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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Nancy Strouse

DATE: February 11, 2015

RE: Judicial Council Testimony on SB 37 – Written Only

The Judicial Council supports Senate Bill 37, a bill which is based on the work product of the Council's Juvenile Offender/Child in Need of Care Advisory Committee. The attached report provides some background on the study process that resulted in recommendations identical to the substance of SB 37, including how that bill differs from last year's 2014 Substitute for Senate Bill 394.

**REPORT OF JUDICIAL COUNCIL JUVENILE OFFENDER/
CHILD IN NEED OF CARE ADVISORY COMMITTEE ON
FOSTER PARENTS' RIGHTS – 2014 SB 394**

In May 2014, Representative Lance Kinzer requested that the Judicial Council conduct a study on the topic of the legal rights of foster parents. Rep. Kinzer noted that the issue of what substantive rights foster parents should have is an interesting one, but also one that may involve unintended consequences. He asked that the Judicial Council review the current legal rights of foster parents and consider areas where those rights could be responsibly expanded, using 2014 Substitute for SB 394 as a base.

At its June 6, 2014 meeting, the Judicial Council assigned the study to the Juvenile Offender/Child in Need of Care Advisory Committee, directing that additional members should temporarily be added to the Committee to ensure that foster parents and other relevant stakeholders were part of the discussion. The Committee held three all-day meetings on September 26, October 8, and October 24, 2014 and met via teleconference on November 3, 2014 to approve the final report.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee are:

Honorable Maritza Segarra, Chair, Junction City. Judge Segarra is a District Court Judge in Geary County and a member of the Kansas Judicial Council.

Kathy L. Armstrong, Shawnee Mission. Ms. Armstrong is a Staff Attorney for Prevention and Protection Services, Kansas Department for Children and Families.

Marc A. Bennett, Wichita. Mr. Bennett is the Sedgwick County District Attorney.

Charlene Brubaker, Hays. Ms. Brubaker is an Assistant Ellis County Attorney who works exclusively in child in need of care and juvenile offender matters.

Kathryn Carter, Topeka. Ms. Carter is Director of the Racial Profiling and Biased-Based Policing Unit of the Kansas Attorney General's Office.

Jeff Cowger, Topeka. Mr. Cowger is a Deputy General Counsel with the Kansas Department of Corrections - Juvenile Services.

Honorable Timothy H. Henderson, Wichita. Judge Henderson is a District Court Judge in Sedgwick County.

Donald W. Hymer, Olathe. Mr. Hymer is an Assistant District Attorney in Johnson County.

Hon. Jeffry L. Jack, Parsons. Judge Jack is a District Court Judge in Labette County.

Professor Richard E. Levy, Lawrence. Professor Levy is the J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law.

Senator Julia Lynn, Olathe. Senator Lynn is a business owner and is the Assistant Majority Leader in the Kansas Senate.

Rachel Y. Marsh, Halstead. Ms. Marsh is an attorney with Saint Francis Community Services.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney and state representative who has served as the ranking minority member on the House Corrections and Juvenile Justice and House Judiciary Committees.

Lois Rice, Mission. Ms. Rice is Executive Director of CASA of Johnson and Wyandotte Counties.

Honorable Steven M. Roth, Westmoreland. Judge Roth is a an attorney and is a District Magistrate Judge in Pottawatomie County.

The temporary members invited to join the Juvenile Offender/Child in Need of Care Advisory Committee in conducting this study are:

Barbara Allen, Overland Park. Ms. Allen is a foster parent, an attorney, and a former Kansas State Senator.

Chad Anderson, Lenexa. Mr. Anderson is a Licensed Specialist Clinical Social Worker and is the President of KVC - Kansas.

Becki Ewert, Lawrence. Ms. Ewert is a retired RN who has been a foster parent in Kansas for more than thirty years.

Saundra Hiller, Canton. Ms. Hiller is a Licensed Master Social Worker, has experience as both an adoptive and foster parent, and is the Executive Director of the Kansas Foster and Adoptive Parent Association.

Daniel Martin, Wichita. Mr. Martin is a Program Consultant with the Kansas Department for Children and Families and is a former foster youth.

Daric Smith, Topeka. Mr. Smith is an attorney and is the Director for the Child Placing Agency and Residential Programs Section in the Kansas Department of Health and Environment's Bureau of Family Health.

BACKGROUND

SB 394 was introduced by the Senate Committee on Assessment and Taxation on February 13, 2014. It was referred to the Senate Judiciary Committee on February 14, 2014. Senate Judiciary held a hearing on the bill on February 19, 2014. Several foster parents testified in support of the bill, including Lori Ross, who is the President and CEO of Midwest Foster Care and Adoption Association. Ms. Ross created the initial draft of SB 394, which was modeled in part after Missouri's legislation, passed in 2002. Kathy Armstrong testified on behalf of the Kansas Department for Children and Families (DCF) as a neutral conferee. Ms. Armstrong testified that although DCF had some concerns about specific provisions in the bill, it was generally in favor of a bill of rights for foster parents and looked forward to working with the proponents and the Legislature to craft a Foster Care Parents Bill of Rights that would both meet the needs of foster parents and be in the best long-term interests of Kansas children in need of care. Daric Smith, as a neutral conferee, presented written testimony on behalf of the Kansas Department of Health and Environment (KDHE), which is the licensing entity for foster homes and child placing agencies.

Following the hearing, DCF prepared a "balloon" version of the bill. The balloon's amendments ranged from minor amendments to major rewrites of proposed language, completely eliminating some sections of the bill. Proponents of the bill met with DCF to try to reach agreement on the proposed balloon. Although the proponents did not believe the balloon adequately addressed their substantive concerns, they agreed to the balloon in the interests of seeing the bill move forward. The Senate Judiciary Committee adopted the balloon as Substitute for SB 394 and recommended the bill favorably for passage on March 6, 2014. The bill passed the Senate on March 12, 2014. Substitute for SB 394 was referred to the House Judiciary Committee on March 14, 2014, where it was heard on March 18, 2014. The bill died in committee, and Rep. Kinzer later requested the Judicial Council study that was referred to this Committee.

The balloon bill shows the differences between the original SB 394 and the substitute bill, which the Committee found very helpful to its discussions. A copy of the balloon is attached to this report as Attachment 1. For the convenience of the reader, Attachment 2 contains all of the

Committee's recommendations, shown in a redline format as amendments to Substitute for SB 394, which passed the Senate in the 2014 Legislative Session.

As of the date of this report, there is another group also working on the issue of foster parents' rights. The Kansas Bill of Rights Group (KBORG) was created by the Kansas Foster and Adoptive Parent Association and is chaired by KBORG's Executive Director, Sandra Hiller. This group's objective is to bring all stakeholders together to draft a new bill of rights for foster parents. The group spent several meetings discussing the ultimate purpose for the bill of rights document it would be creating, because the language and structure of the new bill of rights would be impacted by whether the document was intended to become a bill or DCF policy. KBORG voted in early October 2014 to proceed with drafting a bill of rights to present to DCF as proposed policy.

COMMITTEE'S APPROACH

This Committee delayed its work for a few months in light of KBORG's parallel project. In the interim, Judicial Council staff invited KBORG members to submit to this Committee written responses to Substitute for SB 394. Only one response was received, from Lori Ross, who prepared a detailed response that stated her concerns with many provisions of the bill and explained how the balloon version neutralized or deleted the original language proposed.

Because she drafted the bill and was instrumental in its progress to date, the Committee asked Ms. Ross for a summary of her opinion of the most important provisions that any future legislation on foster parents' rights must contain. Ms. Ross was also invited to attend the second meeting of the Committee to present her opinions.

The Committee discussed the points made by Ms. Ross. In order to discern other areas in which foster parents' rights could be responsibly expanded without unintended consequences, which was the Committee's charge, the Committee also reviewed the entire balloon bill and located other sections in which language contained in SB 394 was amended or deleted. The Committee went on to discuss those additional issues. The issues presented below are not presented in the chronological order in which they appear in the bill. Presented first are those issues deemed by Ms. Ross to be critical to foster parent rights legislation in Kansas.

DISCUSSION OF ISSUES

Foster Parents' Bill of Rights - Generally

Ms. Ross cited several reasons why Kansas needs a foster parents' bill of rights enacted into statute. First, she noted that accessibility to governing law is crucial. Currently, there are statutes, DCF policy and regulations, and KDHE regulations that govern the care of foster children in this state. Ms. Ross contends that it is extremely difficult for foster parents to locate and integrate these provisions to get a clear and comprehensive picture of governing law regarding foster parents' rights and responsibilities. Ms. Ross asserts that enacting a statutory bill of rights would put the primary governing law in one place, making it much easier for foster parents to access. In addition, she prefers statutory law because she contends that agency policies and regulations can be easily changed.

The Committee agreed that statutes can be more permanent than agency policies and regulations. The Committee also agreed that agencies and contractors should make their governing policies and regulations easily accessible to foster parents, preferably online. However, the Committee also noted that there could be unintended consequences to enacting a statutory bill of rights for foster parents. First, it could lead to increased litigation, which may have not only a financial cost to the state, but a cost to children in terms of delays in permanency. Second, such a bill of rights could open the door to demands for similar legislation for other groups, such as birth parents and grandparents. Finally, because much of the subject matter covered in New Section 1 of SB 394 also is covered in other statutes or regulations, there is a risk of conflicts between provisions governing the same topic. If a bill of rights is enacted, care must be taken at the time of passage and when subsequent amendments are made to the bill of rights or statutes and regulations on the same matter to ensure consistency.

Elevating Status of Foster Parents

Several of the issues raised in the Committee's discussions can be related back to the status of foster parents. For example, proponents of the bill contend that foster parents want to be privy

to more information, to be involved in or give input regarding decisions made about a foster child, and to be free to object to or disagree with decisions made without fear of reprisal from a caseworker or agency. The argument is that these problems would be greatly reduced if foster parents were considered to be a part of the child professional team and treated as such. When foster parents don't receive important information or are not given an opportunity to contribute to decisions that are made, outcomes for children are poorer and foster family retention decreases.

Subsection (b)(1) of New Section 1 of SB 394 (page 1 of Attachment 1) provided that foster parents are "colleagues" on the child professional team and not merely clients of the agencies. The Committee discussed the difficulty with attempting to categorize foster parents as equals of the other members of the child professional team. It was noted that foster parents cannot be considered "colleagues" or equivalent to the rest of the child professional team because there is an inherent conflict of interest in the fact that a foster parent may be a potential adoptive parent at some point in the case. Another potential problem is that foster parents must remain private actors and not agents of the state. Elevating the status of foster parents could impute to them the agencies' obligations to make reasonable efforts under the federal Adoption and Safe Families Act. It was suggested that a specific disclaimer could be inserted in any bill of rights enacted, making clear that any obligations imposed on foster parents are not intended to impose on foster parents any reasonable efforts obligations under the Adoption and Safe Families Act.

The Committee recommends the balloon language for subsection (b)(1), which notes that foster parents "play an integral role in the state's efforts to care for dependent children displaced from their homes" and have the right to be treated with dignity, respect, and trust. The Committee also noted that the national association of social workers' code of ethics standard proposed in SB 394 was properly stricken as it is not an appropriate standard for social workers in Kansas. Although certain professional associations may encourage compliance with particular codes of ethics, the Kansas Behavioral Sciences Regulatory Board, which is the licensing entity for social workers in this state, enforces violations of K.A.R. 102-2-7, which sets forth acts constituting unprofessional conduct by a social worker licensed in Kansas.

Increasing Information Sharing Between Agencies and Foster Parents

Proponents of the bill contend that agencies and contractors should be required to increase the flow of information between themselves and foster parents in both directions. They want to receive more information, and they want their input to be given more importance. These issues will be addressed separately.

