehabilitation Services
Children and Family Policy Division

March 2, 2000

Frequently Asked Questions about Youth in Need of Community Services

Why not just expand family preservation?

These children and families would not be best served by current family preservation program that is intensive and short-term. The reason we have not yet succeeded with these children and families is that they need longer intensive services coupled with long-term or intermittent less intensive services.

While current family preservation service providers could "easily gear up" to serve these families under contract, that would not help build the community capacity to coordinate services already there and fill gaps – which is the ultimate way to move to prevention.

Why is this statute needed?

The law is applied differently in different judicial and county/district attorney jurisdictions. Judges are autonomous in their courtroom. County/district attorneys are elected and responsive to the public as well as the best interests of the child. The federal ASFA law must be implemented uniformly across the state. IV-E eligibility is the same for every child in the state and cannot be corrected if we miss it on any child.

How is Youth In Need of Community Services funded?

The governor has recommended $5.1 million in FY 2001 which will be allocated to SRS area offices and used to match community dollars and services and "fill gaps" in services for particular children.

Why set up a separate fund?

Accountability. These dollars are specifically for serving children and families so that children do not come into foster care. They must accomplish that purpose.

Also, the legislation allows the Secretary of SRS to receive funds from other sources to expand the resources available for this population of children and families.

How will funds be used?

To leverage community resources for these children and families and to fill gaps in services available for individual children.

What happens if the bill does not pass?

The money in the governor's budget recommendation for FY 2001 which was removed from foster care will need to be restored.

Are there other states with similar structures?

Eleven other states have similar systems in place. Some administer through their social service agencies such as SRS; some administer through their juvenile justice system; one administers through the education system and another has set up a separate community collaboration system.

What are the differences between references to "child" and "youth"?

We intentionally called one child and one youth because, as you know, SRS lives on acronyms and it would be unworkable to have two identical--so we will have CINCs (children in need of care) and YINCS (youth in need of community services).

SECTION BY SECTION SUMMARY – SUBSTITUTE FOR SB 633
Arranged by Topic

REQUIRED BY OR IN SUPPORT OF THE ADOPTION AND SAFE FAMILIES ACT (ASFA):

Section 6. K.S.A. 38-1531. The petition must specify known efforts to maintain the family unit, to prevent or eliminate the need for removal of a child or the basis that an emergency exists.

Section 7. K.S.A. 38-1532. Requires a copy of the petition be provided to the secretary if custody to the secretary is requested. Failure to obtain a copy does not affect the jurisdiction of the court. The petition must specify known efforts to maintain the family unit, to prevent or eliminate the need for removal of a child or the basis that an emergency exists.

Section 8. K.S.A. 38-1542. An application for an ex parte order of protective custody must state efforts to prevent or eliminate the need for such petition, the basis for a belief that remaining in the home would be contrary to the welfare of the child, or the basis for a filing due to an emergency which threatens the child's safety. If the secretary provides a safety plan acceptable to the court, custody to the secretary only continues until the plan is in place. *45 CFR, 1356.21 (b) 1*

If the court awards protective custody, the court must enter an order concerning the best interest of the child and reasonable efforts to avoid removal. The secretary shall consider the recommendations of a community intervention team, if any, and is to provide the court with written documentation of efforts made to prevent or eliminate the need for custody. The court is to provide the secretary with a written order. *45 CFR, 1356.21 (b) 1*

Section 9. K.S.A. 38-1543. If the court awards protective custody, the court must enter an order concerning the best interest of the child and reasonable efforts to avoid unnecessary removal. A youth in need of community services may be placed in the custody of the Secretary upon the recommendation of the Secretary. The secretary shall consider the recommendations of a community services team, if any, and is to provide the court with written documentation of efforts made to prevent or eliminate the need for custody. The court is to provide the secretary with a written order. *45 CFR, 1356.21 (b) 1*

Section 12. K.S.A. 38-1563. If the court awards protective custody, the court must enter an order concerning whether removal is contrary to the welfare of the child and reasonable efforts to avoid removal. A youth in need of community services may be placed in the custody of the Secretary upon the recommendation of the Secretary. The secretary shall consider the recommendations of a community intervention team, if any, and is to provide the court with written documentation of efforts made to prevent or eliminate the need for custody. The court is to provide the secretary with a written order. *45 CFR, 1356.21 (b) 2*
If the secretary provides the court with a plan to provide for the safety of a child at home which the court finds will ensure safety, the court shall permit the return of the child.

Section 13. K.S.A. 38-1565. Requires the court to make a written finding whether reasonable efforts have been made to achieve the goals of a permanency plan and whether continued out of home placement is in the best interest of the child. This review must occur not less than every 12 months. If reintegration is a viable option, the court shall determine whether and, if applicable, when the child will be returned home. *45 CFR, 1356.21 (b) 2*

Section 14. K.S.A. 38-1566. If a child in the custody of the secretary has been in placement with a parent for a period of 6 months or longer and then again needs to be placed in out of home care, this is considered a new removal and requires a court determination of best interests of the child and reasonable efforts to prevent or eliminate placement. *45 CFR, 1356.21 (e)*

Section 15. K.S.A. 38-1567. Parallels K.S.A. 38-1566.

Section 19. K.S.A. 38-1584. Replaces post-termination custody for long term foster care with custody for permanent guardianship. Long term foster care is not an accepted permanency goal in Kansas and is now discouraged in ASFA as well. Allows custody to a fit and well meaning relative and continued custody to SRS for continued permanency planning.

REQUIRED FOR IV-E ELIGIBILITY (NOT ASFA REQUIREMENT):

Section 24. K.S.A. 75-3329. Removes the term "not for profit" from the definition of private children's home. This is required for the state to remain eligible for Title IV-E funding.
45 CFR, 1355.20

REQUIRED TO IMPLEMENT THE YOUTH IN NEED OF COMMUNITY SERVICES INITIATIVE:

Section 1. Creates a special fund within the treasury into which the Secretary can deposit and from which the Secretary can expend funds to implement programs and services for youth in need of community services and their families. The department has begun an initiative to serve youth who are not abused or neglected in their own families and communities instead of the foster care system whenever safely possible. It is the department's intent to attract federal, local and private funds to enhance the state's ability to serve these youth.

Section 2. K.S.A. 38-1502. Creates within the definition of child in need of care, two subcategories, "Child in need of Protection," and "Youth in Need of Community Services." The categories highlight the differences between the needs of children who have been harmed or are in danger of harm from their parents or caregivers and youth who are placing themselves at risk because of their own behaviors but who are safe at home.

The definition of permanent guardian is amended to permit continued court supervision and to appoint successor guardians. These changes cure some concerns expressed by judges and will

promote the use of permanent guardianship.

Defines "community services team" which is a new vehicle for community based assessment and services delivery to youth in need of community services.

Section 8. K.S.A. 38-1542. The court must enter a finding regarding the welfare and best interest of the child as well as efforts made to prevent or eliminate the need for placement. If the secretary presents the court with a plan which the court finds will assure the safety of a child the child may be in the protective custody of the secretary until the services are in place. The court may require persons agreeing to the plan to perform as agreed in the plan.

Section 9. K.S.A. 38-1543. If the secretary presents the court with a plan which the court finds will assure the safety of a child the child may be in the temporary custody of the secretary until the services are in place. The court may require persons agreeing to the plan to perform as agreed in the plan.

Section 12. K.S.A. 38-1563. If the child is alleged to be a youth in need of community intervention (not in need of protection) the youth may come into the protective custody of the secretary only if the court finds that a plan provided by the secretary is insufficient to protect the safety of the child. The court may require persons agreeing to the plan to perform as agreed in the plan.

CLARIFICATIONS AND GOOD CHILD WELFARE PRACTICE

Section 2. K.S.A. 38-1502. The subsection regarding permanent guardians removes the requirement that the CINC case be dismissed upon appointment of the guardian and replaces it with continued court jurisdiction upon appointment of a permanent guardian. [Legal Guardianship defined in 45 CFR 45, 1355.20]

A definition of neglect is added to guide the department and the courts.

Section 3. K.S.A. 38-1503. Clarifies that changes to the code are applicable to children already subject to the code.

Section 5. K.S.A. 38-1513. Amends the section to clarify that a medical examination to determine maltreatment may be held without parental consent. Current law appears to give such permission to sexual abuse but not other forms of abuse or neglect.

Clarifies when a person having custody may consent to medical care for a child. The current statute is ambiguous as to consents between adjudication and disposition when both do not occur in the same hearing.

Section 10. K.S.A. 38-1544. When the court takes a child under informal supervision, the court

may issue a restraining order to protect the child from harm, harassment or intimidation.

Section 16. K.S.A. 38-1568. Provides the court will other custody options than SRS upon violation by a youth of a no-run order.

Section 18. K.S.A. 38-1583. Continues court jurisdiction following appointment of a permanent guardian and allows the court to appoint a successor guardian.

Section 21. K.S.A. 38-1587. Continues court jurisdiction following appointment of a permanent guardian and allows the court to appoint a successor guardian. When a child in the custody of the secretary is appointed a permanent guardian, custody to the secretary is discharged.

Section 22. K.S.A. 38-1591. When parental rights have been terminated, the parent(s) must acknowledge their wish to continue appeal at every level of appeal or the appeal shall be dismissed. Currently, attorneys are bound to proceed with appeals even if the parent is disinterested or cannot be located.

TECHNICAL CHANGES:

Section 4. K.S.A. 38-1507. Corrects an error which prevented the free exchange of information with the Kansas Department of Health in Environment in their responsibility for child care licensing and regulation.

Section 11. K.S.A. 38-1562. Technical change. The county or district attorney enters a "motion" to establish permanent guardianship, does not "establish" permanent guardianship.

Section 16. K.S.A. 38-1568. Technical change to reference the correct subsections of K.S.A. 38-1502.

Section 17. K.S.A. 38-1581. Technical change that a filing for termination of parental rights shall occur unless the court has found compelling reasons why adoption or permanent guardianship is not in the child's best interest.

Section 20. K.S.A. 38-1585. Technical change to reference the correct subsections of K.S.A. 38-1502.

Section 23. K.S.A. 38-1610. Technical change to reference the correct subsections of K.S.A. 38-1502.

Section 25. Repeals amended sections.

Section 26. Effective date.

Kansas Department of Social and Rehabilitation Services
Children and Family Policy Division

February 29, 2000

Youth In Need of Community Services (YINCS)
Service Framework

Decisions to Date:

- Community Intervention dollars will be administered at SRS area office level
- Maximum flexibility for dollars and decisions at area office level
- Targeted implementation by county
- Common data collection and documentation will be required
- Statewide outcomes and measurements

Tentative Decisions:

- Intake will be by judicial district or whatever combination they might decide
- Sign off by at least SRS, JJA, judge, community mental health center and school districts responsible for each county to trigger flow of dollars to that county.

Common Themes from Work Groups:

- Central Intake and Assessment
- Standard Data Collection
- Standard Documentation
- Statewide Outcomes and Measures
- 24/7 Crisis Intervention Access (Access to services—not necessarily a facility)
- Common Assessment Tools
- Implemented in Targeted Counties First
- Family Service Coordination decided at local level
- Rapid Eligibility Determination
- Dollars Administered by Area SRS
- Pool Resources First
  - *Parents*
    - Insurance
    - Child Support
  - *Federal Eligibility*
    - SSI
    - TANF
    - Medicare
    - *Waivers*

State Eligibility
- Health Wave
- Community-Based Services
  - CMCH Sliding Scale
  - Waivers
- Substance Abuse

- Coordinated Community Resources
  - *SRS Integrated Services*
    - CPS
    - Family Services/Family Preservation
    - Child Care / Early Head Start/Head Start
    - TAF
    - Economic and Employment Supports
    - Rehabilitation Services
  - *Education*
    - Special Ed IEP
    - Early Education
    - Parents As Teachers
  - *Health*
    - Local Health Department
    - Healthy Families
  - *Mental Health*
  - *Substance Abuse*
  - *Court Services*
    - Probation
  - *County/District Attorney*
    - Diversion
  - *Private Providers*
  - *Family Resource Centers*
  - *Domestic Violence Shelters*
  - *Faith, Benevolent and Civic Organizations*
    - YMCA
    - Big Brothers/Big Sisters
    - Mentoring programs
  - *County Extension Offices*
  - *ETC.*
  - *ETC.*
  - *ETC.*
  - *ETC.*

When these services have all been coordinated, fill gaps with "Community Intervention Dollars"

Children and Family Policy
Evaluation and Program Improvement Unit

Youth in Need of Community Intervention – Conduct Disorder

Who are Conduct Disorder Children?

Some children present annoying and disruptive behaviors while others present more serious anti-social and delinquent behavior. Most troublesome behavior runs along a continuum from irritating to a problem in daily functioning. When a child is older and the behaviors have persisted long enough, they may be considered to be a Conduct Disordered child. The causes of such behavioral and emotional problems are complex; each child is unique with his/her own strengths and needs. To one degree or another, such children may manifest the following behaviors;

- They may have difficulty following rules, or behaving in socially acceptable ways.
- They are disruptive.
- They may be aggressive to family and others.
- They may be truant from school and engage in runaway behaviors.
- They may have a learning disability or behavior disorders which require an IEP.
- They may have depression or be diagnosed with ADD.
- They, most often, have an uncooperative attitude and a fear and mistrust of adults.

How are they identified?

The behavioral and emotional problems usually begin in preschool and elementary years with behavior problems peaking in late adolescents/early adulthood.

