

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 418**

As Agreed to April 29, 2016

Brief*

SB 418 would establish the Host Families Act, amend the Family Law Code with regard to use of a domestic violence offender assessment and certified batterer intervention program, amend law related to the medicating of a child and access to files in child in need of care proceedings, and create and amend law related to human trafficking, sexual exploitation of a child, children in need of care, and juvenile offenders.

Host Families Act

The bill would establish the "Host Families Act" (Act). The Act would allow a child placement agency (agency) or other Kansas charitable organization working under an agreement with an agency to establish a program in which it coordinates with private organizations to provide temporary care of children by placing a child with a host family. Such programs would be required to include screening and background checks for potential host families that are the same as those required by the Secretary for Children and Families for family foster home licensing, and a host family would not receive payment other than reimbursement for actual expenses of providing the temporary care. The bill would require that the placement of a child into such a program be voluntary and would establish that such

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placement would not be considered an out-of-home placement by the State, would not supersede any order under the Code for Care of Children (CINC Code) or any other court order, and would not preclude any investigation of suspected abuse or neglect.

A parent could place a child into a program established under the Act by executing a power of attorney delegating to a host family any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption, the performance or inducement of an abortion, or the termination of parental rights to the child. The power of attorney could not be executed without the consent of all individuals with legal custody of the child. The power of attorney could not exceed one year in duration but could be renewed for one additional year.

A “serving parent,” defined by the Act to include a parent under one of several specified military or other governmental 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 delegation of powers would not deprive any parent of any parental or legal authority regarding the care and custody of the child; deprive any non-delegating parent of any parental or legal authority, if such parent’s rights have not otherwise been terminated or relinquished; or affect any parental or legal authority otherwise limited by a court order. A parent executing a power of attorney under the Act would have the authority to revoke or withdraw the power of attorney at any time. Upon such withdrawal or revocation, the child would have to be returned to the parent as soon as reasonably possible. The execution of a power of attorney under the Act would not be evidence of abandonment, abuse, or neglect as defined in the CINC Code.

The Kansas Judicial Council would be directed to create a power of attorney form consistent with the Act, and a power

of attorney would be legally sufficient if the wording complied substantially with the Judicial Council form.

During any child protective investigation by the Department for Children and Families (DCF) that does not result in an out-of-home placement due to abuse of a child, DCF would be authorized and encouraged to provide information to the parent or custodian about respite care, voluntary guardianship, or other support services for families in crisis, including organizations operating programs under the Act. DCF would have discretion in recommending programs, organizations, and resources to the parent or custodian.

Additionally, DCF would be authorized to work with families with financial distress, unemployment, or homelessness, or experiencing other family crises by detailing available community resources, including respite care, voluntary guardianship under the Act, and information regarding agencies and organizations operating programs under the Act.

Domestic Violence Offender Assessment and Certified Batterer Intervention Program

The bill would amend the Family Law Code statute governing factors considered in determination of child custody, residency, and parenting time to allow the court to order a parent to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and to order the parent to follow all recommendations made by such program.

The bill would make technical amendments to this statute to ensure consistency with other statutes.

Medicating of a Child

The bill would amend the CINC Code to specify that nothing in the Code shall be construed to compel a parent to medicate a child if the parent is acting in accordance with a physician's medical advice. A parent's actions in these circumstances would not constitute a basis for determination that a child is a child in need of care, for the removal of custody of a child, or for the termination of parental rights without a specific showing of a causal relation between the actions and harm to the child. "Physician" would be defined as a person licensed to practice medicine and surgery by the state board of healing arts or by an equivalent licensing board or entity in any state.

Access to Files in Child in Need of Care Proceedings

The bill would amend the list of persons and entities with access to the official file and social file in a child in need of care proceeding, to add to the list any county or district attorney from another jurisdiction with a pending child in need of care matter regarding any of the same parties or interested parties.

