

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 179**

As Agreed to May 1, 2018

Brief*

House Sub. for SB 179 would create and amend law to establish juvenile crisis intervention centers (intervention centers) and procedures for admission of juveniles to such centers. The bill also would make additional amendments to the Revised Kansas Code for Care of Children (CINC Code) and the Newborn Infant Protection Act within the CINC Code.

Establishment of Intervention Centers

The bill would create law describing an intervention center as a facility that provides short-term observation, assessment, treatment, and case planning, and referral for any juvenile who is experiencing a mental health crisis and is likely to cause harm to self or others. The bill would describe required parameters for intervention centers in several areas, including access to various services, construction and environmental features, and policies and procedures for operation and staff monitoring for intervention center entrances and exits.

The bill would require intervention centers to provide treatment to juveniles admitted to the centers, as appropriate while admitted.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

An intervention center could be on the same premises as another licensed facility, but the living unit of the intervention center would have to be maintained in a separate, self-contained unit. An intervention center could not be located in a city or county jail or a juvenile detention facility.

A juvenile could be admitted to an intervention center when:

- The head of the center determines the juvenile is in need of treatment and is likely to cause harm to self or others;
- A qualified professional from a community mental health center (CMHC) has given written authorization for the juvenile to be admitted to an intervention center; and
- No other more appropriate treatment services are available and accessible to the juvenile at the time of admission.

A juvenile could be admitted to an intervention center for not more than 30 days, and a parent with legal custody or a legal guardian of the juvenile could remove the juvenile from the center at any time. If the removal could cause the juvenile to become a child in need of care pursuant to the CINC Code, the head of the intervention center could report such concerns to the Department for Children and Families (DCF) or could request the county or district attorney to initiate proceedings under the CINC Code. If the head of the intervention center determines such a request to the county or district attorney is the most appropriate action, the head of the intervention center shall make the request and keep the juvenile in the intervention center for an additional 24-hour period to initiate the appropriate proceedings.

Upon a juvenile's release from an intervention center, the managed care organization (MCO), if the juvenile is a

Medicaid recipient, and the CMHC serving the area where the juvenile is being discharged would be required to be involved with discharge planning. The head of the intervention center would be required to give written notice of the date and time of discharge, within seven days prior to discharge, to the patient, the MCO (if the juvenile is a Medicaid recipient), the CMHC serving the area where the juvenile is being discharged, and the patient's parent, custodian, or legal guardian.

If a juvenile is a Medicaid recipient, upon admission to an intervention center, the bill would require the MCO to approve services as recommended by the head of the intervention center. Within 14 days after admission, the head of the intervention center would be required to develop a plan of treatment for the juvenile in collaboration with the MCO.

The bill would not prohibit the Department of Health and Environment (KDHE) from administering or reimbursing state Medicaid services to any juvenile admitted to an intervention center pursuant to the waiver granted under Section 1915(c) of the federal Social Security Act, provided that such services are not administered through a managed care delivery system, or from reimbursing any state Medicaid services that qualify for reimbursement and that are provided to a juvenile admitted to an intervention center. The bill would state it would not impair or otherwise affect the validity of any contract in existence on July 1, 2018, between an MCO and KDHE to provide state Medicaid services. On or before January 1, 2019, the Secretary of Health and Environment would be required to submit to the Centers for Medicare and Medicaid Services (CMS) any approval request necessary to implement these provisions.

On or before January 1, 2019, the Secretary for Children and Families, in consultation with the Attorney General, would be required to promulgate rules and regulations to implement the law created by the bill.

The Secretary for Children and Families would be required to provide an annual report of information regarding outcomes of juveniles admitted into intervention centers to the Joint Committee on Corrections and Juvenile Justice Oversight, the House Committee on Corrections and Juvenile Justice, and the Senate Committee on Judiciary. The bill would require the report include the number of admissions, releases, and lengths of stay for juveniles admitted to intervention centers; services provided to admitted juveniles; needs of admitted juveniles determined by evidence-based assessment; and success and recidivism rates, including information on the reduction of involvement of the child welfare system and juvenile justice system.