Such children may be:

- impulsive, do not grasp future consequences of behavior;
- cannot delay gratification or self-regulate emotions (temper);
- need stimulation and excitement;
- have a low frustration tolerance;
- have aggressive behavior;
- frequently have been exposed to violence and abuse;
- may exhibit rebelliousness;
- experience peer rejection;
- usually associate with negative peers and have favorable attitudes toward deviant behavior.

They frequently come from families with:

- parental history of and favorable attitudes toward deviant behavior;
- harsh/inconsistent discipline;
- poor parental and community monitoring of their behavior;
- low parental (mother) education;
- family conflict, disruption in care giving; substance abuse,
- poor attachment between child and family and community and family.

In school they have:

- academic failure, beginning in elementary school;
- poor academic aptitude test scores; poor reading scores by the 3rd and 4th grade;
- lack of commitment to school, or attachment to teachers, experience peer rejection and social alienation,
- exhibit early aggressive behavior (grades K-3);
- have low aspirations and goals;
- frequently special education services are needed.

What is effective intervention?
The mental, emotional, family issues leading to such behaviors will not suddenly go away. Intervention needs to be concentrated in the child's natural setting: with the family, school, community. It needs to identify and maximize the child and family's strengths while detecting and modifying weaknesses.

Interventions which might "turn the tide" in the life of a child or family, are not announced with "bells and whistles." Attachment to even one caring, responsible adult; teacher, custodian, bus driver, administrator, relative, community member, social worker, case manager, can help children become prosocial.

A comprehensive assessment and individualized education program (IEP) can help identify and maximize children's strengths while detecting and accommodating weaknesses, which multiply risk. To maximize opportunities for prosocial interaction, assign personal coaches or mentors for students with IEP's or reoccurring discipline referrals.

To succeed in school, these children need to learn strategies for improving social performance and controlling emotions. Early intervention programs to improve social competence and meet physical and emotional needs have been shown to increase academic achievement and reduce later behavior problems.

Programs to teach coping strategies, academic, social and life skills to these children have been shown to improve behavior and reduce criminal recidivism rates. The teaching of "emotional literacy" can help children learn to control impulses and emotions, especially anger and aggression.

A study of the effects of remediation on delinquency showed that the child's bond with the tutor affected school attitude and behavior more than improved grades.

To boost a child's self esteem, provide:

- support in opportunities to develop responsibility;
- to contribute to school, family, community life;
- make decisions and choices;
- develop self-discipline;
- deal with failure and mistakes;
- the acceptance and support of one prosocial adult.

Children seek to imitate and gain approval from their role models, be they good or bad.

Students who belonged to social, sports, hobby, or other kinds of groups while in school, missed less school and failed fewer courses than those who did not belong to such groups.

What would be "early intervention?"
Programs for early intervention focus upon; good prenatal care, programs for teenage parents and premature infants, early intervention for at-risk children, home visiting or Parents as Teachers programs, kindergarten readiness programs, stressing the importance of parent involvement, treatment for abusing parents.

Sources: Facts for Families, The American Academy of Child and Adolescent Psychiatry, 1997
Preventing Antisocial Behavior in Disabled and At-Risk Students, Journal of Learning Disabilities, 1997

Mary Hillin, 2/2/2000

Children and Family Policy
Evaluation and Program Improvement Unit
Reactive Attachment Disorder

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Concerns have been raised regarding the availability of treatment resources for children who have been diagnosed with Reactive Attachment Disorder. Such resources are needed to keep children from coming into SRS custody or to utilize when children must be placed outside their own home. The following is a discussion of this disorder relying heavily on the work of Reber (1996) published by the Phillips Graduate Institute, other writings, case readings and discussion with professionals.

Many childhood disorders in the DSM IV (1994) have similar presenting symptoms to Reactive Attachment Disorder. Attention Deficit Hyperactive Disorder, Oppositional Defiant Disorder, Separation Anxiety, Adjustment Disorder, Posttraumatic Stress Disorder may present many of the same symptoms and behaviors. Reactive Attachment Disorder distinguishes itself by being an outgrowth of environmental/familial deprivation. The single factor which differentiates RAD from other disorders is the history of attachment disruptions. Because of this fact, the child welfare system may be a gathering point for children with such a disorder.

No matter what disorder a child with mental or emotional difficulties presents there are some underlying principles which guide practice; the entire family needs to be involved in treatment, sifting out the real issues generating the difficulty is not easy, treatment will not be quick or easy to accomplish. Treatment for such children is a long difficult process. Hospitalization is appropriate for crisis stabilization or medication adjustment but it doesn't cure or, many times, even help the child get better. It does not make mental, emotional or family issues go away. Intervention needs to be concentrated in the child's natural setting; with the family, school, community.

Definition

Attachment is defined as the "lasting psychological connectedness between human beings" which begins in-utero between mother and child. After birth, there are several specific child behaviors and maternal responses which must take place in order for the child to develop normal attachment (bonding). Attachment runs along a continuum between secure and unattached, with the normal child falling somewhere in the middle. Children who have secure attachments can internalize safety and security and have full access to emotions through which they can face adversity and develop normally. If a young child's needs are not met often enough, trust in others will not develop and problems in adjustment and coping appear. Normal attachment is necessary to gain a sense of security and mastery of one's environment.

Attachment is the most critical milestone during the first year of life. It occurs during the same time as rapid brain development. Studies of the effects of trauma on brain development and later behavior have changed the way the treatment of psychiatric disorders is viewed (Pickle 1997). "When an infant or toddler experiences trauma they lack a stable base, a secure sense of attachment, a repertoire of defenses and ego strength." Instead of developing skills to cope with the trauma, the child develops entrenched defensive strategies which affect the ability to think, feel, relate to others and behave in a socially

acceptable manner.

Children with attachment disorder will exhibit a history of significant trauma prior to age five, most usually in the first 18 months of life. Some common trauma events are;

- premature birth,
- physical or psychological abandonment by the mother,
- physical abuse or neglect,
- painful illness or injury (chronic ear infection),
- sudden separation from primary caregiver,
- prenatal alcohol and drug abuse,
- frequent foster placements or failed adoption,
- pathological or inadequate child care.

Many times there are rapid, multiple changes in the child's life leading to unsatisfactory caretaking and relocations.

It is very important when planning treatment for a child experiencing disturbed behavior to distinguish between Reactive Attachment Disorder, Post Traumatic Stress or other Disorders as such a diagnosis has implications for effective treatment. The DSM IV (1994) defines Reactive Attachment Disorder as markedly disturbed and developmentally inappropriate social relatedness in most contexts, beginning before age five. Fraiberg (1980) found that children with attachment disorders have problems in three areas:

1. *Impairment in the capacity to attach:* Relationships are formed only on the basis of need, with little regard for one caregiver over another. The child who asks to be taken home by a stranger with no selective attachment to primary caregivers. The mother figure trying to parent such a child feels rejected, criticized by self and others and to experience an overall sense of inadequacy as a parent. She is the most traumatized by the child's rejection (Cline, 1998).

2. *Developmental retardation:* Conceptual thinking remains low, even after favorable environments are provided. Children who have been traumatized have affective and emotional memories indelibly burned into their brainstem and midbrain, alterations in basic physiological functioning, persisting emotional memories related to the original trauma. (Baylor College of Medicine, 1994) The child doesn't develop emotionally or develop abstract thinking.

3. *Poor impulse control, particularly aggression.* Adolescents who haven't developed empathy or concern for others see others as objects to be used, eg. sexual acting out where the other becomes the victim. Many of these children, as adolescents, wind up in the Juvenile Justice System or eventually in adult prisons.

Children with Reactive Attachment Disorder usually have been severely emotionally abused or neglected. Eighty percent of children abused or neglected in the first year of life demonstrate symptoms of the disorganized/disoriented type of Reactive Attachment Disorder. The National Adoption Center reports that 52% of adoptable children have attachment disorder symptoms. It has been suggested that adoption after six months of age increases the chances of becoming attachment disordered. Minskew and Hooper (1990) report that 86% of special needs adoptions involve sexually abused children. It has been estimated that perhaps half of the incarcerated adult population suffers from some form of attachment breaks in childhood.

An underlying feature of the child with Attachment Disorder is the lack of basic trust. This lack of trust

seems to generate feelings of aloneness, being different, pervasive feelings of anger and excessive need to be in control of everything (Odenthal, no date).

Identifying Behaviors

(Common Symptoms of Reactive Attachment Disorder)

Social	Emotional	Behavioral	Developmental
Superficially engaging and charming child	Indiscriminately affectionate with strangers	Destructive of self, others, things	Developmental lags experienced
Will not make eye contact	Not cuddly or affectionate with parents	Cruelty to animals, siblings, other children	Lacks cause and effect thinking
Has poor peer relationships	Is inappropriately demanding or clingy	Engages in stealing, lying even about unimportant things	Lacks a conscience
Engages in persistent nonsense questions or incessant chatter		Has poor impulse control	Has abnormal speech patterns
Fights for control over everything		Hoarding or gorging of food	
		Preoccupation with fire	

Treatment Approach

The underlying issues generating emotional and behavioral problems for the Attachment Disordered child have to do with loss and grief. There is grief over the loss of the previous family, difficulty trusting the new adoptive or foster family and yet fear of separation from the new family. Such children struggle to believe the adoptive family will truly keep them and not reject them for their bad behavior. Separation from the family through hospitalization, foster or group home placement only makes treatment more difficult as it strengthens the child's fear of rejection and makes it more difficult for him or her to trust caretakers (Alger, 1999).

Mental Health treatment efforts should not only focus on the attachment issues, but also focus on preventing the need for hospitalization or other out of home placement. Parents and/or caretakers must be included as active participants in the treatment process. Any efforts in treatment need to emphasize assessing and treating the family as a unit, and understand that the best way to provide services to a child is to strengthen and empower the family (Alger, 1998). In less severe situations traditional treatment approaches such as individual therapy (with caretaker involvement), family therapy, and/or psychiatric services (ie., medication management) may be effective. In more severe situations, other treatment options are indicated. For any child experiencing severe emotional disturbance, there is an array of additional mental health services available. Such services often include supportive services for the family as well, and are offered in the family home or community (ie., school) rather than the providing agency. (Alger, 1999).

Treatment efforts and resources need to be directed at preserving the existing family through providing the supportive services necessary to maintain the child in the home. Hospitalization or other out-of-home placement is a last resort treatment option and should be considered only when the safety of the child, family, and /or community are at risk. Such a placement can contribute to more acute psychological problems, and exacerbate the already existing attachment issues.

The treatment of any child believed to be attachment disordered begins with a comprehensive assessment which addresses all aspects of the child's life and history;

1. History- Was there significant trauma in the child's life? When did it occur and for how long? Was it in-utero, during birth, after birth, before age three, before age five, much later? Is the child attachment disordered or suffering from Post Traumatic Stress or another disorder as a result of abuse and neglect? Do symptoms of PTSD mask the more basic Reactive Attachment Disorder?

   What strengths might/or might not have been present to mitigate the trauma. What strengths are currently present for the child and family?

2. How does the child relate to the world? How does his/her interaction with the world mirror how he/she perceives the world as a result of the trauma? Adopted attachment disordered children are convinced their parents do not want them and are going to send them away. They behave in such a way as to try to confirm what they believe.

3. What are the child's presenting behaviors? Children with RAD will either have behaviors that protect them from others or control others. Most of these behaviors are not socially acceptable.

4. **What level of health, functionality and bonding does the family possess?** How prepared are they to work with the child, treatment resources, the school system, the community to help the child. If a foster or adoptive family, what level of commitment do they have to the child in working on the problems the RAD child presents? If not available, can such a resource be developed for the child? Any effective treatment is going to involve work with both the child and the family.

5. **Are there professionals available to work with the family**? Such work is draining for both the family and the professionals involved. **Attachment/bonding is a cycle that takes more then one person to make it whole.**

6. What is the child's physical make-up. What is their nutritional status. Are other disabilities, difficulties present which must be addressed? Do they need other therapies; speech, physical therapy, etc. Will medication and medication monitoring help? Is it available?

"It is impossible to erase the devastating consequences of years of abuse easily. The rise in juvenile crime proves that fact." (Pickel)

Helping the child to overcome the destructive early experiences which have led to the Attachment Disorder involves;

- helping them to build basic trust,
- to bond and attach with others (parent figures),
- helping them to build healthy relationships with peers,
- to express needs and feelings appropriately,
- to think rationally,

- and to behave in response to reasonable expectations.

For the foster and adoptive parents trying to parent such a child it means setting small step-by-step goals toward achieving peaceful co-existence rather than a loving relationship, especially if the appropriate therapy is not available. Successful parenting of the RAD child involves high structure, effective environmental control, helping the child develop appropriate responses to authority, as well as, internal controls on behavior, use of logical and natural consequence, reenforcement of natural consequences and nurturing and reparenting (Cline, 1998).

Delaney (1991) has found four areas on which to focus treatment for Reactive Attachment Disorder:
- Containing the child's acting out sabotaging behaviors which place caregivers in an unwanted negative role and jeopardize continued placement in the home.
- Increasing the child's ability to verbalize his negative expectations about caregivers and his/her belief that they will mistreat and/or reject him/her.
- Developing the child's ability to express a wide range of feelings and express his needs to caregivers directly.
- Promoting positive encounters between the child and foster, adoptive or natural parents. Use of humor, surprise, teasing, parents to become more animated, playful and more forceful in loving interactions.

