

**SPECIAL COMMITTEE ON FOSTER CARE
ADEQUACY**

November 16 & 17 2016

TESTIMONY PROVIDED BY:

JONI HIATT
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FOSTERADOPT CONNECT

Oversight and Supervision by DCF

- I. Lack of transparency with even the most basic aspects of the state's child welfare work
 - A. Can't find the contracts

- II. Money based conflict-of-interest in foster child placement process

OVERSIGHT AND SUPERVISION BY DCF

Introduction:

- A. My name is Joni Hiatt, I am the Kansas Director of Services with FosterAdopt Connect. We are a grassroots organization that provides support and advocacy services to children and families that allow them to better care for our most vulnerable children.

I have monthly contact with around 1000 foster, adoptive, relative and kin families through the newsletter, support services, advocacy, direct services and trainings in Kansas.

My husband and I have been foster parents for 25 years. We have three grown daughters, two of which are adopted through foster care. We have fostered roughly 130 children with our last placement, of almost five years, going to their forever home on September 21 of this year.

- B. I was invited to speak about oversight and supervision by DCF

I am going to focus on the lack of transparency and clarity, conflict of interest and child placement issues.

- C. **Handout 1**-The last contract awarded July 2013, was awarded to two contractors who were/are now providing all of the services. In the handout you will see what part of the state each of the two providers are servicing.

I reached out to the legislative research department for help locating the actual contract between DCF and the two contractors. I was given the link to the contract but was unable to locate it still. I asked our team of lawyers to search and passed on the same information and they were unable to find the Request for Proposal as well.

What we were able to locate were documents that confirm there are only two contracts to provide services

What we were not able to locate was the Request for Proposal or any specific information regarding the expectations of the two contractors and a clear description of how services are to be provided or outcomes reported. This was not only frustrating in the fact that I could have used that for my report today and tomorrow, but it is a public contract that isn't public.

- D. Placement decision making seems to be a conflict of interest. The way placement works today, a contractor has a child come into care, they look at their own homes first because that is where the most money is to be made/saved. If there is not an available contractor home in county, they move out of county~ TELL STORY.....

A child of a specific religion, was very religious, living in a large Kansas community and going to a nearby parochial school. A family (kin, not licensed) from his religious community was located so that the child could stay near his family, attend the same school, and practice his religion.

Instead, for financial incentive, the child was moved to a contractor licensed home, three hours away. The foster home was in a very rural area, and the foster parents were not only unfamiliar with the child's religion, but they were also uncomfortable with the practices of that religion, and that they were at least 100 miles away from a place of worship for that religion.

Other stories tell of children being split from siblings to stay in a contractors home or moved hours/counties away for apparent financial incentive, when sub-contractor homes were available in county, neighborhood and sometimes school.

- E. **Handout 2-Child Welfare System Map** was designed to show the basic contact with the child and foster family. It was designed to show the link between the child, birth family, foster family and all of the players in a case.

- F. There is a placement tool developed by University of Kansas Social Work Department and members of Non-Profit Solutions called E-CAP (every child a priority) that is designed to place in the best interest of the child. It is designed to be operated by an autonomous or independent organization, who would not benefit in any way by placement of a child, with no apparent financial incentive. The child is placed, through the E-CAP system by home county, school, etc. Not Agency~

- G. I will speak tomorrow about our foster parent's fear of reprisal, retaliation and intimidation from the contractors and DCF, but today, I will include that sub-contractors face the same fears.

To be able to move forward from where we are today, there should be itemized outcomes that are measureable, clear and concise.

A work group may be able to help with guidelines depending on who facilitates the group and what the terms are surrounding the group.

Kansas Department for Children and Families (DCF) Secretary Phyllis Gilmore announced Friday that the department has signed eight new contracts for reintegration, foster care, and adoption services, and for family preservation services. These contracts are scheduled to go into effect July 1, 2013.

"Since 1996, Kansas has been one of only a few states that privatize the majority of their child welfare services. This has proven to be an effective, successful way to serve children and families while demonstrating a model of collaboration between private business and state government," Secretary Phyllis Gilmore said. "These new contracts follow that tradition by continuing to partner with the private sector to improve our child welfare practices while using our resources more effectively and efficiently."

These reintegration, foster care and adoption services contracts are for working with children and their families when out-of-home care is deemed necessary by a court for the protection of the child(ren). Providers will continue working to ensure safety and promote stability for children, offer continued support to families when children who have been in out-of-home care are returned to the home and give ongoing support to adoptive families.

"Our family preservation services are an investment in strengthening families before they need court intervention, which can be very traumatic for a child," Secretary Gilmore said.

