

SESSION OF 2015

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 113**

As Agreed to May 18, 2015

Brief*

SB 113 would enact the Safe Families Act, amend law related to when a law enforcement officer is required to take a child into custody, and amend law to provide immunity from prosecution for alcohol possession by a minor when medical assistance is sought in certain circumstances.

Safe Families Act

Under the Act, a parent or legal custodian of a child would be allowed to execute a power of attorney, in a form designated by and included in the Act, to delegate to another person (the attorney-in-fact) any powers regarding the care and custody of the child for up to one year. A new power of attorney would have to be executed for each additional year the delegation is to exist.

A “serving parent,” defined by the Act to include a parent under one of several specified military service obligations, would be allowed to delegate powers for a period longer than one year if on active duty service, but the term of delegation could not exceed the term of active duty service plus 30 days.

The powers to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child

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could not be delegated, and a delegation pursuant to the Act would not deprive the parent or legal custodian of any parental or legal authority regarding the care and custody of the child.

The parent or legal custodian could revoke the power of attorney at any time, at which point the child would be returned to the custody of the parents as soon as reasonably possible.

The attorney-in-fact would exercise parental or legal authority on a continuous basis, without compensation, for the duration of the power of attorney. The Act would specify that the parties would not be subject to laws, rules, or regulations regarding foster care, foster care homes, or child care facilities. The delegation would not constitute an out-of-home placement. The execution of a power of attorney would not constitute abandonment, abuse, or neglect unless the parent or legal custodian failed to take custody of the child or execute a new power of attorney after the one-year time limit has elapsed.

A power of attorney would be legally sufficient if the wording complied substantially with the form provided in the statute, the form was properly completed, and the signatures of the parties were acknowledged.

During any child protective investigation by the Kansas Department for Children and Families (DCF) that does not result in an out-of-home placement resulting from abuse of a child, the child protective investigator would be required to provide information to parents in certain situations about respite care, voluntary guardianship, other support services for families in crisis (including churches and other organizations that work with Safe Families for Children), and the Act.

The DCF would be authorized to work with families in financial distress, unemployed, homeless, or experiencing other family crises by detailing available community

resources, including respite care, voluntary guardianship under the Act, and information regarding churches and other organizations that provide host families for Safe Families for Children.

When Law Enforcement Officer Required to Take Child Into Custody

The bill would amend the Revised Kansas Code for Care of Children to require a law enforcement officer to take a child under 18 years of age into custody when the officer has probable cause to believe there is a crime involving controlled substances occurring in the child's residence and the officer reasonably believes such crime threatens the safety of the child.

Minor-In-Possession Immunity When Seeking Medical Assistance

Finally, the bill would amend the crime of possessing, consuming, obtaining, purchasing, or attempting to obtain or purchase alcohol by a person under 21 to include immunity from prosecution if a person and, if applicable, one or two other persons acting in concert with such person, if the person initiated contact with law enforcement or emergency medical services; requested medical assistance on their own behalf because such person reasonably believed he or she was in need of medical assistance; and cooperated with emergency medical services personnel and law enforcement officers.

The bill also would extend immunity from prosecution when a person and, if applicable, one or two other persons acting in concert with such person, initiated contact with law enforcement or emergency medical services or was one of one or two other persons who acted in concert with such person; requested medical assistance for another person who reasonably appeared to be in need of medical assistance;

provided his or her full name, the name or names of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services; remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and cooperated with emergency medical services personnel and law enforcement officers.

Immunity also would be extended to a person who reasonably appeared to be in need of medical assistance but did not initiate contact with law enforcement or emergency medical services and cooperated with emergency medical services personnel and law enforcement.

The bill would state a person shall not be allowed to initiate or maintain an action against a law enforcement officer or such officer's employer based on the officer's compliance or failure to comply with these new provisions.

Conference Committee Action

The Conference Committee on Senate Sub. for HB 2177 agreed to include the contents of SB 113, as it entered conference, in the conference report for Senate Sub. for HB 2177. The second Conference Committee on SB 113 then agreed to replace the contents of SB 113 with the contents of SB 133, as passed by the Senate, and SB 159, as passed by the Senate.

Background

As it entered conference, SB 113 contained provisions related to Department of Wildlife, Parks and Tourism licensing and violations. The Conference Committee included these provisions in the conference report for Senate Sub. for HB

2177 and replaced the contents of SB 113 with the contents of SB 133 and SB 159.