For traumatized children, symptoms and problems become submerged, altered or may even disappear during certain stages of development. Frequently the submerged set of symptoms will re-emerge when a new developmental phase begins. This is very frequently seen during adolescence. Many children traumatized as young children seem to make good progress until they become 12 or 13 years old. At this time, symptoms of hyper sexuality, aggressive or assaultive behaviors, impulse control and anxiety problems re-emerge. "Children who have been abused or experienced traumatic losses during childhood will likely have re-emergence of profound anxiety and impulsivity during adolescents" (Baylor College of Medicine,1997).

Randolph (1998) has developed an assessment instrument to determine the severity of Reactive Attachment Disorder through parent report of behavioral symptoms. The child is classified as mild, moderate or severe on the basis of their score on the instrument.

<u>Attachment Therapy</u>

There are many different treatment approaches a clinician may take in the therapeutic process. Each approach is based on underlying principles within the theory driving the approach. During therapy, a clinician utilizes the approach that fits the client's personality, fit the therapists style and applied to the treatment issues at hand. The Holding/Attachment approaches of therapeutic intervention are but one of many approaches in the therapeutic field(Alger, 1999).

Attachment Therapy has been around since the 1970's and has been called by many different names; holding therapy, holding/attachment therapy, rage reduction, dynamic therapy, Z-process. The Attachment Center at Evergreen, Colorado and the Bonding Center of Ohio list a wide range of treatment modalities which are utilized depending on the outcome of the assessment of the child and family. These may include; reparenting, inner child work, cognitive restructuring, psychodrama, holding therapy, EMDR, sensory integration work, auditory reprocessing, offender treatment, therapeutic foster parenting while the child is in the program, grief and loss work and redecision therapy. All designed to meet the four goals of treatment listed above.

Attachment (holding) therapy has the goal of changing the child's paradigm of being in control by recreating the bonding cycle that is experienced between the infant and mother. The goal is to create a "crisis of intimacy" between parents and child from which a more loving relationship can grow. Holding Therapy is one modality used in more severe cases of Reactive Attachment Disorder.

Critics of holding/attachment therapy see it as abusive as it could traumatize an already traumatized child (James 1989). It is especially damaging to children who suffer from Postturmatic Stress Disorder.

Myeroff and Mertlich (1999) assessed the effects of holding therapy on children who have a history of aggressive and delinquent behaviors. The subjects were adopted children between the ages of 5-14 recruited through the Attachment Center at Evergreen, Colo. The authors found a significant decrease in aggressive and delinquent behaviors in a pre-post quasi-experimental study. Solter has suggested that holding therapy is effective due to the release of strong emotions through the holding process.

Every effort should be made to treat the attachment disordered child in the local community with resources which can be utilized to work with that child and family over a long period of time. Holding or Attachment Therapy may be sought by those who do not know about or have not utilized other resources to meet their child's needs.

Children in SRS Custody

To prevent children from coming into SRS custody for out of home placement services must be directed at strengthening and empowering the family. In more severe situations, the community based wrap-around concept offers the best opportunity for service delivery. Many private insurances, as well as, Medicaid and Health Wave will cover the cost of traditional mental health services. Traditional mental health services are provided by private practitioners, as well as, the local community mental health center and typically include individual, family and group therapy and/or psychiatric services. The non-traditional mental health services recommended for children experiencing severe emotional disturbance are also covered by Medicaid and Health Wave, but are not typically covered by private insurance. The non-traditional mental health services are offered through the local community mental health centers as part of their Community Based Services for severely emotionally disturbed children. These services typically include intensive mental health case management, attendant care, psychosocial groups, wraparound facilitation, and parent support services. Other services may also be available depending on the service array within each mental health center. Any child meeting the criteria for severe emotional disturbance is eligible for community based services through the mental health center.

For very severe situations, when a child is at risk of hospitalization or other out-of-home placement, the child may be eligible for The Home and Community Based Services Waiver for S.E.D. children. The waiver makes additional services available to the child and family which are not routinely offered to all S.E.D. children. The additional services are available in addition to those mentioned above. The waiver provides a different financial eligibility determination process from that of Medicaid or Health Wave. Therefore, it assists families by covering the cost of all the mental health services recommended for the child in the S. E. D. Waiver plan of care. It is important to remember that the S.E.D. Waiver is a diversion program to prevent psychiatric hospitalization and/or other intensive impatient treatment. Eligibility determination for the S.E.D. Waiver is a two fold process. The first step includes a clinical assessment through the local community mental health center to determine if the child meets clinical eligibility. The second step determines whether the child meets the financial eligibility requirements, which are applied for through the CMHC, but determined by the local SRS office.

Research both within Kansas and nationally indicates mental health case management is the service

which best meets the needs of the child and family experiencing severe emotional disturbance (Alger, 1999). Thus it is important to ensure that any child experiencing attachment issues severe enough to warrant the need for more intensive services than might traditionally be offered, be able to obtain them. Anyone involved with such a child needs to keep in mind that the treatment process can be lengthy. Recovery is determined by many factors including the severity of the trauma, the child's readiness and response to treatment, the level of familial involvement, whether the child is in a permanent placement or moves frequently, etc. It is known, however, that children improve more readily in a safe, stable environment, among people they know and trust and who support them through even their most difficult moments. Everyone benefits when such an approach can be successfully implemented: a child's stability is obtained in the least restrictive setting possible, preferably in a home setting; support is given to the child's caretakers which allows them to more adequately meet the needs of the child; the family learns new and strengthens existing coping skills; and the family is linked with appropriate community agencies and social resources which creates an extended, natural support system (Snyder, 1990); and ultimately, the need for the child to be placed in a more intensive setting away from family and community is prevented.

For children who have come into SRS custody, questions arise as to the available resources for treatment. The child welfare/foster care system is not a mental health treatment system. It is a child welfare system containing children with mental health treatment needs. ASFA time lines and requirements for permanency planning place unique pressures on the system with regard to the core issues of Reactive Attachment Disordered children; treatment and permanency. The ASFA requirements may work to the benefit of younger children if they serve to make assessments/decisions sooner. Are/can parents ever meet the needs of their children? Can they relate to the treatment issues just described? Making decisions on the basis of that information can enable permanency and stability become a reality in the child's life sooner rather than later. Recognition must be given to the fact that any adoptive or foster family resources developed for the child may need help and assistance throughout the growing-up years of that child.

Severely Emotionally Disturbed children in the child welfare system are the ones with numerous hospitalizations and out-of-home placements. From information gained in case reading, there may be a tendency to do "too little too late" when it comes to focused treatment for the child and family. Focus should be on early intervention techniques when the child first comes to the attention of the system.

Implications and Recommendations:

Early Crisis Intervention

1) One key to minimizing the sensitizing and damaging potential of an experience is early intervention. Early interventions should be focused on providing stability, predictability and information to the child about what is happening to them and what is going to happen to them. Children in the midst of a crisis are confused and have little idea about what is going to happen next. It is critically important that professionals and caretakers, working with a child in the midst of an acute crisis, provide information for the child which is age appropriate but, at the same time, helps the child develop some sort of understanding of what is going on and what is happening to them. At the point a child comes into SRS custody, every effort should be made to help them to manage the crisis and anxiety in their life. Children are very sensitive to non verbal cues. Providing simple clear and factual information to the child which helps them to understand what has happened will help to minimize the effects of the crisis. Providing adults to whom they can attach and stay connected and who will listen to them will help mitigate the effects of the trauma.

2) A key to minimizing stress and trauma for the child is to provide a stable, predictable and nurturing environment. The child needs to have a predictable schedule which includes a variety of activities, some of which are quiet and contained and others which involve free play and large muscle movement.

3) Children need to have factual information about what they have experienced and the way the mind and body respond to trauma. Adults working with the child need to be able to tolerate the intense emotional nature of the acute traumatic situation so they can help the child to deal with the situation.

The optimum treatment situation for such children is in a **family; natural, foster or adoptive** with knowledgeable professionals who can work with the child and family over time. Such resource may be in the form of services (wrap-around) through the local mental health center, other professionals in the community or other resources who provide support and treat children and families.

Indicators at Intake (Incident Based Report vs. Assessment)

A review of intake and assessment protocols should be completed with regard to whether these children are being identified at intake in such a way that early assessment and intervention can occur, if needed. Special attention should be paid to child behaviors of; cruelty to animals, fire setting, physical aggression toward other children, inappropriate sexual behaviors and generalized danger to self and others. Such behaviors should receive special consideration in relation to the child's age as they are indicators of the child's degree of attachment and concern for others. Prematurity, low birth weight, developmental delay and parents with histories of severe problems are also indicators of potential problems for the child. While many of these situations do not reach the level of severity to warrant SRS intervention, referral to other community resources for help and assistance may be in order.

Clinical Consultation for Area Office Staff

What kind of resources do workers in the local office need to assess the needs of children and families coming into custody? What kind of resources do contractor staff need? Can we get beyond the tendency for "to little treatment/intervention to late" for children in SRS custody?

Prevention Programs

With the reorganization of the Division and new emphasis within SRS, greater efforts should be placed on prevention of the development of Reactive Attachment Disorder and other child mental health problems through working with other Divisions and the Department of Health and Environment in the following areas:

- Prenatal Care
- Programs for Premature Infants
- Early Intervention for At-risk Children
- Home Visiting Programs
- Programs addressing teenage pregnancy
- Preventing Childhood traumas in the first three years of life
- Stressing the importance of parent involvement
- Treatment for substance abusing parents
- Identification of parents at high risk for neglect
- Minimal disruption for young children coming into custody

mrh, 1/4/2000

**Clarification and Explanations from the
Final Rules to the
Adoption and Safe Families Act of 1997
Department of Health and Human Services
Administration for Children and Families**

Selected pages. The sections highlighted by a vertical bar in the margin are especially recommended for review. The full text of the final rule and comments may be found in the Federal Register for Tuesday, January 25, 2000. Part II, 45 CFR Parts 1355, 1356, and 1357. Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355, 1356 and 1357

RIN 0970–AA97

Title IV–E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Final Rule.

SUMMARY: This final rule amends existing regulations concerning Child and Family Services by adding new requirements governing the review of a State's conformity with its State plan under titles IV–B and IV–E of the Social Security Act (the Act), and implements the provisions of the Social Security Act Amendments of 1994 (Pub. L. 103–432), the Multiethnic Placement Act (MEPA) as amended by Pub. L. 104–188, and certain provisions of the Adoption and Safe Families Act (ASFA) of 1997 (Pub. L. 105–89).

In addition, this final rule sets forth regulations that clarify certain eligibility criteria that govern the title IV–E foster care eligibility reviews which the Administration on Children, Youth and Families conducts to ensure a State agency's compliance with statutory requirements under the Act, and makes other technical changes to the race and ethnicity data elements in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy McHugh, Director, Policy Division, Children's Bureau, Administration on Children, Youth and Families at (202) 401–5789.

SUPPLEMENTARY INFORMATION:

I. Background
II. Approach
A. Consultation With the Field
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C. Regulation in Context
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Final Rule

I. Background

Titles IV–B and IV–E of the Social Security Act (the Act) are the primary sources of Federal funds for State child welfare services, foster care and adoption assistance. The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272), amended title IV–B child welfare services to institute financial incentives for States to provide certain protections for children in foster care under section 427 of the Act. Public Law 96–272 also established Part E of title IV of the Act, "Federal Payments for Foster Care and Adoption Assistance." The foster care component of the Aid to Families with Dependent Children (AFDC) program, which had been an integral part of the AFDC program under title IV–A of the Act, was transferred to the new title IV–E, effective on October 1, 1982.

In August 1993, under the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Congress again amended title IV–B, creating two subparts and extending the range of child and family services funded under title IV–B to include family preservation and family support services. The family preservation and support services were designed to strengthen and support families and children in their own homes, as well as children in out-of-home care.

Later, through the Social Security Amendments of 1994, Congress repealed section 427 and amended section 422 of the Act to include, as State plan assurances, the protections formerly required in section 427 of the Act. As a result, ACF is no longer conducting "427" reviews to determine if a State is eligible to receive additional title IV–B, subpart 1 funds. Besides mandating the Secretary to promulgate regulations for reviews of State child and family service programs, the amendments to the Act at section 1123A required the Department to make technical assistance available to the States, and afforded States the opportunity to develop and implement corrective action plans designed to ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

In 1994, Congress passed the Multiethnic Placement Act (MEPA), Public Law 103–382, to address excessive lengths of stay in foster care experienced by children of minority heritage. One factor believed to be contributing to these excessive lengths of stay in foster care was State agencie' attempts to place children of minority heritage in foster and adoptive homes with parents of similar racial or ethnic backgrounds. The MEPA forbids the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. At the same time, Congress added a title IV–B State plan requirement to section 422(b)(9) of the Act, to compel States to make diligent efforts to recruit prospective foster and adoptive parents who reflect the racial and ethnic diversity of the children in the State for whom foster and adoptive homes are needed.

As originally enacted, section 553 of MEPA permitted States to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parent to meet the needs of a child of such background, as one of several factors in making foster and adoptive placements. In 1996, through section 1808, "Removal of Barriers to Interethnic Adoptions," of the Small Business Job Protection Act (Pub. L. 104–188), Congress repealed section 553 of MEPA, believing that the "permissible consideration" language therein was being used to obfuscate the intent of MEPA. Section 1808 of Public Law 104–188 amended title IV–E by adding a State plan requirement, section 471(a)(18) of the Act, which prohibits the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. Section 1808 of Public Law 104–188 also dictates a penalty structure and corrective action planning for any State that violates section 471(a)(18) of the Act.