1. Information Given to Foster Parents by Agencies and Contractors

Proponents of the bill seek changes in the law to expand the amount of information about a child that must be given to foster parents prior to placement. They contend that full and complete information about a child is necessary for the foster parent to make a responsible decision about whether to accept a placement. This decision-making process could include determining whether the foster family is capable of handling a specific child's needs and how that child's placement may affect other children already in the home. Section (c)(2) of New Section 1 of SB 394 (pages 1-2 of Attachment 1) sets forth the types of information about the child and the child's family that foster parents want to receive prior to placement. According to Ms. Ross, "there is NO information about a child or the child's family that a foster parent should not have access to prior to or during placement." Also important to foster parents was the proposed language that would establish consequences for a caseworker who knowingly provides false or misleading information to a foster parent in order to secure a placement.

The balloon bill eliminated almost all of the proposed language in subsection (c)(2) and replaced it with a provision that would require informing foster parents about the number of times a child has been removed and the reasons for the removal, to the extent permitted by law. The balloon language would also allow foster parents to be given the names and phone numbers of previous foster parents if the previous foster parents authorized the release of that information.

Section 4 of SB 394 (page 7 of Attachment 1) also contained amendments to K.S.A. 38-2210 that would include foster parents in the list of persons and entities who should freely exchange information "to facilitate investigation and ensure the provision of necessary services to children

who may be in need of care.” Finally, Section 5 of SB 394 contained amendments to K.S.A. 38-2212(c)(9) (pages 8-9 of Attachment 1) that would provide more specificity regarding, and perhaps expand the amount of, information that must be given to a foster parent, adoptive parent, or prospective foster or adoptive parent “to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child’s placement, and to help the family meet the needs of the child in a constructive manner.”

The balloon bill struck Section 4 of SB 394 in its entirety and struck all language delineating or increasing the information to be provided to foster and adoptive parents under K.S.A. 38-2212(c)(9) in Section 5.

The Committee discussed at length the general issue of increasing the amount of information shared with foster parents. Several objections were raised, such as that foster parents may not need such comprehensive information about the child’s family. There must be a balance considered between biological parents, foster parents, and foster children. The Committee concluded that information sharing is adequately covered by the existing language in K.S.A. 38-2212(c)(9). The Committee recommends the balloon amendment to subsection (c)(2) of New Section 1 of SB 394 (pages 1-2 of Attachment 1), although foster youth noted that allowing contact with a prior foster family may “brand” a youth who is wanting to make a fresh start in a new placement.

The Committee also recommends amendments to three additional sections in the balloon dealing with information. Subsection (c)(7) of New Section 1 of SB 394 (pages 2-3 of Attachment 1) concerns confidentiality of information received by foster parents about the child and the child’s family. This section is not consistent with existing regulations and could lead to confusion. The Committee believes the section could be stricken in its entirety, but if some statement on confidentiality is considered necessary, the Committee recommends language that defers to existing statutes and regulations, such as “Foster parents shall maintain confidentiality as required by law.”

Second, the Committee discussed subsection (c)(8) of New Section 1 of SB 394 (page 3 of Attachment 1), which imposes a duty on foster parents to seek necessary information before deciding whether to accept a child for placement. This subsection was amended in the substitute bill and then entirely deleted by the Senate before passage of Substitute for SB 394. If the subsection is retained, the Committee recommends amending the language as follows:

(8) Recognizing that placement changes ~~are~~ may be difficult and detrimental to the health and well-being of children, foster parents ~~may request~~ have the responsibility to seek all legally available information, whenever possible, before deciding whether or not to accept a child for placement.

Finally, the Committee discussed subsection (e)(1) of New Section 1 of SB 394 (page 3 of Attachment 1). In the original bill, this subsection required DCF, upon request, to provide information to former foster parents about a child's progress after the child leaves foster care. Foster parents related to the Committee that it is very difficult to love and parent these children and then never hear anything about them after they leave the foster home. Substitute for SB 394, which passed the Senate, retained this subsection, but amended it significantly. Instead of providing information "on the child's progress," the amended language required DCF to provide to a former foster parent "general information, if available." Also, the requirement applied only if the child was still in the custody of the secretary, not after the child leaves foster care, and any disclosure of information to a former foster parent was conditioned on agreement by the child and the child's placement.

The Committee had concerns about the language in Substitute for SB 394. The more minor issue was that children are often too young to agree to the disclosure of information to a former foster parent. More troublesome, however, is the potential interference with parental rights in cases where a child is in state custody and parental rights have not been terminated. If the language is crafted properly to eliminate these potential issues, the Committee did think this was an area where foster parents' rights could be slightly expanded. It is a good thing to have foster parents who love the children enough to want to know what happens in their lives after they leave the foster home. It is not possible to give foster parents as much information as they would like, but they can be given some. After much debate, the Committee recommends the following language to replace the language in subsection (e)(1) in Substitute for SB 394:

(e)(1) Upon request by a former foster parent, the department for children and families shall provide general information, if available, on the well-being of a child if: A) all parental rights to the child have been terminated; and B) there is no objection from the guardian ad litem, if the child is less than 14 years of age, or the child, if the child is 14 years of age or older, but less than 18 years of age. The department for children and families shall adopt policy and procedure consistent with the revised code for care of children regarding the provision of general information about a child's well-being upon request from a former foster parent if the child is in the custody of the secretary for children and families, but parental rights to the child have not been terminated.

2. Foster Parent Participation and Input

Proponents of the bill contend that foster parents' input is often not valued or even sought when decisions are made about a child. Because foster parents live with the child 24/7 and arguably know the child better than any other member of the child professional team, the failure to solicit foster parent feedback before making decisions could result in decisions that are not in the best interests of the child. This issue is addressed in subsection (c)(5) of New Section 1 of SB 394 (page 2 of Attachment 1), which provides that foster parents shall be timely informed of "all team meetings and staffings concerning their licensure status, or concerning the children placed in their homes, and shall be allowed and encouraged to participated in such meetings."

The Committee first concluded that licensure meetings and meetings regarding children are very different and that licensure meetings were correctly stricken in the balloon amendments. A foster parent's due process rights in any licensing dispute are adequately protected under the Kansas Administrative Procedure Act, and the licensing entity should be entitled to have internal meetings regarding a licensure issue without the foster parent being present.

The Committee discussed at length the issue of foster parent involvement in "all team meetings and staffings" regarding a child placed in the foster parent's home. The amendments in the balloon struck "all team meetings and staffings" and replaced the language with "all case plan meetings." The balloon retained the language providing that foster parents "shall be allowed and encouraged to participate in such meetings." Foster parent Committee members noted that the case

plan meetings are not the issue. They related feelings of being left out of other meetings, although they do not know what such meetings are called and were unable to specifically identify the purpose of the meetings. Foster parents fear that these untitled meetings often involve discussion of a prospective move of the child from their home, and they think foster parents have valuable information for the team that should be considered in such discussions. Even if the foster family is not opposed to a move, they would have valuable information about the child to share with the next foster placement.

The Committee found the language “all team meetings and staffings” to be problematic because it is so broad. This language could potentially apply to a caseworker stopping a supervisor in the hallway and asking a question about a case. In addition, meetings often happen very quickly and having to give notice to and involve the foster parents every time could cause the system to become bogged down, which would not be good for children and could delay permanency. After discussion, the Committee agreed that the balloon should be amended to include language providing that “foster parents should be encouraged to participate in other meetings concerning the placement of the child when appropriate and feasible.”

Establishment of a Grievance Process

Subsection (g)(1) of New Section 1 of SB 394 (page 4 of Attachment 1) requires DCF, KDHE, and their contractors to provide access to a “fair and impartial grievance process to address licensure, case management decisions and delivery of service issues.” The section further provides that foster parents “shall be free from acts of retaliation while exercising the right to appeal and afterward.” Foster parents note that grievances will most often involve placement moves. They contend that decisions about moving children are sometimes based on factors that benefit the agency and have little to do with the child’s best interest. A grievance process would allow foster parents the opportunity to share their concerns with higher level supervisors or administrators who have the responsibility for ensuring that the agency’s interests in assuring stability for the children in their care are upheld. Foster parents believe that more thought is put into decisions when there is a process in place that holds decision-makers accountable.

The balloon amendment substantially amends the proposed language to read: “Foster parents have access to the appeals and grievance processes pursuant to state law and the Kansas department for children and families office of client service and department of health and environment regulation and policies.”

The Committee agrees that, regardless of the reason for moves, they are difficult for children. Proponents of the bill want a process by which a prospective move can be challenged before the child is actually taken out of the foster parent’s home. If the child is moved pending a challenge to that move, winning the challenge after the fact does not undo the harm that may have been caused by an unnecessary move. On the other hand, agency representatives were opposed to requiring a pre-move meeting or review of the foster parent’s objection because an additional review process could lead to a delay in permanency. Foster youth expressed concern about short-term foster parents having the ability to slow down or prevent a move desired by the youth. All agreed that if such a grievance process were required, emergency situations must be excepted.

K.S.A. 38-2258 (pages 13-14 of attachment) currently provides a statutory process for court review which may be used when a foster parent objects to a proposed move of a child who has been in the foster parent’s home for more than six months. SB 394 amended that statutory time period from six months to three months. After thorough discussion, the Committee agreed to recommend maintaining the six-month time period for accessing the court review process and to propose a new subsection to K.S.A. 38-2258 which would require any private child placement agency that sponsors family foster homes to develop and implement a grievance process that could be used by a foster parent to object to a proposed move of a child who has been in the foster parent’s home for more than 30 days, but less than six months.

The Committee opted against proscribing all the details of the grievance process, deciding instead to establish essential parameters and allow each agency to come up with the details of its own process, such as time limits and other factors which may vary depending on the age of the child. The Committee determined that, at a minimum, the grievance process must be available to any foster parent who has had a foster child in the foster parent’s home for more than 30 days, but less than six months, and must provide for 72 hours’ written notice to the foster parent of a prospective move.

The notice must state the reason for the planned move and inform foster parents about the available grievance process. The child may not be moved until a review is held if a foster parent opts to access the grievance process. Although Committee members representing state and private agencies expressed concern about potential delays, it was noted that the child placement agency is the one in control of how fast the review takes place and can arrange the proceedings quickly to minimize delay.

The Committee also agreed that delay can be minimized in the existing statutory process for court review in cases in which a child has been in the same home for more than six months by amending K.S.A. 38-2258(c) to require that the court conduct the hearing within 7 days. The Committee recommends striking subsection (g)(1) of New Section 1 of SB 394 and making the following amendments to K.S.A. 38-2258:

Subsection (c) Within 14 days after receipt of the notice, any person enumerated in subsection (a)(2) through (8) receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been received, the court shall schedule a hearing, **to be held within 7 days**, and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a)(2) through (9). If the court does not receive a request for hearing within the specified time, the change in placement may occur prior to the expiration of the 30 days. The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.

New Subsection:

(f)(1) Except as provided in subsection (d)(2) of K.S.A. 38-2255 and 38-2259, and amendments thereto, if a child has been in the same foster home for more than 30 days, but less than six months, the private child placing agency shall give 72 hours' written notice to the foster parent of any plan to move the child to a different placement.

(2) Each private child placing agency shall develop and implement an internal grievance process, consistent with this section, through which a foster parent can object to a planned change of placement as described in paragraph (1).

(3) The written notice provided by the private child placing agency under paragraph (1) shall state the reason for the change of placement and provide the foster parent with information about accessing the agency's internal grievance process.

(4) If a foster parent objects to the change of placement pursuant to the internal grievance process established pursuant to paragraph (2), the child shall not be moved to a different placement until the grievance process has been concluded.

(5) The decision reached following the grievance process shall not be appealable to the district court or any appellate court in the state of Kansas.