Human Trafficking, Sexual Exploitation of a Child, Children in Need of Care, and Juvenile Offenders

The bill would enact new law in the CINC Code requiring the Secretary for Children and Families to report to law enforcement agencies of jurisdiction information that a child has been identified as a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, immediately after receiving such information and in no case later than 24 hours after receiving such information. Similarly, immediately after receiving information that a child in the custody of the Secretary is missing, and in no case later than 24 hours after receiving such information, the Secretary would be required to report

such information to the National Center for Missing and Exploited Children and the law enforcement agency in the jurisdiction from where the child is missing. The law enforcement agency would be required to enter such information into the National Crime Information Center and Kansas Bureau of Investigation missing person systems in accordance with other statutory provisions.

The bill would amend the definition of “child in need of care” in the CINC Code to include a person less than 18 years of age at the time of filing of the petition or issuance of an *ex parte* protective custody order who has been subjected to an act that would constitute human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or who has committed an act that, if committed by an adult, would constitute selling sexual relations. The bill also would add definitions for “reasonable and prudent parenting standard” and “runaway.” The definition of “sexual abuse” would be amended to clarify the list of crimes included is not exclusive, and the list of crimes would be expanded.

For the purpose of carrying out the responsibilities related to the Interstate Compact for Juveniles, the Interstate Compact for Juveniles compact administrator would be added to the following provisions:

- The list of persons and entities required to freely exchange information related to children alleged or adjudicated to be in need of care;
- The list of persons and entities to whom records of law enforcement officers and agencies and municipal courts concerning juvenile offenses may be disclosed; and
- The list of persons and entities to whom the head of any juvenile intake and assessment program may authorize disclosure of records, reports, and other information obtained as a part of the juvenile intake and assessment process.

A provision in the CINC Code requiring a law enforcement officer to take a child under 18 years of age into custody under certain circumstances would be amended to add probable cause that the child is a runaway as a permissible circumstance. A circumstance listed in existing law where there is probable cause that the child is a missing person and a verified missing person entry for the child can be found in the National Crime Information Center missing person system would be amended to allow either circumstance to justify taking the child into custody.

The CINC Code statute governing permanency planning would be amended to include consultation with the child, if the child is 14 years of age or older and is able, in preparing the permanency plan.

The CINC Code statute governing permanency hearings would be amended to limit other planned permanent arrangements to children 16 years of age or older. The permanency hearing requirements would be amended to apply to every permanency hearing and to require the court to enter a finding as to whether the reasonable and prudent parenting standard (standard) has been met and whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. The Secretary for Children and Families would be required to report the steps being taken to ensure the foster home or child care institution is following the standard and the child has the required opportunities. If the child is 14 years of age or older, the Secretary would be required to document efforts to help the child prepare for transition from custody to successful adulthood, including programs and services being provided to help accomplish this.

If the permanency goal at the time of the hearing is another planned permanent arrangement, the court would be required to ask the child about the desired permanency outcome and document the intensive, ongoing, and unsuccessful (as of the hearing date) efforts by the Secretary to return the child home or secure a placement with a fit and

willing relative, legal guardian, or adoptive parent. The Secretary would be required to report on these efforts, including utilization of search technology (including social media) to find biological family members. Finally, the court would be required to make a judicial determination explaining why (as of the hearing date) another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, or be placed with a legal guardian or a fit and willing relative.

The CINC Code statute governing notice of the permanency hearing would be amended to require notice of the time and place be given to the child if 14 years of age or older. The notice would be required to request the child's participation by attendance or by report to the court.

The CINC Code statute containing provisions for children in custody who are victims of human trafficking-related crimes would be amended to broaden its application to include situations where there is reason to believe a child has been subjected to an act that would constitute the crimes. The bill would clarify the assessment tool to be used to assess the child's needs and would specify that only a summary of the results of the assessment tool would be provided to the court. The bill would clarify a required DCF assessment is to determine "appropriate and timely" placement and "appropriate services to meet the immediate needs of the child." A requirement for use of a rapid response team would be removed.

The Juvenile Justice Code (Juvenile Code) definitions section would be amended to add definitions for "reasonable and prudent parenting standard" and "secretary."