The Secretary of Corrections would be permitted to enter into memoranda of agreement with other cabinet agencies to provide funding, not to exceed \$2,000,000 annually, from the Evidence-based Programs Account of the State General Fund (SGF) or other available appropriations for juvenile crisis intervention services.

The bill would define “juvenile” as a person less than 18 years of age. It would also provide definitions of “head of a juvenile crisis intervention center,” “likely to cause harm to self or others,” “treatment,” and “qualified mental health professional.”

Amendments to Law

The bill would amend various statutes to incorporate use of intervention centers, as follows.

CINC Code amendments. The bill would amend the statute governing when a law enforcement officer (LEO) may take a child into custody to require an LEO to take a child under 18 years of age into custody when the LEO reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others.

The bill would amend the statute governing delivery of a child taken into custody by an LEO to allow an LEO to deliver a child taken into custody without a court order to an intervention center after written authorization by a CMHC. The bill also would non-substantively restructure the list of delivery alternatives in this section.

The bill would require, when an LEO takes a child into custody because the LEO reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others, the LEO place the child in protective custody. The LEO could deliver the child to an intervention center after written authorization by a CMHC, but the child could not be placed in a juvenile detention facility or other secure facility.

The bill would amend the statutes governing *ex parte* protective custody orders and temporary custody orders to allow placement, after written authorization by a CMHC, with an intervention center. The circumstances justifying an entry of a temporary custody order would be amended to include probable cause to believe the child is experiencing a mental health crisis and is in need of treatment.

Throughout the amended CINC Code statutes, the term “forthwith” would be replaced with “promptly.”

Juvenile Justice Code amendment. The bill would amend the statute in the Revised Kansas Juvenile Justice Code governing taking juveniles into custody to allow an officer, when a juvenile cannot be delivered to the juvenile’s parent or custodian, to (in addition to continuing options) deliver the juvenile to an intervention center, if the juvenile is determined to not be detention eligible based on a standardized detention risk assessment tool and is experiencing a mental health crisis, after written authorization by a CMHC.

Account amendments. The bill would amend the statute establishing the Evidence-based Programs Account of

the SGF to allow expenditures from the account for the development and implementation of evidence-based community programs and practices for juveniles experiencing mental health crises, including intervention centers.

Additional Amendments to CINC Code and the Newborn Infant Protection Act

In addition to the provisions related to juvenile crisis intervention centers, the bill would further amend the CINC Code and the Newborn Infant Protection Act (Act) within the Code, as follows.

Definitions

The bill would amend definitions in the CINC Code as follows:

- “Extended out of home placement” to specify removal from the home means from the child’s home;
- “Kinship care” changed to “Kinship care placement,” to mean the placement of a child in the home of an adult with whom the child or the child’s parent already has close emotional ties; and
- “Relative” to remove language indicating the term does not include the child’s other parent when referring to a relative of a child’s parent.

Interested Parties

The bill would clarify that, in addition to the parties, interested parties also would be entitled to notice of the time and place of the dispositional hearing.

Placement of a Child

The term “extended out of home placement” would be deleted and replaced in various sections in the CINC Code with the specific time frame defined as when a child has been in the custody of the Secretary for Children and Families and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date on which the child was removed from the child’s home. In continuing law, this time frame is considered when a court is determining whether reintegration is a viable alternative and when a court is making a determination of unfitness.

Permanency Plan

If a child’s permanency plan is either adoption or appointment of a custodian, prior to a hearing to consider the termination of parental rights, either or both parents would be able to relinquish parental rights to the child to the Secretary for Children and Families, consent to an adoption, or consent to appointment of a permanent custodian with the approval of the guardian *ad litem* and the acceptance and approval of the Secretary. Current law requires consent from both the guardian *ad litem* and the Secretary for the parental decision.

Adoption

The bill would revise adoption provisions to clarify the process for a child in custody of the Secretary for Children and Families to proceed to adoption. If a child is in the custody of the Secretary and the parental rights of both parents have been terminated or one parent has had parental rights terminated or has relinquished parental rights of the child to the Secretary, adoption could be allowed by persons approved by the Secretary and the court. The bill also would add language to specify that, if a child was no longer in the custody of the Secretary, the court would be authorized to approve adoption of a child by persons who both parents consent to adopt or one parent consents to adopt, if the parental rights of the other parent have been terminated.

