

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS.

The meeting was called to order by Chairperson Bill Mason at 1:40 p.m. on March 12, 2003 in Room 313-S of the Capitol.

All members were present except: Representative Ray Cox
Representative Joann Freeborn
Representative Becky Hutchins

Committee staff present: Russell Mills, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

OPPONENTS:

Candy Shively, Deputy Secretary, Integrated Service Delivery, SRS
Ron Pascal, Sedgewick County District Attorney's Office
Mark Gleeson, Office of Judicial Administration
Gary Brunk, Kansas Action For Children (written testimony only)
Elisa Marie Breitenbach (written testimony only)

Others attending: See Attached

HB 2300 - Child in need of care; family preservation; access to records and reports by legislators; information to parents upon child being taken into custody; testing for SRS employees and foster care parents; placement with relatives

HB 2354 - Child in need of care; family preservation; legislator access to CINC records and child abuse and neglect records

Staff reviewed the bills and the Chairman opened the hearing on **HB 2300** and **HB 2354**.

Candy Shively, Deputy Director, Integrated Service Delivery, SRS appeared in opposition to **HB 2300**. She stated that several of the elements of the bill added to the complexities of delivery of service, overlooked particular kinds of situations and created some unintended consequences (Attachment 1). She reviewed specific sections of the bill offerings rebuttal or suggestions for eleven sections.

Currently the Judicial Council is in the process of the reexamination of the children in need of care code and plan to present formalized recommendations to the Legislature during the 2004 session. Many of their recommendations may apply to several of the issues addressed in the bill. SRS has reviewed many of the recommendations that will be made by the Judicial Council in order to make improvements in the child welfare system.

At the request of a committee member, Ms Shively agreed to check on the council's progress to determine their proposed time frame.

The Chairman reviewed the fiscal note.

Ms. Shively reviewed the reasons that SRS opposed **HB 2354** (Attachment 2). They believe that Family Preservation is a valuable program, however it is expensive and often much less intrusive services are effective in preventing out of home placement. The bill also provides that legislators be allowed to review and copy SRS and law enforcement records upon receipt of written authorization from the parents. Release of confidential information is prohibited by the federal Child Abuse Prevention and Treatment Act and could threaten the loss of federal funds to Kansas.

Ron Pascal, Sedgewick County District Attorney's Office rose in opposition to **HB 2354**. He talked about the issue of releasing confidential information and the resulting negative impact it would have on investigators. He questioned on whose authority court orders relating to children in need of care would be issued and how the additional expense and work load would be handled. He outlined their concerns regarding **HB 2300** and urged the committee to wait for the Judicial Council's report before moving any legislation.

Mark Gleeson, Family and Children Program Coordinator, Office of Judicial Administration, stated that **HB 2354** and **HB 2300** present significant challenges to the State's ability to comply with federal Adoption and Safe Families Act, to the resources of the Kansas Judicial Branch, and to the potential safety of the children the state is obligated to protect (Attachment 3). He voiced concern over the language in Section 9, the loss of federal funds when Kansas is out of compliance with the Adoption and Safe Families Act, and the tremendous expenses of restricted mail service and a family conference prior to making a placement.

It was noted that Gary Brunk, Kansas Action For Children, had presented written testimony (Attachment 4). Included in his testimony was a brochure on *The Best Interest of the Child - Emerging Issues in Child Welfare (Jan. 2003)*. (Copy on file in the office of Kansas Action for Children).

Discussion followed regarding the pros and cons of the release of confidential information, the open records policy in Alaska and Iowa, responsible parties for child support, process of a child being placed in protective custody, amount of time a guardian spends with child before court hearings, qualifications of an administration hearing officer and the standards used to determine placing someone's name on a perpetrator's list.

Written testimony was received after the hearing from Elisa Marie Breitenbach, (Attachment 5). Copies were distributed to committee.

The meeting adjourned at 3:10 with the next meeting scheduled for March 13, 1:30 pm. in room 313-S at the Capitol.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE March, 12, 2003

<u>NAME</u>	<u>REPRESENTING</u>
Mark Gleeson	Judicial Branch
Dan Spencer	Judicial Branch
Carolyn M. Leindorf	Ks St No Assn
Keith Haxton	SEAK
Terry Hill	—
Mary Audrey	—
Susan D. Behrke	KCDAA
Ron Paschal	Sol. Cty DA's office
Maureen Gop	
Frances O'Brien	
Jackie Aubert	
Sharon Kress	
Cindy Bower	
B. King	
Kathryn Forbes	
Chris Johnson	
Dan Mennies	DCCCA, Inc.
Chuck Cowell	
Ramona Dierksen	KCSL
Teresa Schwab	KCSL
Mary Ellen Beck	