Adoptive and Foster Placement Preference

SB 394 addressed an adoptive placement preference for foster parents in two places. Subsection (e)(4) of New Section 1 of SB 394 (page 4 of Attachment 1) contained language that states the foster parents should be given first consideration if a child becomes free for adoption and has lived with the foster parents for more than six months. The bill also contained amendments to K.S.A. 38-2270(b) (page 15 of attachment) that would limit the relative preference for adoptive placements to those persons related within the third degree, to give equivalent preference to adoptive parents of previously-born siblings of the child, and to give preference among those having close emotional ties with the child to a foster parent who has had physical custody of the child for more than six months.

The proponents of the bill contend that current law does not adequately take into consideration the importance of attachment and its role in the healthy development of children. They point out that other states have set a guideline for the amount of time a foster parent must have cared for a child in order to be given a statutory “preference” or heightened level of consideration as an adoptive placement. The Committee discussed situations in which a child was moved from a long-term foster home to be placed for adoption with a relative the child did not know well or at all. There was no disagreement that such a move could be extremely traumatic for a child.

However, it was also pointed out that the current statutory provision giving preference to a relative is conditioned upon the placement being in the best interests of the child and is consistent with applicable federal law. Placement with a person with whom the child has “close emotional ties” is already allowed under the statute. The Committee does not believe it is necessary to give foster parents a statutory preference equal to that of a relative in order for a court to select the foster

parents as the best adoptive placement for a child in appropriate circumstances. In addition, changes to the adoptive placement preference must be considered cautiously lest the amendments be in violation of the Federal Fostering Connections Act or the Indian Child Welfare Act.

The Committee determined that the current statutory language is broad enough to allow the court to select a foster family as the adoptive placement over a relative when it is in the best interests of the child. It was noted that the proposed language could be construed as being more restrictive on the court's exercise of discretion than the existing, broader language. However, to the extent that judges may not be interpreting the statutory "close emotional ties" language to include relationships that foster children form with foster parents, the Committee recommends adding one clarifying sentence to K.S.A. 38-2270(b) as follows:

(b) In making an order under subsection (a), the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to granting such custody for adoption to a relative of the child and second to granting such custody to a person with whom the child has close emotional ties. **For purposes of this section, a person with whom the child has close emotional ties may include a foster parent.**

Subsection (e)(3) of New Section 1 of SB 394 (page 4 of Attachment 1) contained language providing that former foster parents should be given first consideration of a child and any subsequently born siblings if a child comes back into care. The balloon bill amended this language to state that former foster parents "have the right to be considered, when appropriate, as a placement option" under circumstances when the child re-enters the child welfare system.

As in the case of consideration of foster parents for an adoptive placement, the Committee agreed to strike this subsection and amend the appropriate statute to add the sentence added to K.S.A. 38-2270(b) above concerning "close emotional ties." This turned out not to be a perfect solution, because the disposition statute, K.S.A. 38-2255 does not contain parallel language about preference of placement first with a relative and second with someone having close emotional ties with the child. To capture this intent, the Committee opted to cross-reference the language from K.S.A. 38-2270(b) through the following amendment to K.S.A. 38-2255(d)(1):

(d)(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and, **when possible, the order of preference established under subsection (b) of K.S.A. 38-2270, and amendments thereto, and shall** notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody. After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

Right to Engage a Skilled Advocate or “Ally”

Subsection (g)(2) of New Section 1 of SB 394 (pages 4-5 of Attachment 1) gave foster parents the right to access the services of a trained foster parent ally when contesting agency decisions related to licensure, case management, or delivery of service issues. Under this new provision, foster parent allies would be allowed to attend and participate in meetings and “communicate with agencies with a written release of information.”

Proponents of the bill contend that foster parents are in need of this kind of support and that retention of foster parents could be improved if Kansas allowed foster parents to engage the assistance of an experienced foster parent “ally” to help navigate the complex and sometimes confusing system. In Missouri, advocates for foster parents are state-funded and can attend meetings with foster parents, help them to seek and obtain educational or mental health services, and help them to understand information received from the state or agency. Most importantly, the foster parents feel supported in the process of fostering, which arguably could improve foster parent retention in Kansas.

The Committee agreed that an “ally “ system might benefit new foster parents who have a great deal to learn before feeling confident in navigating all of the systems involved with fostering a child and getting necessary services for that child. It was noted that Kansas already has an established parent ally program for biological parents which could serve as a model. However, the

Committee also discussed the significant hurdle of dealing with confidentiality issues that would arise with a foster parent ally system. In the existing parent ally program, the parent consents to allowing the ally to have access to confidential information about the parent. It is very different to contemplate allowing a third-party foster parent ally to have access to confidential information about both the child and the biological family. Who is expected to sign the “written release” referenced in the proposed subsection? If it is not a biological parent, or both parents, does anyone else have the authority to allow the ally to have access to confidential information about the child and the child’s biological family? The confidentiality issues raised by the proposal are significant. The Committee also noted that an unintended consequence of allowing foster parents to have an ally system could be that other groups, such as grandparents, may also want to access an ally for assistance.

The Committee understands foster parents’ desire to be able to access an advocate or ally, but does not recommend the proposal due to critical confidentiality issues and the potential that implementation of an ally program for foster parents might encourage other groups to demand new ally programs to meet their specific needs.

Involvement of Foster Parents in Conducting Training

Language in subsection (c)(1) of New Section 1 of SB 394 (page 1 of Attachment 1) was intended to address two different issues concerning foster parent training. Proponents of the bill related that, although foster parent licensure requires compliance with annual training requirements, foster parents in some regions of the state have difficulty finding and accessing the required training. The first sentence of the subsection places a statutory duty on the agencies and contractors to provide foster parents with “regularly scheduled opportunities” for training before and after licensure.

The last sentence of the subsection was intended to allow foster parent support groups to offer training that would satisfy licensure-related training requirements. This would give foster parents the opportunity to determine the training topics to ensure that training is both of interest and helpful to them.

The balloon language amended the subsection significantly. The balloon does preserve the agency duty to provide training, but “regularly scheduled” has been replaced with “at appropriate intervals.” The last section of the subsection was stricken in its entirety, although there was some effort to partially incorporate the concept of foster parent input to subject matter by stating the training shall be to “meet mutually assessed needs of the child and to improve foster parent skills.”

The Committee, after discussion, agreed to recommend retention of the balloon language in the first sentence and to restore the stricken second sentence, modifying the word “training” by amending it to say “training approved by the licensing agency.”

Retaliation

Proponents of the bill and some foster parent Committee members assert that there is a fear of agency retaliation in response to a foster parent who asks too many questions, challenges decisions, or refuses a placement. The retaliation feared is that other children in the home may be moved or that the foster parent will not get other placements in the future. Subsection (c)(4) of New Section 1 of SB 394 (page 2 of Attachment 1) provides that a foster parent may ask questions, encourage a placement, or refuse a placement without reprisal from the caseworker or agency.

The balloon language amended this section by striking the language “without reprisal from the caseworker or agency” and inserting a sentence stating: “In the event foster parents refuse a placement, such refusal shall not serve as the sole determining factor with respect to subsequent placement of a child with such foster parents.” The Committee, after discussion, recommends the balloon amendments with the following changes: “In the event foster parents ask questions about the case plan or refuse a placement, ~~such refusal~~ these actions shall not serve as the ~~sole~~ determining factor with respect to subsequent placement of a child with such foster parents.”

Foster Child’s Cultural Heritage, Foster Family’s Values, Visits, and Discipline

Subsection (d) of New Section 1 of SB 394 (page 3 of Attachment 1) deals with issues relating to the appropriate balance between a foster child’s cultural heritage and the foster family’s

own values and routines. The section also covers family visits and discipline issues. The balloon bill contained substantial amendments to this subsection.

These sensitive issues are currently covered in some detail in KDHE's regulations for foster homes. While the Committee is not opposed to all instances of expanding foster parents' rights by elevating regulations to the level of statutory law, the Committee expressed great concern that restating in a general way by statute a number of very specific regulations can lead to inconsistency and confusion. This is an area ripe for the creation of inconsistency because the existing regulations are child-focused, and the proposed language in subsection (d)(1) is focused on rights of the foster parents. The Committee believes that all of the subject matter in subsections (d)(2) and (d)(3) are adequately covered in existing regulations and that they add little, if anything, to the rights of foster parents. The Committee recommends that subsection (d) be stricken in its entirety and not included in any legislation that may be enacted regarding the rights of foster parents.

Creation of a State Foster Care and Adoption Board

New Section 2 of SB 394 (pages 5-6 of Attachment 1) established a new state board within DCF. Proponents of the bill asserted that a statewide board would be beneficial for several reasons. The privatized system in Kansas involves so many people and so many different agencies that a board would help make things more cohesive. The new board could bring statewide issues to the table and could assist with drafting policy. In addition to providing services to private child placing agencies, a statewide board would allow for broad and geographical representation of foster parents. The balloon bill struck New Section 2 in its entirety, and the section was not included in Substitute for SB 394.

The Committee discussed the entities that are currently performing some of these functions. The Kansas Foster and Adoptive Parent Association brings foster parents together and also has a strong relationship with DCF. Kaw Valley, one of the private child placing agencies that contracts with DCF to provide foster care in Kansas, has a foster parent advisory board that provides support to foster parents and suggests policy to the agency. DCF notes that consultation and policy input are agency goals, and DCF already has a process for making suggestions regarding policy matters.

Taking all things into consideration, including the costs associated with establishing another statewide board, the Committee agreed that creation of a new board for foster and adoptive parents is not necessary at this time.

COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

This was an interesting, yet challenging study for the Committee. The discussions were always lively and sometimes heated, but the Committee believes there was good diversity of representation from state agencies, private agencies, foster parents, foster youth, attorneys, and judges, which ensured that all points of view were heard. Through extended debate and compromise on all sides, the Committee was able to reach reasoned agreement on these difficult issues. The Committee wants to thank the temporary members who joined the group for this study. Their input and assistance was invaluable.

The Committee was asked to review the current legal rights of foster parents and consider areas where those rights could be responsibly expanded, using 2014 Substitute for SB 394 as a base. To be as thorough as possible in its review, the Committee studied the balloon bill created by DCF (Attachment 1). The balloon bill essentially became the Substitute for SB 394. By reviewing the balloon bill, the Committee was able to see the differences between SB 394 and Substitute for SB 394. The Committee explored and discussed each of those differences.

The Committee agreed on certain areas in which foster parents' rights could be expanded and have attempted to foresee and prevent unintended consequences. Although only the highlights of the Committee's recommended expansions of foster parents' rights are set forth below, it can be argued that nearly every paragraph in New Section 1 of the bill would constitute an expansion of foster parents' rights if enacted, because provisions that used to be regulations or policy would now be elevated to statutory law.

The Committee concluded that some sections that had been either stricken from SB 394 or significantly amended could be redrafted to expand foster parents' rights while also greatly reducing the chance of unintended consequences. For example, the Committee drafted new language to allow foster parents, to the extent possible, to obtain some information about a former foster child's well-

being after the child has left the foster home. This new right for foster parents is limited due to the necessity of respecting the rights of the child and the child's parents, but the result is more than foster parents had before.

The Committee's recommendation to require implementation of a grievance process by which foster parents can object to planned changes of placement when a foster child has been in the home for more than 30 days, but less than six months is a significant expansion of foster parents' rights. All sides compromised to reach agreement on this solution.

The Committee also recommends an expansion of foster parents' rights by amending the adoptive placement preference statute, K.S.A. 38-2270(b) to clarify that a foster parent may be considered as a person having close emotional ties with the child. While the Committee does not believe this is a substantive change to the law, the clarification may lead to more uniform interpretation of the section by judges making adoptive placement decisions.

Finally, the Committee recommends a number of other minor amendments to Substitute for SB 394 that have not been specifically discussed in this report. All of the Committee's recommended changes to the bill are shown in redline format in Attachment 2. If the amendment has not been discussed herein, a Comment following the section will contain the Committee's reason for making the recommendation.