The proposed Fiscal Year (FY) 2014 budget for foster care, reintegration and adoption services is \$138 million. The proposed FY 2014 budget for family preservation services is about \$10.2 million. In FY 2012, more than 5,000 children a month were served by reintegration, foster care and adoption services providers. In FY 2012, 2,613 families were served in family preservation services. The providers awarded the contracts have been able to create some efficiencies which will result in approximately 175 more families being served each year.

The providers awarded contracts, by region:

Reintegration, Foster Care and Adoption Service Contracts and Family Preservation Contracts for the Kansas City Region awarded to KVC Behavioral Health Care Inc.

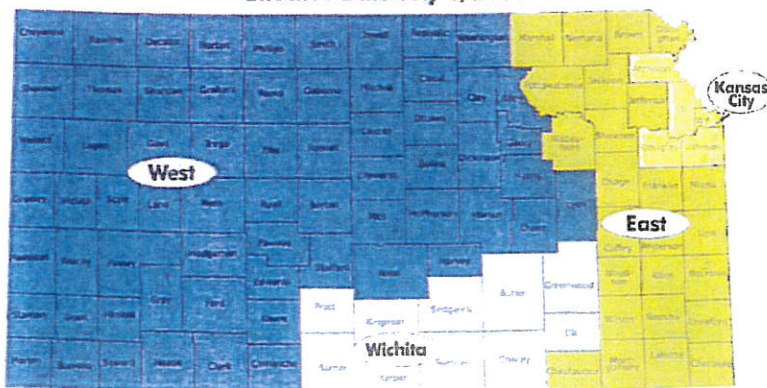
Reintegration, Foster Care and Adoption Services Contract and Family Preservation Contract for the Eastern Region awarded to KVC Behavioral Health Care Inc.

Reintegration, Foster Care and Adoption Services Contract and Family Preservation Contract for the Western Region awarded to St. Francis Community Services.

Reintegration, Foster Care and Adoption Services Contract and Family Preservation Contract for the Wichita Region awarded to St. Francis Community Services.

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**Department for Children and Families
Effective Date July 1, 2013**



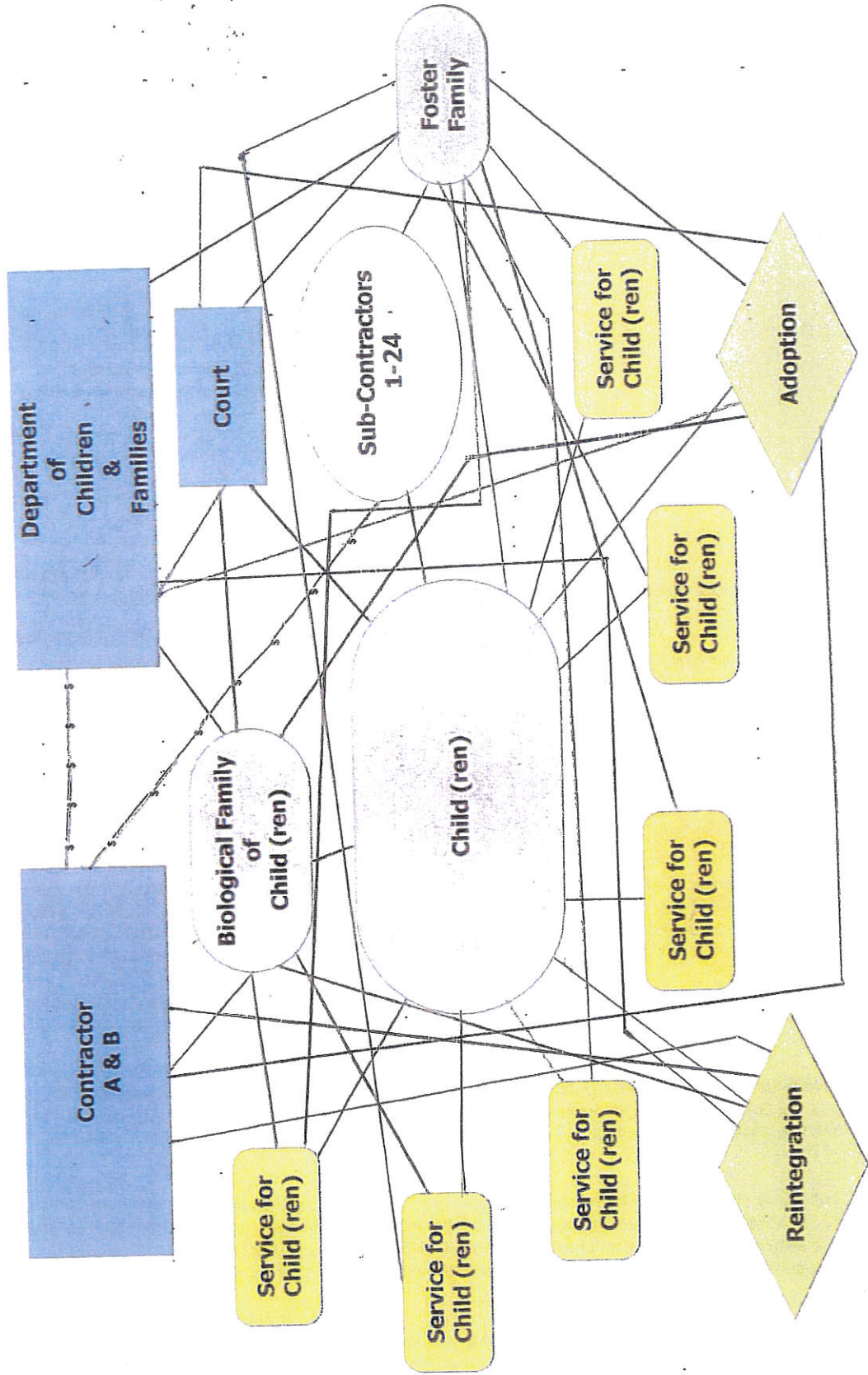
Foster Care, Adoption and Reintegration Services Providers