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

For additional information contact:

House Federal and State Affairs

March 12, 2003

HB 2300 - Concerning Children in Need of Care

Integrated Service Delivery

Candy Shively, Deputy Secretary

785/296-3271

Office of Planning and Policy Coordination
Marianne Deagle, Director

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.3271
fax: 785.296.4685
www.srskansas.org

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Attachment # 1

Page 1

**Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary**

House Federal and State Affairs
March 12, 2003

HB 2300 - Concerning children in need of care

Representative Mason and members of the Committee, I am Candy Shively, Deputy Secretary of Social and Rehabilitation Services. HB 2300 makes substantive changes to the Kansas Code for the Care of Children. I will address the most significant changes.

Child Care Vouchers

New Section 1 would provide child care vouchers for indigent parents with children in the home, so that the parents may attend court hearings, meetings and court ordered counseling sessions. The bill intends for this program to be funded from financial savings resulting from fewer children placed in foster care. SRS supports the concept of providing child care for parents in these instances if funding is available.

Written Information Provided to Parents

New Section 2 requires written information to be provided to the child's biological or adoptive parents within 24 hours from the time the child is placed in protective custody. This information includes the name of the officer or other person taking the child into custody, the date and time the child is taken into custody, the names of persons who were present at the time the child was taken into custody, and the name of the alleged perpetrator, if known. While this responsibility rests with law enforcement or court service officers, SRS is directed to adopt rules and regulations to implement the requirement. We support the concept of providing maximum information to parents as quickly as possible but are concerned about the impact on law enforcement who, based on the requirements of K.S.A. 38-1528, are responsible for determining when the safety of a child is sufficiently imperiled to require protective custody. The information contained in the required report may be critical to the investigation and early release of this information may compromise the investigation or assessment resulting in a perpetrator of serious child abuse avoiding prosecution. In some cases the individuals present at the time the child is taken into custody may be the reporter of the abuse or neglect. These individuals may perceive the release of their names to be threatening and may cause non mandated reporters to forgo reporting suspected abuse or neglect.

Parental Notification by Mail

New Section 3 provides for parental notification by restricted mail at least 10 days prior to a hearing, with the exception of protective custody and temporary custody hearings. Currently K.S.A. 38-1534 requires notice of hearings and includes the option of personal services.

Court Determination to Identify Perpetrators of Abuse or Neglect

New Section 4 and Section 6 require a court determination, by clear and convincing evidence, to identify perpetrators of abuse or neglect. Requiring court action to substantiate a perpetrator of abuse, prior to placing the name of a person on the child abuse and neglect central registry, creates the potential for considerable delays. In the current process SRS has 25 working days to make a case determination on a report of abuse and neglect, including placing the identified perpetrator's name on the central registry. The identified perpetrator is notified in writing of the decision and is given 30 days to appeal the decision. After 30 days or a decision by the

Administrative Hearings Officer if the perpetrator appeals, the perpetrator's name is immediately entered in the child abuse and neglect central registry. This legislation would add to the work load of the court system and result in a delay in entering the perpetrator's name in the child abuse and neglect central registry. These individuals would continue to be eligible to work, reside, or volunteer as care givers for the children of others. SRS believes existing statutes and administrative regulations carefully balance the protection of children with the rights of the alleged perpetrator.

Child Abuse and Neglect Registry

Section 6 provides a definition for the child abuse and neglect central registry established by the 1984 legislature in K.S.A. 65-516. It is appropriate that the registry be specifically and clearly defined, however, as noted previously, SRS does not support the required court substantiation that is a prerequisite to placing a perpetrator in the registry.

Definition of Neglect

Section 6 also amends the definition of neglect to exclude a home that does not create a health hazard, provides discretion to find neglect when harm may result in bodily injury, and adds the modifier "strong" to likelihood of harm. Enhanced flexibility will allow a finding of neglect in cases where the child is at risk of injury. We agree with those who oppose removing a child from a home that is dirty but not a health hazard. Children are less harmed by dirt than by separation from family.

Since the 2000 legislative session SRS has been building consensus both within the department and with stakeholders, on the best definition of abuse and neglect. Detailed changes to the definitions of abuse and neglect are being considered based on thorough discussions with social workers, supervisors and managers throughout the agency and with multi-disciplinary groups such as the Child Death Review Board, the Child Safety and Permanency Review Panel, the Continuous Quality Improvement Council, a parent advocacy organization and the state adoptive and foster parent association. Information about the work being done in this area has been provided to the Joint Committee on Children's Issues. This information will be provided to the Judicial Council which is currently working on a review of the entire code for care of children.

