



**Proponent Testimony on HB2299
House Committee on Child Welfare and Foster Care
February 8, 2023**

Chair Concannon, Vice Chair Johnson, Ranking Member Ousley, and Members of the Committee, my name is Rachel Marsh, CEO of the Children's Alliance of Kansas. The Alliance is an association of 19 private, non-profit child welfare agencies that collectively provide a full array of services for children and families in child abuse and neglect prevention, family preservation, foster care, adoption, independent living, and parent, youth, and child skill-building, mental health, and substance use treatment. Thank you for the opportunity to share our perspective on HB2299.

Children's Alliance members work closely with youth and families to support them through the adoption process from foster care. While most children in child welfare are returned home with family members after reintegration services, approximately 25-27% of youth achieve permanency through adoption – usually with an extended family member or with a foster parent. Reintegration case managers prepare youth through the heartbreaking process of parental termination rights hearings and help youth manage grief and loss in the months leading up to those hearings. Child placing agencies and kinship specialists support prospective adoption parents through the emotional rollercoaster of the adoption process. Adoption case managers are experts in the foster-care-to-adoption process -- including the steps required by DCF and our adoption code; the documentation needs of adoption attorneys; the preparation of children for pre-placement visits and placement changes; and the need for an appropriate adjustment period as child and family identities change from “temporary” to “permanent.” Meanwhile, the Kansas Caregiver Support Network can be there to help both kinship and foster families navigate the adoption process. Finally, some adoptive families from foster care face unique challenges and need additional support, which is offered through the Kansas Post Adoption Resource Center.

Overall, HB2299 reflects a carefully considered approach to some longstanding concerns in adoption that have been voiced for multiple years. In 2019, the Child Welfare Systems Task Force recommended studying the issue of attachment, kinship, and adoption as a priority policy issue. Then, during the last legislative biennium, this committee initially considered a bill on the issue of attachment and adoption selection. This last summer, the Child in Need of Care / Juvenile Offender Advisory Committee to the Kansas Judicial Council studied the issue of attachment in adoption and made carefully targeted recommendations to respond to the narrow issues of concern. Finally, last fall, the Joint Committee on Child Welfare Oversight heard testimony about attachment issues in adoption. Today, we believe HB2299 effectively balances multiple competing considerations in Kansas adoption-from-foster-care policy, and we support the bill. We appreciate the time and attention of committee leaders in reviewing and considering this issue.

(1) Policy

HB2299 maintains focus on the best interests of the child

The first change in HB2299 relates to the guideline for decision-making that DCF shall use when selecting who will adopt a child from foster care. The standard is the best interests of the child. While DCF would state that “best interests” is the standard they use, the statement isn’t present in the statutory language delegating adoption selection authority to DCF. We believe including the “best interests” standard is a technical but important change from the perspective of legal review of DCF’s reasonable efforts to achieve permanency.

HB2299 distinguishes the options and role of the court and the Secretary

The second change in HB2299 relates to clearly separating out processes relating to the court versus processes relating to the Secretary. Currently, the child in need of care code combines considerations for the court and for the Secretary in a somewhat confusing manner. Also, HB2299 adds additional language pinpointing when DCF custody ends after adoption. DCF suggested this language to increase clarity in their adoption process implementation standards.

HB2299 brings issues of best interests to the front, outside of just case law

Let me detour to highlight the challenges faced by DCF and practitioners in understanding and implementing foster care adoption law today.

Currently, Kansas law around foster care from adoption is a bit of a quagmire that would take a multi-page memo to untangle. As mentioned, the child in need of care code currently requires a court (but maybe not the Secretary?) to consider placing first with a relative, and then with a person who has a close relationship with a child. At the same time, applicable Kansas case law requires courts to consider whether DCF made an “individualized determination” that does not prefer “blood over bond” or “bond over blood.” As you can imagine, these considerations seem at odds with one another: the statute requires relative first preference, and case law seems to prohibit same.