The Juvenile Code statute governing permanency planning for juveniles in the custody of the Commissioner of Juvenile Justice, as well as other statutes throughout the bill, would be amended to replace references to the

Commissioner of Juvenile Justice and the Juvenile Justice Authority with references to the Secretary of Corrections and the Department of Corrections to reflect the provisions of 2013 Executive Reorganization Order 42.

This statute also would be amended to include provisions nearly identical to those added to the CINC Code requiring permanency planning consultation with a juvenile 14 years of age or older, requiring certain information be provided and certain findings be made at the permanency hearing, and requiring notice of the hearing be given to a juvenile 14 years of age or older. A provision also would be added requiring the court to determine whether and, if applicable, when the juvenile will be reintegrated with the juvenile's parents; placed for adoption; placed with a permanent custodian; or, if the juvenile is 16 years of age or older and the Secretary of Corrections has documented compelling reasons why it would not be in the juvenile's best interests for one of the above placements, placed in another planned permanent arrangement.

The statute governing staff secure facilities would be amended to replace a requirement for 24-hour-a-day staff observation of facility entrances and exits with a requirement for staff monitoring of such entrances and exits. The bill would clarify the services to be provided to children in the facility are to be as appropriate and for the duration of the placement. A provision would be added to allow a staff secure facility to be on the same premises as another licensed facility. The Secretary for Children and Families would be required to promulgate rules and regulations to implement the section by January 1, 2017.

The statute governing the juvenile intake and assessment system would be amended to prohibit records, reports, and information obtained as a part of the juvenile intake and assessment process from being used in a juvenile offender proceeding, except in regard to the possible trafficking of a runaway. Such records, reports, and information would be made available to the appropriate

county or district attorney and the court, to be used only for diagnostic and referral purposes.

Conference Committee Action

The Conference Committee agreed to the House version of SB 418, related to human trafficking, sexual exploitation of a child, children in need of care, and juvenile offenders. The Conference Committee further agreed to add the contents of:

- a portion of SB 393, as passed by the Senate, further modified by the Conference Committee, regarding domestic violence offender assessments and certified batterer intervention programs;
- SB 157, as passed by the Senate, regarding medicating of a child, with additional language defining “physician”;
- SB 325, as amended by House Committee and passed by the House, regarding access to files in child in need of care proceedings; and
- Senate Sub. for HB 2112, as passed by the Senate, establishing the Host Families Act, with modifications drawn from House Sub. for SB 159, as recommended by House Committee, regarding the same topic. The modifications included:
 - adjusting the definition of “host family”;
 - adjusting the structure of the programs that may be created under the Act, the placing of a child into such programs, and the continuing power and authority of a parent;
 - adjusting the background checks required for potential host families;
 - adjusting the reimbursement that may be provided to a host family; and

- removing language specifying that host families are not subject to requirements of child care facility or foster care licensing laws or rules and regulations.

The Conference Committee also agreed to incorporate language in the report reconciling the bill's provisions with amendments already enacted in 2016 SB 367.

Background

SB 418 was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of the DCF. In the hearing before the Senate Committee on Judiciary, a district court judge and representatives of the Office of Judicial Administration (OJA) and DCF testified in support of the bill. The proponents stated the bill was the product of a joint task force involving representatives of each branch of Kansas government and other stakeholders in response to the 2014 federal Preventing Sex Trafficking and Strengthening Families Act. Written testimony supporting the bill was submitted by an Assistant Attorney General, the Interim Secretary of Corrections, and a KDOC representative. There was no neutral or opponent testimony.

The Senate Committee of the Whole adopted an amendment creating the Juvenile Out-of-Home Placement Fund and adding a mechanism for transfer of funds between school districts, *via* the Fund, based upon the districts that the child leaves and in which the child is enrolled upon placement.

