

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2352**

As Agreed to May 4, 2006

Brief*

HB 2352 would revise the Kansas Code for Care of Children (CINC). Reorganization of the Code was sought in order to clarify and simplify language and resolve any ambiguities in current law. The following outlines the major provisions of the recodification.

- **Substantive and Procedural Changes.** Although the proposals would not contemplate fundamental changes in the current CINC system, the proposals do include a number of procedural and substantive changes. These changes range from some that are very minor to others that have more significant policy implications.
- **Disability of Parent.** The disability of a parent would not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relationship between the disability and harm to the child. In cases involving a parent with a disability, determinations made under the Code would consider the availability and use of accommodations for the disability, including adaptive equipment and support services.
- **Federal Adoption and Safe Families Act Compliance Act (ASFA).** Due to ASFA, the bill would impose certain requirements on the state as a condition of receiving federal funding. Of particular importance is the ASFA requirement that a state must make certain findings before removing a child from the home. These requirements must be met on first removal of the child from the home, which may include very preliminary and temporary removals. In general terms, the bill would require a determination that removal is justified either because efforts to

*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. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

preserve the family have failed or because an emergency exists requiring the immediate removal of the child from the home. The current Code does not specify the findings that need to be made or the circumstances under which they are necessary in a way that ensures compliance with ASFA.

If a child is in protective custody, the Secretary of SRS must allow supervised visits between the child and parent(s) while the child is in protective custody. The court may prohibit the supervised visits if the court determines it is not in the best interest of the child.

If the court enters an order of temporary custody that provides for placement of the child with a person other than the parent, the court would make a child support determination.

- **Notice and Service of Process.** While service of process and adequate notice are to permit parents to protect their rights and interests, the current Code requires service of process twice: once at the outset of proceedings and a second time if the proceedings move to a termination phase. The bill would require that if the absentee parent was not located at the outset of the proceedings and was served by publication notice after the use of due diligence in efforts to locate the parents, requiring a second service of process would not be necessary. The proposed changes would allow the state, to provide notice of further proceedings, including termination proceedings, by return receipt delivery.
- **Informal Supervision.** For a child under an order for informal supervision who remains in the custody of the child's parent, the one year extension provided for in the bill, could be extended for one additional year, with reviews by the court at least every six months.
- **Parties, Interested Parties, and Attendance at Hearings.** The bill would clarify the role of various interested parties by distinguishing between two groups of participants. First, the "parties" are those who are necessarily directly affected by the outcome of the proceeding, including the child, the parents, the petitioner, and the state, whose position is analogous to parties in traditional civil litigation. Second, "interested parties" are those who have a recognized interest in the well-being and potential placement of the child including grandparents, persons with whom the child has been living, and others with a significant

relationship to the child. The rights, duties, and participatory roles of these two groups are distinct and would be treated separately.

- **Dispositional Hearings and Termination of Parental Rights.** The bill would clarify the delineation of factors to be considered in dispositional hearings, clarify the relationship between disposition and termination, and make the transition from one phase of the process to another more clear.
- **Permanency Planning.** The bill would add several new provisions related to the permanency planning and procedures to assess progress on those plans to assure that delays need to be avoided to ensure the development of healthy emotional relationships to parents or other caregivers.
- **Permanent Custodian.** The bill would propose a new kind of permanent caregiver for a child. A major feature of this relationship is that appointment of a permanent custodian would not always require termination of parental rights. While a permanent custodian would have virtually all the rights of a parent concerning the child, if parental rights have not been terminated the parent may retain some rights, such as the right to consent to an adoption.
- **False Reports.** The bill would make it a class B misdemeanor for an officer or employee of the Department of SRS or a person who contracts with the Department to provide services to willfully and knowingly makes a false report or makes a report that lacks factual foundation.
- **School District Changes.** The bill would require that if the Secretary of SRS or a provider who contracts with the Secretary is the custodian of the child and changes the placement of the child from one school district to another or to another school within the same district, the Secretary or contract provider would have the authority and it would be the duty of the Secretary or contract provider to transfer, or make provision for the transfer, of all school records of the child to the district or school to which the child is transferred. The school records would be transferred at the same time that the child is transferred or as soon as possible thereafter.
- **Indian Child Welfare Act.** The bill provides that the Indian Child Welfare Act may apply to the following:

- Child in need of care proceedings;
 - Ex parte custody orders;
 - Temporary custody hearings;
 - Adjudication;
 - Burden of proof;
 - Disposition;
 - Permanency hearings;
 - Termination of parental rights;
 - Establishment of permanent custodianship;
 - The placement of a child in any foster, pre-adoptive and adoptive home; and
 - The placement of a child in a guardianship arrangement.
- **SRS Attorneys.** The bill would allow, pursuant to a written agreement between the Secretary of SRS and the county or district attorney, the attorneys for the Secretary to perform the duties of the county or district attorney after disposition has been determined by the court.
 - **Technical Changes.** Most of the proposed changes in the bill would be technical in nature and are intended to clarify the law without effecting significant changes. Technical changes include changes in terminology, phrasing of particular provisions, incorporation of cross references, and similar matters.
 - **Organizational Changes.** Other proposed changes would be organizational. These changes would involve moving sections around within the Code, moving material from one section to another, or consolidating related provisions into new sections.