SENATE BILL No. 394

By Committee on Assessment and Taxation

2-13

SB394-Balloon-DCF

Prepared By: Jason Thompson,
Office of Revisor of Statutes
February 24, 2014

1 AN ACT concerning children and minors; enacting the Kansas foster
2 parents' bill of rights act; relating to foster care; family foster homes;
3 ~~establishing the state foster care and adoption board; amending K.S.A.~~
4 ~~2013 Supp. 38-2210, 38-2212, 38-2213, 38-2258, 38-2259 and 38-2270~~
5 ~~and repealing the existing sections.~~
6 and

7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) The provisions of this act shall be known and may
9 be cited as the Kansas foster parents' bill of rights act.

10 (b) (1) The Kansas department for children and families, department
11 of health and environment and their contractors, recognizing that foster
12 parents are not clients, but rather are colleagues on the child welfare team,
13 shall treat foster parents in a manner consistent with the national
14 association of social workers' code of ethics. Foster parents shall treat all
15 children in their care, each child's birth family and all members of the
16 child welfare team in a manner consistent with their ethical responsibilities
17 as team members.

18 (2) The Kansas department for children and families, department of
19 health and environment and their contractors shall provide written
20 notification of the rights enumerated in this section to foster parents at the
21 time of initial licensure and at the time of each licensure renewal following
22 the initial licensure period.

23 (3) The Kansas department for children and families shall make its
24 policies available to foster parents and the public by publishing the
25 prevention and protection services policy procedure manual and other
26 relevant materials on the department's public website.

27 (c) (1) The Kansas department for children and families, department
28 of health and environment and their contractors shall provide foster
29 parents with regularly scheduled opportunities for pre-service training, and
30 regularly scheduled opportunities for pertinent in-service training. Training
31 conducted by foster parent support groups shall be recognized as pertinent,
32 and information about training offered by foster parent support groups
33 shall be regularly shared with family foster homes licensed within the
34 region served by those support groups.

35 (2) The Kansas department for children and families and its
36 contractors shall provide to foster parents and potential adoption parents,

and department of health and environment recognize that
foster parents play an integral role in the state's effort to care
for dependent children displaced from their homes. Foster
parents have the right to be treated by the Kansas department
for children and families, department of health and
environment and other partners in the care of abused and
neglected children with dignity, respect and trust as a
provider of foster care. Foster parents shall treat all children
in their care, each child's birth family and all members of the
child professional team with dignity and respect.

The Kansas department for children and families, department
of health and environment or the child placement agency
shall provide training at appropriate intervals to meet
mutually assessed needs of the child and to improve foster
parent skills.

Strike

Strike

Strike

1 prior to placement, all pertinent information, including, but not limited to,
 2 full disclosure of all medical, psychological and psychiatric conditions of
 3 the child, as well as information from previous placements that would
 4 indicate that the child or children may have a propensity to cause violence
 5 or harm to any member of the foster family home. The foster parents shall
 6 be provided with any information regarding the child or the child's family,
 7 including, but not limited to, the case plan, any family history of mental or
 8 physical illness, sexual abuse of the child or sexual abuse perpetrated by
 9 the child, criminal background of the child or the child's family, fire-
 10 setting or other destructive behavior by the child, substance abuse by the
 11 child or the child's family and any other information which is pertinent to
 12 the care and needs of the child and to protect the foster or adoptive family.
 13 Knowingly providing false or misleading information to foster parents in
 14 order to secure placement shall be denoted in the caseworker's personnel
 15 file and shall be kept on record by the Kansas department for children and
 16 families and its contractors.

17 (3) The Kansas department for children and families and its
 18 contractors shall arrange for pre-placement visits between foster children
 19 and family foster home parents, except in emergencies.

20 (4) Foster parents may ask questions about the child's case plan,
 21 encourage a placement or refuse a placement without reprisal from the
 22 caseworker or agency. After a placement, the Kansas department for
 23 children and families and its contractors shall update the foster parents as
 24 new information about the child and the child's parents, and other relatives,
 25 is gathered.

relevant

26 (5) Foster parents shall be informed in a timely manner by the Kansas
 27 department for children and families, department of health and
 28 environment and their contractors of all team meetings and staffings
 29 concerning their licensure status, or concerning the children placed in their
 30 homes, and shall be allowed and encouraged to participate in such
 31 meetings.

32 (6) The Kansas department for children and families, department of
 33 health and environment and their contractors shall establish reasonably
 34 accessible respite care for children in foster care for short periods of time,
 35 jointly determined by foster parents and the child's caseworker. Foster
 36 parents shall follow all policies and procedures established by the Kansas
 37 department for children and families and its contractors for requesting and
 38 using respite care.

39 (7) Foster parents shall treat all information received from the Kansas
 40 department for children and families and its contractors about the child and
 41 the child's family as confidential. Information necessary for the medical or
 42 psychiatric care of the child may be provided to the appropriate
 43 practitioners. Foster parents may share information necessary with school

and during

to the extent allowed under state and federal law

The Kansas department for children and families shall provide foster parents information regarding the number of times a child has been removed and the reasons therefor, to the extent permitted by law, and may also provide the names and phone numbers of the previous foster parents if the previous foster parents have authorized such release.

when appropriate and feasible

In the event foster parents refuse a placement, such refusal shall not serve as the sole determining factor with respect to subsequent placement of a child with such foster parents.

of a child with foster parents

of all case plan meetings

and provide input concerning the case plan. Foster parents shall be informed by the Kansas department of health and environment concerning their licensure as a family foster home

will, when appropriate and feasible

in consultation with the foster parents

Strike

1 personnel in order to secure a safe and appropriate education for the child.
 2 Additionally, foster parents shall share information they may learn about
 3 the child and the child's family, and concerns that arise in the care of the
 4 child, with the caseworker and other members of the child welfare team.

professional

5 (8) Recognizing that placement changes are difficult and detrimental
 6 to the health and well-being of children, foster parents ~~shall seek all~~
 7 ~~necessary information and participate in pre-placement visits whenever~~
 8 possible, before deciding whether or not to accept a child for placement.

may request all available information

9 (d) (1) Foster parents ~~shall make decisions about the daily living~~
 10 ~~concerns of the child and~~ shall be permitted to continue the practice of
 11 their own family values and routines while respecting the child's cultural
 12 heritage. All discipline shall be consistent with state law and rules and
 13 regulations. ~~The Kansas department for children and families and its~~
 14 ~~contractors shall allow foster parents to help plan visitation between the~~
 15 ~~child and the child's siblings or biological family.~~ Visitations should be
 16 scheduled at a time that meets the needs of the child, the biological family
 17 members and the foster family whenever possible. Recognizing that
 18 visitation is an important right of children in foster care, foster parents
 19 shall be flexible and cooperative with family visits. Recognizing the
 20 importance of a positive relationship between birth parents and foster
 21 parents, whenever possible, foster parents shall assist in assuring frequent
 22 and positive parent-child visitation by providing supervision for visits and
 23 transporting children to and from visits.

Strike

between the child and the child's
siblings or biological family

Strike

all consistent with the child's case plan

24 (2) Foster parents shall provide care that is respectful of the child's
 25 cultural identity and needs. ~~Recognizing that cultural competency can be~~
 26 ~~learned, the Kansas department for children and families and its~~
 27 ~~contractors shall provide foster parents with training that specifically~~
 28 ~~addresses cultural needs of children, including, but not limited to,~~
 29 ~~information on skin and hair care, information on any specific religious or~~
 30 ~~cultural practices of the child's biological family and referrals to~~
 31 ~~community resources for ongoing education and support.~~

The Kansas department for children and families shall
provide foster parents relevant information on specific
religious or cultural practices of the child.

32 (3) ~~Foster parents shall recognize that the purpose of discipline is to~~
 33 ~~teach and direct the behavior of the child and ensure that it is administered~~
 34 ~~in a humane and sensitive manner.~~ Foster parents shall use discipline
 35 methods which are consistent with policies, rules and regulations adopted
 36 by the Kansas department for children and families.

and department of health and environment

37 (e) (1) ~~The Kansas department for children and families and its~~
 38 ~~contractors shall provide, upon request by the former foster parents,~~
 39 ~~information on the child's progress after the child leaves foster care.~~

Strike

40 (2) Recognizing the importance of placement stability to the health
 41 and well-being of children, ~~except in an emergency,~~ foster parents shall be
 42 given 30 days' advance notice in accordance with K.S.A. 2013 Supp. 38-
 43 2258, and amendments thereto, ~~and a written statement of the reasons for~~

Strike

1 removal before a child is removed from such foster parents' family foster-
 2 home. Except in an emergency, foster parents shall have the right to
 3 initiate a fair and impartial grievance process through which they may
 4 contest the decision to remove a child from such foster parents' family
 5 foster home, and during which no move of the child shall occur. When
 6 foster parents request removal of a child from such foster parents' family
 7 foster home, such foster parents shall give 14 days' advance notice to the
 8 child's caseworker, except in an emergency.

Strike

9 (3) Recognizing the critical nature of attachment in the health and
 10 well-being of children, if foster care placement is being considered for a
 11 child that has previously been in foster care and such child is not placed in
 12 the home of a relative, the child's former foster parents shall be given first
 13 consideration for placement of the child and any subsequently born
 14 siblings.

Foster parents have the right to be considered,
when appropriate, as a placement option when a
child who was formerly placed with the foster
parents has re-entered the child welfare system.

15 (4) Recognizing the critical nature of attachment in the health and
 16 well-being of children, if a child becomes free for adoption while in foster
 17 care, the child's foster parents, with whom the child has lived and
 18 established attachment for a period of six months or longer, shall be given
 19 first consideration for adoptive placement of the child in accordance with
 20 K.S.A. 2013 Supp. 38-2270, and amendments thereto.

21 (5) If a foster child becomes free for adoption, and the foster parents
 22 desire to adopt the child, they shall inform the caseworker within 60 days
 23 of the caseworker's initial query. If they do not choose to pursue adoption,
 24 foster parents shall make every effort to support and encourage the child's
 25 placement in a permanent home, including, but not limited to, providing
 26 information on the history and care needs of the child and accommodating
 27 transitional visitation.

in a timely manner

28 (f) (1) Unless a longer notice period is provided by law, foster parents
 29 shall be informed by the court at least 14 days prior to all court hearings
 30 pertaining to a child in their care, and shall be informed of their right to
 31 attend and participate consistent with state and federal law.

32 (2) Foster parents, as members of the child welfare team, shall have
 33 access to all court orders concerning the foster family and the children in
 34 their care.

Foster parents shall be informed in advance of all
court hearings and reviews pertaining to a child in
their care, and shall be informed of their right to
attend and participate as allowable by applicable
state and federal law. Foster parents have the right
to complete the foster parent court report form and
submit such form to the court.

35 (g) (1) The Kansas department for children and families, department
 36 of health and environment and their contractors shall provide access to a
 37 fair and impartial grievance process to address licensure, case management
 38 decisions and delivery of service issues. Foster parents shall have timely
 39 access to the child placement agency's appeals and grievance processes,
 40 and shall be free from acts of retaliation while exercising the right to
 41 appeal and afterward.

pursuant to state law and the Kansas department
for children and families office of client service
and department of health and environment
regulations and policies

42 (2) Foster parents shall have the right to access the services of a foster
 43 parent ally when contesting agency decisions related to licensure, case

1 management decisions and delivery of service issues. Such foster parent
 2 ally shall participate in a parent ally orientation program described in
 3 K.S.A. 2013 Supp. 38-2247, and amendments thereto. After participating
 4 in such program, such foster parent ally shall be permitted to attend and
 5 participate in meetings, communicate with agencies with a written release
 6 of information, and otherwise assist and support the foster parent.