West: St. Francis Community Services
East: KVC Behavioral HealthCare, Inc.
Wichita: St. Francis Community Services
Kansas City: KVC Behavioral HealthCare, Inc.

Family Preservation Services Providers

West: St. Francis Community Services
Wichita: St. Francis Community Services
Kansas City: KVC Behavioral HealthCare, Inc.

CHILD WELFARE SYSTEM MAP



Selection of Foster Parents

- I. What we know about the process
 - A. Issues among parents
- II. Selection of diverse parents to fit diverse children coming into care
- III. How to proceed productively

Selection of Foster Parents

Introduction

- A. Thank you for the invitation to speak Chairman Knox and Special Committee Members

I am Joni Hiatt, the Kansas Director of Programs for FosterAdopt Connect. We are a grassroots organization created by foster parents for foster parents. Our mission is "to provide foster and adoptive children a stable, loving and nurturing family environment by support and advocacy for abused and neglected children and the families who care for them." In a nutshell, I have a great job.

Additionally, my husband and I have been licensed foster parents for 25 years. We have three grown daughters; two of whom were adopted out of the Kansas Foster Care System. We have fostered over 130 children with our last placement, of almost five years, just moving to their forever home on Sept. 21 of this year.

- B. I was asked to present testimony on the 'Selection of Foster Parents'

1. The testimony given by Children's Alliance Executive Director, Christie Applehantz explained the rigorous process to become a licensed foster parent in Kansas. Along with all of the requirements mentioned, there are also extensive home inspections and consults, assessments of all members of the family and more. Foster Parents must live an open book and allow their licensing agency, the contractor or DCF into their homes at a minimum of monthly, but additionally, without notice, at any time. The training and licensing requirement should not be in question here. It has proven to be in the best interest of children.

- C. My work allows me the opportunity to interact with around 1000 foster parents monthly through our newsletter and also our service and support to families who are licensed through a variety of licensing agencies. Through these interactions, I hear concerns from parents and see trends that have risen recently. What I know through advocacy work is that foster parents are scrutinized, misunderstood, undervalued and often not included as part of the team for the child placed in their homes. I personally have heard stories of foster parents being reprimanded, as well as, left out of meetings and decisions completely when trying to advocate for best interest of a child. Foster parents intimately know the children placed in their homes; they invest hours of love, mentoring, role modeling, listening- the best solution for difficult cases is to hear the opinions and expertise of the people taking care of children instead of consequencing them for a differing of views. There is a very real fear of retaliation in the form of moving placements from a foster home- this may not sound vitally important, but for a child who is forced to move from home to home for an insignificant reason, such as a differing of opinions, this is incredibly traumatic and increases the negative outcomes for our foster children as they become young adults. Each child deserves stability. For a foster parent, who's passion is to care and take care of

children who have suffered trauma, dealing with the reality that any contract agency can decide to not use your skills and abilities by refusing you placement, causes foster parents to stay silent instead of advocating because they have no voice or control over the outcome if someone on the professional team arbitrarily decides they do not like what or the way you are contributing to the case. There is also a real fear that your license can be revoked at will.