In the hearing before the House Committee on Judiciary, Senator Knox testified in support of the provisions of the bill added by the Senate Committee of the Whole. A representative of OJA testified in favor of the bill as introduced and requested the provisions added by the Senate Committee of the Whole be removed, as they were not

studied by the task force. A representative of DCF testified in support of the bill. A district judge who served on the task force submitted written testimony supporting the bill and requesting that the provisions added by the Senate Committee of the Whole be stricken until their impact could be studied. An assistant attorney general submitted written testimony supporting the bill. A representative of the Kansas Association of School Boards submitted written neutral testimony opposing the inclusion of school finance provisions in the bill.

The House Committee adopted amendments removing the provisions added by the Senate Committee of the Whole and clarifying the reporting of missing persons. *[Note: these amendments are retained in the Conference Committee report.]*

According to the fiscal note prepared by the Division of the Budget, the bill, as introduced, would have a fiscal effect on the Judicial Branch, creating additional work for OJA staff in reviewing journal entries, reviewing the child in need of care bench book, and conducting training for judges. The additional staff time would be absorbed by current staff and all expenditures would be paid from federal court improvement grants. While the bill would not require additional permanency hearings, the length of time of hearings could slightly increase due to the additional findings required by the bill. The bill would not have a fiscal effect on Judicial Branch revenues. Any fiscal effect is not reflected in *The FY 2017 Governor's Budget Report*.

Background of Host Families Act Legislation

Senate Sub. for HB 2112 Background

As introduced and amended by the 2015 House Committee on Judiciary and passed by the 2015 House of Representatives, HB 2112 would have amended law

regarding the use of county law library fees. This language was subsequently enacted in 2015 HB 2111.

The 2016 Senate Committee on Judiciary recommended a substitute bill replacing the original contents of HB 2112 with language modified from SB 394, enacting the Host Families Act. The modifications included changing the name from the “Supporting Families Act” to the “Host Families Act,” inserting language regarding parental rights *[Note: in the Conference Committee report, this language was replaced by similar language drawn from House Sub. for SB 159]*, clarifying that a host family shall not receive compensation but may receive reimbursement that is voluntarily contributed *[Note: in the Conference Committee report, this language was replaced by language prohibiting payment except for reimbursement for actual expenses, drawn from House Sub. for SB 159]*, and modifying language related to the provision of information by DCF *[Note: this language is included in the Conference Committee report]*.

SB 394 Background

The bill was introduced by the Senate Committee on Public Health and Welfare. In the hearing before the Senate Committee on Judiciary, Representative Rhoades, Senator Pilcher-Cook, and a representative of DCF testified in support of the bill. A representative of the Foundation for Government Accountability provided written testimony supporting the bill. No neutral or opponent testimony was presented at the hearing.

According to the fiscal note prepared by the Division of the Budget on SB 394, as introduced, the OJA indicates any effect on Juvenile Branch revenues or expenditures would be negligible. The Kansas Judicial Council estimates a one-time expenditure of \$1,200 would be required during FY 2017 to create the power of attorney form required by the bill.

DCF indicates the bill would result in additional workload to monitor placements. An additional .50 FTE social worker specialist position would be required in each of four DCF regions, increasing salary and other operating costs by \$114,153 in FY 2017, including \$109,633 from the State General Fund. DCF states the bill could increase the workload of investigative staff, but cannot estimate these costs at this time. Any fiscal effect of the bill is not reflected in *The FY 2017 Governor's Budget Report*.

House Sub. for SB 159 Background

The bill was introduced by the 2015 Senate Committee on Judiciary at the request of Senator Knox. As introduced, the bill contained only a provision regarding when a law enforcement officer is required to take a child into custody. In the hearing before 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 2015 Senate Committee adopted an amendment adding a probable cause requirement.

The 2015 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.

In the hearing before the 2015 House Committee on Judiciary, conferees testifying in support of the bill were Senator Knox; Representative Rhoades; representatives of the Foundation for Government Accountability, Lifeline Children's Services, and the DCF; and a citizen. Written proponent testimony was received from a representative of

Safe Families for Children. A family law attorney testified in opposition to the bill. Written neutral testimony addressing the provision regarding taking children into custody when a drug violation occurs was submitted by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association.

