MINUTES

JOINT COMMITTEE ON CHILDREN'S ISSUES

October 12-13, 2005
Room 313-S—Statehouse

Members Present

Representative Willa DeCastro, Chairperson
Senator Kay O'Connor, Vice Chairperson
Senator David Haley
Senator Laura Kelly
Senator Roger Reitz
Representative Marti Crow
Representative Bonnie Huy
Representative Frank Miller
Representative Sue Storm

Members Absent

Senator Susan Wagle

Staff Present

Susan Kannarr, Kansas Legislative Research Department
Robert Waller, Kansas Legislative Research Department
Mike Corrigan, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Florence Deeter, Committee Secretary

Conferees

Ron Denney, Department of Social and Rehabilitation Services
Steve Erikson, Department of Social and Rehabilitation Services
Ira Stamm, Psychologist, Topeka
Regina Kimbrel, School Psychologist, Marion
John Campbell, School Psychologist, Wichita
Stephen Christenberry, Family Service and Guidance Center, Topeka
Ric Dalke, Area Mental Health Center, Garden City
Parents of Youth with Mental Health Needs
  Brenda Wadley, Topeka
  Georgia Platt-Sparta, Parent Advocate, Topeka
  Barbara Peeples, Kansas City

Ardith Holmes, Emporia
Mary Barrett, Former Foster Care Child
Susie Graber, Retired Licensed Specialist Clinical Social Worker
Greg Tangari, Licensed Specialist Clinical Social Worker
Cheryl Rathbun, St. Francis Academy, Salina
Kelly McCaulley, KVC Behavioral Health
Steve Solomon, The Farm, Inc.
Walt Thiessen, Wichita Children's Guidance Center
Brenda Harvey-Smith, Mental Health Credentialing Coalition
Jane McIrvin and Theresa Nelson, NAMI Kansas
Cindy D'Ercole, Kansas Action for Children
Chris Petr, MSW, PhD, Professor of Social Welfare, University of Kansas
Representative Brenda Landwehr
The Honorable Robert Bednar, 1st District
The Honorable Dan Mitchell, 3rd District
Wade Bowie, Assistant District Attorney, 7th District
Craig Stancliffe, GAL, 7th District
Juanita Carlson, GAL 7th District
The Honorable Maritza Segarra, 8th District
Michelle Brown, County Attorney, 8th District
The Honorable James Burgess, 18th District
The Honorable Tim Henderson, 18th District
Ron Pascal, Assistant District Attorney, 18th District
Mark Jordan, Assistant District Attorney, 18th District
The Honorable Ann Dixson, 26th District
The Honorable Patty Macke Dick, 28th District
Myndee Reed, County Attorney, 28th District
The Honorable Tom Graber, 30th District
Mark Gleeson, Office of Judicial Administration, Kansas Judicial Center
Rick Macias, Esquire

Others Present

See attached lists.

Wednesday, October 12
Morning Session

The Chairperson called the meeting to order and commented that the roundtable discussion has no set agenda so that participants were free to bring up topics related to children's mental health services they believed were important. The Chairperson noted that audience members who might have comments, specific facts, or pertinent information for the Committee were welcome to seek recognition to participate in the discussion.

The first topic raised by a participant was the improvement in access in rural Community Mental Health Centers (CMHC). However, concern also was expressed with flat and decreasing funding to pay for adequate personnel to maintain services which results in a high turnover rate.

The ability of social workers in private practice to receive Medicaid third party reimbursement and issues with allowing them to become Medicaid providers was the next topic of discussion. One participant stated that because social workers are not allowed to be Medicaid enrolled providers, services can be disrupted if a person's private insurance is discontinued and he or she switches to a medical card. A family also may be unable to use the same therapist if a parent has insurance and their child has a medical card. Several participants noted that it is important to have community mental health centers and private contractors available to Medicaid beneficiaries to provide quicker access to services. It was noted that in current child-welfare contracts, mental health care services are to be provided by Medicaid and that there are limitations to referrals.