Newborn Infant Protection Act

The bill would add language to state the purpose of the Act is to protect newborn children from injury and death caused by abandonment by a parent and to provide safe and secure alternatives to such abandonment.

Definitions. The following definitions would be added and references throughout the Act would be updated:

- “Non-relinquishing parent” to mean the biological parent of an infant who does not leave the infant with any person specified in accordance with the Act; and
- “Relinquishing parent” to mean the biological parent or person having legal custody of an infant who leaves the infant with any person in accordance with the Act.

The bill would change the defined age of an infant for purposes of the Act from 45 days old or younger to 60 days old or younger and state that provisions of the Act would be applicable to persons purporting to be an infant’s parent.

Relinquishment of infant at a facility. An employee of a facility where an infant was left would be allowed to take physical custody of the child without a court order. References to “person or facility” throughout the Act would be amended to clarify when provisions would be applicable to employees of any facility specified in the Act, any facility specified, or both.

When an infant is delivered to a facility pursuant to the Act that is not a medical care facility, the employee taking physical custody of the infant would be required to make arrangements for the immediate transportation of the infant to the nearest medical care facility. The medical care facility, its employees, agents, and medical staff would be required to perform treatment in accordance with the prevailing standard

of care as necessary to protect the physical health and safety of the infant.

Immunity. Provisions regarding a specified facility's civil and criminal immunity would be amended to clarify the immunity applied to employees of such facilities. Administrative immunity would be added for facilities specified in the Act and employees of such facilities. Such immunity would not extend to any acts or omissions, including negligent or intentional acts or omissions, occurring after the acceptance of the infant.

Any medical care facility receiving the infant from another facility pursuant to the Act would be immune from administrative, civil, and criminal liability for treatment performed consistent with standards as specified in the Act.

The bill would also add provisions providing immunity from civil or criminal liability for a relinquishing parent if the following conditions were met:

- The relinquishing parent voluntarily delivered the infant safely to the physical custody of an employee at a facility specified in the Act;
- The infant was no more than 60 days old when delivered by the relinquishing parent to the physical custody of an employee at a facility specified in the Act; and
- The infant was not abused or neglected by the relinquishing parent prior to such delivery.

Parental rights to relinquished infant. A relinquishing parent's voluntary delivery of an infant in accordance with the Act would constitute the parent's implied consent to the adoption of the infant and a voluntary relinquishment of such parent's parental rights.

The bill would establish notice by publication requirements for termination of parental rights proceedings initiated after relinquishment of an infant pursuant to the Act. The bill would require a non-relinquishing parent seeking to establish parental rights to notify the court where the proceeding is filed of the parent's intentions regarding the infant within 30 days after publication of such notice. The court would be required to initiate proceedings to establish parentage if no person notifies the court within 30 days. An examination of the putative father registry would be required to determine previous attempts to preserve parental rights to the infant and, if such attempts were made, the State would be required to make reasonable efforts to provide notice of the abandonment of the infant to such putative father.

A non-relinquishing parent seeking to preserve parental rights to an infant relinquished pursuant to the Act would be required to take necessary steps to establish parentage within 30 days after the published notice and, if the non-relinquishing parent fails to do so, the bill would allow for the termination of such parent's rights with respect to the child. If a non-relinquishing parent inquires at a facility specified in the Act regarding an infant whose custody was relinquished pursuant to the Act, such facility would be required to refer the non-relinquishing parent to the DCF and the court exercising jurisdiction over the child.

Technical Amendments

The bill would make technical amendments to remove outdated terms and language throughout the CINC Code and other statutes pertaining to children and minors, clarify references to "children in need of care" means children in need of care as defined within the Code, update statutory references, and reconcile effective dates with current law.

Conference Committee Action

The Conference Committee agreed to House Sub. for SB 179, creating juvenile crisis intervention centers, as it entered conference, with a modification to the description of intervention centers, the addition of language regarding MCOs and removal of language regarding CMS waivers and fee-for-service rates, the addition of a definition for “head of a juvenile crisis intervention center,” and a modification to the definition of “likely to cause harm to self or others.”

The Conference Committee further agreed to add the contents of SB 221, as amended by Senate Committee on Public Health and Welfare, making additional amendments to the CINC Code and related statutes.