Following the 2015 Session, Senator King requested the Judicial Council study the language of the Safe Families Act contained in SB 159. In December 2015, the Judicial Council submitted a report on its study of the bill, including proposed legislation the Judicial Council recommended be used if the Legislature decided to proceed with a program like Safe Families.

Following a staff briefing on the Judicial Council proposed legislation, the 2016 House Committee on Judiciary recommended a substitute bill containing the Judicial Council language, modified with additional language regarding background checks, the consent required to execute a power of attorney, and the impact of the power of attorney on the rights of non-delegating parents or parental or legal authority limited by a court order.

According to the 2015 fiscal note prepared by the Division of the Budget on the bill, as introduced, DCF indicated the bill could increase the number of children placed in protective custody and the custody of DCF. The DCF estimated 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 OJA indicated the bill 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 was not reflected in *The FY 2016 Governor's Budget Report*.

There was no fiscal note available for the House substitute bill at the time of the House Committee hearing.

SB 148 Background

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 2015 fiscal note prepared by the Division of the Budget, DCF estimated 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 indicated 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 stated SB 148 would have a fiscal impact on Judicial Branch expenditures or revenues. Any fiscal effect was not reflected in *The FY 2016 Governor's Budget Report*.

SB 157 Background

SB 157 was introduced by the Senate Committee on Judiciary at the request of Senator Knox. In the Senate

Committee hearing, Senator Knox and a citizen testified in support of the bill. A citizen provided written proponent testimony. The Secretary for Children and Families provided written neutral testimony.

In the House Committee on Judiciary, the same proponents and neutral conferees testified or offered written testimony. An attorney testified in opposition to the bill. The House Committee recommended the bill be passed, but the bill was stricken from the House calendar in March 2015.

According to the fiscal note prepared by the Division of the Budget, SB 157 would have no fiscal effect.

SB 325 Background

SB 325 was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of the Kansas County and District Attorneys Association (KCDAA). In the Senate Committee hearing, a representative of KCDAA testified in support of the bill. A representative of the DCF submitted written neutral testimony. There was no opponent testimony. The Senate Committee recommended the bill be placed on the Consent Calendar.

In the hearing before the House Committee on Corrections and Juvenile Justice, the same representative of KCDAA testified as a proponent and the same DCF representative submitted written neutral testimony. There was no opponent testimony. The House Committee amended the bill to update references to the Secretary of Corrections and to allow a county or district attorney access to files regarding any interested parties also involved in the pending matter.

According to the fiscal note prepared by the Division of the Budget on SB 325, as introduced, the OJA and the League of Kansas Municipalities state the bill would not have a fiscal effect. The Kansas Association of Counties indicates some additional staff time could be associated with granting

access to files, but any cost would be nominal. Any fiscal effect is not reflected in *The FY 2017 Governor's Budget Report*.

SB 393 Background

SB 393 was introduced by the Senate Committee on Public Health and Welfare. At the hearing before the Senate Committee on Judiciary, proponents testifying in support of the bill included three private citizens and a representative of the Kansas Coalition Against Sexual and Domestic Violence. The Victim Services Division of the Kansas Attorney General's Office submitted written testimony in favor of the bill. No neutral or opposing testimony was presented.

According to the fiscal note prepared by the Division of the Budget on SB 393, the OJA states the bill would increase the amount of time judges spend on these types of cases and thus would lead to increases in Judicial Branch expenditures, but a precise estimate of expenditures cannot be determined at this time.

Host Families Act; temporary care of children; power of attorney; Family Law Code; domestic violence offender assessment; certified batterer intervention program; Code for Care of Children; Secretary for Children and Families; human trafficking; commercial sexual exploitation of a child; missing children; Interstate Compact for Juveniles; runaways; law enforcement officers; permanency hearings; planned permanent arrangements; assessment; reasonable and prudent parenting standard; medicating a child; county and district attorneys; access to official file and social file; Juvenile Justice Code

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