7 (h) ~~The Kansas department for children and families, department of~~
 8 ~~health and environment and their contractors shall provide training to~~
 9 ~~foster parents on their policies, rules and regulations and laws governing~~
 10 ~~the licensure of family foster homes, the provision of foster care and the~~
 11 ~~adoption process. Foster parents shall, upon request, be provided with~~
 12 ~~written documentation of the policies of the Kansas department for~~
 13 ~~children and families, department of health and environment and their~~
 14 ~~contractors.~~ Foster parents shall comply with the licensure requirements
 15 and policies of their licensing agency and child placing agency.

16 (i) For the purposes of this section, foster parent means a resource
 17 family providing care to children in foster care in a family foster home, as
 18 defined in section 3, and amendments thereto.

19 (j) This section shall be part of and supplemental to the revised
 20 Kansas code for care of children.

21 ~~New Sec. 2. (a) There is hereby created, within the the Kansas~~
 22 ~~department for children and families, the state foster care and adoption~~
 23 ~~board. The board shall provide consultation and assistance to the~~
 24 ~~department and shall draft and provide an independent review of the~~
 25 ~~department and its contractors' policies and procedures related to the~~
 26 ~~provision of foster care and adoption in Kansas, in order to improve the~~
 27 ~~provision of foster care and adoption services to children statewide. The~~
 28 ~~board shall be comprised of at least eight members as follows:~~

29 ~~(1) Two members who are foster or adoptive parents from each of the~~
 30 ~~four regional areas delineated by the department for children and families~~
 31 ~~as follows: The east regional service area; the Kansas City regional service~~
 32 ~~area; the west regional service area; and the Wichita regional service area.~~
 33 ~~The eight regional members shall be appointed by the governor, subject to~~
 34 ~~confirmation by the senate as provided in K.S.A. 75-4315b, and~~
 35 ~~amendments thereto, based upon recommendations made by foster parent~~
 36 ~~support groups, child welfare boards, contract child placing agencies or~~
 37 ~~other similar entities. Except as provided by K.S.A. 46-2601, and~~
 38 ~~amendments thereto, no member appointed to the board by the governor~~
 39 ~~shall exercise any power, duty or function as a member of the board until~~
 40 ~~confirmed by the senate.~~

41 ~~(2) The board may approve up to two additional representatives of~~
 42 ~~statewide foster care and adoption associations to be voting members of~~
 43 ~~the board.~~

have the right to contact the Kansas department for
 children and families or department of health and
 environment regarding any concerns or grievances about
 management decisions or delivery of service issues

Foster parents shall have access to policies of the Kansas
 department for children and families which are posted on
 the agency's website. Foster parents shall have access to
 rules and regulations regarding their licensure which are
 posted on the Kansas department of health and
 environment website.

Strike all of Sec. 2

Strike all of Sec. 2

~~(b) All members of the board shall serve for a term of two years and until their successors are appointed or approved. Members may be reappointed to the board for consecutive terms. All vacancies on the board shall be filled for the unexpired term in the same manner in which the board membership which is vacant was originally filled.~~

~~(c) Each member of the board shall be paid subsistence allowances and mileage as provided in K.S.A. 75-3223, and amendments thereto. All such expenses shall be paid from available appropriations of the Kansas department for children and families upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for children and families or a person designated by the secretary.~~

~~(d) The board shall be subject to the provisions of the open records act, K.S.A. 45-215 et seq., and amendments thereto, and the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.~~

~~(e) The board shall elect officers from the membership consisting of a chairperson, co-chairperson and secretary. Officers shall serve for a term of two years. The board may elect such other officers and establish such committees as it deems appropriate.~~

~~(f) The board shall establish procedures as necessary to:~~

~~(1) Review proposed policies for the Kansas department for children and families, department of health and environment and their contractors and provide written opinions and recommendations for change to the sending agency within 30 days of receipt of the proposed policy;~~

~~(2) provide draft policy suggestions at the request of the Kansas department for children and families, department of health and environment or their contractors, or in response to issues identified by the board, to the appropriate or sending agency, for improvements in foster care or adoption practice; and~~

~~(3) provide a written report of all annual activities of the board to the secretary for children and families, secretary of health and environment and the governor, and upon request, members of the legislature.~~

~~(g) The board shall exercise its powers and duties independently of the Kansas department for children and families, department of health and environment and their contractors, in order to ensure partnership and accountability in the provision of services to the state's children who have been affected by abuse and neglect. The secretary for children and families shall provide budgetary, procurement and accounting functions and other staff assistance as necessary to assist the board in carrying out the provisions of this section.~~

~~New Sec. 3. (a) A family foster home is a child care facility that is a private residence, including any adjacent grounds, in which a licensee provides care for 24 hours a day for one or more children in foster care and for which a license is required under the provisions of K.S.A. 65-501 et~~

1 seq., and amendments thereto.

2 (b) This section shall be part of and supplemental to article 5 of
3 chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

4 ~~Sec. 4. K.S.A. 2013 Supp. 38-2210 is hereby amended to read as~~
5 ~~follows: 38-2210. To facilitate investigation and ensure the provision of~~
6 ~~necessary services to children who may be in need of care and such~~
7 ~~children's the families of such children, the following persons and entities~~
8 ~~with responsibilities concerning a child who is alleged or adjudicated to be~~
9 ~~in need of care shall freely exchange information:~~

- 10 ~~(a) The secretary.~~
- 11 ~~(b) The commissioner of juvenile justice.~~
- 12 ~~(c) The law enforcement agency receiving such report.~~
- 13 ~~(d) Members of a court-appointed multidisciplinary team.~~
- 14 ~~(e) An entity mandated by federal law or an agency of any state~~
15 ~~authorized to receive and investigate reports of a child known or suspected~~
16 ~~to be in need of care.~~
- 17 ~~(f) A military enclave or Indian tribal organization authorized to~~
18 ~~receive and investigate reports of a child known or suspected to be in need~~
19 ~~of care.~~

20 ~~(g) A county or district attorney with responsibility for filing a~~
21 ~~petition pursuant to K.S.A. 2013 Supp. 38-2214, and amendments thereto.~~

22 ~~(h) A court services officer who has taken a child into custody~~
23 ~~pursuant to K.S.A. 2013 Supp. 38-2231, and amendments thereto.~~

24 ~~(i) An intake and assessment worker.~~

25 ~~(j) Any community corrections program which has the child under~~
26 ~~court ordered supervision.~~

27 ~~(k) The department of health and environment or persons authorized~~
28 ~~by the department of health and environment pursuant to K.S.A. 65-512,~~
29 ~~and amendments thereto, for the purpose of carrying out responsibilities~~
30 ~~relating to licensure or registration of child care providers as required by~~
31 ~~article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments~~
32 ~~thereto.~~

33 ~~(l) Any foster parent or placement provider responsible for providing~~
34 ~~for the day-to-day care of a child in custody of the secretary, for the~~
35 ~~purpose of ensuring adequate care, safety and protection for the child.~~

36 Sec. 5. K.S.A. 2013 Supp. 38-2212 is hereby amended to read as
37 follows: 38-2212. (a) *Principle of appropriate access.* Information
38 contained in confidential agency records concerning a child alleged or
39 adjudicated to be in need of care may be disclosed as provided in this
40 section. Disclosure shall in all cases be guided by the principle of
41 providing access only to persons or entities with a need for information
42 that is directly related to achieving the purposes of this code.

43 (b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-

Remove Sec. 4
Leave current law

2210, and amendments thereto, the secretary and juvenile intake and assessment agencies shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Necessary access.* The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) A child named in the report or records, a guardian ad litem appointed for the child and the child's attorney.

(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.

(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.

(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of ~~social and rehabilitation services for children and families~~ to care for, treat or supervise a child in need of care.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) An attorney for a private party who files a petition pursuant to subsection (b) of K.S.A. 2013 Supp. 38-2233, and amendments thereto.

(9) A foster parent, prospective foster parent, permanent custodian, prospective permanent custodian, adoptive parent or prospective adoptive parent. In order to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child's placement, and to help the family meet the needs of the child in a constructive manner, the secretary shall seek and shall provide the following information to such person's as the information becomes available to the secretary:

(A) Strengths, needs and general behavior of the child, ~~including, but not limited to, any information from previous placements which would indicate that the child or children may have a propensity to cause violence~~

Strike

1 ~~to any member of the family foster home, including pets;~~

2 (B) circumstances which necessitated placement, ~~including, but not~~
 3 ~~limited to, a listing of previous placements and contact information for~~
 4 ~~previous placement providers;~~

Strike

5 (C) information about the child's family and the child's relationship to
 6 the family which may affect the placement, ~~including, but not limited to,~~
 7 ~~potential relative placement options, any known history of previously born~~
 8 ~~siblings in this state or any other, the case plan, any family history of~~
 9 ~~mental or physical illness, criminal background of the child's family and~~
 10 ~~any other information which is pertinent to the care and needs of the child~~
 11 ~~and to protect the foster or adoptive family;~~

Strike

12 (D) important life experiences and relationships which may affect the
 13 child's feelings, behavior, attitudes or adjustment, ~~including, but not~~
 14 ~~limited to, any history of sexual abuse of the child or sexual abuse~~
 15 ~~perpetrated by the child, and any criminal background of the child;~~

Strike

16 (E) medical history of the child, including, ~~but not limited to, full~~
 17 ~~disclosure of all medical, psychological and psychiatric conditions of the~~
 18 ~~child and any information on third-party coverage which may be available~~
 19 ~~to the child; and~~

Strike

20 (F) education history, ~~to include including, but not limited to, present~~
 21 ~~grade placement, special strengths and weaknesses, previous educational~~
 22 ~~testing and the presence or absence of an individualized education~~
 23 ~~program or plans for the provision of a free appropriate public education.~~

Strike

24 (10) The state protection and advocacy agency as provided by
 25 subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of
 26 K.S.A. 74-5515, and amendments thereto.

27 (11) Any educational institution to the extent necessary to enable the
 28 educational institution to provide the safest possible environment for its
 29 pupils and employees.

30 (12) Any educator to the extent necessary to enable the educator to
 31 protect the personal safety of the educator and the educator's pupils.

32 (13) Any other federal, state or local government executive branch
 33 entity or any agent of such entity, having a need for such information in
 34 order to carry out such entity's responsibilities under the law to protect
 35 children from abuse and neglect.

36 (d) *Specified access.* The following persons or entities shall have
 37 access to information contained in agency records as specified.
 38 Information authorized to be disclosed pursuant to this subsection shall not
 39 contain information which identifies a reporter of a child who is alleged or
 40 adjudicated to be a child in need of care.

41 (1) Information from confidential agency records of the department
 42 ~~of social and rehabilitation services for children and families,~~ a law
 43 enforcement agency or any juvenile intake and assessment worker of a

1 child alleged or adjudicated to be in need of care shall be available to
2 members of the standing house or senate committee on judiciary, house
3 committee on corrections and juvenile justice, house committee on
4 appropriations, senate committee on ways and means, legislative post audit
5 committee and any joint committee with authority to consider children's
6 and families' issues, when carrying out such member's or committee's
7 official functions in accordance with K.S.A. 75-4319, and amendments
8 thereto, in a closed or executive meeting. Except in limited conditions
9 established by $\frac{2}{3}$ of the members of such committee, records and reports
10 received by the committee shall not be further disclosed. Unauthorized
11 disclosure may subject such member to discipline or censure from the
12 house of representatives or senate. The secretary of ~~social and~~
13 ~~rehabilitation services for children and families~~ shall not summarize the
14 outcome of department actions regarding a child alleged to be a child in
15 need of care in information available to members of such committees.

16 (2) The secretary of ~~social and rehabilitation services for children~~
17 ~~and families~~ may summarize the outcome of department actions regarding
18 a child alleged to be a child in need of care to a person having made such
19 report.