One of the participants addressed the topic of whether opening up medical cards to additional providers, such as social workers, would fragment the mental health system. This participant believes that this access could open up the support system for more families and that the private providers can work with CMHCs and the public mental health system to avoid fragmentation. Finally, the participant believes that adding in these additional providers also could help avoid forcing children to change providers when the payment source changes.

A representative from Social and Rehabilitation Services (SRS) noted that access in the public health system has continued to improve. However, integration between juvenile justice and mental health is lacking across the state. This will be a topic Kansas needs to continue to address, although Kansas leads nationally with services to the public and that children within the state have broader access when compared with many other states. He also noted that early intervention and wrap-around services are essential in assisting children with mental health needs.

The next topic, which received significant discussion, involved issues with health insurance coverage and difficulties in substantiating medical necessity. One participant commented that, because mental health services are not regarded equally by the private insurance industry as compared to physical health services, it is more of a challenge to acquire coverage for expenses. One reason is that it is more difficult to show results in mental health services and that there are not as many concrete tests to use to show insurers what is wrong with a patient or that services are helping. Applying for coverage of services initially and having to re-apply every six to ten sessions creates hassles for providers.

Another participant noted that the Medicaid program has a similar challenge in that services must be defined as medically necessary to be covered. The mental health system of care has been expanded to include more social, community, and case management services which do not fit the medical necessity model. This participant also expressed the opinion that in child welfare, if a court orders a service, that order ought to override the Medicaid medically necessary limitation for reimbursement.

One participant noted that issues with medical necessity requirements and difficulty with insurers is partially reflective of the newness of the science of mental health care as compared to physical medical care. Mental health treatment is still in its infancy as compared to physical health care and children’s mental health is still a challenge because of the natural changes children go through. For all of these reasons, insurers have difficulty understanding mental health care. He commented that better diagnosing began to occur during the 1990s, allowing mental health care to be better recognized. Greater awareness of the need for mental health care has become a feature in every other human system of care giving. He further commented that with the gain in knowledge and decrease of the stigma attached to mental health, each profession will be able to provide quality care in the field of mental health. Ultimately, increased recognition and familiarity with the science of mental health care should erode some of the resistance.

The conversation next moved to issues concerning services for youths who are aging out of private coverage. Parent concerns were expressed regarding children who will soon reach the age of 18 and not be covered with insurance from the private sector under their parent's provider. Often, the time of treatment is brought to closure too quickly. Having Medicaid available to them is imperative for continued treatment and medication.

Next, a Committee member asked for an explanation of the growth in the mental health portion of the state budget. Responses centered around the newness of the system, particularly for children, and the fact that it is still in the growth phase. Also, mental health has become a feature in many other types of systems such as education, child welfare, physical health, juvenile justice, and corrections. Another participant noted that the costs of providing mental health services are less expensive than other services such as hospitals, the juvenile justice system, or foster care, meaning that it is to the state's overall advantage to provide adequate mental health services and potentially avoid these higher cost services. Finally, one participant noted that, for whatever reason, awareness of mental health is much greater and the stigma over seeking treatment has decreased over the last 30 years, leading to a higher proportion of people with mental illness seeking services. Another participant noted that mental health issues have been a driver in Medicaid costs due to the availability of new medications. This same conferee noted that Medicaid was the best third party payer in the system for places like CMHCs who have challenges getting payments from other third party payers who do not want to cover what Medicaid pays.

The next topic discussed followed a question from a Committee member about the offering of spiritual help to patients. The responses generally indicated that spirituality could be a part of treatment if the patient indicated a desire to include it, but that a therapist must be careful not to insert his or her own values into the discussion. One participant commented that part of therapy and case management is to assess where a patient's strengths and supports are and that spirituality may be a part of that assessment. Finally, it was noted that the Joint Commission on Accreditation of Health Organizations requires spiritual issues to be included in patient assessment.