- D. As I began my testimony, I am supportive of a rigorous approval assessment process for the selection of foster parents. However, foster parents should not be selected solely based on their ethnicity or religious preferences. Our children in care are diverse, so therefore, our pool of foster parents should also be diverse. Children excel best when they are placed in a loving home with caring adults; the demographics of that loving home should not be the issue if the family applicants have met the scrutiny of the high licensing standards.
- E. What I would like to make sure you understand today, and what I tell any foster parent who will listen is-- that no one quits fostering because of a child, they quit because of the system for the reasons I have already highlighted. Foster parents yearn to be supported and acknowledged for the skills and role they play in the child welfare system. Support could be offered in a variety of ways including training, support groups, increase in daily reimbursement rates, placement stability, and the passing of a Foster Parent Bill of Rights which provides clear and defined regulations for all parties involved. If support was increased to foster parents, there would be an increase in the foster parent retention rate. Although this information is not easily accessed by the public, my guess is that Kansas continues to have a low to medium foster parent retention rate. When foster parents are retained, skills and abilities are increased allowing them to manage more difficult behaviors, placement stability increases, and they recruit other passionate caregivers to provide loving homes.
- F. So, it seems if DCF were willing to look at ways of maintaining and sustaining the parents they already license and support the daily work, the children we serve would benefit greatly. And again, a Foster Parent Bill of Rights, a work group to discuss and decide policy before it is implemented to allow for clarity and transparency would greatly improve the Kansas foster care system.

Note: This document shows the Committee's recommendations as amendments to Substitute for SB 394. The bill contained some striketype already. The Committee's recommended changes appear in bold.

{As Amended by Senate Committee of the Whole}

Session of 2014

Substitute for SENATE BILL No. 394

AN ACT concerning children and minors; enacting the Kansas foster parents' bill of rights act; relating to foster care; family foster homes; amending K.S.A. 2013 Supp. 38-2212, 38-2213 and 38-2258 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The provisions of this act shall be known and may be cited as the Kansas foster parents' bill of rights act.

(b)(1) The Kansas department for children and families and department of health and environment recognize that foster parents play an integral role in the state's effort to care for dependent children displaced from their homes. Foster parents have the right to be treated by the Kansas department for children and families, department of health and environment and other partners in the care of abused and neglected children with dignity, respect and trust as a provider of foster care. Foster parents shall treat all children in their care, each child's birth family and all members of the child professional team with dignity and respect.

(2) The department of health and environment shall provide written notification of the rights enumerated in this section to foster parents at the time of initial licensure and at the time of each licensure renewal following the initial licensure period.

(3) The Kansas department for children and families shall make its policies available to fosterparents and the public by publishing the prevention and protection services policy procedure manual on the department's public website.

(c) (1) The Kansas department for children and families shall provide foster parents with pre-service training. The Kansas department for children and families, department of health and environment or the child placement agency shall provide training at appropriate intervals to meet mutually assessed needs of the child and to improve foster parent skills. **Training approved by the licensing agency and conducted by foster parent support groups shall be recognized as pertinent, and information about training offered by foster parent support groups shall be regularly shared with family foster homes licensed within the region served by those support groups.**

Comment

See page 17-18 of Committee Report.

(2) The Kansas department for children and families shall provide to foster parents, prior to and during placement, information which is pertinent to the care and needs of the child and to protect the foster family to the extent allowed under state and federal law. The Kansas department for children and families shall provide foster parents information regarding the number of times a child has been removed and the reasons therefor, to the extent permitted by law, and may also provide the names and phone numbers of the previous foster parents if the previous foster parents have authorized such release.

(3) The Kansas department for children and families will, when appropriate and feasible, arrange for pre-placement visits between foster children and family foster home parents.

(4) Foster parents may ask questions about the child's case plan, encourage a placement or refuse a placement. In the event foster parents **ask questions about the case plan or** refuse a placement, **such refusal these actions** shall not serve as the **sole** determining factor with respect to a subsequent placement of a child with such foster parents when such placement is in the best interests of the child. After a placement of a child with foster parents, the Kansas department for children and families shall update the foster parents as new relevant information about the child, the child's parents and other relatives is gathered.

Comment

See page 18 of Committee Report.

(5) Foster parents shall be informed in a timely manner by the Kansas department for children and families of all case plan meetings concerning the children placed in their homes, and shall be allowed and encouraged to participate in such meetings and provide input concerning the case plan. **Foster parents should be encouraged to participate in other meetings concerning the placement of the child when appropriate and feasible.** Foster parents shall be informed by the Kansas department of health and environment concerning their licensure as a family foster home.

Comment

See pages 10-11 of Committee Report.

(6) The Kansas department for children and families will, when appropriate and feasible, establish reasonably accessible respite care for children in foster care for short periods of time, in consultation with the foster parents. Foster parents shall follow all policies and procedures established by the Kansas department for children and families for requesting and using respite care.

~~(7) Foster parents shall treat all information received from the Kansas department for children and families about the child and the child's family as confidential. Information necessary for the medical or psychiatric care of the child may be provided to the appropriate practitioners. Foster parents may share information necessary with school personnel in order to secure a safe and appropriate education for the child. Additionally, foster parents shall share information they may learn about the child and the child's family, and concerns that arise in the care of the child, with the caseworker and other members of the child professional team.~~

Comment

See page 8 of Committee Report.