On November 19, 1997, President Clinton signed the first broad-based child welfare reform legislation since Public Law 96–272 was enacted in 1980. The Adoption and Safe Families Act (ASFA) of 1997, Public Law 105–89, seeks to provide States with the necessary tools and incentives to achieve the original goals of Public Law 96–272: safety; permanency; and child and family well-being. The impetus for the ASFA was a general dissatisfaction with the performance of State' child welfare systems in achieving these goals for children and families. The ASFA seeks to strengthen the child welfare system's response to a child's need for safety and permanency at every point along the continuum of care. In part, the law places safety as the paramount concern in the delivery of child welfare

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years to complete program improvement in all cases, and note that a State will only be able to extend a program improvement plan to three years in rare circumstances subject to the approval of the Secretary. Finally, we will apply penalties for nonconformity as soon as a State fails to improve on an area of nonconformity within the interval noted in the program improvement plan, rather than at the conclusion of the entire plan. We believe that these changes to the final rule properly focus the State on achieving outcomes while maintaining flexibility and accountability.

We also believe it necessary to ensure State accountability in the areas of documentation of reasonable efforts and contrary to the welfare determinations and requirements related to enforcement of section 471(a)(18) of the Act. Some commenters were concerned that the documentation requirements and enforcement of section 471(a)(18) of the Act were too inflexible. However, we believe that State accountability and Federal oversight in these critical areas of child and family protections and anti-discrimination consistent with the statute, will lead to better outcomes for children and families.

Documentation

Use Non-Regulatory Resources to Support Federal Statutory and Regulatory Provisions

As we analyzed the comments, we carefully considered whether Federal regulations were the appropriate vehicle to address certain comments. We believe that we can better respond to some comments in a venue separate from the regulatory process, such as through technical assistance activities or program guidance.

For instance, some commenters requested regulations on title IV–E training or programs under title IV–B of the Act. We have very limited authority to expand the scope of the final rule beyond the issues presented for public comment in the NPRM, but we are now aware of certain issues that we may consider for future clarification. Other commenters asked for specific guidance on working to reunify children with parents who have substance abuse problems, or guidelines for judges on reasonable efforts, while others requested information about "best practices" in concurrent planning. We are committed to providing practice level guidance and will provide technical assistance in a variety of forms rather than in regulation. Other commenters requested Federal funds to subsidize legal guardianships, or train courts and their staff. Under current authority, title IV–E funds cannot be used for these purposes. However, we can direct States to our resource centers who may have information on seeking non-Federal funding sources for such initiatives.

C. Regulation in Context

This final rule incorporates many provisions of recently enacted legislation, including the Adoption and Safe Families Act of 1997, the Multiethnic Placement Act of 1994 as amended, and the Social Security Act Amendments of 1994. We received some comments that criticized us for not focusing on the requirements of ASFA and other amending legislation. We believe that some commenters were unclear that, to a large extent, provisions of ASFA, MEPA, etc. amend the Social Security Act (the Act), and that we refer to the requirements by their citation in the Act, rather than their citations in the amending legislation. We believe that this final rule does address the requirements of the amending legislation in the context of the existing requirements of titles IV–B and IV–E of the Act.

In addition to the guidance provided by this final rule, we encourage administrators to use the appropriate statutes as references in implementing Federal requirements. Also, the final rule amends existing regulations at 45 CFR part 1355 and 45 CFR part 1356. Therefore, we encourage the reader to examine and implement the rules herein in conjunction with existing regulations that have not been amended.

III. Discussion of Major Changes and Provisions of the Final Rule

Discussed below are some of the major changes and provisions of the final rule. A more thorough response to the individual comments can be found in the section-by-section discussion.

A. Definitions

Overall, we received comments that requested greater clarity on several definitions. We frequently encountered comments that noted that the Federal definitions did not encompass the variety of State definitions or practice. Where a definition was not essential to the proper implementation of the program, we chose to be flexible and leave definitions to the State's discretion. In particular, we deleted definitions of a "full hearing" and a "temporary custody hearing" as the comments revealed that they were limiting and not helpful to States. We also received comments that requested additional definitions for terminology used in the statute or in the regulation, *e.g.*, "compelling reasons," "aggravated circumstances," and "reasonable efforts." In most cases we chose not to regulate additional definitions as we do not wish to be more prescriptive and restrict State flexibility.

The proposed definition of the "date a child is considered to have entered foster care" elicited many comments requesting more clarity and State flexibility. In response, we have revised the definition to mirror the statutory language more closely. The "date a child is considered to have entered foster care" is no longer different for children placed in foster care under voluntary placement agreements, but more consistently applied. We also have clarified that a State can use a date earlier than the outside Federal limit set in the statute to begin the "clock" for satisfying the requirements for holding periodic reviews, permanency hearings, and for the termination of parental rights (TPR).

We received many comments on the definition of a "foster family home" that urged us to allow provisional licensure and a two-tiered system of licensing and approval. Despite these comments, we are prohibiting these practices, consistent with the statute, to ensure that children receiving title IV–E funds are placed safely in licensed homes. In recognition that some time may lapse between the date when a foster family home satisfies all requirements for licensure or approval and the actual date the license is issued, we will allow States to claim title IV–E reimbursement during this period, not to exceed 60 days. To accommodate those States where current State practice is not consistent with the requirements for foster family homes, we will allow a six-month period for States to bring current foster family homes to the appropriate licensing standards.

B. Child and Family Services Reviews

We received many comments in response to the proposed child and family services review process that have helped us strengthen it significantly from that proposed in the NPRM. In the NPRM and in the early pilot reviews, we relied heavily on the findings from the on-site reviews to make determinations about substantial conformity. In the final rule, we believe we have balanced our use of statewide quantitative indicators with case-specific qualitative observations in our decision-making about substantial conformity. Among the major changes we have made in the child and family review process are the following: We have strengthened the use of the statewide assessment, selected particular statewide data indicators to use in determining substantial

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conformity, more clearly defined the process for reviewing the systemic factors, clarified the criteria for determining substantial conformity, increased the frequency of full reviews for States not in substantial conformity, added a discrepancy resolution process, and added graduated penalties for continuous nonconformity.

Most of the comments we received, particularly from the States, strongly favored the change to the results-and outcome-based review process proposed in the NPRM from the prior emphasis on compliance with procedural requirements. Similarly, we received very strong support for proposing a review process that provides time for States to improve programs and enhance services to children and families rather than one that imposes immediate penalties for nonconformity with certain requirements. A number of comments also indicated concerns about the details of the review process and raised issues about the overall approach that ACF is taking in reinventing the child and family services reviews.

Since we did not include all of the details of the reviews in the proposed rule, we would like to explain the procedures in more detail prior to addressing the major changes we made to the child and family services review.

We will review State programs in two areas: (1) Outcomes for children and families in the areas of safety, permanency, and child and family well-being; and (2) systemic factors that directly impact the State's capacity to deliver services leading to improved outcomes. The outcomes are as follows:

Safety Outcomes

1. Children are, first and foremost, protected from abuse and neglect.

2. Children are safely maintained in their homes whenever possible and appropriate.

Permanency Outcomes

1. Children have permanency and stability in their living situations.

2. The continuity of family relationships and connections is preserved for children.

Child and Family Well-Being Outcomes

1. Families have enhanced capacity to provide for their children's needs.

2. Children receive appropriate services to meet their educational needs.

3. Children receive adequate services to meet their physical and mental health needs. Each outcome is evaluated by using specific performance indicators and two outcomes are evaluated using data indicators as well.

Outcomes

State programs will also be reviewed to determine the extent to which the State agency has implemented State plan requirements that build the capacity to deliver services leading to improved outcomes. We describe such State plan requirements as systemic factors. These systemic factors include: (1) Statewide information systems; (2) case review system; (3) quality assurance system; (4) staff and provider training; (5) service array; (6) agency responsiveness to the community; and (7) foster and adoptive parent licensing, recruitment and retention. Each of the systemic factors subject to review is based on specific State plan requirements. Our review and assessment of the systemic factors will be based on the extent to which the State is in conformity with those State plan requirements.

We also want to clarify how the various components of the review process will inform decisions regarding substantial conformity.

Four sources of information are included in the child and family services reviews in order to make decisions about substantial conformity:

- Statewide AFCARS and NCANDS data on foster care, adoption and child protective services, including the State's performance on statewide data indicators with respect to the national standards for such;
- Narrative information on outcomes and systemic factors;
- Case-specific qualitative information and family interviews on outcomes; and
- Interviews with non-case-specific State and local community representatives on outcomes and systemic factors.

To complete this review effort, several tools will be used, including:

- A field-tested CFSR procedures manual that addresses the steps to be followed in the reviews and supplements information included in the rule;
- A statewide assessment instrument that directs the utilization of statewide foster care, adoption and child protection data to complete a narrative discussion of the outcomes and systemic factors reviewed, and the State's performance in meeting the standards for the statewide data indicators;
- An on-site intensive review instrument;
- Interview protocols for use with State and local stakeholders; and
- A summary of findings and recommendations form that enables the review team to address each outcome and systemic factor reviewed. This form, when completed, serves as the report of the review findings to the State.

There are five steps in the review process, from the point of initiating the review to assessing penalties where determinations of nonconformity are made:

- Prior to the State beginning work on the statewide assessment, ACF prepares and transmits data profiles of the State's foster care and child protective service populations, using AFCARS and NCANDS data submitted by the State. Some examples of the data included in the profiles include the length of stay in foster care, foster care re-entries, and repeat maltreatment rates of children. The data will indicate whether or not the State meets the national standards for those statewide data indicators used to determine substantial conformity.
- The State then completes the statewide assessment. This task requires the State to examine the data relative to the State programs, goals, and objectives, and consider them in light of the outcomes for children and families subject to review. The State also addresses in narrative the systemic issues under review relative to their influence on the State's capacity to deliver effective services. Based on the quantitative and qualitative findings of the statewide assessment, the State and the ACF Regional Office jointly make decisions about the locations of the on-site review activities and the types of cases that will be reviewed on-site.
- The on-site review is conducted by a joint Federal-State team that combines both the outcomes and the systemic factors being reviewed. In reviewing for the outcomes, a sample of cases is reviewed intensively using information from the case record and interviews with family members, the caseworker, and service providers involved with the family. The findings from the sample of cases are combined with the State's performance on selected Statewide data indicators to make determinations about substantial conformity on the outcomes. In reviewing for the systemic factors, interviews are conducted with State and local representatives, *e.g.*, courts, other agencies, foster families, and foster care review boards. The information from these stakeholder interviews is combined with information on the systemic factors in the statewide assessment to make determinations about substantial conformity on the systemic factors.
- The review team recommends a determination regarding substantial conformity, for each of the outcomes and systemic factors reviewed. The basis for the determinations is a

reviewers would have to remain on-site for three weeks to complete the review. Either option creates unreasonable expectations for States and the Federal government in terms of staff resources and cost and, therefore, does not constitute a cost-effective approach to the reviews.

As originally proposed in the NPRM, the sample would be comprised of both in-home and foster care cases. In-home cases do not provide insight into the State's performance with respect to the permanency outcomes, meaning that not every case in the sample would inform decisions regarding substantial conformity for the permanency outcomes. On the other hand, we need to assure that the sample accurately captures information on in-home service cases in order to examine the safety outcomes based on recent practice and for children who never entered the foster care system.

Therefore, in certain circumstances, the sample size may be increased to assure that all program areas identified in the statewide assessment for further review are adequately represented. In addition, we are requiring, in regulation, that the sample of 30–50 cases include children who entered foster care in the State during the year under review.

We have also added provisions to the rule for resolving discrepancies between the aggregate data and the findings of the on-site review that address the sample of cases reviewed. We are providing States the option of resolving such discrepancies through the submission of additional information, or by ACF and the State reviewing additional cases that, in combination with the 30–50 cases reviewed on-site, will be a sufficient number to comprise a statistically significant sample. ACF and the State will determine jointly the exact number of additional cases to be reviewed, however, the total number of cases may not exceed 150. We chose a maximum of 150 cases because it exceeds the highest number of cases necessary to review a sample that will be statistically significant with a compliance rate of 90 percent (or 95 percent for subsequent reviews), a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. In order to assure that the sample of cases reviewed in the on-site review and the additional cases actually comprise one random sample, we will randomly select the oversample of 150 cases for the on-site review, from which a subsample of 30–50 cases will be drawn. If the State chooses a review of additional cases to resolve a discrepancy, those cases will be selected from the same oversample. In this manner, we believe we will address concerns about the size of the sample, particularly in cases where discrepancies in the findings exist and must be resolved.

We recognize that the sample size does not represent a faultless approach to reviewing State programs, and we fully understand the varying perspectives on this issue. We must emphasize, however, that the quality of information gathered from the overall process, and not the on-site sample in isolation, will benefit children and families by tracking their outcomes and allowing States to focus on program improvements where needed.

Penalties Associated With Nonconformity

We have made an important change in the final rule regarding withholding of funds in situations where States remain in nonconformity continuously on the same outcomes or systemic factors, and for States that elect not to engage in a program improvement plan. The final rule provides for graduated penalties in successive reviews if areas of nonconformity remain uncorrected. We have also applied the maximum withholding to those States that do not implement program improvement plans to correct the areas of nonconformity.

The comments we received on the imposition of penalties raised a number of issues that we considered in making this change to the rule. Some comments indicated concerns that the Federal government is not meeting its stewardship responsibilities by not taking a more aggressive approach to penalizing States found not to be in substantial conformity. Other comments indicated that the potential for penalties is substantial and could have a serious effect on the capacity of States to administer their programs. We also were encouraged to use the process for imposing penalties to assure that program improvements are made when and where they are needed.