Kinship Conferences

Section 9 amends K.S.A. 38-1559 to require both SRS and the court to convene kinship conferences prior to placement with someone other than a parent. It seems unlikely that two conferences are intended and this should be clarified. Kinship conferences are an excellent tool in many circumstances. With technical assistance from the National Resource Center for Family Centered Practice and in collaboration with the University of Kansas, we have completed pilot programs in two communities and are beginning the statewide implementation of a plan which will make this option commonplace. However, these conferences are not universally applicable and require specialized training and skill to be successful. It is an expensive process for both the state and the family. Family members will need to take leave from their employment and incur travel expenses, potentially from other states, to participate in these meetings. If the decision of the family is to have the child placed with a relative outside the State of Kansas, the regulations of the Interstate Compact on the Placement of Children apply. These regulations require a home study prior to any placement across state lines.

Family Preservation

Sections 7, 8 and 10 all emphasize the preference for relative placement and establishes Family Preservation as a minimum reasonable effort prior to the court authorizing out of home placement except in rare circumstances. The definition of reasonable efforts is an appropriate topic for public debate and we are pleased with the support for this valuable program. Family Preservation is beneficial to a child's well-being and promotes the SRS mission. However, in many cases, less intrusive services are often more effective in preventing out of home placement. Currently, participation in Family Preservation services is voluntary because the best outcomes are achieved when the family is committed to the program. Requiring family preservation may not be in the best interests of the family and may replicate services the family has received or is receiving.

The department estimates that at least 1,189 additional families would receive family preservation under the provisions of this bill. At the FY 2004 estimated average annual cost of \$3,897, the additional families would cost \$4.65 million which includes \$4.5 million from the State General Fund. This amount does not include any savings from diverting some of these children from foster care.

Payment for Relative Placements

Section 10 amends K.S.A. 38-1563 to prohibit court ordered child support for relative placements unless requested by the relative. This section also authorizes the court to order payment to such relative, if indigent, up to the amount paid to the foster care contractor for the purpose of reimbursing licensed foster parents for the cost of care. A conservative estimate of cost for this provision is \$1.8 million in state funds.

Judicial Determinations

Section 10 in amending K.S.A. 38-1563(h), eliminates the federal requirement for judicial determination that remaining in the home is contrary to the welfare of the child. Absence of this judicial determination in the first court order authorizing out of home care places SRS out of compliance with the Adoption and Safe Families Act (45 CFR, Part 1355-1357) and may result in the loss of an estimated \$37.5 million in federal IV-E funds.

Attended Visitation

Section 10 also amends K.S.A. 38-1563(f) to prohibit "attended visitation" unless court ordered and, when court ordered, authorizes the parent to bring a legislative representative or clergy to the attended visitation. Visitation decisions are currently controlled by the court. While the case planning team may determine by consensus that supervised visits are necessary, a parent who believes this is too restrictive may seek a court order establishing unsupervised visits. Requiring court involvement will diminish flexibility including the ability to cease supervision of visits when it is no longer necessary.

Thank you and I will stand for questions.

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary
For additional information contact:

**House Federal and State Affairs
March 12, 2003**

**HB 2354 - Concerning Children in Need of Care,
family preservation, legislator access to CINC
records and child abuse and neglect records**

**Integrated Service Delivery
Candy Shively, Deputy Secretary
phone: 785-296-3271**

Office of Planning and Policy Coordination
Marianne Deagle, Director

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
phone: 785.296.3271
fax: 785.296.4685
www.srskansas.org

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Attachment # 2

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State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

March 12, 2003

House Federal and State Affairs Committee
House Bill 2300 and House Bill 2354
Testimony from the Office of Judicial Administration
Prepared by Mark G. Gleeson
Family and Children Program Coordinator

Mr. Chairman, members of the committee. Thank you for the opportunity to testify on these bills this afternoon. Although we stand in opposition to these bills, we recognize and respect the intent and spirit with which these bills were introduced. Nonetheless, both bills present significant challenges to the State's ability to comply with federal Adoption and Safe Families Act (ASFA), to the resources of the Kansas Judicial Branch, and to the potential safety of the children the state is obligated to protect.