(8) Recognizing that placement changes are may be difficult and detrimental to the health and wellbeing of children, foster parents ~~may request~~ have the responsibility to seek all legally available information, whenever possible, before deciding whether or not to accept a child for placement.

Comment

Subsection (c)(8) was stricken in bill that passed the Senate.
See page 9 of Committee Report.

~~(d) (1) Foster parents shall be permitted to continue the practice of their own family values and routines while respecting the child's cultural heritage. All discipline shall be consistent with state law and rules and regulations. Visitations between the child and the child's siblings or biological family should be scheduled at a time that meets the needs of the child, the biological family members and the foster family, whenever possible. Recognizing that visitation is an important right of children in foster care, foster parents shall be flexible and cooperative with family visits. Recognizing the importance of a positive relationship between birth parents and foster parents, whenever possible, foster parents shall assist in assuring frequent and positive parent-child visitation by providing supervision for visits and transporting children to and from visits, all consistent with the child's case plan.~~

~~(2) Foster parents shall provide care that is respectful of the child's cultural identity and needs. The Kansas department for children and families shall provide foster parents relevant information on specific religious or cultural practices of the child.~~

~~(3) Foster parents shall use discipline methods which are consistent with policies, rules and regulations adopted by the Kansas department for children and families and department of health and environment.~~

Comment

See pages 18-19 of Committee Report.

~~(e) (1) Upon request by a former foster parent, the department for children and families shall provide general information, if available, on the child's progress if the child is at the time of the request in the custody of the secretary for children and families and provision of such information is agreed to by the child and the child's placement.~~

Upon request by a former foster parent, the department for children and families shall provide general information, if available, on the well-being of a child if: A) all parental rights to the child have been terminated; and B) there is no objection from the guardian ad litem, if the child is less than 14 years of age, or the child, if the child is 14 years of age or older, but less than 18 years of age. The department of children and families shall adopt policy and procedure consistent with the revised code for care of children regarding the provision of general information about a child's well-being upon request from a former foster parent if the child is in the custody of the secretary for children and families, but parental rights to the child have not been terminated.

Comment

See pages 9-10 of Committee Report.

(2) Recognizing the importance of placement stability to the health and well-being of children, fosterparents shall be given ~~30 days'~~ written notice of any plan to move a child in their care to a different placement in accordance with subsections (a) and (f) of K.S.A. 2013 Supp. 38-2258, and amendments thereto.

(3) ~~Foster parents have the right to be considered, when appropriate, as a placement option when a child who was formerly placed with the foster parents has re-entered the child welfare system.~~

Comment

See pages 14-16 of Committee Report.

(4) If a foster child becomes free for adoption and the foster parents desire to adopt the child, they shall inform the caseworker in a timely manner. ~~If they do not choose to pursue adoption, foster~~ **Foster** parents shall make every effort to support and encourage the child's placement in a permanent home, including, but not limited to, providing information on the history and care needs of the child and accommodating transitional visitation.

Comment

The stricken clause improperly narrows the foster parents' duty. If foster parents do choose to pursue adoption, but are not selected as the adoptive placement, they still should make every effort to support and encourage the child's placement in the adoptive home selected.

(f) Foster parents shall be informed in advance of all court hearings and reviews pertaining to a child in their care, and shall be informed of their right to attend and participate as allowable by applicable state and federal law. Foster parents have the right to complete the foster parent court report form and submit such form to the court.

(g)(1) Foster parents have access to the appeals and grievance processes pursuant to state law and regulations and policies of the Kansas department for children and families and department of health and environment.

(2) Foster parents have the right to contact the Kansas department for children and families or department of health and environment regarding any concerns or grievances about management decisions or delivery of service issues.

(h) Foster parents shall have access to policies of the Kansas department for children and families which are posted on the agency's website. Foster parents shall have access to rules and regulations regarding their licensure which are posted on the Kansas department of health and environment website. Foster parents shall comply with the licensure requirements and policies of their licensing agency and child placing agency.

~~(I) For the purposes of this section, foster parent means a resource family providing care to children in foster care in a family foster home, as defined in section 2, and amendments thereto.~~

Comment

The definition is unnecessary and is inconsistent with definitions in KDHE regulations.

(j) This section shall be part of and supplemental to the revised Kansas code for care of children.

~~New Sec. 2. (a) A family foster home is a child care facility that is a private residence, including any adjacent grounds, in which a licensee provides care for 24 hours a day for one or more children in foster care and for which a license is required under the provisions of K.S.A. 65-501 et seq., and amendments thereto.~~

Comment

The definition is unnecessary, although it is consistent with K.A.R. 28-4-311.