Background

As introduced and passed by the Senate in 2017, SB 179 contained various provisions regarding human trafficking. Language based on these provisions was enacted in 2017 House Sub. for SB 40.

The 2018 House Committee on Judiciary recommended a substitute bill for SB 179 containing language modified from HB 2787, creating juvenile crisis intervention centers.

HB 2787 (Juvenile Crisis Intervention Centers)

HB 2787 was introduced by the House Committee on Appropriations at the request of Representative Finch. In the House Committee on Judiciary hearing, representatives of the Association of Community Mental Health Centers of Kansas and Saint Francis Community Services testified in support of the bill, stating the bill was based on recommendations from a 2017 Judicial Council advisory committee study and would create a framework for juvenile crisis intervention in Kansas. A representative of the Kansas

County and District Attorneys Association provided written-only proponent testimony. A private citizen testified in opposition to the bill. A representative of the Kansas Community Corrections Association and Behavioral Health Association of Kansas testified as a neutral conferee. No other testimony was provided.

The House Committee modified the language of HB 2787 to clarify the description of an intervention center, the definition of “treatment,” and when an officer may deliver a juvenile to an intervention center, and placed this language into House Sub. for SB 179. [Note: The Conference Committee retained all these modifications except for adjusting the modification of the description of an intervention center.]

According to the fiscal note prepared by the Division of the Budget on HB 2787, as introduced, the Department for Aging and Disability Services indicates enactment of HB 2787 would have a fiscal effect on the agency but is unable to estimate the fiscal effect.

The Office of the Judicial Administration estimates no fiscal effect on the courts with the enactment of HB 2787, and the Office of the Attorney General estimates no fiscal effect with the enactment of HB 2787.

The Department of Corrections indicates enactment of HB 2787 could increase agency expenditures by \$2.0 million in FY 2019 and beyond. The bill identifies the Evidence-based Programs Account within the Department of Corrections as a funding source for implementing provisions of the bill and expenditures from the account for purposes prescribed in the bill would be limited to \$2.0 million annually. The Department of Corrections estimates funds will be available in the account through the end of FY 2020. However, if the account does not receive ongoing appropriations in out years, moneys available in the account would become inadequate.

DCF indicates enactment of HB 2787 would have a fiscal effect on agency operations. Promulgating rules and regulations would require additional staff time, but would be absorbed within existing agency resources. Annual reporting requirements would also be absorbed within existing agency resources. DCF estimates no increased expenditures for placing children in intervention centers because the agency assumes Medicaid moneys, made available through KDHE, would be used for those placements. DCF anticipates a need to increase staffing levels to license and monitor intervention centers. However, the agency cannot estimate how many additional full-time equivalent positions would be necessary because the agency cannot estimate how many facilities would be utilized and where those facilities would be located.

KDHE states HB 2787 will have a fiscal effect. However, to quantify the effect, more information regarding the intervention centers is needed than is provided in the bill. Any fiscal effect associated with enactment of HB 2787 is not reflected in *The FY 2019 Governor's Budget Report*.

SB 221 (CINC Code and Newborn Infant Protection Act Amendments)

SB 221 was introduced by the Senate Committee on Public Health and Welfare during the 2017 Legislative Session. At the Senate Committee hearing during the 2018 Session, a Johnson County District Judge and a representative of DCF testified in support of the bill. The proponents stated the bill provided clarification and guidance within the Code. No other testimony was provided.

On February 7, 2018, the Senate Committee made technical amendments to remove outdated terms and language throughout the Code and other statutes pertaining to children and minors, clarify references to “children in need of care” means children in need of care as defined within the Code, and update statutory references. On February 8, 2018, the Senate Committee further considered the bill and adopted

an additional technical amendment to reconcile effective dates with current law. [*Note:* These amendments were retained by the Conference Committee.]

According to the fiscal note prepared by the Division of the Budget, enactment of SB 221 would have no fiscal effect on the Office of Judicial Administration or DCF.

juvenile crisis intervention centers; Revised Kansas Code for Care of Children; definitions; interested parties; placement; permanency plan; adoption; Newborn Infant Protection Act; definitions; relinquishment; immunity; parental rights

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