The federal Adoption and Safe Families Act requires each state to consider three factors as it makes decisions about children: safety, permanency, and well-being. ASFA is clear that safety is paramount. Establishing "preservation of the family" as the primary objective of the Kansas Child in Need of Care Code would place millions of federal dollars in jeopardy. Preservation of the family is important and ASFA and the Kansas CINC code are both clear that the child's nuclear family is preferred and relatives are the first choice for the child when safety concerns prevent the child from returning home. Judges to whom I have spoken about this legislation have reinforced their belief that families and relatives are the preferred placement when that is possible without compromising the children's safety. Requiring judges to place the preservation of the family, no matter what situation exists, above the safety of the child is not an objective that meets the requirements of ASFA, requirements which judges across the nation are obligated to follow by federal law.

Section 9 raises significant concerns. As written, section 9 requires not only SRS but also the court or court services officer to convene a conference of the child's grandparents, aunts, uncles, siblings, cousins, and other relatives to determine the placement for the child. I am not aware of any court using this section of the statute as written because of the risks posed by not knowing anything about the potential placements. Once a formal petition alleging a child to be a child in need of care has been filed, the court is obligated to make placement findings consistent with the child safety mandates of the Adoption and Safe Families Act. Permitting anyone, no matter how well intentioned, other than the judge to determine the placement of a child or children with an individual or family who has not undergone even the most basic background check is not a practice found in any Kansas courtroom.

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Attachment # 3

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House Bill 2300 and HB 2354 would both take Kansas out of compliance with the Adoption and Safe Families Act by removing the "reasonable efforts" and "contrary to the welfare" language currently found in K.S.A. 38-1563 and requiring family preservation in certain circumstances. If the current version of the bill passes, Kansas will turn its back on millions of dollars in federal reimbursement for foster care costs. Please understand that judges across the state support family preservation services. They encourage the use of family preservation and believe the investment in family preservation saves families the grief and despair of having a child removed from their home and saves the State of Kansas considerable money through foster care savings. Still, we strongly recommend returning the language struck on page 13, lines 23 through 27 of House Bill 2354 and on page 15, lines 37 through 41 of House Bill 2300. Doing so returns this section of the bill to being in compliance with ASFA.

Finally, allow me to address the workload issues imposed on the Judicial Branch by HB 2300. First, new section 4 of HB 2300 requires restricted mail service on notice of hearing. Currently, those notices are successfully delivered through first class mail. Restricted mail not only requires additional expense, but also requires additional time on the part of the district court clerk. The exact additional cost of this is not known. Should this bill be enacted, we would invest time and effort in developing a fiscal impact statement for the Legislature's consideration.

The second impact is much greater than the first. Section 9 requires the court to convene a family conference prior to making a placement. We estimate the minimum cost to be between \$453,250 and \$815,850, depending on whether the process is facilitated or not facilitated. Judges have had the option to do this and have chosen not to utilize this section because of the safety issues discussed earlier and because it is an unfacilitated process. Courts are using a process typically called family group conferencing, juvenile mediation, or family conciliation, but those are all facilitated processes. Although they take considerable time and require specially trained facilitators, judges generally find the outcomes to be better for the child and the family than the outcomes for those families who have gone through the traditional judicial process. We are currently evaluating a family group conferencing project in Sedgwick County. One of the key factors believed to predict success in this project is the amount of time spent preparing the family members for the conference. As one might expect, the more time spent preparing family members, the greater the likelihood of success. Please keep in mind that the Wichita project and other similar programs around the state are completely facilitated processes.

I'm not aware of any program in Kansas or any other state where the process is not facilitated and the decision is left with the family members. Judge Mitchell, Shawnee County District Judge, permits family members to gather, discuss and make a recommendation for placement but he retains the right to override their recommendation. Retaining the authority to make the final decision in these matters of abuse and neglect brought before the court by the county or district attorney is important to protect the children and to achieve permanency for each child.

Thank you for your consideration of these issues, and I would be glad to stand for any questions.

MG:vm



March 12, 2003

To: House Federal and State Affairs Committee
From: Gary Brunk
Re: House Bill 2300 and House Bill 2354

We applaud part of the intent of HB 2300 and HB 2354 because we believe that removing a child from the home should *always* be an action of last resort and because we have consistently supported additional funding for family preservation services.

These bills propose several measures we endorse in principle, including greater use of family preservation services, daycare vouchers, more information for parents, and more specification in the definition of "neglect." We think the bills could be improved if they required a home study prior to relative placement and did not seem to require two kinship conferences (one convened by SRS and another by the courts). We are also concerned that HB 2354 may permit release of information to legislators that could put in jeopardy federal funding.

