

DRAFT

JOINT COMMITTEES

**Report of the
Joint Committee on Children's Issues
to the
2010 Kansas Legislature**

CHAIRPERSON: Representative Mike Kiegerl

VICE-CHAIRPERSON: Senator Julia Lynn

OTHER MEMBERS: Senators David Haley, Laura Kelly, Roger Reitz, and Susan Wagle;
and Representatives Marti Crow, Peter DeGraaf, Bill Otto, and Valdenia Winn

STUDY TOPIC

The Committee is directed statutorily to study children's issues the Committee deems necessary.

December 2009

HOUSE CHILDREN AND
FAMILIES
DATE: JANUARY 13, 2011
ATTACHMENT NO. 1 - 1

Joint Committee on Children's Issues

REPORT

CONCLUSIONS AND RECOMMENDATIONS:

The Committee acknowledges receipt of the response from the Department of Social and Rehabilitation Services (SRS) regarding the 23 specific cases for which testimony was received from the parents or grandparents of children who had been removed from their homes. The SRS response took a significant amount of work, and the agency's efforts were appreciated. After considering the response, however, several concerns remain. As a result, the Committee makes the following conclusions and recommendations.

- SRS provided a general explanation for many of the problems discussed in the cases, *i.e.*, that SRS is not responsible for the removal of children because the courts have to order the child be taken into custody. While technically accurate, it is SRS (or their contracting agency) who petitions the court that a child be removed. The courts generally take the testimony of SRS and its contracting agencies over the testimony of the parents or grandparents regarding the removal of the children. The Committee therefore recommends that documentation be provided to the families in a speedy fashion when children are removed from their homes.
- The Committee believes training of caseworkers and their managers is inadequate and, as a result, errors in their judgment can be expected. The Committee recommends additional training be considered.
- The courts cannot order a child to be returned to the child's home of origin. The court only has the ability to deny a placement, but not to order a child returned to a home. The Committee recommends the Legislature consider whether the courts should be given the statutory authority to order the return of a child to the child's home.
- The Committee believes grandparents and foster parents should be reimbursed at the same rate. However, an argument exists that this could provide a disincentive to parents to provide adequate care to their own children. The Committee therefore recommends giving SRS discretion to reimburse grandparents at the same rate.

With respect to the contract issues, the Committee makes the following conclusions and recommendations.

- It appears the present method of selecting the contractors is not done at arm's length, and terms of the contract are not negotiated in a neutral fashion. Due to negotiation regarding reimbursement in one 2005 contract, the state ended up paying \$2.9 million in excess that year. The Committee recommends the Legislature consider possible remedies, for example, contracting based on an hourly rate.

- The Committee also recommends SRS provide greater administrative control over its contracting agencies. SRS needs to monitor closely the activities regarding each case, and each contracting agency needs to justify its current expenditure per child. For example, one of the contractors has budgeted an expenditure of \$1,564 per child for FY 2012. This needs to be justified in detail.
- The investigation by Attorney General Six regarding the \$713,000 Emergency Funding (EF) payment resulted in a finding that the Secretary of SRS did not follow the established procedures but his actions did not constitute a criminal act. The Committee recommends that the Legislature review why SRS had that much in surplus money. In addition, the Legislature may wish to look at imposing greater control over the SRS budget.

Finally, due to the Committee's concerns, the Committee recommends the Legislature consider establishing an oversight committee over SRS.

Proposed Legislation: The Committee has no authority to introduce legislation.

BACKGROUND

The Joint Committee on Children's Issues was created in 1998 as part of the legislation enacting the state children's health insurance program, known as HealthWave in Kansas. In 2008, House Sub. for SB 81 was enacted, which transferred the Committee's responsibility for overseeing the implementation and operation of the children's health insurance program to the Joint Committee on Health Policy Oversight. As currently specified in KSA 46-3001, the Joint Committee on Children's Issues is responsible for addressing children's issues as the Committee deems necessary.

COMMITTEE ACTIVITIES

The Committee was granted two meeting days for the 2008 Interim. It met on November 30 and December 1, 2009. A brief summary of the Committee meeting and deliberations follows.

Policies, Procedures and Practices Regarding Foster Care and Adoption

The foster care system in Kansas is administered by the Department of Social and Rehabilitation Services (SRS) and delegated to

regional contractors. The contracting relationship will be addressed in greater detail in the second portion of this report.

The Committee received testimony from private citizens regarding 23 specific foster care cases. The private citizens either were parents or grandparents of children who had been placed in the foster care system. Included in the testimony were a number of claims and complaints. Following is a partial list of the claims and complaints.

- Grandparents being denied placement of their grandchildren due to their age.
- The state making money when children are adopted by non-relatives.
- Case managers, caseworkers and other resource personnel not being licensed or trained properly.
- SRS and contractors making questionable decisions regarding the children's care and placement. For example, some adoptive parents ultimately selected and some other placement decisions were of concern to some parents or grandparents.

- Children's behavior growing worse in foster care placement.
- Children being abused during foster care placement.
- Children being removed from parents when parents have not been convicted of a felony.