20 (3) Information from confidential reports or records of a child alleged
21 or adjudicated to be a child in need of care may be disclosed to the public
22 when:

23 (A) The individuals involved or their representatives have given
24 express written consent; or

25 (B) the investigation of the abuse or neglect of the child or the filing
26 of a petition alleging a child to be in need of care has become public
27 knowledge, provided, however, that the agency shall limit disclosure to
28 confirmation of procedural details relating to the handling of the case by
29 professionals.

30 (e) *Court order.* Notwithstanding the provisions of this section, a
31 court of competent jurisdiction, after in camera inspection, may order
32 disclosure of confidential agency records pursuant to a determination that
33 the disclosure is in the best interests of the child who is the subject of the
34 reports or that the records are necessary for the proceedings of the court
35 and otherwise admissible as evidence. The court shall specify the terms of
36 disclosure and impose appropriate limitations.

37 (f) (1) Notwithstanding any other provision of law to the contrary,
38 except as provided in paragraph (4), in the event that child abuse or
39 neglect results in a child fatality or near fatality, reports or records of a
40 child alleged or adjudicated to be in need of care received by the secretary,
41 a law enforcement agency or any juvenile intake and assessment worker
42 shall become a public record and subject to disclosure pursuant to K.S.A.
43 45-215, and amendments thereto.

(2) Within seven days of receipt of a request in accordance with the procedures adopted under K.S.A. 45-220, and amendments thereto, the secretary shall notify any affected individual that an open records request has been made concerning such records. The secretary or any affected individual may file a motion requesting the court to prevent disclosure of such record or report, or any select portion thereof. If the affected individual does not file such motion within seven days of notification, and the secretary has not filed a motion, the secretary shall release the reports or records. If such motion is filed, the court shall consider the effect such disclosure may have upon an ongoing criminal investigation, a pending prosecution, or the privacy of the child, if living, or the child's siblings, parents or guardians. The court shall make written findings on the record justifying the closing of the records and shall provide a copy of the journal entry to the affected parties and the individual requesting disclosure pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(3) For reports or records requested pursuant to this subsection, the time limitations specified in this subsection shall control to the extent of any inconsistency between this subsection and K.S.A. 45-218, and amendments thereto. As used in this section, "near fatality" means an act that, as certified by a person licensed to practice medicine and surgery, places the child in serious or critical condition.

(4) Nothing in this subsection shall allow the disclosure of reports, records or documents concerning the child and such child's biological parents which were created prior to such child's adoption. Nothing herein is intended to require that an otherwise privileged communication lose its privileged character.

Sec. 6. K.S.A. 2013 Supp. 38-2213 is hereby amended to read as follows: 38-2213. (a) *Principle of limited disclosure.* Information contained in confidential law enforcement records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-2210, and amendments thereto, a law enforcement agency shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Access to information in law enforcement records.* In order to discharge their official duties, the following persons or entities shall have access to confidential law enforcement records concerning a child alleged or adjudicated to be in need of care.

(1) The court having jurisdiction over the proceedings, including the

- 1 presiding judge and any court personnel designated by the judge.
 2 (2) The secretary.
 3 (3) The commissioner of juvenile justice.
 4 (4) Law enforcement officers or county or district attorneys or their
 5 staff.
 6 (5) Any juvenile intake and assessment worker.
 7 (6) Members of a court-appointed multidisciplinary team.
 8 (7) Any other federal, state or local government executive branch
 9 entity, or any agent of such entity, having a need for such information in
 10 order to carry out such entity's responsibilities under law to protect
 11 children from abuse and neglect.
 12 (8) Persons or entities allowed access pursuant to subsection (f) of
 13 K.S.A. 2013 Supp. 38-2212, and amendments thereto.
 14 (d) *Necessary access.* The following persons or entities shall have
 15 access to information from law enforcement records when reasonably
 16 necessary to carry out their lawful responsibilities, to maintain their
 17 personal safety and the personal safety of individuals in their care, or to
 18 educate, diagnose, treat, care for or protect a child alleged or adjudicated
 19 to be in need of care. Information authorized to be disclosed in this
 20 subsection shall not contain information which identifies a reporter of a
 21 child alleged or adjudicated to be a child in need of care.
 22 (1) Any individual, or public or private agency authorized by a
 23 properly constituted authority to diagnose, care for, treat or supervise a
 24 child who is the subject of a report or record of child abuse or neglect,
 25 including physicians, psychiatrists, nurses, nurse practitioners,
 26 psychologists, licensed social workers, child development specialists,
 27 physician assistants, community mental health workers, alcohol and drug
 28 abuse counselors, ~~and licensed or registered child care providers and~~
 29 ~~foster parents caring for a child in the custody of the secretary.~~
 30 (2) School administrators shall have access to but shall not copy law
 31 enforcement records and may disclose information to teachers,
 32 paraprofessionals and other school personnel as necessary to meet the
 33 educational needs of the child or to protect the safety of students and
 34 school employees.
 35 (3) The department of health and environment or persons authorized
 36 by the department of health and environment pursuant to K.S.A. 65-512,
 37 and amendments thereto, for the purposes of carrying out responsibilities
 38 relating to licensure or registration of child care providers as required by
 39 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
 40 thereto.
 41 (e) *Legislative access.* Information from law enforcement records of a
 42 child alleged or adjudicated to be in need of care shall be available to
 43 members of the standing house or senate committee on judiciary, house

Strike

1 committee on corrections and juvenile justice, house committee on
 2 appropriations, senate committee on ways and means, legislative post audit
 3 committee and any joint committee with authority to consider children's
 4 and families' issues, when carrying out such member's or committee's
 5 official functions in accordance with K.S.A. 75-4319, and amendments
 6 thereto, in a closed or executive meeting. Except in limited conditions
 7 established by $\frac{2}{3}$ of the members of such committee, records and reports
 8 received by the committee shall not be further disclosed. Unauthorized
 9 disclosure may subject such member to discipline or censure from the
 10 house of representatives or senate.

11 (f) *Court order.* Notwithstanding the provisions of this section, a
 12 court of competent jurisdiction, after in camera inspection, may order
 13 disclosure of confidential law enforcement records pursuant to a
 14 determination that the disclosure is in the best interests of the child who is
 15 the subject of the reports or that the records are necessary for the
 16 proceedings of the court and otherwise admissible as evidence. The court
 17 shall specify the terms of disclosure and impose appropriate limitations.

18 Sec. 7. K.S.A. 2013 Supp. 38-2258 is hereby amended to read as
 19 follows: 38-2258. (a) Except as provided in K.S.A. 2013 Supp. 38-2255(d)
 20 (2) and 38-2259, and amendments thereto, if a child has been in the same
 21 foster home or shelter facility for ~~six~~ *three* months or longer, or has been
 22 placed by the secretary in the home of a parent or relative, the secretary
 23 shall give *30 days'* written notice of any plan to move the child to a
 24 different placement ~~unless the move is to the selected preadoptive family~~
 25 ~~for the purpose of facilitating adoption.~~ The notice shall be given to: (1)
 26 The court having jurisdiction over the child; (2) the petitioner; (3) the
 27 attorney for the parents, if any; (4) each parent whose address is available;
 28 (5) the foster parent or custodian from whose home or shelter facility it is
 29 proposed to remove the child; (6) the child, if 12 or more years of age; (7)
 30 the child's guardian ad litem; (8) any other party or interested party; and
 31 (9) the child's court appointed special advocate.

32 (b) The notice shall state the placement to which the secretary plans
 33 to transfer the child and the reason for the proposed action. The notice
 34 shall be mailed by first class mail 30 days in advance of the planned
 35 transfer, except that the secretary shall not be required to wait 30 days to
 36 transfer the child if all persons enumerated in subsection (a)(2) through (8)
 37 consent in writing to the transfer.

38 (c) Within 14 days after receipt of the notice, any person enumerated
 39 in subsection (a)(2) through (8) receiving notice as provided above may
 40 request, either orally or in writing, that the court conduct a hearing to
 41 determine whether or not the change in placement is in the best interests of
 42 the child concerned. When the request has been received, the court shall
 43 schedule a hearing and immediately notify the secretary of the request and

unless the move is to the selected preadoptive
 family for the purpose of facilitating adoption
 (Restore current law language)

1 the time and date the matter will be heard. The court shall give notice of
 2 the hearing to persons enumerated in subsection (a)(2) through (9). If the
 3 court does not receive a request for hearing within the specified time, the
 4 change in placement may occur prior to the expiration of the 30 days. The
 5 secretary shall not change the placement of the child; ~~except for the~~
 6 ~~purpose of adoption, unless the change is approved by the court.~~

, except for the purpose of adoption,
 (Restore current law language)

7 (d) When, after the notice set out above, a child in the custody of the
 8 secretary is removed from the home of a parent after having been placed in
 9 the home of a parent for a period of six months or longer, the secretary
 10 shall request a finding that: (1) (A) The child is likely to sustain harm if
 11 not immediately removed from the home;

12 (B) allowing the child to remain in home is contrary to the welfare of
 13 the child; or

14 (C) immediate placement of the child is in the best interest of the
 15 child; and

16 (2) reasonable efforts have been made to maintain the family unit and
 17 prevent the unnecessary removal of the child from the child's home or that
 18 an emergency exists which threatens the safety to the child.

19 (e) The secretary shall present to the court in writing the efforts to
 20 maintain the family unit and prevent the unnecessary removal of the child
 21 from the child's home. In making the findings, the court may rely on
 22 documentation submitted by the secretary or may set the date for a hearing
 23 on the matter. If the secretary requests such finding, the court, not more
 24 than 45 days from the date of the request, shall provide the secretary with a
 25 written copy of the findings by the court for the purpose of documenting
 26 these orders.

27 ~~Sec. 8. K.S.A. 2013 Supp. 38-2259 is hereby amended to read as~~
 28 ~~follows: 38-2259. (a) When an emergency exists requiring immediate~~
 29 ~~action to assure the safety and protection of the child or the secretary is~~
 30 ~~notified that the foster parents or shelter facility refuse to allow the child to~~
 31 ~~remain, the secretary may transfer the child to another foster home or~~
 32 ~~shelter facility without prior court approval. The secretary shall notify the~~
 33 ~~court of the action at the earliest practical time. When the child is removed~~
 34 ~~from the home of a parent or a foster parent after having been placed in~~
 35 ~~the home for a period of six months or longer, the secretary shall present to~~
 36 ~~the court in writing the specific nature of the emergency and reasons why~~
 37 ~~it is contrary to the welfare of the child to remain in the placement and~~
 38 ~~request a finding by the court whether remaining in the home is contrary to~~
 39 ~~the welfare of the child. If the court enters an order the court shall make a~~
 40 ~~finding as to whether an emergency exists. The court shall provide the~~
 41 ~~secretary with a copy of the order. In making the finding, the court may~~
 42 ~~rely on documentation submitted by the secretary or may set the date for a~~
 43 ~~hearing on the matter. If the secretary requests such a finding, the court~~

Remove Sec. 8
 Leave current law

1 shall provide the secretary with a written copy of the finding by the court
 2 not more than 45 days from the date of the request.