We wish to note that we have not proposed an "all or nothing" approach to penalizing States. We have been faithful to the statutory mandate that applicable penalties be commensurate with the extent of nonconformity. Further, we have designed a review process that is based on substantial conformity with the requirements, rather than total compliance without exception, to be consistent with the statutory mandate. Penalties are attached to each outcome and systemic factor determined to be in nonconformity. We are providing time-limited opportunities for States to make needed program improvements prior to withholding of Federal funds for nonconformity. Only when States fail to take advantage of program improvement opportunities or complete a plan successfully will they be faced with an actual loss of Federal funding as a result of the child and family services reviews.

At the same time, we have taken seriously the stewardship responsibilities of the Federal government in enforcing conformity with State plan requirements. These responsibilities are clear and we have not abandoned them. We intend to withhold Federal funds where States are not using those funds to achieve their designated purpose. To clarify that the need to make program improvements will be strongly enforced, we are strengthening sections of the final rule to assure that penalties will be taken in a timely and certain manner.

Penalties

We do not wish to impose penalties in a manner that will impair a State's ability to provide essential services to children and families. However, we have a responsibility to assure that State plan requirements are met and that children and families are served in ways that will provide for their safety, permanency, and well-being.

C. Enforcement of Section 471(a)(18) of the Act

We received a large response to the section of the regulation that enforces the Multiethnic Placement Act, as amended. Several commenters sought practice guidance on how to implement the law. We believe that we have addressed these issues in other forums through policy issuances and HHS-funded technical assistance and guides. Other commenters were concerned that we were not maintaining the partnership approach exemplified in the child and family services reviews. We have made no changes to the regulation in response to these comments, since we find that the statute is definitive in the manner in which we are to implement corrective action and enforce compliance with section 471(a)(18) of the Act.

In response to other comments, we have:

- Clarified that we will consider a State in violation of section 471(a)(18) when it maintains a policy, practice, law or procedure that, on its face, clearly violates section 471(a)(18) of the Act;
- Required States to notify ACF upon a final court finding that the State has violated section 471(a)(18) of the Act;
- Allowed States up to 30 days to develop a corrective action plan to respond to a violation of section 471(a)(18) of the Act resulting from a

permanency hearings, and TPR. In that context, States determine whether a legal guardianship is the most appropriate permanency option for a child. We do not believe it is appropriate for us to regulate the definition of a legal guardianship further.

Comment: One commenter requested guidance on the use of legal guardianship as a permanency option. The commenter requested that we share lessons learned from the title IV–E demonstration waiver States.

Response: Information on the findings from the States with demonstration waivers will be disseminated when available. This information will be better provided through our resource centers and technical assistance activities rather than through regulation.

National Child Abuse and Neglect Data System (NCANDS). No comments were received on this definition and therefore no changes are being made to the language proposed in the NPRM.

Partial Review. The Department is responsible for State compliance with all aspects of the title IV–B and IV–E plan requirements and not only the elements covered by the child and family service reviews. Accordingly, we have revised the definition of "partial review," to clarify its application to title IV–E and title IV–B compliance issues that are outside the scope of the child and family services review. This partial review may cover whatever the Secretary considers necessary to make a determination regarding State plan compliance. An example of an area which is not subject to the full child and family services review but subject to a partial review is compliance with AFCARS. The procedures and standards for AFCARS compliance are set forth in 45 CFR 1355.40.

Permanency Hearing. Comment: One commenter disagreed with the requirement that permanency hearings be held within 12 months of the date a child is considered to have entered foster care. The commenter felt that it did not give families sufficient time to make their homes ready for the child to return.

Response: The requirement to conduct permanency hearings no later than 12 months from when a child enters foster care is statutory. One of the main purposes of ASFA was to encourage States and parents to achieve permanency for children in a more timely manner.

Comment: One commenter did not think that permanency hearings should be conducted by any entity other than a court.

Response: The option for administrative bodies, appointed or approved by the court, to conduct permanency hearings is expressly permitted at section 475(5)(C) of the Act.

Comment: Several commenters were opposed to the requirement that any body that conducts permanency hearings may not be part of or under the supervision or direction of the State agency. One commenter asked if this requirement extended to other public agencies with which the State agency has an agreement.

Response: Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes any body appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the State agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the State agency has an agreement. In accordance with ACYF–PIQ–85–2, title IV–E requirements extend to any other public agency with which the State agency enters an agreement for the performance of title IV–E administrative functions, including responsibility for placement and care of the child.

Comment: One commenter requested that the definition of "permanency hearing" be revised to indicate specifically that a tribal agency is permitted to appear before a tribal court and that the tribal court has the authority to make all the necessary rulings with respect to permanency hearings.

Response: The statutory and regulatory language both clearly indicate that permanency hearings may be held before a tribal court. The references to State courts in the permanency hearing requirements in section 475(5)(C) of the Act and in the definition of permanency hearing at § 1355.20 should be understood to include tribal courts.

Comment: A few commenters requested additional guidance regarding whether reunification efforts can be extended beyond the permanency hearing or if an alternate permanency plan must be set at the permanency hearing if the child and family cannot be reunited at that time.

Response: A major purpose of ASFA is to promote timely permanency planning. We recognize, however, that there are situations when reunification cannot occur within 12 months but it is not appropriate to abandon it as the permanency plan at the permanency hearing. It is acceptable to extend reunification efforts past the permanency hearing if the parent(s) has been diligently working toward reunification and the State and court expect that reunification can occur within a time frame that is consistent with the child's developmental needs.

Comment: One commenter wanted to know if the permanency hearing was similar to a dispositional hearing or an administrative review. This commenter also wanted to know if the hearing could still be held within 18 months of a child entering foster care.

Response: The ASFA changed the name of the former "dispositional hearing" to "permanency hearing" and the timing was changed from 18 months to 12 months (see p. 50072 of the NPRM). No statutory flexibility exists with respect to the time line in the ASFA for conducting permanency hearings.

Comment: One commenter asked that we clarify whether the permanency goal of placement with a fit and willing relative was optional because the commenter's State had eliminated it as a permanency goal. A few commenters asked that we specifically identify placement in "another planned permanent living arrangement" as the appropriate permanency option for all unaccompanied refugee minors. These commenters requested that, in establishing placement in "another planned permanent living arrangement" as the appropriate permanency option for unaccompanied refugee minors, this group of the foster care population be exempted from the requirement to provide a compelling reason for not setting reunification, adoption, legal guardianship or placement with a fit and willing relative as the permanency plan.

Response: We do not believe it is appropriate for ACF or States to exclude any permanency options from consideration or to identify one permanency goal as the appropriate permanency goal for an entire group of the foster care population. Permanency planning is based on the best interests, individual needs, and circumstances of the child. The requirement to document, to the court, a compelling reason for setting a permanency plan other than reunification, adoption, legal guardianship, or placement with a fit and willing relative is statutory and cannot be waived for any group of the foster care population.

Comment: We had several commenters request that we include

Permanency

placement in a permanent foster family home and emancipation in the list of permanency goals at section 475(5)(C) of the Act that are exempt from the compelling reason requirement in that section. Some commenters also asked us to include long term foster care and emancipation as other planned permanent living arrangements.

Response: Section 475(5)(C) of the Act specifies that the only permanency options the State may set without a compelling reason to do so include reunification, adoption, legal guardianship, or placement with a fit and willing relative. Therefore, "another planned permanent living arrangement" would be any permanent living arrangement that is not enumerated in statute.

Comment: One commenter suggested that we amend the section of the definition that describes the decisions to be made at a permanency hearing. The commenter suggested that the term "should" be replaced with "will" in the definition. The commenter thinks the term "will" is consistent with ASFA's intent to ensure permanency while "should" is noncommittal.

Response: We agree and have amended the language accordingly.

Comment: One commenter was opposed to the prohibition of paper reviews, *ex parte* hearings, and agreed orders as satisfying the requirements of a permanency hearing.

Response: Section 475(5)(C) of the Act requires the State to ensure "* * * procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents * * *." In our view, paper reviews, *ex parte* hearings, and agreed orders fail to provide these important safeguards. No change was made to the regulation based on this comment.

Comment: One commenter was opposed to the use of the term "compelling reason" for setting another planned permanent living arrangement as the permanency plan. The commenter feels the term suggests a legal burden of proof that is not appropriate for establishing permanency plans.

Response: The term "compelling reason" is taken directly from the statutory language. Moreover, the term was adopted because far too many children are given the permanency goal of long-term foster care, which is not a permanent living situation for a child. The requirement is in place to encourage States to move children from foster care into the most appropriate permanent situation available.

Comment: We received several comments regarding the preamble language to paragraph 1356.21(g) in the NPRM which states that States should exhaust all efforts to place a child in a permanent home outside the foster care system before placing the child in a permanent foster care setting. The commenters feel this language has created a standard above the "compelling reason" requirement prescribed in statute.

Response: We want to clarify that the language should not be interpreted to set a standard above what is set in statute. It was intended to encourage States to seriously consider placement options outside of foster care before settling on a permanent foster care placement as the permanency plan.

Statewide Assessment (formerly State self-assessment). No comments were received on this definition, so we made no changes to the definition itself. We did, however, change the name from "State self-assessment" to "statewide assessment." The term "statewide assessment" more accurately reflects the comprehensive nature of the assessment conducted during the first phase of a child and family services review.

Temporary custody proceeding. Comment: Several commenters objected to a definition for a temporary custody proceeding. Some commenters expressed confusion while others asserted that the definition, especially in combination with the definition for a "full hearing," did not accurately reflect the variety of State proceedings where placement and care responsibility is granted to the State agency.

Response: In the proposed rule we defined "temporary custody proceeding" as the first judicial proceeding held at or shortly after the emergency removal of a child from the home. We intended to clarify when the State court must make certain reasonable efforts and contrary to the welfare judicial determinations. However, we concur that a Federal definition for a temporary custody proceeding is not helpful in clarifying when the court must make certain title IV–E eligibility determinations, and we have deleted the definition.

Sections 1355.31–1355.37 The Child and Family Services Reviews

Section 1355.31 Elements of the Child and Family Services Review System

This section describes the scope of the child and family services reviews as including programs administered by States under titles IV–B and IV–E of the Act.

All of the relevant comments on this section are addressed in the following sections.

Section 1355.32 Timetable for the Reviews

This section specifies the review timetable for the initial and the subsequent reviews as required by section 1123A of the Act, and sets forth rules for reinstatement of reviews based on information that a State is not in substantial conformity.

Section 1355.32(a) Initial Reviews

This section sets forth the timetable for the initial child and family services reviews.

Comment: We received many comments concerning the time that it will take for States to become familiar with the new review process. Most of the commenters indicated that it will take significant time for States to prepare for the reviews and requested that ACF add to this section a requirement that we provide an advance six-month, or longer, notification to States prior to initiating the review process. Similarly, most of these commenters indicated that the six-month period proposed between publication of the final rule and initiation of the new review schedule is necessary and some comments suggested that a longer time frame to begin reviews is desirable. A small number of comments dissented on this provision.

Response: We acknowledge that advance notice and preparation are required for the child and family services reviews. The exact period of preparation may vary by State and may change as the States and ACF become more familiar with the process. Taking into consideration that Federal staff will also require a period of time to prepare adequately for each review, we do not anticipate lack of advance notice becoming an issue. Therefore, we do not intend to regulate the notification period. We have, however, extended the time for completing the initial reviews to up to 4 years following the effective date of the final rule.

Comment: We received comments requesting coordination among the components of the child and family services reviews with other Federal planning and review functions, *i.e.*, coordinating the statewide assessment with the CFSP and coordinating the reviews with the title IV–E reviews.

Response: We have designed the child and family services reviews to build on and coordinate with the process in place

language to preclude such determinations from being made at an earlier time, thus delaying title IV–E eligibility.

Response: We did not intend to prohibit these determinations from being made at an earlier time and we have amended the regulation language in paragraph (b)(1)(i) accordingly. The rule now requires the State agency to obtain a judicial determination that it either made or was not required to make reasonable efforts to prevent a child's removal from home no later than 60 days from the date the child was removed from the home.

Comment: Many commenters believed that we were overly harsh in prohibiting title IV–E eligibility for an entire foster care episode if the reasonable efforts to prevent removal requirements were not satisfied. Some suggested that the State be permitted to establish the child's eligibility when and if this requirement is met at a later date.

Response: The requirement for the State to make reasonable efforts to prevent removals is a fundamental protection under the Act and one of several title IV–E eligibility criteria used in establishing eligibility. From both a practice and an eligibility perspective, it is impossible for the State to provide efforts to prevent the removal of a child from home after the fact.

In terms of practice, there is a profound effect on the child and family once a child is removed from home, even for a short time, that cannot be undone. If the child is returned after services have been delivered, or even immediately, the State has reunified the family, not prevented a removal.

The statute requires that title IV–E eligibility be established at the time of a removal. If the State does not make reasonable efforts to prevent a removal or fails to obtain a judicial determination with respect to such efforts, the child can never become eligible for title IV–E funding for that entire foster care episode because there is no opportunity to establish eligibility at a later date. Once title IV–E eligibility is initially established, the judicial determination regarding the reasonable efforts the State made to finalize a permanency plan is required to maintain title IV–E eligibility.

Comment: A couple of commenters stated that it was impossible to satisfy the proposed requirements for making reasonable efforts to prevent removals for unaccompanied refugee minors.