SRS officials were unable to respond during the Committee meeting regarding the 23 specific cases. The primary reason was that SRS and its regional contractors are required statutorily (KSA 38-2209) to maintain the confidentiality of each case. Because of the agency's confidentiality restriction, the Committee Chairperson requested that SRS review each case in detail and provide a detailed written response to the complaints expressed in the testimony regarding each case. Pursuant to KSA 38-2212, which provides an exception for disclosing such information to the Joint Committee on Children's Issues, the agency did provide a detailed response to each of the cases.

The Committee also heard from two guardians *ad litem* (GAL - an attorney charged by KSA 38-2205 to represent the child and to conduct an independent investigation as to what represents the child's best interests). The GALs expressed a number of concerns and made some suggestions. Among the concerns and suggestions were the following (some excerpted verbatim from their testimony):

- "GALs often hear complaints that the agencies [*i.e.*, Kansas Department of Social and Rehabilitation Services (SRS) and the regional contracting agencies for foster care and family preservation services] act without permission or input, do not place [children] with family, are allowed to submit sometimes subjective court reports parents and family of the child are not allowed to see, act in arbitrary ways, do not return children when parents have completed reintegration plans, and don't provide enough meaningful

contact between children and parents in their visitation policies. In the course of investigating on behalf of children, I've found cases where this is true."

- "In my experience, when contractors have performed poorly in cases, it's due to a few main factors:
 - Inexperience of workers, changing workers
 - Timeliness of services, dropping the ball, resources
 - Placement issues – attachment of children to foster parents who want to adopt
 - Policies that don't serve families (visitation, grandparent visitation, resources)"
- Although opining that the Kansas Child In Need of Care code (KSA 38-2201 et seq.) is "... one of the best written bodies of law in the country as pertains to child welfare....," one GAL suggested a statutory change authorizing judicial determination of placement:
 - "The law currently provides that upon a finding that an emergency exists or reasonable effort have been made to prevent removal of a child from home, a child can be placed in SRS custody with the authority for placement. SRS stands in loco parentis (in place of the parents) and takes custody of the child. SRS therefore makes many decisions for the child, including and most importantly where the child lives. The Court can review placement issues, but can only order a specific placement not be made. The Court cannot order that a child live with a specific person or family.

The Court should be given the authority to review and order placement as the Court finds represents the best interests of the child. Without

this recourse, only SRS can make these decisions. Currently, the only option a party can take is to ask that SRS custody be removed. This does not always represent a child's best interests either, leaving a catch 22."

- "[In a number of case examples presented in one GAL's testimony] I find overreaching by the agencies and the Courts. In the state of Kansas we need to think of family as being important and consider the best interest of the child no matter how much money we can make by delay."

Issues Regarding Contracting of Foster Care and Family Preservation Services

Questionable contract award process - The Committee heard from a staff member of the Legislative Division of Post Audit regarding the appropriateness of procedures followed in awarding specific contracts in 2005. The Division of Post Audit was asked to review whether appropriate procedures were followed in awarding contracts to The Farm for foster care and family preservation services in 2005. The audit stated:

"During the [contracting] process, an SRS employee appears to have inadvertently disclosed information that The Farm subsequently used to increase its bids. When conducting the financial phase of the contracting process, SRS officials realized that four of five contractors' bid proposals were significantly higher than SRS' target, while The Farm submitted bids that were lower than SRS had projected.... While discussing its risk mitigation plan with Farm officials during the third and final negotiations, an SRS employee disclosed financial information that initially had been withheld, which led to The Farm increasing its bids. Consequently, the State paid an additional \$2.9 million to The Farm during the first two contract years. To avoid this situation, SRS officials could have finalized negotiations with The Farm before working with the other contractors on the risk-mitigation plan...."

Questions regarding an award of Extraordinary Funding - The Committee heard from an official of Johnson County Developmental Supports, an agency working with people with disabilities. According to the official, Extraordinary Funding (EF) is defined as follows:

"... funding above the established reimbursement rates for Community Service Providers (CSP) who demonstrate that their costs to support an individual with a developmental disability (DD) are significantly in excess of the established reimbursement rate for that individual. These costs would be due to the medical and/or behavioral needs of the individual being supported."

The official stated that SRS authorized a payment of \$713,000 in EF to Community Living Opportunities (CLO), another provider of services to developmentally disabled individuals, in a manner that the official claimed deviated "... from the standard, overriding contract and policy."

The Attorney General was asked to review the ER award to determine "...whether there was evidence of violations of Kansas criminal statutes, including KSA 21-3846 which prohibits the making of a false claim to the Medicaid program." The Attorney General concluded:

"[Based upon several findings detailed in the letter]..., I conclude that SRS Secretary Don Jordan and his staff failed to follow SRS procedures in authorizing extraordinary funding for CLO. However, authorizing the extraordinary funding does not rise to the level of criminal culpability under Kansas law."

CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges receipt of the response from SRS regarding the 23 specific cases for which testimony was received from the parents or grandparents of children who had been

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