Conference Committee Action

The Conference Committee agreed to the Senate version of the bill and adopted compromise language regarding physical or mental care and treatment that unless a child is alleged or suspected to have been abused by a parent or guardian, the investigating officer must notify or attempt to notify the parent or guardian of the medical examination of the child.

Background

Conferees representing the Kansas Judicial Council expressed support for the bill which was the result of a four year study by the

Judicial Council. Input was received from the Department of Social and Rehabilitation Services, the Statewide Independent Living Council of Kansas, a legislator, the Juvenile Justice Authority, and a District Court Judge.

House Committee amendments would include the following:

- The disability of a parent would not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relationship between the disability and harm to the child. In cases involving a parent with a disability, determinations made under this Code would consider the availability and use of accommodations for the disability, including adaptive equipment and support services.
- The term "reasonable efforts" would be defined to mean the exercise of reasonable diligence and care to utilize all available services related to meeting the needs of the child and the child's family. In determining reasonable efforts the child's safety and welfare would be the paramount consideration. In support of its determination of whether reasonable efforts have been made, the court would enter findings, including a brief description of the preventive or reunification efforts. The State of Kansas would have the burden of demonstrating reasonable efforts. The court would weigh the harmful effects of removal against the need to insure the child's safety and welfare. Reasonable efforts would not be required if 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: Murder in the first degree, murder in the second degree, capital murder, and voluntary manslaughter, or a felony battery that resulted in bodily injury; or
 - Subjected the child or another child to aggravated circumstances as defined in the Code.
- The bill would allow, pursuant to a written agreement between the Secretary of Social and Rehabilitation Services (SRS) and the county or district attorney, the attorneys for the Secretary to perform the duties of the county or district attorney after

disposition has been determined by the court.

- The bill would require that, if the Secretary of SRS or a provider who contracts with the Secretary is the custodian of the child, and changes the placement of the child from one school district to another or to another school within the same district, the Secretary or contract provider would have the authority and it would be the duty of the Secretary or contract provider to transfer, or make provision for the transfer, of all school records of the child to the district or school to which the child is transferred. The school records would be transferred at the same time that the child is transferred or as soon as possible thereafter.
- The bill would require that an officer or employee of the Department of SRS or a person who contracts with the Department to provide services who willfully and knowingly makes a false report or makes a report that such person lacks factual foundation would be guilty of a class B misdemeanor.
- The bill would require that in the provision on service by publication when service cannot be completed, the term "reasonable efforts" would be replaced with the term "due diligence" as the standard to be used.
- The bill would require that if a child is in protective custody, the Department of SRS would allow at least one supervised visit between the child and the parent or parents within such time period as the child is in protective custody. The House Committee of the Whole amendment added language to allow the court to prohibit the supervised visit if it was in the best interest of the child.
- The bill would require that for a child under an order of informal supervision who remains in the custody of such child's parent, a one-year period may be extended if no party objects, upon hearing, the time period could be extended for up to an additional one year, with reviews by the court occurring at least every six months.

The House Committee of the Whole amendments, other than the provision regarding the prohibition of supervised visitation based on the best interest of the child, would be primarily clarifying and technical in nature.

The Senate Committee amendments would do the following:

- The definition of "reasonable efforts" added by the House Judiciary Committee would be deleted from New Section 2(z).
- The bill would specify in New Section 3 the proceedings in which the Indian Child Welfare Act may apply.
- New Section 4 would be clarified so that when a judge orders a transfer of venue, the clerk shall transmit contents of the official file and a complete copy of the social file rather than a "complete record."
- The bill would clarify in New Section 5 that appointment of an attorney for an interested party who cannot afford an attorney is permissible but not automatic.
- New Section 13 would be amended to incorporate changes enacted by the 2005 Legislature (Section 23 of HB 2331) in reference to placement of a child in a school district and the definition of the term "pupil."
- New Section 13 would be amended to define when a parent would be considered unavailable.
- Amendments would be made in New Sections 27, 37, and 38 to limit the holding of a child in a secure facility to runaways or those children alleged to be runaways in compliance with the federal Juvenile Justice and Delinquency Prevention Act.
- New Section 42 would be amended to insert parent ally provisions enacted in 2005 HB 2261.
- New Section 44 would be amended to delete the House amendment which expanded total proceedings not just hearing the rule that would prevent a judge from considering reports unless properly admitted into evidence or excepted from the requirement.
- New Section 37, 50, 53, 54, and 108 would be amended to provide that a court shall not remove a child from the custody of a parent unless the court finds probable cause that:
 - The child is likely to sustain harm if not immediately removed from the home;

- The child if allowed to remain in the home would be contrary to the welfare of the child;
- Immediate placement of the child is in the best interest of the child; and
- 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 Senate Committee of the Whole amendments included the following:

- At the first hearing in connection with child in need of care proceedings, the court would be required to distribute a pamphlet to the parents to advise them of their rights under the code.
- The parents or guardian would have the right to be notified and to be present with the child undergoing a medical exam unless the parent or guardian is alleged to have abused the child.

The fiscal note on the original bill indicates no fiscal effect.