Response: We have no authority to waive title IV–E eligibility requirements for any child or group of children. If the State wishes to claim title IV–E funds for unaccompanied refugee minors, then all title IV–E eligibility criteria must be satisfied.

Section 1356.21(b)(2) Judicial Determination of Reasonable Efforts to Finalize a Permanency Plan

This section (formerly § 1356.21(b)(3) and (b)(4) of the NPRM) describes the requirements for obtaining a judicial determination to finalize a permanency plan.

Comment: Most commenters expressed confusion regarding when the "clock" starts for obtaining judicial determinations that the State made reasonable efforts to reunify the child and family or to make and finalize an alternate permanency plan. A few commenters observed that often the permanency plan may change from reunification to an alternate permanency plan prior to the State obtaining a judicial determination regarding its efforts to reunify the child and family. These commenters requested clarification about which permanency plan the court must rely on to make its determination in such situations. A couple of commenters suggested that we not permit States to change the permanency plan outside a permanency hearing or without a court order so that the court has an opportunity to determine if the State agency did make reasonable efforts to reunify the child and family before sanctioning the change in the permanency plan.

Response: After reviewing the comments and the proposed requirements, we determined that our proposal in the NPRM with respect to reasonable efforts to reunify a child and family and to make and finalize alternate permanency plans was confusing and not responsive to actual practice. To simplify the requirements, we have consolidated the reasonable efforts requirements regarding efforts to reunify the child and family and to make and finalize alternate permanent placements into a single requirement related to making reasonable efforts to finalize a permanency plan. In new paragraph (b)(2), we require the State to obtain a judicial determination that it made reasonable efforts to finalize the permanency plan that is in effect, regardless of what it is, within 12 months of the date the child is considered to have entered foster care in accordance with the definition of such at § 1355.20. The State must obtain such a determination every 12 months thereafter while the child is in foster care. Our purpose in imposing this policy, as stated in the NPRM, is to tie the timing for obtaining reasonable efforts determinations regarding permanency to the timing of the permanency hearing because it is a logical determination to make at such hearings and it would ease administrative burden.

In determining whether the State made reasonable efforts to finalize a permanency plan, the court's determination should be based on the permanency plan that is in effect at the time at which the agency is seeking such a determination. We are not requiring the State to obtain judicial determinations on its efforts regarding permanency plans that it has abandoned.

We realize that obtaining reasonable efforts determinations regarding finalizing permanency plans every 12 months while a child is in foster care is a significant departure from current practice and that States will need transition time to implement this requirement for children who have been in foster care for more than 12 months. Therefore, we will not take adverse action against States who cannot comply with this requirement for a period of 12 months from the effective date of this final rule.

Finally, we think it appropriate to permit the State agency to alter the permanency plan outside a permanency hearing and will not require the court to approve such a plan before the State agency can act on it. When a State agency has placement and care responsibility for a child, it is responsible for setting and acting on the appropriate permanency plan. We understand that, in some States, courts provide such active oversight during the course of a permanency hearing that the court actually sets the permanency plan. That is the State's prerogative. Federal law does not require the courts to play such a prescriptive role in the permanency planning process. Section 475(5)(C) of the Act requires the court to review the permanency plan presented to it by the State agency.

Comment: We received several comments objecting to the proposal that children, for whom judicial determinations are not made regarding reasonable efforts to reunify and to make and finalize alternate permanency plans, become ineligible for title IV–E funding until such a determination is made.

Response: We did not amend the regulation based on these comments because the requirements for judicial determinations are statutory. To be eligible for title IV–E funding, section 472(a)(1) of the Act requires the State to obtain a judicial determination regarding its reasonable efforts of the type described in section 471(a)(15) of

Iowa Decategorization Project Analysis

I spoke with the child welfare policy analysis office with DHS in Iowa regarding the status of the decategorization of child welfare services in Iowa. The following points are an update.

- Programs and services are not available statewide. Iowa is a "very county administered state".
- Program administrator who provided the leadership for the project is no longer in that capacity and subsequent leadership has not been as visible.
- Blended funds on a statewide basis; medicaid, HCBS, child care, IV-B, sub-part 2 (Promoting Safe and Stable Families) and children's trust fund. State agency budget limitations were reached early in the project.
- Policy analysis would indicate the greatest area of success was with communities who provided wrap around services to SED children, preventing in-patient psychiatric hospitalization.
- Communities are limited in the type and amount of funds to provide to the project. Counties renew their participation on an annual basis and no new counties have come into the project in the past two years. Three original counties no longer participate.
- Iowa has an HCBS and mental retardation waiver which they have been able to use in this effort.
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1. *Demonstrated solvency.*

There are basically four areas that can impact the solvency of the child welfare/juvenile justice system: Demand for services at intake; utilization of services as determined by the case manager; price of services as determined by the contracts; and morbidity of the environment/ external variables which may place increased pressure on the child welfare system (economic downturn, influx of transient population into the community, etc.).

Over the past seven years, ACFS has carefully managed these variables and operated within its legislative appropriation. Under a global capped budget each one of the 37 service areas is provided a fixed allocation based on historical utilization patterns and population projections. In the past, if these offices have been unable to manage within these resources, other local or regional sites help cover the deficit through sharing resources.

In a recent effort to stabilize the area appropriations, a 'risk pool' was created to ensure against insolvency in any individual area. More than $500,000 was set aside for FY 98-99 to cover costs which may exceed individual area allocations. In order to access this 'risk pool,' utilization of services will be carefully reviewed by Regional Administrators and Juvenile Court Officers to determine that children are not receiving excess services.

The state initiated this risk pool for the following reasons:

- The awareness that while devolution to local control is in keeping with the state's philosophical direction, this movement must be balanced with equity of access for children and families, and the larger mission of child protection, permanency and community safety must be preserved.
- The acknowledgment that regions are impacted to varying degrees by judicial authority and other community standards. When a child is removed from his or her home due to child protection issues, or because he/she has committed an offense, the judiciary has ultimate authority over case disposition and services provided. While most agree the majority of judges are fair, there are times when a judge orders services outside the case manager's request. This may inhibit the area administrator's ability to manage within current budget constraints. This situation can result in a region spending more than budgeted in order to satisfy the requirements of the judiciary.

The reality is that if these solvency safeguards are insufficient, the State of Iowa is the ultimate body responsible for solvency.

Required Action Steps: HCFA may require that a certain portion of general fund monies be set aside as a reserve, to that the legislature pass legislation describing how the solvency of the PMCE will be assured.

2. Gatekeeping, prior-authorization and utilization Review

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STATE OF KANSAS

SRS Areas

Topeka Area

Kansas City Area

Manhattan Area

Region 3

Region 2

Lawrence Area

Hays Area

Garden City Area

Region 4

Hutchinson Area

Emporia Area

Region 1

Olathe Area

Chanute Area

Wichita Area

Region 5

CHEYENNE RAWLINS DECATUR NORTON PHILLIPS SMITH JEWELL REPUBLIC WASHINGTON MARSHALL NEMAHA BROWN DONIPHAN

SHERMAN THOMAS SHERIDAN GRAHAM ROOKS OSBORNE MITCHELL CLOUD POTTAWATOMIE JACKSON ATCHISON LEAVENWORTH

CLAY RILEY OTTAWA LINCOLN JEFFERSON WYANDOTTE

WALLACE LOGAN GOVE TREGO ELLIS RUSSELL GEARY WABAUNSEE SHAWNEE DOUGLAS JOHNSON

ELLSWORTH SALINE DICKINSON

GREELEY WICHITA SCOTT LANE NESS RUSH BARTON MORRIS OSAGE FRANKLIN MIAMI

MCPHERSON

PAWNEE RICE MARION CHASE LYON COFFEY ANDERSON LINN

HAMILTON KEARNY FINNEY HODGEMAN STAFFORD HARVEY

EDWARDS RENO WOODSON ALLEN BOURBON

STANTON GRANT HASKELL GRAY FORD KIOWA PRATT SEDGWICK BUTLER GREENWOOD WILSON NEOSHO CRAWFORD

KINGMAN ELK

MORTON STEVENS SEWARD MEADE CLARK COMANCHE BARBER HARPER SUMNER COWLEY CHATAUQUA LABETTE CHEROKEE

MONTGOMERY

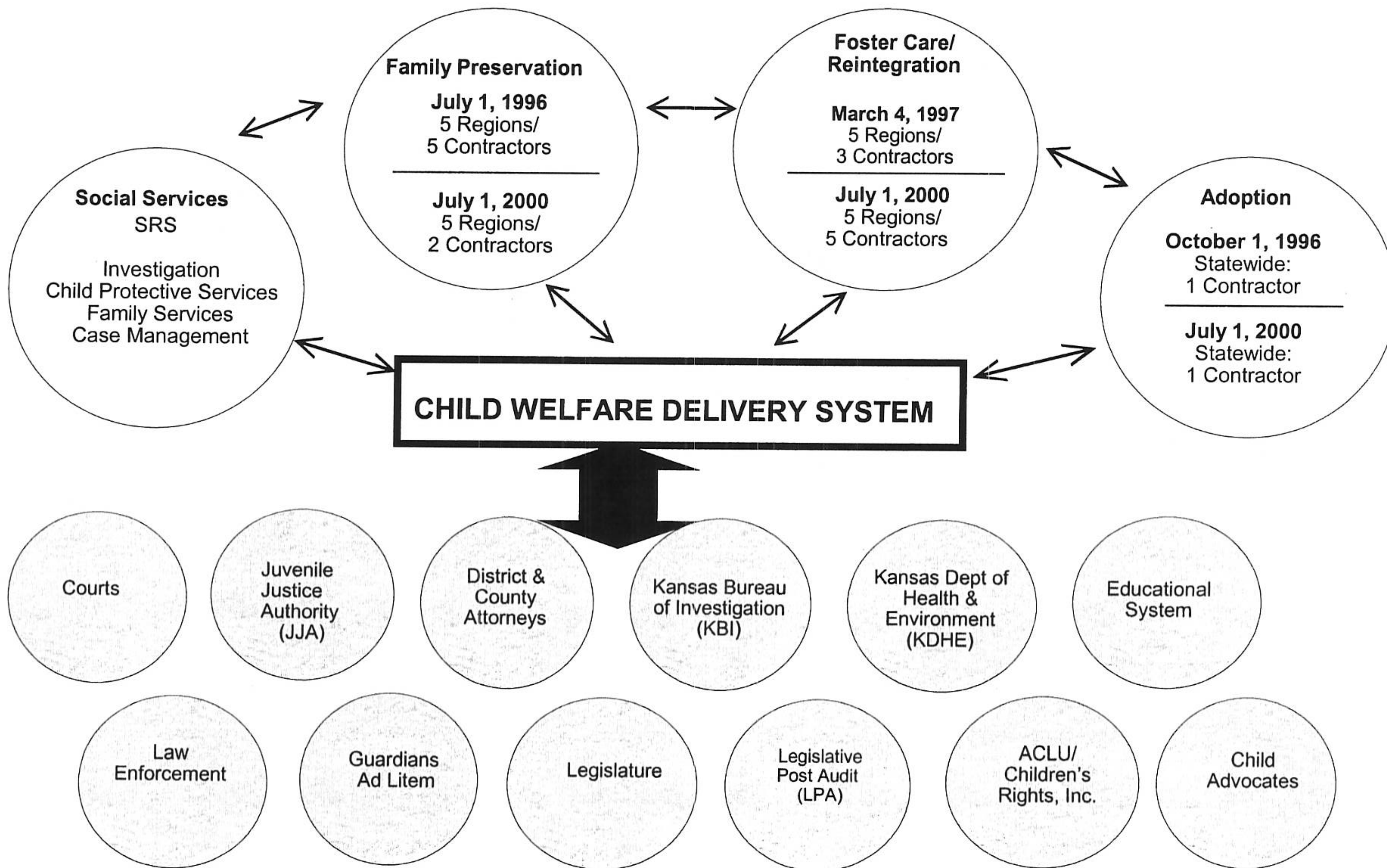
Region 1 = Olathe, Chanute, Emporia
Region 2 = Kansas City, Lawrence
Region 3 = Topeka, Manhattan
Region 4 = Hutchinson, Hays, Garden City
Region 5 = Wichita

❍ SRS Area Office

2-50

KANSAS CHILD WELFARE

February 29, 2000



TESTIMONY IN REGARD TO SUBSTITUTE FOR

SENATE BILL NO. 633

BY THOMAS H. GRABER, DISTRICT JUDGE

The substitute bill for Senate Bill No. 633 still has some unresolved issues carried over from Senate Bill 633. Most judges still doubt that it is necessary or even advisable to separate the CINC code into children in need of protection and children in need of community services. However, if that change is approved the substitute bill will allow the court to continue to respond to all children and families in crisis and to protect them when protection is needed whatever label is placed upon them. I believe that most judges would agree with me that the bill in its present form can be lived with if two changes were made.

First, the court needs to be insured the flexibility allowed by the federal acts and regulations in regard to children whose parents are found to be unfit but there are compelling reasons to not terminate the parental rights. The first attachment to this testimony contains the language, which needs to be added to the amendments to K.S.A. 38-1583 as a new paragraph (i), which was section 21 in Senate Bill 633.

The second, is the addition to the language requiring the court to provide SRS with a written copy of the orders entered of the following language:

"for the purpose of documenting the order"

Sn Jud
3-21-00
att 3

PROPOSED AMENDMENT OF SUBSTITUTE FOR SENATE BILL NO. 633

TO SECTION ~~21~~ 18 PAGE ~~34~~ 33 BETWEEN LINES ~~32~~ 4 AND ~~33~~ 5

(i) If after finding the parent unfit, the court determines a compelling reason why it is not in the best interests of the child to terminate parental rights, and the department has documented compelling reasons why neither permanent guardianship or placement with a relative or other person is a viable option, the court may order custody to the secretary for continued permanency planning and another planned permanent living arrangement.