In our opinion, all adoption decisions should be based on the individualized needs of the child. We believe the final version of this bill should focus on considering attachments, with the determinative factor being the best interests of the child.

HB2299 recognizes the importance of healthy attachment for children

The third change in HB2299 will require DCF to consider foster parents as close and healthy attachments in selecting adoptive families. You may recall testimony from the Joint Committee on Child Welfare Oversight hearings from last fall. We learned that brain science and trauma-informed practice support maintaining healthy attachments as a priority consideration where possible to support a child’s healthy development. At the same time, we heard that each child’s needs are unique and individual as related to adoption family selection. Maintaining attachments is one of many important considerations in adoption family selection from a child-centered perspective. HB2299 codifies that healthy attachments must be considered but best interests remain the decisive consideration.

HB2299 recognizes foster parents may be attachment figures

In practice today, implementation of DCF adoption family selection policies can vary significantly from region to region and court to court. In some instances, DCF policies have been interpreted as excluding long-term foster parents from being eligible for consideration when siblings or relatives are involved and/or requiring selection of a relative solely due to status of being a relative. We believe these instances are rare based on data from DCF about best interest staffing appeals – the vast majority are not contested nor challenged. Nonetheless, regardless of the reason or the frequency of the practice, excluding long-term caregivers from viable consideration for adoption selection is problematic for the impacted child. HB2299 requires DCF to change this application of policy. HB2299 clarifies that after two years, or half of a child’s life, a foster parent must be considered as an attachment figure in the adoption selection process. At the same time, with its central focus on “best interests,” HB2299 doesn’t dictate a selection decision for any individual child based on any one single factor. Our goal is that the final version of HB2299 after all amendments are considered, is that Kansas law ensures adoption selection policies and procedures don’t remove our responsibility to consider all factors and make sometimes very difficult, individualized determinations for each child in care.

(2) Practice

HB2299 clarifies implementation standards for DCF

As mentioned, adoption practices, training, and expectations can vary across the state. HB2299 asks DCF to implement the above-discussed policies with thorough review, training, and monitoring. DCF and providers can and should continue to focus on important goals of locating relative placements and placing siblings together, supporting kinship placements, facilitating visits with relatives and siblings, and facilitating close and healthy attachments with relatives and siblings. We believe the provisions in HB2299 that will require DCF to review and update policies, identify and implement needed training for adoption selection practices, and work toward consistent application of individualized decision-making in adoption selection practices across the state will strengthen outcomes for child wellbeing.

(3) Caveat

HB2299 provision re access to court of appeals may delay certainty for children

We understand the desire for court review of cases to ensure DCF is appropriately considering attachment in its processes. It is important to recognize that today, both foster and kinship parents have a path to review adoption selection at the district court level through a Motion for No Reasonable Efforts as outlined in case law. We read section (c) as supplementing or codifying this existing legal avenue for both kinship and foster families and support section (c) as applied to district court.

However, we would ask this committee to carefully reflect on the issue of opening a path to appeal a district court’s decision to the court of appeals. Appeals for adoption from foster care are generally not available due to the long length of time the appeals process can take, and the impact on a child waiting to know where “home” will be. We’d like to work further with this committee to explore appropriate guardrails, standard of review, clarification of processes, and the benefits of our long history of not

appealing adoption cases. Our suggestion at this time is to pass HB2299 without the provision for appeal to the court of appeals, and to monitor the adoption situation moving forward based on ongoing data reporting from DCF.

We ask the Committee to support HB2299, to clearly place best interests of the child as the essential consideration, and to ensure long-term foster parents are recognized as possibly playing that role. We are greatly appreciative of the time, leadership, and energy by Representative Concannon and Representative Humphries in raising the issue of attachment to the Kansas Judicial Council and appreciate that this bill largely echoes the study recommendations.

I am happy to stand for questions at the appropriate time.

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