3 ~~(b) The court shall not enter an order approving the removal of a~~
 4 ~~child from the home of a parent pursuant to this section unless the court~~
 5 ~~first finds probable cause that: (1) (A) The child is likely to sustain harm if~~
 6 ~~not immediately removed from the home;~~

7 ~~(B) allowing the child to remain in home is contrary to the welfare of~~
 8 ~~the child; or~~

9 ~~(C) immediate placement of the child is in the best interest of the~~
 10 ~~child; and~~

11 ~~(2) reasonable efforts have been made to maintain the family unit and~~
 12 ~~prevent the unnecessary removal of the child from the child's home or that~~
 13 ~~an emergency exists which threatens the safety to the child.~~

14 ~~Sec. 9. K.S.A. 2013 Supp. 38-2270 is hereby amended to read as~~
 15 ~~follows: 38-2270. (a) When parental rights have been terminated and it~~
 16 ~~appears that adoption is a viable alternative, the court shall enter one of the~~
 17 ~~following orders:~~

18 ~~(1) An order granting custody of the child, for adoption proceedings,~~
 19 ~~to the secretary or a corporation organized under the laws of the state of~~
 20 ~~Kansas authorized to care for and surrender children for adoption as~~
 21 ~~provided in K.S.A. 38-112 et seq., and amendments thereto. The person,~~
 22 ~~secretary or corporation shall have authority to place the child in a family~~
 23 ~~home, and give consent for the legal adoption of the child which shall be~~
 24 ~~the only consent required to authorize the entry of an order or decree of~~
 25 ~~adoption.~~

26 ~~(2) An order granting custody of the child to proposed adoptive~~
 27 ~~parents and consenting to the adoption of the child by the proposed~~
 28 ~~adoptive parents.~~

29 ~~(b) In making an order under subsection (a), the court shall give~~
 30 ~~preference, to the extent that the court finds it is in the best interests of the~~
 31 ~~child, first to granting such custody for adoption to a relative of the child~~
 32 ~~within the third degree, to include the adoptive parents of previously born~~
 33 ~~siblings of the child, and second to granting such custody to a person with~~
 34 ~~whom the child has close emotional ties giving preference to a foster~~
 35 ~~parent who has had physical custody of the child for six months or longer.~~

36 ~~(c) Discharge upon adoption. When an adoption decree has been filed~~
 37 ~~with the court in the child in need of care case, the secretary's custody shall~~
 38 ~~cease, the court's jurisdiction over the child shall cease and the court shall~~
 39 ~~enter an order to that effect.~~

40 ~~Sec. 10. K.S.A. 2013 Supp. 38-2210, 38-2212, 38-2213, 38-2258, 38-~~
 41 ~~2259 and 38-2270 are hereby repealed.~~

42 ~~Sec. 11. This act shall take effect and be in force from and after its~~
 43 ~~publication in the statute book.~~

Remove Sec. 8
 Leave current law

Remove Sec. 9
 Leave current law

and

Note: This document shows the Committee's recommendations as amendments to Substitute for SB 394. The bill contained some striketype already. The Committee's recommended changes appear in bold.

{As Amended by Senate Committee of the Whole}

Session of 2014

Substitute for SENATE BILL No. 394

AN ACT concerning children and minors; enacting the Kansas foster parents' bill of rights act; relating to foster care; family foster homes; amending K.S.A. 2013 Supp. 38-2212, 38-2213 and 38-2258 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The provisions of this act shall be known and may be cited as the Kansas foster parents' bill of rights act.

(b)(1) The Kansas department for children and families and department of health and environment recognize that foster parents play an integral role in the state's effort to care for dependent children displaced from their homes. Foster parents have the right to be treated by the Kansas department for children and families, department of health and environment and other partners in the care of abused and neglected children with dignity, respect and trust as a provider of foster care. Foster parents shall treat all children in their care, each child's birth family and all members of the child professional team with dignity and respect.

(2) The department of health and environment shall provide written notification of the rights enumerated in this section to foster parents at the time of initial licensure and at the time of each licensure renewal following the initial licensure period.

(3) The Kansas department for children and families shall make its policies available to foster parents and the public by publishing the prevention and protection services policy procedure manual on the department's public website.

(c) (1) The Kansas department for children and families shall provide foster parents with pre-service training. The Kansas department for children and families, department of health and environment or the child placement agency shall provide training at appropriate intervals to meet mutually assessed needs of the child and to improve foster parent skills. **Training approved by the licensing agency and conducted by foster parent support groups shall be recognized as pertinent, and information about training offered by foster parent support groups shall be regularly shared with family foster homes licensed within the region served by those support groups.**

Comment

See page 17-18 of Committee Report.

(2) The Kansas department for children and families shall provide to foster parents, prior to and during placement, information which is pertinent to the care and needs of the child and to protect the foster family to the extent allowed under state and federal law. The Kansas department for children and families shall provide foster parents information regarding the number of times a child has been removed and the reasons therefor, to the extent permitted by law, and may also provide the names and phone numbers of the previous foster parents if the previous foster parents have authorized such release.

(3) The Kansas department for children and families will, when appropriate and feasible, arrange for pre-placement visits between foster children and family foster home parents.

(4) Foster parents may ask questions about the child's case plan, encourage a placement or refuse a placement. In the event foster parents **ask questions about the case plan or** refuse a placement, **such refusal these actions** shall not serve as the **sole** determining factor with respect to a subsequent placement of a child with such foster parents when such placement is in the best interests of the child. After a placement of a child with foster parents, the Kansas department for children and families shall update the foster parents as new relevant information about the child, the child's parents and other relatives is gathered.

Comment

See page 18 of Committee Report.

(5) Foster parents shall be informed in a timely manner by the Kansas department for children and families of all case plan meetings concerning the children placed in their homes, and shall be allowed and encouraged to participate in such meetings and provide input concerning the case plan. **Foster parents should be encouraged to participate in other meetings concerning the placement of the child when appropriate and feasible.** Foster parents shall be informed by the Kansas department of health and environment concerning their licensure as a family foster home.

Comment

See pages 10-11 of Committee Report.

(6) The Kansas department for children and families will, when appropriate and feasible, establish reasonably accessible respite care for children in foster care for short periods of time, in consultation with the foster parents. Foster parents shall follow all policies and procedures established by the Kansas department for children and families for requesting and using respite care.

~~(7) Foster parents shall treat all information received from the Kansas department for children and families about the child and the child's family as confidential. Information necessary for the medical or psychiatric care of the child may be provided to the appropriate practitioners. Foster parents may share information necessary with school personnel in order to secure a safe and appropriate education for the child. Additionally, foster parents shall share information they may learn about the child and the child's family, and concerns that arise in the care of the child, with the caseworker and other members of the child professional team.~~

Comment

See page 8 of Committee Report.

(8) Recognizing that placement changes ~~are~~ may be difficult and detrimental to the health and well-being of children, foster parents ~~may request~~ have the responsibility to seek all legally available information, whenever possible, before deciding whether or not to accept a child for placement.

Comment

Subsection (c)(8) was stricken in bill that passed the Senate. See page 9 of Committee Report.

~~(d)(1) Foster parents shall be permitted to continue the practice of their own family values and routines while respecting the child's cultural heritage. All discipline shall be consistent with state law and rules and regulations. Visitations between the child and the child's siblings or biological family should be scheduled at a time that meets the needs of the child, the biological family members and the foster family, whenever possible. Recognizing that visitation is an important right of children in foster care, foster parents shall be flexible and cooperative with family visits. Recognizing the importance of a positive relationship between birth parents and foster parents, whenever possible, foster parents shall assist in assuring frequent and positive parent-child visitation by providing supervision for visits and transporting children to and from visits, all consistent with the child's case plan.~~

~~—(2) Foster parents shall provide care that is respectful of the child's cultural identity and needs. The Kansas department for children and families shall provide foster parents relevant information on specific religious or cultural practices of the child.~~

~~—(3) Foster parents shall use discipline methods which are consistent with policies, rules and regulations adopted by the Kansas department for children and families and department of health and environment.~~

Comment

See pages 18-19 of Committee Report.

~~(e)(1) Upon request by a former foster parent, the department for children and families shall provide general information, if available, on the child's progress if the child is at the time of the request in the custody of the secretary for children and families and provision of such information is agreed to by the child and the child's placement.~~

Upon request by a former foster parent, the department for children and families shall provide general information, if available, on the well-being of a child if: A) all parental rights to the child have been terminated; and B) there is no objection from the guardian ad litem, if the child is less than 14 years of age, or the child, if the child is 14 years of age or older, but less than 18 years of age. The department of children and families shall adopt policy and procedure consistent with the revised code for care of children regarding the provision of general information about a child's well-being upon request from a former foster parent if the child is in the custody of the secretary for children and families, but parental rights to the child have not been terminated.

Comment

See pages 9-10 of Committee Report.

(2) Recognizing the importance of placement stability to the health and well-being of children, foster parents shall be given ~~30 days~~¹ written notice of any plan to move a child in their care to a different placement in accordance with subsections (a) and (f) of K.S.A. 2013 Supp. 38-2258, and amendments thereto.

~~(3) Foster parents have the right to be considered, when appropriate, as a placement option when a child who was formerly placed with the foster parents has re-entered the child welfare system.~~

Comment

See pages 14-16 of Committee Report.

(4) If a foster child becomes free for adoption and the foster parents desire to adopt the child, they shall inform the caseworker in a timely manner. ~~If they do not choose to pursue adoption, foster~~ **Foster** parents shall make every effort to support and encourage the child's placement in a permanent home, including, but not limited to, providing information on the history and care needs of the child and accommodating transitional visitation.

Comment

The stricken clause improperly narrows the foster parents' duty. If foster parents do choose to pursue adoption, but are not selected as the adoptive placement, they still should make every effort to support and encourage the child's placement in the adoptive home selected.

(f) Foster parents shall be informed in advance of all court hearings and reviews pertaining to a child in their care, and shall be informed of their right to attend and participate as allowable by applicable state and federal law. Foster parents have the right to complete the foster parent court report form and submit such form to the court.

(g)(1) Foster parents have access to the appeals and grievance processes pursuant to state law and regulations and policies of the Kansas department for children and families and department of health and environment.

(2) Foster parents have the right to contact the Kansas department for children and families or department of health and environment regarding any concerns or grievances about management decisions or delivery of service issues.

(h) Foster parents shall have access to policies of the Kansas department for children and families which are posted on the agency's website. Foster parents shall have access to rules and regulations regarding their licensure which are posted on the Kansas department of health and environment website. Foster parents shall comply with the licensure requirements and policies of their licensing agency and child placing agency.

~~(f) For the purposes of this section, foster parent means a resource family providing care to children in foster care in a family foster home, as defined in section 2, and amendments thereto.~~

Comment

The definition is unnecessary and is inconsistent with definitions in KDHE regulations.

(j) This section shall be part of and supplemental to the revised Kansas code for care of children.

~~New Sec. 2. (a) A family foster home is a child care facility that is a private residence, including any adjacent grounds, in which a licensee provides care for 24 hours a day for one or more children in foster care and for which a license is required under the provisions of K.S.A. 65-501 et seq., and amendments thereto.~~

Comment

The definition is unnecessary, although it is consistent with K.A.R. 28-4-311.

(b) This section shall be part of and supplemental to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 3. K.S.A. 2013 Supp. 38-2212 is hereby amended to read as follows: 38-2212. (a) *Principle of appropriate access.* Information contained in confidential agency records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-2210, and amendments thereto, the secretary and juvenile intake and assessment agencies shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Necessary access.* The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) A child named in the report or records, a guardian ad litem appointed for the child and the child's attorney.

(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.

(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.

(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary ~~of social and rehabilitation services for children and families~~ to care for, treat or supervise a child in need of care.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) An attorney for a private party who files a petition pursuant to subsection (b) of K.S.A. 2013 Supp. 38-2233, and amendments thereto.

(9) A foster parent, prospective foster parent, permanent custodian, prospective permanent custodian, adoptive parent or prospective adoptive parent. In order to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child's placement, and to help the family meet the needs of the child in a constructive manner, the secretary shall seek and shall provide the following information to such person's as the information becomes available to the secretary:

(A) Strengths, needs and general behavior of the child;

(B) circumstances which necessitated placement;

(C) information about the child's family and the child's relationship to the family which may affect the placement;

(D) important life experiences and relationships which may affect the child's feelings, behavior, attitudes or adjustment;

(E) medical history of the child, including third-party coverage which may be available to the child; and

(F) education history, ~~to include~~ *including* present grade placement, special strengths and weaknesses.