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on Senate Bill No. 633
before the
Senate ~~Education~~ Judiciary Committee

By
Donna L. Whiteman
Assistant Executive Director/Attorney
Kansas Association of School Boards
March 21, 2000

Mister Chairman and Members of the Committee, thank you for the opportunity to appear in support of Senate Bill 633.

The Kansas Association of School Boards participated in four meetings convened by SRS's Children and Family Policy Division to develop a community model for Youth in Need of Community Intervention.

Senate Bill 633 embodies this focus on "Youth in Need of Community Intervention" and previous legislative efforts to separate "Children In Need of Protection" from "Children in Need of Community Services" within the Kansas Child in Need of Care Code.

The goal of keeping children out of SRS custody unless they need to be protected from harm through providing community services to the family is the right thing to do for children.

I have attached a copy of the Kansas Association of School Boards Legislative Policies as amended by the Delegate Assembly on December 4, 1999 which support local efforts to help students achieve success along with the

Sn Jud
3-21-00
att 4

briefing paper on Public Education's Perspective presented by KASB at the Youth In Need of Community Work Group sessions.

Local interventions and initiatives to help children attend and be successful at school are worthwhile as long as there is a corresponding commitment to provide any additional resources needed to support increased local efforts.

Thank you

Tom Edminster
Catholic Community Services
President

Bruce Linhos
Executive Director

OF KANSAS

Community Agencies Serving Children and Families

212 S.W. 7th Street Topeka, Kansas 66603
(785) 235-KIDS fax: (785) 235-8697 e-mail: childally@ cj networks.com
Website: www.ink.org/public/childally

Senate Judiciary Committee
Substitute for Senate Bill 633
Tuesday, March 21, 2000

I appreciate the opportunity to appear before this committee this morning. My name is Bruce Linhos and I am the director of the Children's Alliance. The Children's Alliance is the association of non-profit child welfare agencies in Kansas. Our members provide an array of services to the families and children they serve including; foster and residential care, emergency services, adoption, family preservation, juvenile intake and assessment, day treatment, drug and alcohol services, educational services, family counseling and many more.

Currently the association has 22 member agencies representing better than 80% of the not-for-profit child welfare services provided in Kansas. With privatization, members of the association represent both contractors and subcontracting agencies. Members of our association are also providing services to youth that are being served through Juvenile Justice.

I appear here this morning in support of substitute for S.B. 633. We believe that the best permanency for children is with their families. The cornerstone of this bill is that we will work to insure that every effort is made to serve a child in context of his/her family or community before placing the child outside of the home. This is also consistent with the requirement of the federal adoption and safe families act that we prove all reasonable efforts have been made to keep families together before a child is placed outside the home.

Our agencies are the service providers of the child welfare system. As such, for years we have heard the concerns of families that their children had to be placed in custody before they could receive services. We have also seen the reality that once a child is removed from their home it becomes increasing difficult to reunite that family. We wholeheartedly support doing all that can be done to provide appropriate services to families in their communities before making the very serious decision that a child must be removed.

The safety of the child is obviously paramount. If the safety of the child can not be insured in the family home, then the child would be found to be a child in need of protection and placed in a safe environment.

Throughout the past couple of weeks we have seen a great deal of compromise in the wording of this bill. Both the Judiciary and the Department of SRS have made significant concessions that we believe make this a much stronger bill. While there are still outstanding issues to be resolved there seems good reason to be optimistic that these too can find resolution.

We support the intent of substitute for S.B. 633 In the spirit of working to help this legislation realize the promise of first serving the needs of the family in the community, we have made some suggestions surrounding implementation that we feel need to be addressed.

Sn Jud
3-21-00
att 5

Suggestions

- While we understand that SRS is an agency that doesn't engender trust in all circles, we feel that SRS should be the lead agency in the implementation of this initiative. Our reasons are as follows:
  - As the statewide welfare agency SRS is ultimately responsible for the welfare of these children as well as having fiscal responsibility.
  - If the various agencies of government are being expected to share responsibility and funding to serve children identified as youth in need of community services, it will require a cabinet level agency to insure that this happens.
  - SRS already has a presence in every county in Kansas.
  - All community providers should be accountable for the same identified outcomes. SRS seems in the best position to insure such accountability.
  - Finally, SRS is the state agency responsible for the implementation of the federal regulation governing the adoption and safe families act. Because of the serious financial implications that can result from improper implementation, we feel SRS should have direct oversight of this initiative.
- Before implementation we must be clear on how these services will be funded so community providers are encouraged to be creative in the services they develop and networks they will need to form.
- The July implementation date should be a target for those communities that have relatively sophisticated services systems already in place. Other communities would work to coordinate and develop service networks and come on-line later in the year.
- Because we are concerned that we may not at this time have a clear understanding on the numbers of children that can be served in their communities, we suggest that foster care again be included in the states system of caseload estimating.
- It makes sense to us that statewide intake and assessment be developed to provide screening for youth in need of community services.
- We have learned that we shouldn't indulge in initiatives unless we plan to evaluate our programmatic results. Statewide outcomes and expectation should be established. There should also be a compatibility of these outcomes across service providers.

We believe that this legislation drives the child welfare system toward further refinement. We understand that being able to provide each child with the services they need in their home community is a tall order. Serving children and families in this way is the right thing to do, and we should do what we must to struggle with the implementation of this initiative for that reason. Whether it's a less expensive way to provide services remains to be seen.

OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

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District Attorney

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Senate Judiciary Committee
March 21, 2000

Substitute for Senate Bill 633

Karen L. Langston
Assistant District Attorney, Chief, Juvenile Division
18th Judicial District
Wichita, Sedgwick County, Kansas
316-383-7138

Sn Jud
3-21-00
att 6

Chairman Emert and Members of the Senate Judiciary Committee:
RE: Substitute for Senate Bill #633; Hearing 3-21-00

Thank you for allowing me to appear before you today to speak in opposition of Substitute for Senate Bill #633; specifically to changing the Child In Need of Care (CINC) definitions.

Our office is opposed to rushing into a complete overhaul of the CINC code, without first more fully studying whether or not such a major change is truly in the best interest of Kansas children and families. This committee is requested to place this bill in an interim committee to fully study all aspects of this legislation. There needs to be a thorough and exhaustive study of this bill before it is ever voted on. If privatization has taught us anything, it is the value of initial study and planned implementation before passing legislation that affects the lives of children and families in Kansas.

We must ask ourselves, what has brought about the rather instant need to change the law? What data is being presented as a reason to change the law? Is there more than one source of the data, and is the date reliable? Are there benefits to changing the Child In Need of Care definitions? If there are benefits, who receives them, and is it truly in the best interest of the children of Kansas to change the law? These are some of the questions that need to be more fully explored.

It must be remembered that every Child In Need of Care definition represents a classification of a child; many children fit into more than one classification. A child who is a runaway today may be the child who was previously abused or neglected and who did not receive intervention when the abuse or neglect occurred; will the new definitions take this into account? The same for a truant. Many of the truancy cases filed in our jurisdiction have truancy as the symptom, but the cause may be due to numerous family issues that leave the child at risk. Will the new definitions take this into account? What happens to a runaway in protective custody whom the parent refuses to take back home because of various issues? There are no other relative placement options, and there are no community resources yet available, will the new definitions take this into account?

What happens to the baby who is born drug affected whose mother is still actively using drugs; mother refuses to go to treatment; cannot take care of the child, and there are no relative placements available? Under the current definitions, this child would be filed as a CINC because he/she is without proper care custody or control and/or is without the care custody and control necessary for the child's physical, mental or emotional health. Temporary custody would be given to SRS. In the proposed bill, the first definition used is no longer a definition, the second definition would treat the child as a "youth in need of community intervention". What will the new definition mean to this baby or the many other drug affected babies that are filed on each month? These and many other case examples

need to be explored before the current law is changed. The current law already requires the court to make findings throughout a court case, where the child is placed in SRS custody, that either reasonable efforts have been made or that an emergency exists. Changing the law will not change the needs of certain Kansas children and families, it will only change for the worse their ability to access intervention which keeps them safe.

As to changes for the Adoption and Safe Families Act (ASFA), no one wants the State to lose Title IV E monies. If there are certain parts of the current statute that must be amended to comply with the law, the sections which deal with what findings must be made when a child goes into state's custody, then I am not opposed to amending those. However, this office will proceed to continue its efforts to comply with ASFA after March 27, 2000, by continuing to work with SRS and Judges in our jurisdiction to comply with suitable ASFA language in our Court documents. This will happen whether or not the law is amended We will do this because it is in the best interest of children to do so. If there are jurisdictions who allegedly aren't following the current law, how will changing the law change the alleged behavior? If we are worried that our petitions, orders and journal entries will not stand up to federal scrutiny now, why are we being asked to change to an even more complicated two part definition system? By segregating children into two different, more complicated definitional systems, it is possible that it will draw even more federal attention or scrutiny to any youth in need of care who go into SRS custody, and actually put Title IV E money more in jeopardy.

New statutory Child In Need of Care definitions are not required in order to create a fund for resources for communities to use in working toward increasing support services and intervention services to children and their families who are at risk for running away, being truant or being out of control. New statutory definitions are not required to establish community resource teams. SRS brought together numerous people from all over Kansas in January of this year to look for new ways to deal with runaways, truants and out of control behavior children. This was a good thing. Many of us then returned to our respective communities and have continued the dialogues. Change in how we provide services to children can occur without having to change CINC definitions; changing the definitions only makes the process more complicated and leaves many Kansas children at risk.

Children in Need of Care cases represent a process of protecting children and families. There is a continuum in this process, part of the front end of the continuum is SRS, and County and District Attorneys. Judges and Court intervention are at the other end of the continuum. Each entity in the continuum looks at the process from unique perspectives. The current statutes provide an adequate basic legal framework of statutory CINC definitions, with the exception perhaps of the runaway definition.

Complete change of the CINC definitions and changing the system of how we protect children in Kansas is a giant undertaking; it is requested this momentous task be given the time required to study it carefully before any final legislation is passed.

Thank you,

18th District ADA

CONCERNS OF PROSECUTORS IN REFERENCE TO SB633

by Sheryl A Bussell, assistant district attorney, Wyandotte county

page --

Change in the definitions of Child in Need of Care are first of all, unnecessary. Second they will result in more confusion than anything else, amongst judges, prosecutors, and especially SRS workers, who will be the first line of people who will have to apply them. SRS has not adequately trained the workers (that all became investigators after privitization) how to use the code that we have now. This situation will only be exacerbated when a whole new set of rules is adopted. Third and most importantly, the general definition found currently in KSA 38-1502(a)(1) has been completely deleted. This means that in order to be found a CINP, without a trial, parents will have to stipulate that they have abused or neglected the child. Most will now want a trial. This will not only increase the time courts have to spend on cases, it will put a greater strain on county attorneys, already pushed to the limit of their resources. It will also increase the acrimony and hard feelings between the parents, who are mostly fragile people anyway, and SRS and others in the system who are trying to rehabilitate them. It will mean that many children won't have acess to the system at all, because many situations do not give rise to clear and convincing evidence of abuse or neglect. The creation of two categories of children in need of care is a major change, and one that should be carefully studied before adoption.

page 3

Same as above

page 4

Separation of the definitions of abuse from the definitions of neglect is okay, but would like to have a better definition of emotional abuse while we are at it. Would like to see a specific reference to "chronic exposure to acts of domestic violence" "exposure to drug abuse, " and some other things, especially if not going to have the general definition found in 1502(a)(1).

page 5

I would venture a guess that most of the jurisdictions that have multidisciplinary teams are not going to want to have the job of reviewing every case of the children that are described in the YINC definitions. The "communities" have already had to absorb part of the duties of caring for these children on the offender side.

page 6

No objection. (Understand there is not real agreement among the judges on the permanent guardianship change, but this is okay by us)

page 7

definition of neglect is okay, although when you get specific things in a statute, even though you add the "not limited to" language, you just give parent attorneys more things to argue about, more things to appeal. (ff) community services teams. First of all, see page 5 above. Second, why do the YINCs get this, and not the CINPs? I think we can probably figure out what these kids need without setting up more meetings that people will not attend. What evidence do we have, for instance, that foster care review boards were a successful initiative, with the exception

Sn Jud
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of Douglas County? Why do we have intake and assessment centers, if not to assist us with this very task? We are already paying for this I and A system. Let's use it, perhaps expand it, instead of creating more things that the community can't provide.

page 8
no objection

page 9
no objection to (12). For (13), see page 5 and page 7 above

page 10
no objection

page 11
no objection

page 12
Amendment to 38-1513(a)(1) as proposed, I am sure would be supported by KCDAA. As to the rest of the amendment, I have never personally understood why we need a limitation on the medical/other treatment consent authority prior to adjudication. Lengthening the time of that limitation would seem counter to the best interest of the children, and calculated only to protect parents' rights. Something we can live with, but would like to see at least added, "and such other prodedures as may be ordered by the court." so that where a parent objected (or can't even be found), SRS could get a court order for surgery that is really needed.

page 13
The problems of mentally ill children, and most especially children who need MRDD services plus are mentally ill, need to be addressed with amendments to this statute, but too complicated to do anything about that this session.