The ability of the state to verify or account for the effectiveness of treatment, the "realness" of diagnoses, and providers keeping people in care to continue receiving Medicaid reimbursement was the next topic discussed in response to a Committee member's question. Participants had a lengthy discussion on oversight functions built into the system, advances in mental health treatments, and the time people spend receiving treatment. With regard to oversight functions, participants stated that CMHC's have a utilization review process and compliance committees as part of their agreements with the state and that external reviews and audits also are done at the state level. Although there is no comprehensive external oversight function to track the overuse of services, the managed care environment provides incentives to improve efficiency and reach desired goals in a timely manner while not overusing services. Also, community based services must be accredited and provide assurance that specific numbers of children are being treated. Next, one participant stated that all models of treatment should be evidence-based, tested, and verified for validity in order to provide external proof of reliability of treatment for children. During the discussion, several participants related long-term mental health services to long-term physical health services that need continued support. One provider stated that she tries to make mental health issues more tangible by comparing mental health conditions to things like diabetes because of the need for long-term maintenance even when a person is feeling better.

Regarding the "realness" of diagnoses, participants noted that new scientific knowledge is helping make mental health issues more real.

Regarding the concern that providers might keep people in services longer than necessary, participants stated that people are more likely to be taken out of treatment too quickly as opposed

to being kept in services too long. One provider indicated that they try to pull back services slowly because of inability to evaluate when someone is "cured" and there is a fear of "shocking" the support system.

The discussion then flowed to the ability of the mental health community to better evaluate the effectiveness of efforts and track successes and failures. This is particularly true in light of the fact that both private insurance and Medicaid are evaluating what aspects of mental health should be funded by their agencies. Despite pressures to effectively treat patients, the opportunity to properly evaluate patients is very limited in both the public and private mental health systems. Insurance companies today limit the amount of time for testing and no longer cover lengthy mental health treatment services. One participant made the point that physical health treatment is not a perfect science, but that the public and insurers have more faith in it than mental health services.

One of the weaknesses in the mental health system cited by participants, in response to a question from a Committee member, is the inability to effectively track successes. One participant noted that there is more research out there nationally to track successes and reliability of treatment. The mental health field is still in the infancy of the evaluation of functional outcomes which look at whether kids are able to function effectively with their mental illness. Examples of these outcomes are whether they are they going to school or involved with the juvenile justice system. Another example of tools that are already being used to evaluate progress are behaviors seen in the school system and test scores as part of the No Child Left Behind Act. A participant noted that these are not "classic" medical proof of outcomes, but that they do represent some tools that are already available. As a part of the discussion, participants noted that one of the difficulties in treating children and determining why they improve is that the children are also going through natural development as well as going through treatments and receiving family support. One participant stated that although we have come a long way over the years in assessing the success of various therapies, we have only recently started asking families what works. Another provider stated that we need more shared outcomes between mental health and child welfare providers because of their interdependence. Finally, a provider reminded participants that just because kids are out of treatment and not receiving services, they may not be truly better or cured.

The next topic of discussion concerned the continuity of providers in the child welfare system and the transition from youth to adulthood. One of the participants was a former foster care child who gave information to the Committee about her experiences in the foster care system. All aspects of the system, including foster care, family preservation, and adoption were part of her childhood, and later, her brother was in the system for care. The participant talked about how being moved around to various placements interrupted her therapy and how finally finding a stable foster family who advocated for her made a difference. Her biggest concern is that mental health services should move with the child and not be cut off too quickly. The participant suggested that foster children should be allowed to access services for 2-3 years after transitioning out of the foster care system.

This same participant then talked about some success stories of children aging out of the foster care system. The participant indicated that a referral system for resources that are available would help create more success stories. She noted that foster parents are not usually on hand to answer questions or assist in helping with decision making and that an identified resource to answer these questions or help direct them to resources would be very valuable to these young adults.