(b) This section shall be part of and supplemental to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 3. K.S.A. 2013 Supp. 38-2212 is hereby amended to read as follows: 38-2212. (a) *Principle of appropriate access.* Information contained in confidential agency records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-2210, and amendments thereto, the secretary and juvenile intake and assessment agencies shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Necessary access.* The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) A child named in the report or records, a guardian ad litem appointed for the child and the child's attorney.

(2) A parent or other person responsible for the welfare of a child, or such person's legal representative.

(3) A court-appointed special advocate for a child, a citizen review board or other advocate which reports to the court.

(4) A person licensed to practice the healing arts or mental health profession in order to diagnose, care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the child.

(5) A person or entity licensed or registered by the secretary of health and environment or approved by the secretary of ~~social and rehabilitation services~~ *for children and families* to care for, treat or supervise a child in need of care.

(6) A coroner or medical examiner when such person is determining the cause of death of a child.

(7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

(8) An attorney for a private party who files a petition pursuant to subsection (b) of K.S.A. 2013 Supp. 38-2233, and amendments thereto.

(9) A foster parent, prospective foster parent, permanent custodian, prospective permanent custodian, adoptive parent or prospective adoptive parent. In order to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child's placement, and to help the family meet the needs of the child in a constructive manner, the secretary shall seek and shall provide the following information to such person's as the information becomes available to the secretary:

(A) Strengths, needs and general behavior of the child;

(B) circumstances which necessitated placement;

(C) information about the child's family and the child's relationship to the family which may affect the placement;

(D) important life experiences and relationships which may affect the child's feelings, behavior, attitudes or adjustment;

(E) medical history of the child, including third-party coverage which may be available to the child; and

(F) education history, ~~to include~~ *including* present grade placement, special strengths and weaknesses.

(10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

(11) Any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees.

(12) Any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils.

(13) Any other federal, state or local government executive branch entity or any agent of such entity, having a need for such information in order to carry out such entity's responsibilities under the law to protect children from abuse and neglect.

(d) *Specified access.* The following persons or entities shall have access to information contained in agency records as specified. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

(1) Information from confidential agency records of the department of ~~social and rehabilitation services~~ *for children and families*, a law enforcement agency or any juvenile intake and assessment worker of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3

of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. The secretary of ~~social and rehabilitation services for children and families~~ shall not summarize the outcome of department actions regarding a child alleged to be a child in need of care in information available to members of such committees.

(2) The secretary of ~~social and rehabilitation services for children and families~~ may summarize the outcome of department actions regarding a child alleged to be a child in need of care to a person having made such report.

(3) Information from confidential reports or records of a child alleged or adjudicated to be a child in need of care may be disclosed to the public when:

(A) The individuals involved or their representatives have given express written consent;

or

(B) the investigation of the abuse or neglect of the child or the filing of a petition alleging a child to be in need of care has become public knowledge, provided, however, that the agency shall limit disclosure to confirmation of procedural details relating to the handling of the case by professionals.

(e) *Court order.* Notwithstanding the provisions of this section, a court of competent jurisdiction, after in camera inspection, may order disclosure of confidential agency records pursuant to a determination that the disclosure is in the best interests of the child who is the subject of the reports or that the records are necessary for the proceedings of the court and otherwise admissible as evidence. The court shall specify the terms of disclosure and impose appropriate limitations.

(f) (1) Notwithstanding any other provision of law to the contrary, except as provided in paragraph (4), in the event that child abuse or neglect results in a child fatality or near fatality, reports or records of a child alleged or adjudicated to be in need of care received by the secretary, a law enforcement agency or any juvenile intake and assessment worker shall become a public record and subject to disclosure pursuant to K.S.A. 45-215, and amendments thereto.

(2) Within seven days of receipt of a request in accordance with the procedures adopted under K.S.A. 45-220, and amendments thereto, the secretary shall notify any affected individual that an open records request has been made concerning such records. The secretary or any affected individual may file a motion requesting the court to prevent disclosure of such record or report, or any select portion thereof. If the affected individual does not file such motion within seven days of notification, and the secretary has not filed a motion, the secretary shall release the reports or records. If such motion is filed, the court shall consider the effect such disclosure may have upon an ongoing criminal investigation, a pending prosecution, or the privacy of the child, if living, or the child's siblings, parents or guardians. The court shall make written findings on the record justifying the closing of the records and shall provide a copy of the journal entry to the affected parties and the individual requesting disclosure pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto.

(3) For reports or records requested pursuant to this subsection, the time limitations specified in this subsection shall control to the extent of any inconsistency between this subsection and K.S.A. 45-218, and amendments thereto. As used in this section, "near fatality" means an act that, as certified by a person licensed to practice medicine and surgery, places the child in serious or critical condition.

(4) Nothing in this subsection shall allow the disclosure of reports, records or documents concerning the child and such child's biological parents which were created prior to such child's adoption. Nothing herein is intended to require that an otherwise privileged communication lose its privileged character.