page 14

page 15

page 16
No objection.

page 17
No objection to requiring the petition to contain these things. However, this is not going to accomplish the goal of stopping county attorneys or private petitioners from filing for SRS custody of kids. A simple statement "It is unknown to the petitioner whether any efforts have been made to prevent the child's removal from the home" will technically satisfy the requirement. But since most of the "custody" petitions are brought to us by SRS workers, it will be up to them to document in the petition what has been done up to the point of filing. The same is true of simply requiring the court to furnish a copy of the petition when it is filed. If we really

want to keep kids out of custody unnecessarily, then we need to be working on this way before it gets to the stage of filing a petition. The law might require that any person who files a petition requesting custody of the child to the secretary shall give at least 48 hours notice, by telephone or fax, to the secretary, unless an emergency exists which threatens the safety of the child, prior to filing the petition. This would give the SRS staff notice of the action to be taken before it happens, and give them a chance to put together a plan to satisfy the petitioner before the filing. I believe the position of the KCDAA would be that we can get this problem dealt with by training the members, but we could live with such a provision. See also Comments About Alternative Solutions to Perceived Problem of Unnecessary Out of Home Placements.

page 18
(c)(4) This provision still gives SRS the power to basically veto actions of a court. Big objections. If a child is alleged to be a CINP, the court **must** send the child home or out of custody of the secretary when the services laid out in the plan presented by the secretary are in place. We have had instances where children who are sexually or physically abused by someone in the home are returned home, or left in home with the abuser, with family preservation services in place. If this statute goes into effect, there would be no person with the power to do otherwise if SRS staff wanted that to happen. Not the DA, not the CASA volunteer, not the guardian ad litem, not the judge. Period. Examination of the next section (c)(5) raises even bigger objections. Under this provision, it is highly unlikely that the judges are ever going to put a child in custody, where the evidence is that he or she is continuing to be truant from school, or running away from home. Where a child under 10 commits a serious crime, it is questionable whether the court would have the authority to place a child with the secretary, or to consider the safety of his/her family or the community. If placement out of the home is removed as a very real possibility as a consequence of truancy and running away, it won't be very long before the adolescents and teens catch on to this. We agree that out of home placement should not be the first option considered for truants, but most of these cases that persist as a chronic problem have underlying issues that may require eventual out of home placement. But, the cases that get filed should be only the "tough" ones. We should have prefiling programs in every jurisdiction, rural and urban, to deal with the cases that are amenable to some type of amelioration without having to file a case. See also Comments About Alternative Solutions to Perceived Problem of Unnecessary Out of Home Placements. The requirement of a written order is not necessarily objectionable to KCDAA, but understand the judges want their orders complied with, written or not, if SRS representative is present in open court.

page 19
No objection, but see directly above concerning written orders.

page 20
No objection

page 21
Same objections as page 18 above. One suggestion might be to change the word "and" to "or" in

the sentence "only if the court finds that the services documented by the secretary are insufficient to protect the safety of the child **or** that remaining in the custody of the parent with such services in place is contrary to the welfare or that placement is in the best interests..." Leaving the standard as a two pronged finding creates an extremely high threshold, which is not really necessary, and absolutely not in the best interests of our child caring system.

page 22
No objections

page 23
No objections

page 24
Same objections as page 18 and 21 above.

page 25
The provision in paragraph 4 will give the SRS staff even more power to veto the actions of the court. At the disposition stage of the proceeding, once a plan is submitted, the court can't consider the best interest or welfare of the child. If the safety of the child is protected, then the court **must** return the child home. Same objections as page 18 and 21. In addition to this, it is the opinion of this writer that this is going to create conflicts in some cases with the court finding at disposition that reintegration is not a viable alternative, particularly if that finding is based upon the parent having previously had parental rights terminated. We could have the incongruous result that SRS staff files a plan, and the county or district attorney files a motion to terminate parental rights, and because it appears safe at the time to send the child home (even though not in the child's best interest) the court will have to send the child home. Either change the word to "may" or allow some other considerations just like at the temporary custody stage.

page 26
no objection

page 27
no objection

page 28
At each hearing, the court should also consider the best interest and the welfare of the child, not just safety.

page 29
No objection.

page 30
no objection

page 31

no objection

page 32
no objection

page 33
no objection

page 34
no objection

page 35
(B)(2) This section creates confusion about permanent guardianship. There are simply times when adoption is not a viable alternative and there are no willing relatives. It is highly unlikely that you would find a person to be a permanent guardian when you can't find an adoptive home.

page 36
same objection as above, although section (4) seem okay as a way to get the words "long term fostercare" out of the statutory vocabulary.

page 37
No objection. I would think that the KCDAA supports the adoption of the provision requiring the verification of the person bringing the appeal.

pages 38 through end
no objection

Comments About Alternative Solutions to Perceived Problems of Unnecessary Out of Home Placements

Kansas prosecutors would agree that we, the players in the child caring system, need to change the way in which we do business. We would respectfully suggest that there are several strategies that could be employed to reduce unnecessary out of home placements of children:

1. An amendment to the statute that provides for the police to place children in police protective custody. The statute could provide that children over 15 would have up to five days to remain in PPC. During this time, an assessment would be done of needs, and a referral to an appropriate program. Many times in the past cases are filed on "out of control teens" because the period of time for police protective custody is about to run out and there has not been sufficient time to explore all the alternatives, such as relatives or other placements.
PLEASE NOTE that many rural areas do not have adequate attendant care or emergency placements and this would have to be developed as a new program or additional services for these children.

2. While we appreciate the desire not to create "new programs" this is exactly what may be needed for the conduct disordered, chronic runaway and chronic truants. A program of thirty days of "respite" care with intensive counseling and other appropriate services, including aftercare with family preservation services in place, could be set up and used BEFORE the filing of a petition. This could be by written agreement between the county attorney, SRS (or a contract provider) and the parents and child. This would be a "prefiling diversion" (for lack of a better term) of families from the Child in Need of Care court system. This would require a close partnership between local SRS offices and county attorneys, but would be welcomed by most prosecutors if it meant that less cases get filed. This would also mean that the cases that did get filed are the ones where the problems are too pernicious to be dealt with in the short term program with aftercare. The court would have to have a lot of flexibility in options, including the court ordering of the short term "respite" program if the family declined that voluntarily, or

SRS custody, because it would only be getting the "tough" cases. One might argue that this is the population upon which we should be spending judicial time and resources.

3. Truancy is more than just a problem of oppositional adolescents. Often, when it is present in the very young students, it is a red flag for other problems. Every county should have a "prefiling" program that is taylored to addressing the needs of the families of the young students and the oppositional adolescents. There are several in place across the state that should be looked at and replicated. This would save the filing of about half of the truancy cases, and would identify the families where intensive work is needed to prevent custody later.

4. The present contractual arrangement for aftercare when children go back home is inadequate in many cases. We recognize that it is traumatic for a child to be removed from home, but it is truly tragic when that has to happen a second time because we get in a hurry to return children, and then don't have adequate support for the family after the child leaves SRS custody.

pre-charging div

5. All SRS workers should be trained that petitions can be brought to the county attorney that do not request custody, only that the court enter orders that are necessary to prevent the removal from the home. This tool is not used as much as it could be. Many line workers still do not understand the distinction between the filing of a petition and an emergency application for custody. One suggestion would be to amend KSA 38-1532 to clearly state that when a petition does not seek custody to the secretary, the case shall be set for (come up with a name for this hearing) "admit or deny" or "first hearing." This would help the social workers understand that they have two choices.

In conclusion, there are many strategies that might be developed in time to reduce unnecessary out of home placements. We would urge a closer look at this problem (we have questions about the size of the problem–we believe that a close look at the cases designated as CINC-NAN by SRS would later become known to be true CINCs if looked at on a case by case basis). The KCDAA and its members are committed to assisting SRS in being in compliance with federal regulations. We will be arranging training for our members in the short term to assure that journal entries and court documents will be adequate to satisfy the federal requirements. We would propose to have a segment of our fall conference devoted to discussion of strategies in which we can assist in this endeavor.

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Director of Vict vices
Suzanne H.

Investigators
Donald M. Murphy
Ken Hendrix
Mick Meyer

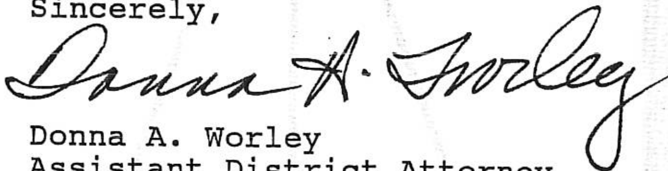
Americans with Disabilities Act Enforcement Officer
Bob Burke

MARCH 20, 2000

TO: THE CHAIRMAN/CHAIRWOMAN OF THE KANSAS SENATE JUDICIARY COMMITTEE

I, Donna A. Worley, Assistant District Attorney, Shawnee County, join, in part, Ms. Sheryl Bussell, Assistant District Attorney, Wyandotte County, in her recommendations concerning Senate Bill 633. I also have other differing comments and recommendations that I request the Judiciary Committee to consider.

Sincerely,



Donna A. Worley
Assistant District Attorney
Shawnee County, Kansas

Justice for All

Sn Jud
3-21-00
att 8

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March 21, 2000

To: Chair and Committee Members of the Senate Judiciary Committee

Submitted by: William E. Kennedy III
Riley County Attorney

Dear Senators:

I have been the Riley County Attorney since 1985. I am the primary attorney in my office for Child in Need of Care cases, the area in which I specialized for 2 ½ years as Assistant County Attorney. Prior to attending Law School, I was a teacher for three years and then a principal for five years, am certified from kindergarten through twelfth grade, and have five children of my own. I am extremely concerned with what I have seen so far of Senate Bill 633, both as currently published and used, the present proposed amendments.

Although I attended two Saturday morning meetings concerning the creation of this bill, I saw nothing in writing until Thursday, the 16th day of March, 2000. Few of the concerns brought out by Judges or Prosecutors at those meetings were addressed by this bill. Instead it appears to be an effort to gain freedom from the Courts.

Following are some of my objections to the bill, both as modified and as currently published. The bill gives too much authority to the Secretary, creates too much make work, and does not ensure children's safety. I would like to keep working on the entire process before it is blessed by our Legislature.

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I affirmatively suggest that SRS should develop short-term (30 days) voluntary respite programs for out-of-control adolescents and teens that would operate to keep a great number of those kids from ever coming into SRS custody. A statutory change to lengthen the time of police protective custody for youths over 13 years of age would be of great help. My experience is that when these families are struggling with youths whose behavior is out of control, 72 hours is not enough time for the SRS worker to investigate and explore all the options for the youth. When the time runs out, then a petition has to be filed.

THERE ARE A FEW THINGS THEY DIDN'T TELL ME WHEN I TOOK THIS JOB - ISSUES

With the current definitions of Child in Need of Care, parties generally stipulate that a child is in need of care. Under the proposed definitions of Child in Need of Protection, very few parents will stipulate that their child has been physically, mentally or emotionally abused or neglected or sexual abused. If the proposed bill passes I predict many more trials than we currently have. County Attorneys are funded by parsimonious commissioners who like road graders, not courts. We are already incredibly strained time-wise. We do not need more trials. There are very rarely winners in these trials because testimony polarizes issues and individuals.

On page 9, line 28-43 and lines 1, 2 and 3 on page 10, I am concerned that the existing statute gives the person who allegedly abused or neglected the child access to reports received by SRS or by a law enforcement agency. This is a conflict in part with the Open Records Act, can greatly aid the offending parties, and terrify reporters. (Once a case is filed there is no problem with giving such reports to an attorney for the party with provisos for simultaneous care of the child.) Concerning pages 16 or 17, this office oversees the prosecution of thirteen hundred criminal acts, four thousand traffic acts, three hundred juvenile matters and numerous others in any given year. If you want the "attempting-saving" words put in boilerplate we will put them in boilerplate. However, it has been very rare in the past that reports coming to this office at 3:30 on Friday afternoon contain the necessary information. On the other hand, it is certainly appropriate for a county attorney to provide notice by copies of filings to the Secretary upon filing the case. It should be done ahead of time by telephone at any rate.

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WHO RUNS THIS LATCHUP? ISSUES

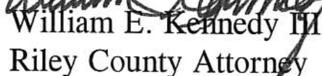
Pages 18, 21 and 24 contain the "Why do you need a Judge Anyhow?" sections. Trials in this area would be from my experience, the world against SRS. SRS would not be standing up for the child's needs, but would be standing up for the protection plan. In fact the existing statute on page 18, lines 20-26 should be changed and the secretary should not have the discretionary authority to place a child in the home without express approval of a judge.

Referring to page 19 dealing with written orders only, I am sure we can comply, but please be aware that most of these matters finally get done in Court at about 6:00 p.m. on Friday night. If the Secretary anticipates needing a written order at that time, then the Secretary should provide twenty-four hour coverage.

OOPS or DUE PROCESS ISSUES

On the bottom of page 27 and the top of page 28 the published statute calls for a Court Service Officer or the Secretary to submit a written progress for permanency plan. If the child is in foster care, the foster parents are also required to submit supplementary reports to the Court. The existing statute calls for the report to be confidential, only reviewable by the Court and by the child's guardian ad litem. It appears that this information is never destined to reach either the county attorney or the attorney for the parents, thus creating a due process problem that in the event of the matter going on to a termination of parental rights could become extremely serious. See also page 29, lines 16-20 notice of moving of the child, the State is not notified.

Sincerely yours,



William E. Kennedy III
Riley County Attorney

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