However, we have an overarching problem with these bills: we do not think that simply "fully" utilizing family preservation will achieve the intent of this legislation unless we significantly change the purpose and expand the scope (and cost) of current family preservation services.

In the first two quarters of FY 2003 SRS received 20,728 reports or allegations of child maltreatment. Almost 60 percent of those reports (12,183) were "assigned" for an assessment by agency staff. For those assigned cases the initial service decisions were as follows: 3.7 % to family services, 9.2 % to family preservation and 10.6 % to foster care.

The track record for families receiving family preservation services in Kansas is very good. Almost all children in families receiving services are safe from maltreatment while the family receives services (97 %) and after services are terminated (94%). Because of the success of family preservation we should increase funding for those services.

But increasing the number of families referred to family preservation is not sufficient. In Kansas families receive family preservation services because they are in crisis and there are real reasons to be concerned about children's safety: family preservation services are primarily crisis intervention services. However, we have a significant number of children being removed from families who seem to be "flying under the radar." They have not come to the attention of SRS early enough to be referred to family preservation and something happens in the family that brings them to the attention of the courts.

EXECUTIVE DIRECTOR

Gary Brunk

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Attachment # 4

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HB 2300 and HB 2:

We could expand the scope of our current family preservation services in an attempt to do a better job of reaching those families, which would seem to be the impact of these bills. While we support additional funding for family preservation, we think that we need additional – and more cost effective - ways to support families and avoid crisis-oriented interventions. In pages 3 and 4 of the attached report (*Best Interest of the Child: Emerging Issues in Child Welfare*) we review some of the ways we could strengthen prevention programs in Kansas and improve Child Protective Services.

One approach to strengthening prevention programs is to expand the capacity of SRS to provide family services. Family services are provided to families where there are signs of stress that could lead to maltreatment, but the risk is not so imminent.

SRS Area Offices use their Family Services and Community Services allocations to fund grants to community agencies or to purchase services directly. This is a source of flexible funds that can be used to respond to the differing needs of communities. Some of the creative ways in which they are using those funds include providing respite care for parents and providing intensive in-home services for families in crisis. While the use of these funds needs to be properly evaluated, there are indications that they are making a difference and reducing the number of children in out-of-home care. We urge this Committee to look into this promising alternative before advancing these bills.

March 19, 2003
Federal and State Affairs Committee

On this day March 19th I come to you once again begging for your help and aid for Kansas Foster Children. I felt sure your committee understood the urgency of passing HB2300 and HB2354.

I told you last week that there are 12 States who have **Open Justice for Children**. You must understand no State in America would put children before their federal dollars. I will repeat for 20 years the State of Oregon has had **Open Justice** without confidentiality and without losing one penny of federal money.

Open Justice

Oregon was the first in 1980.

Michigan followed Oregon.

Florida opened all hearings except those for termination of custody.

Michigan and Florida routinely permit both reporters and cameras in juvenile court hearings.

New York opened 4 years ago.

Minnesota opened abuse and neglect hearings in 12 counties in a three-year experiment in 1998. After finding no ill affects opened it state wide.

Alaska within the past year opened courts.

Maryland some Judges allow open hearings some do not.

Ohio followed the example of Maryland.

Three Indiana Judges have allowed TV cameras into their juvenile court hearings.

Judges in Illinois, Iowa and Oregon say open abuse and neglect hearings are now just as routine and uncontroversial as open criminal trials.

The State of Kansas children are at crisis level. Parents like Ann Brookes should not have to write a book called "If I Die, Will You Still Love Me?". The State took their child away. Her life was taken away at a place called "The Children's Care Center". Ann Brooks and her husband were told they had no grounds for a suit, because their child was handicapped and her life had absolutely no monetary value. The State of Kansas would not let the Brooks get their child's medical records from the center until the statute of limitations had run out. Thus preventing the Brooks from suing.

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Attachment # 5

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Time and time again I have seen first hand over the last 19 years how children are treated in States custody. They need someone to represent their best interests, not the states best interests. The fact that 12 states have **Open Justice** and have not lost one penny of Federal funds should speak volumes of why S.R.S. is telling you different. You have the facts and I wholeheartedly believe that together your Committee will make a difference for Kansas Children and Families.

With High Hopes,



Elisa Marie Breitenbach
58 Viewcrest Drive
Kansas City, Kansas 66101
Home-913-621-2576
Work-816-746-9880

P.S. Remember in 12 States with **Open Justice** not one penny of Federal money was lost and not one state went back to the "Dark" with their Justice for children.