(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(13) Any other federal, state or local government executive branch entity or any agent of such entity, having a need for such information in order to carry out such entity's responsibilities under the law to protect children from abuse and neglect.

(d) *Specified access.* The following persons or entities shall have access to information contained in agency records as specified. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) Information from confidential agency records of the department ~~of social and rehabilitation services for children and families~~, a law enforcement agency or any juvenile intake and assessment worker of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3

of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. The secretary ~~of social and rehabilitation services for children and families~~ shall not summarize the outcome of department actions regarding a child alleged to be a child in need of care in information available to members of such committees.

(2) The secretary ~~of social and rehabilitation services for children and families~~ may summarize the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(3) Information from confidential reports or records of a child alleged or adjudicated to be a child in need of care may be disclosed to the public when:

(A) The individuals involved or their representatives have given express written consent; or

(B) the investigation of the abuse or neglect of the child or the filing of a petition alleging a child to be in need of care has become public knowledge, provided, however, that the agency shall limit disclosure to confirmation of procedural details relating to the handling of the case by professionals.

(e) *Court order.* Notwithstanding the provisions of this section, a court of competent jurisdiction, after in camera inspection, may order disclosure of confidential agency records pursuant to a determination that the disclosure is in the best interests of the child who is the subject of the reports or that the records are necessary for the proceedings of the court and otherwise admissible as evidence. The court shall specify the terms of disclosure and impose appropriate limitations.

(f) (1) Notwithstanding any other provision of law to the contrary, except as provided in paragraph (4), in the event that child abuse or neglect results in a child fatality or near fatality, reports or records of a child alleged or adjudicated to be in need of care received by the secretary, a law enforcement agency or any juvenile intake and assessment worker shall become a public record and subject to disclosure pursuant to K.S.A. 45-215, and amendments thereto.

(2) Within seven days of receipt of a request in accordance with the procedures adopted under K.S.A. 45-220, and amendments thereto, the secretary shall notify any affected individual that an open records request has been made concerning such records. The secretary or any affected individual may file a motion requesting the court to prevent disclosure of such record or report, or any select portion thereof. If the affected individual does not file such motion within seven days of notification, and the secretary has not filed a motion, the secretary shall release the reports or records. If such motion is filed, the court shall consider the effect such disclosure may have upon an ongoing criminal investigation, a pending prosecution, or the privacy of the child, if living, or the child's siblings, parents or guardians. The court shall make written findings on the record justifying the closing of the records and shall provide a copy of the journal entry to the affected parties and the individual requesting disclosure pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(3) For reports or records requested pursuant to this subsection, the time limitations specified in this subsection shall control to the extent of any inconsistency between this subsection and K.S.A. 45-218, and amendments thereto. As used in this section, "near fatality" means an act that, as certified by a person licensed to practice medicine and surgery, places the child in serious or critical condition.

(4) Nothing in this subsection shall allow the disclosure of reports, records or documents concerning the child and such child's biological parents which were created prior to such child's adoption. Nothing herein is intended to require that an otherwise privileged communication lose its privileged character.

Sec. 4. K.S.A. 2013 Supp. 38-2213 is hereby amended to read as follows: 38-2213. (a) *Principle of limited disclosure.* Information contained in confidential law enforcement records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall

in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-2210, and amendments thereto, a law enforcement agency shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Access to information in law enforcement records.* In order to discharge their official duties, the following persons or entities shall have access to confidential law enforcement records concerning a child alleged or adjudicated to be in need of care.

(1) The court having jurisdiction over the proceedings, including the presiding judge and any court personnel designated by the judge.

(2) The secretary.

(3) The commissioner of juvenile justice.

(4) Law enforcement officers or county or district attorneys or their staff.

(5) Any juvenile intake and assessment worker.

(6) Members of a court-appointed multidisciplinary team.

(7) Any other federal, state or local government executive branch entity, or any agent of such entity, having a need for such information in order to carry out such entity's responsibilities under law to protect children from abuse and neglect.

(8) Persons or entities allowed access pursuant to subsection (f) of K.S.A. 2013 Supp. 38-2212, and amendments thereto.

(d) *Necessary access.* The following persons or entities shall have access to information from law enforcement records when reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged or adjudicated to be in need of care. Information authorized to be disclosed in this subsection shall not contain information which identifies a reporter of a child alleged or adjudicated to be a child in need of care.

(1) Any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect, including physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physician assistants, community mental health workers, and alcohol and drug abuse counselors, ~~and licensed or registered child care providers.~~

(2) School administrators shall have access to but shall not copy law enforcement records and may disclose information to teachers, paraprofessionals and other school personnel as necessary to meet the educational needs of the child or to protect the safety of students and school employees.

(3) The department of health and environment or persons authorized by the department of health and environment pursuant to K.S.A. 65-512, and amendments thereto, for the purposes of carrying out responsibilities relating to licensure or registration of child care providers as required by article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

(e) *Legislative access.* Information from law enforcement records of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) *Court order.* Notwithstanding the provisions of this section, a court of competent jurisdiction, after in camera inspection, may order disclosure of confidential law enforcement records pursuant to a determination that the disclosure is in the best interests of the child who is the subject of the reports or that the records are necessary for the proceedings of the court and otherwise admissible as evidence. The court shall specify the terms of disclosure and impose appropriate limitations.

Sec. 5. K.S.A. 2013 Supp. 38-2258 is hereby amended to read as follows: 38-2258. (a) Except as provided in *subsection (d)(2) of K.S.A. 2013 Supp. 38-2255*~~(d)(2)~~ and 38-2259, and amendments thereto, if a child has been in the same foster home or shelter facility for ~~six~~**three** ~~six~~ months or longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give 30 days' written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court having jurisdiction over the child; (2) the petitioner; (3) the attorney for the parents, if any; (4) each parent whose address is available; (5) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (6) the child, if 12 or more years of age; (7) the child's guardian ad litem; (8) any other party or interested party; and (9) the child's court appointed special advocate.

(b) The notice shall state the placement to which the secretary plans to transfer the child and the reason for the proposed action. The notice shall be mailed by first class mail 30 days in advance of the planned transfer, except that the secretary shall not be required to wait 30 days to transfer the child if all persons enumerated in subsection (a)(2) through (8) consent in writing to the transfer.

(c) Within 14 days after receipt of the notice, any person enumerated in subsection (a)(2) through (8) receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been received, the court shall schedule a hearing, **to be held within 7 days**, and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a)(2) through (9). If the court does not receive a request for hearing within the specified time, the change in placement may occur prior to the expiration of the 30 days. The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.

(d) When, after the notice set out above, a child in the custody of the secretary is removed from the home of a parent after having been placed in the home of a parent for a period of six months or longer, the secretary shall request a finding that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

(e) The secretary shall present to the court in writing the efforts to maintain the family unit and prevent the unnecessary removal of the child from the child's home. In making the findings, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such finding, the court, not more than 45 days from the date of the request, shall provide the secretary with a written copy of the findings by the court for the purpose of documenting these orders.

(f)(1) Except as provided in subsection (d)(2) of K.S.A. 38-2255 and 38-2259, and amendments thereto, if a child has been in the same foster home for more than 30 days, but less than six

months, the private child placing agency shall give 72 hours' written notice to the foster parent of any plan to move the child to a different placement.

(2) Each private child placing agency shall develop and implement an internal grievance process, consistent with this section, through which a foster parent can object to a planned change of placement as described in paragraph (1).

(3) The written notice provided by the private child placing agency under paragraph (1) shall state the reason for the change of placement and provide the foster parent with information about accessing the agency's internal grievance process.

(4) If a foster parent objects to the change of placement pursuant to the internal grievance process established pursuant to paragraph (2), the child shall not be moved to a different placement until the grievance process has been concluded.

(5) The decision reached following the grievance process shall not be appealable to the district court or any appellate court in the state of Kansas.

Comment

See pages 11-14 of Committee Report.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

In addition to the changes to Substitute for SB 394 set forth above, the Committee recommends the following changes to K.S.A. 38-2255 and 38-2270:

38-2255. Authorized dispositions; prohibitions. (a) Considerations. Prior to entering an order of disposition, the court shall give consideration to:

- (1) The child's physical, mental and emotional condition;
- (2) the child's need for assistance;
- (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
- (4) any relevant information from the intake and assessment process; and
- (5) the evidence received at the dispositional hearing.

(b) Custody with a parent. The court may place the child in the custody of either of the child's parents subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including, but not limited to:

- (1) Supervision of the child and the parent by a court services officer;
- (2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and
- (3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) Removal of a child from custody of a parent. The court shall not enter the initial order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that:

- (1) (A) The child is likely to sustain harm if not immediately removed from the home;
- (B) allowing the child to remain in home is contrary to the welfare of the child; or
- (C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.

The court shall not enter an order removing a child from the custody of a parent pursuant to this section based solely on the finding that the parent is homeless.

(d) Custody of a child removed from the custody of a parent. If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to: A relative of the child or to a person with whom the child has close emotional ties who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto; any other suitable person; a shelter facility; a youth residential facility; a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2014 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2014 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2014 Supp. 21-6419, and amendments thereto; or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and, **when possible, the order of preference established under subsection (b) of K.S.A. 38-2270, and amendments thereto, and shall** notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody. After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(2) The custodian designated under this subsection shall notify the court in writing at least 10 days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set the date for a hearing to determine if the child shall be allowed to return home. If the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

(3) The court may grant any person reasonable rights to visit the child upon motion of the person and a finding that the visitation rights would be in the best interests of the child.

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2014 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(5) The court shall provide a copy of any orders entered within 10 days of entering the order to the custodian designated under this subsection.

(e) Further determinations regarding a child removed from the home. If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2014 Supp. 38-2264, and amendments thereto. If a permanency plan is provided at

the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: (A) Murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto; (B) murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014 Supp. 21-5404, and amendments thereto; or (E) a felony battery that resulted in bodily injury;

(2) whether a parent has subjected the child or another child to aggravated circumstances;

(3) whether a parent has previously been found to be an unfit parent in proceedings under this code or in comparable proceedings under the laws of another state or the federal government;

(4) whether the child has been in extended out of home placement;

(5) whether the parents have failed to work diligently toward reintegration;

(6) whether the secretary has provided the family with services necessary for the safe return of the child to the home; and

(7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

(f) Proceedings if reintegration is not a viable alternative. If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

(g) Additional Orders. In addition to or in lieu of any other order authorized by this section:

(1) The court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health provider shall charge a greater fee for court-ordered counseling than the provider would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2014 Supp. 21-5701 through 21-5717, and amendments thereto, by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary,

the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2014 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 2014 Supp. 23-3101 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2014 Supp. 38-2279, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Comment

See pages 15-16 of Committee Report.

38-2270. Custody for adoption. (a) When parental rights have been terminated and it appears that adoption is a viable alternative, the court shall enter one of the following orders:

(1) An order granting custody of the child, for adoption proceedings, to the secretary or a corporation organized under the laws of the state of Kansas authorized to care for and surrender children for adoption as provided in K.S.A. 38-112 et seq., and amendments thereto. The person, secretary or corporation shall have authority to place the child in a family home, and give consent for the legal adoption of the child which shall be the only consent required to authorize the entry of an order or decree of adoption.

(2) An order granting custody of the child to proposed adoptive parents and consenting to the adoption of the child by the proposed adoptive parents.

(b) In making an order under subsection (a), the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to granting such custody for adoption to a relative of the child and second to granting such custody to a person with whom the child has close emotional ties. **For purposes of this section, a person with whom the child has close emotional ties may include a foster parent.**

(c) Discharge upon adoption. When an adoption decree has been filed with the court in the child in need of care case, the secretary's custody shall cease, the court's jurisdiction over the child shall cease and the court shall enter an order to that effect.

Comment

See pages 14-15 of Committee Report.