Sec. 4. K.S.A. 2013 Supp. 38-2213 is hereby amended to read as follows: 38-2213. (a) *Principle of limited disclosure.* Information contained in confidential law enforcement records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall

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in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) *Free exchange of information.* Pursuant to K.S.A. 2013 Supp. 38-2210, and amendments thereto, a law enforcement agency shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) *Access to information in law enforcement records.* In order to discharge their official duties, the following persons or entities shall have access to confidential law enforcement records concerning a child alleged or adjudicated to be in need of care.

(1) The court having jurisdiction over the proceedings, including the presiding judge and any court personnel designated by the judge.

(2) The secretary.

(3) The commissioner of juvenile justice.

(4) Law enforcement officers or county or district attorneys or their staff.

(5) Any juvenile intake and assessment worker.

(6) Members of a court-appointed multidisciplinary team.

(7) Any other federal, state or local government executive branch entity, or any agent of such entity, having a need for such information in order to carry out such entity's responsibilities under law to protect children from abuse and neglect.

(8) Persons or entities allowed access pursuant to subsection (f) of K.S.A. 2013 Supp. 38-2212, and amendments thereto.

(d) *Necessary access.* The following persons or entities shall have access to information from law enforcement records when reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged or adjudicated to be in need of care. Information authorized to be disclosed in this subsection shall not contain information which identifies a reporter of a child alleged or adjudicated to be a child in need of care.

(1) Any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect, including physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physician assistants, community mental health workers, and alcohol and drug abuse counselors, ~~and licensed or registered child care providers.~~

(2) School administrators shall have access to but shall not copy law enforcement records and may disclose information to teachers, paraprofessionals and other school personnel as necessary to meet the educational needs of the child or to protect the safety of students and school employees.

(3) The department of health and environment or persons authorized by the department of health and environment pursuant to K.S.A. 65-512, and amendments thereto, for the purposes of carrying out responsibilities relating to licensure or registration of child care providers as required by article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.

(e) *Legislative access.* Information from law enforcement records of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's

official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) *Court order.* Notwithstanding the provisions of this section, a court of competent jurisdiction, after in camera inspection, may order disclosure of confidential law enforcement records pursuant to a determination that the disclosure is in the best interests of the child who is the subject of the reports or that the records are necessary for the proceedings of the court and otherwise admissible as evidence. The court shall specify the terms of disclosure and impose appropriate limitations.

Sec. 5. K.S.A. 2013 Supp. 38-2258 is hereby amended to read as follows: 38-2258. (a) Except as provided in *subsection (d)(2) of K.S.A. 2013 Supp. 38-2255*~~(d)(2)~~ and 38-2259, and amendments thereto, if a child has been in the same foster home or shelter facility for ~~six~~ **three** ~~six~~ months or longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give *30 days'* written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court having jurisdiction over the child; (2) the petitioner; (3) the attorney for the parents, if any; (4) each parent whose address is available; (5) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (6) the child, if 12 or more years of age; (7) the child's guardian ad litem; (8) any other party or interested party; and (9) the child's court appointed special advocate.

(b) The notice shall state the placement to which the secretary plans to transfer the child and thereason for the proposed action. The notice shall be mailed by first class mail 30 days in advance of the planned transfer, except that the secretary shall not be required to wait 30 days to transfer the child if all persons enumerated in subsection (a)(2) through (8) consent in writing to the transfer.

(c) Within 14 days after receipt of the notice, any person enumerated in subsection (a)(2) through(8) receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been received, the court shall schedule a hearing, **to be held within 7 days**, and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a)(2) through (9). If the court does not receive a request for hearing within the specified time, the change in placement may occur prior to the expiration of the 30 days. The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.

(d) When, after the notice set out above, a child in the custody of the secretary is removed from thehome of a parent after having been placed in the home of a parent for a period of six months or longer, the secretary shall request a finding that: (1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in home is contrary to the welfare of the child; or

(C) immediate placement of the child is in the best interest of the child; and

(2) 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.

(e) The secretary shall present to the court in writing the efforts to maintain the family unit and prevent the unnecessary removal of the child from the child's home. In making the findings, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter.

If the secretary requests such finding, the court, not more than 45 days from the date of the request, shall provide the secretary with a written copy of the findings by the court for the purpose of documenting these orders.

(f)(1) Except as provided in subsection (d)(2) of K.S.A. 38-2255 and 38-2259, and amendments thereto, if a child has been in the same foster home for more than 30 days, but less than six

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months, the private child placing agency shall give 72 hours' written notice to the foster parent of any plan to move the child to a different placement.

(2) Each private child placing agency shall develop and implement an internal grievance process, consistent with this section, through which a foster parent can object to a planned change of placement as described in paragraph (1).