Background of SB 133

In the Senate Judiciary Committee, Senator Hawk, Representative Phillips, the student body presidents of Kansas State University and the University of Kansas, and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association provided testimony in support of SB 133. A representative of the Kansas EMS Association offered written neutral testimony. There were no opponents.

The Senate Committee amended the bill to add immunity for one or two other persons acting in concert with the person; clarify that the person must have initiated contact with law enforcement or emergency medical services to have immunity; clarify in paragraph (A) that the person requested medical assistance on his or her own behalf because the person reasonably believed he or she was in need of medical assistance; clarify in paragraph (B) that it would apply to a person who was one of one or two other persons who acted in concert with such other person and requested medical assistance for another person; require the other persons acting in concert with the person who contacted law enforcement or emergency medical services to provide their names when requested; remove language specifying cooperation only "at the scene"; change "medical assistance personnel" to "medical services personnel"; add a paragraph to extend immunity to a person who reasonably appeared to be in need of medical assistance due to alcohol consumption but did not initiate contact with law enforcement or emergency medical services; and delete language that would have allowed the court to order a person with immunity to perform no more than 40 hours of community service.

The fiscal note prepared by the Division of the Budget indicates SB 133, as introduced, could reduce the amount of

fine revenue credited to the Board of Emergency Medical Services by providing immunity to underage persons who otherwise would have paid a fine. The precise fiscal impact is unknown, however. The Board notes local governments that own or operate ambulance services could incur cost increases if the bill results in increased usage of those services.

The League of Municipalities concurs there could be an effect for local governments but is unable to estimate the specific effect on cities.

The Office of Judicial Administration indicates there would be no fiscal effect on district or appellate courts.

Background of SB 159

SB 159 was introduced by the Senate Committee on Judiciary at the request of Senator Knox. As introduced, the bill contained the provision regarding when a law enforcement officer is required to take a child into custody. In the Senate Committee, Senator Knox and a citizen testified in support of the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association provided neutral testimony. The Secretary for Children and Families provided written neutral testimony. There was no opponent testimony.

The Senate Committee adopted an amendment adding a probable cause requirement.

The Senate Committee of the Whole adopted an amendment that would enact the Safe Families Act. This language was originally introduced in SB 148, which the Senate Committee on Judiciary recommended favorably for passage. Further background information on SB 148 is provided below.

According to the fiscal note prepared by the Division of the Budget on SB 159, as introduced, DCF indicates the bill could increase the number of children placed in protective custody and the custody of DCF. The DCF estimates 37 additional children would be removed, 23 of whom would be placed in foster care for an average stay of 17 months. At an average cost for foster care of \$1,473 per month, these additional placements would increase DCF expenditures by \$406,548, including \$297,252 from the State General Fund (SGF), in FY 2016. The DCF also would incur expenditures of \$23,000 from the SGF for an estimated 200 additional children placed in an emergency shelter for one night, at a daily cost of \$115.

The Office of Judicial Administration indicates SB 159 could result in additional child in need of care case filings, requiring additional time spent by court staff. However, a precise fiscal effect cannot be determined. Any fiscal effect is not reflected in *The FY 2016 Governor's Budget Report*.

Background of SB 148

SB 148 was introduced by the Senate Committee on Judiciary at the request of Senator Pilcher-Cook. In the Senate Committee, Senator Pilcher-Cook, Representative Rhoades, and representatives of Safe Families for Children and the Foundation for Government Accountability, as well as a licensed master social worker and citizens, testified in support of the bill. The Secretary for Children and Families submitted written proponent testimony. There was no neutral or opponent testimony.

According to the fiscal note prepared by the Division of the Budget, DCF estimates SB 148 would require an additional 0.50 Social Worker Specialist position in each of DCF's four regions to identify available services, at a total cost of \$117,785, including \$113,862 from the State General Fund. Salary and benefits for these positions would be \$109,925 and operating expenses would be \$7,860. The DCF

also indicates the bill could increase the workload of investigative staff to determine needed services and make necessary referrals, but the potential increased demand cannot be estimated.

The Office of Judicial Administration states SB 148 would have a fiscal impact on Judicial Branch expenditures or revenues. Any fiscal effect is not reflected in *The FY 2016 Governor's Budget Report*.

Safe Families Act; power of attorney; care and custody of child; Department for Children and Families; law enforcement—when required to take child into custody; controlled substances; minor in possession of alcohol—immunity when seeking medical assistance

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