



*Achieving Better  
Outcomes for Children  
in Need of Care  
Through the Judicial  
Process*

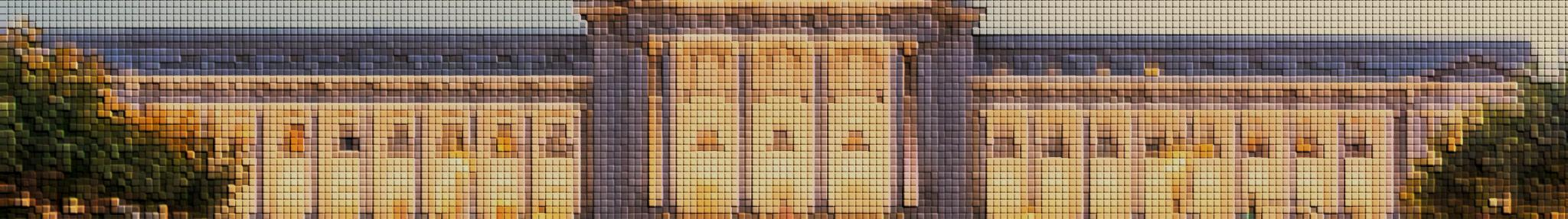
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casey family programs

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SAFE CHILDREN STRONG FAMILIES SUPPORTIVE COMMUNITIES

safe children | strong families | supportive communities





# Select Federal Legislation on Child Welfare

**Indian Child Welfare Act of 1974:** Tribal sovereignty, connections to family and culture. Active efforts.

**Adoption Assistance and Child Welfare Act of 1980:** Established **Titles IV-B** and **IV-E** under the Social Security Act and Required Reasonable Efforts.

**Adoption and Safe Families Act of 1997:** Child's health and safety paramount concern. Reasonable efforts extended to permanency. Timelines.

**Fostering Connections Act of 2008:** Emphasized relatives for permanency, permanency for older youth, extended foster care.

**Family First Prevention Services Act of 2018:** Major shift of federal funding toward prevention of need for removal and secure reunification.



# Kansas Code – Front End

## Jurisdiction – 38-2202 – Definitions of Child in Need of Care

- (1) Is without adequate parental care, control or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian;
- (2) is without the care or control necessary for the child's physical, mental or emotional health;
- (3) has been physically, mentally or emotionally abused or neglected or sexually abused;

**“Neglect”** means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child...

\*Yellow indicates undefined terminology

\*Green indicates defined terminology

# Kansas Code – Front End

## Emergency Custody

**38-2231 Law Enforcement (LE) pick up** if “reasonably believes” child will be harmed if not immediately removed” and

- **38-2232 LE** “...child shall promptly be delivered to the child’s parents... unless there is reasonable grounds to believe... not in the best interests of the child.”

**38-2242 Ex Parte Orders** – “The Court shall not enter the initial order removing a child from the custody of a parent... unless the court finds probably cause to believe...the child is likely to sustain harm if not immediately removed... contrary to the welfare of the child or immediate placement is in the child’s best interests;

and reasonable efforts have been made to maintain the family unit and prevent unnecessary removal of the child...”

“Harm” means physical or psychological injury or damage

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\*Green indicates defined terminology

# Kansas Code – Front End

**Temporary Custody** – Family present at hearing – Are they appearing with counsel?

**38-2243** (f) The court may enter an order of temporary custody after determining there is probable cause to believe that the:

- i. (1) Child is dangerous to self or to others;
- ii. (2) child is not likely to be available within the jurisdiction of the court for future proceedings;
- iii. (3) health or welfare of the child may be endangered without further care;
- iv. (4) child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 21-6422, and amendments thereto;
- v. (5) child is experiencing a mental health crisis and is in need of treatment; or
- vi. (6) child committed an act which, if committed by an adult...

\*Yellow indicates undefined terminology

# Kansas Code – Disposition

## Disposition – 38-2255

- “Considerations” don’t include examining reasonable efforts
- “(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...”
  - Relates to safety. No standard by which to make decision to place with parents.
- **(d)(2) defers decision to custodian re placement with parent.** Court may choose to review.
  - Only standard “no longer **contrary to the welfare** or **best interests of the child.**”
- **Visitation** on motion and **Best Interest Of the Child** – no different standard for parents or “any other person”
  - no presumption of visitation, identification of “right of family”, or emphasis on maximizing time.
  - Research connects visits to reunification.

\*Yellow indicates undefined terminology



# High Quality Judicial Practice

Think: Structure v. Practice

## 45 CFR Part 1356 – Final (new) Rule

- Title IV-E reimbursement for legal representation of agency, *child, parents, relative caregivers, and tribes*. (*Italics = change in rule*)
  - Includes for “candidates” for foster care and their parents (*i.e. pre-petition*)
  - Includes “ancillary legal needs”
  - Includes Multidisciplinary legal team members (*i.e. social worker, peer parent, others*)

Formalized practice change from 2018 – now 33+ states draw down this money

# A few more examples...

- Legislative pilots and provisos
  - FIRST Clinic (WA) – Preventive Legal Advocacy for new mothers, supported by legislature.
- Establishing statewide parent and/or child attorney administration
- Legal Services Offices to support families upstream
- Supportive Court investments
  - Docket space
  - Child Abuse and Neglect Institute training
  - Court collaborative capacity.



Thank you.

*Questions?*

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