(3) The written notice provided by the private child placing agency under paragraph (1) shall state the reason for the change of placement and provide the foster parent with information about accessing the agency's internal grievance process.

(4) If a foster parent objects to the change of placement pursuant to the internal grievance process established pursuant to paragraph (2), the child shall not be moved to a different placement until the grievance process has been concluded.

(5) The decision reached following the grievance process shall not be appealable to the district court or any appellate court in the state of Kansas.

Comment

See pages 11-14 of Committee Report.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

In addition to the changes to Substitute for SB 394 set forth above, the Committee recommends the following changes to K.S.A. 38-2255 and 38-2270:

38-2255. Authorized dispositions; prohibitions. (a) Considerations. Prior to entering an order of disposition, the court shall give consideration to:

- (1) The child's physical, mental and emotional condition;
- (2) the child's need for assistance;
- (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
- (4) any relevant information from the intake and assessment process; and
- (5) the evidence received at the dispositional hearing.

(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 which the court prescribes to assure the proper care and protection of the child, including, but not limited to:

- (1) Supervision of the child and the parent by a court services officer;
- (2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and
- (3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

(c) Removal of a child from custody of a parent. The court shall not enter the initial order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that:

- (1) (A) The child is likely to sustain harm if not immediately removed from the home;
- (B) allowing the child to remain in home is contrary to the welfare of the child; or (C) immediate placement of the child is in the best interest of the child; and

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(2) 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 court shall not enter an order removing a child from the custody of a parent pursuant to this section based solely on the finding that the parent is homeless.

(d) Custody of a child removed from the custody of a parent. If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to: A relative of the child or to a person with whom the child has close emotional ties who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto; any other suitable person; a shelter facility; a youth residential facility; a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2014 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2014 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2014 Supp. 21-6419, and amendments thereto; or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and, **when possible, the order of preference established under subsection (b) of K.S.A. 38-2270, and amendments thereto, and shall** notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody. After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(2) The custodian designated under this subsection shall notify the court in writing at least 10 days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set the date for a hearing to determine if the child shall be allowed to return home. If the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

(3) The court may grant any person reasonable rights to visit the child upon motion of the person and a finding that the visitation rights would be in the best interests of the child.

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting,

harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2014 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(5) The court shall provide a copy of any orders entered within 10 days of entering the order to the custodian designated under this subsection.

(e) Further determinations regarding a child removed from the home. If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to K.S.A. 2014 Supp. 38-2264, and amendments thereto. If a permanency plan is provided at

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the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether 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: (A) Murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2014 Supp. 21-5402, and amendments thereto; (B) murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2014 Supp. 21-5403, and amendments thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2014 Supp. 21-5401, and amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2014

Supp. 21-5404, and amendments thereto; or (E) a felony battery that resulted in bodily injury;

(2) whether a parent has subjected the child or another child to aggravated circumstances;

(3) whether a parent has previously been found to be an unfit parent in proceedings under this code or in comparable proceedings under the laws of another state or the federal government;

(4) whether the child has been in extended out of home placement;

(5) whether the parents have failed to work diligently toward reintegration;

(6) whether the secretary has provided the family with services necessary for the safe return of the child to the home; and

(7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

(f) Proceedings if reintegration is not a viable alternative. If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

(g) Additional Orders. In addition to or in lieu of any other order authorized by this section:

(1) The court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health provider shall charge a greater fee for court-ordered counseling than the provider would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2014 Supp. 21-5701 through 21-5717, and amendments thereto, by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary,

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the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 2014 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 2014 Supp. 23-3101 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2014 Supp. 38-2279, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Comment

See pages 15-16 of Committee Report.

38-2270. Custody for adoption. (a) When parental rights have been terminated and it appears that adoption is a viable alternative, the court shall enter one of the following orders:

(1) An order granting custody of the child, for adoption proceedings, to the secretary or a corporation organized under the laws of the state of Kansas authorized to care for and surrender children for adoption as provided in K.S.A. 38-112 et seq., and amendments thereto. The person, secretary or corporation shall have authority to place the child in a family home, and give consent for the legal adoption of the child which shall be the only consent required to authorize the entry of an order or decree of adoption.

(2) An order granting custody of the child to proposed adoptive parents and consenting to the adoption of the child by the proposed adoptive parents.

(b) In making an order under subsection (a), the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to granting such custody for adoption to a relative of the child and second to granting such custody to a person with whom the child has close

emotional ties. **For purposes of this section, a person with whom the child has close emotional ties may include a foster parent.**

(c) Discharge upon adoption. When an adoption decree has been filed with the court in the child inneed of care case, the secretary's custody shall cease, the court's jurisdiction over the child shall cease and the court shall enter an order to that effect.

Comment

See pages 14-15 of Committee Report.