The discussion next moved to challenges in providing family centered care where the entire family is involved in making decisions and creating reintegration plans. One of the major challenges for the mental health centers in serving children is applying family centered practices to resource/foster families and birth families for children involved in reintegration. The first difficulty is defining what family-centered care looks like when there is more than one family involved. It has

become imperative for the resource/foster family to partner with the birth family in determining the care needed for the child and assist in reintegration of the child to his/her original family setting. Mental health centers who are involved in serving both families are challenged in defining "family center," especially when the two families are not in close proximity to each other. However, one child welfare provider participant stated that having both families involved from the beginning has helped reduce stress among children who often felt divided loyalties between foster and biological parents.

In response to a Committee member's question about foster parent involvement in mental health treatment, a participant previously in the foster care system said her foster parents always spoke up for her but were not included or involved in the treatment plans to her knowledge. She did not know whether or not this was common.

The Chairperson dismissed the roundtable participants until 1:30 p.m.

Working Lunch

A motion was made and seconded to approve the minutes of the September 13 and 14, 2005, meeting. The motion was adopted.

Committee members were reminded to e-mail items to be included in the Committee report to Susan Kannarr. Items must be submitted no later than October 31. Draft recommendations for the report will be sent out to members who will need to respond promptly with any suggested changes so that the report can be completed in a timely manner.

The Chairperson asked members for comments regarding extending the Committee's work as a special committee with the current membership for another year. After that time, membership would revert to the statutory requirements. The Chairperson reminded the Committee that currently, it operates as a special committee because the current appointments do not comply with statutory requirements. By consensus, a request will be made to the Legislative Coordinating Council (LCC) to maintain the present membership through the next interim. Staff will draft a letter of request for the Chairperson.

The Chairperson then asked for input on whether the Committee desires to have a draft to change the statute on membership requirements of the Committee. The discussion focused on the value of having consistent representation from the committees specified in statute versus allowing the LCC the flexibility to assign membership. Specifically, the members discussed whether most committees have specific requirements of membership; the usefulness of having representation from specific committees; the importance of having people who are interested in children's issues; and the role of the Committee to educate the Legislature about critical issues concerning children. After discussion, the Committee recommended that legislation be drafted to eliminate the statutory language specifying which standing committees must be represented on this joint committee effective for 2007.

One member of the Committee addressed the supply of dentists and the need for good dental care for children as issues to be considered in future meetings. The member stated that he believes Medicaid dollars are available to provide services but the dentistry profession chooses not to accept patients because of reimbursement rates. The member stated that this is a major gap in service for children who may need dental care.

The Chairperson discussed with the Committee whether to include Mr. Vincent's suggestions to improve the adoption system in the report. The suggestions included the terms "ground of unfitness"; whether the statute should be amended to allow assessment of court appointed fees to the county in appropriate cases; and clarification of the rights of a father whose identity is intentionally withheld by the birth mother. After discussion, the Committee members determined that they would talk with the judges at the next day's roundtable before making a recommendation.

The Committee recommended that SRS and the public adoption contractor explore collaboration with private agencies to help place the difficult to adopt children or children that have been in foster care for a long time. When the state identifies them as difficult to adopt, the children's cases would be shared with private adoption providers who could receive compensation for children they place into adoptive homes.

The Chairperson reminded the Committee of information received during the September meeting regarding the issuance of birth certificates for foreign born children adopted by Kansas couples. Federal law allows foreign adopted children to be United States citizens after arrival in the country. Currently, Kansas birth certificates contain a statement indicating that the birth certificate is not proof of citizenship. The Chairperson proposed having legislation to remove this statement from Kansas birth certificates. Staff will draft this legislation for the Committee.

A member of the Committee commented about SB 62 which established the grandparents as foster parents program. The member stated that the Chairperson of the House Federal and State Affairs Committee, where the bill currently resides, has committed to holding hearings on the bill during the 2006 Session.

The Chairperson reminded members to send additional recommendations to staff and then recessed the meeting until 1:30 p.m.

Afternoon Session

The Chairperson asked Mike Hammond, Association of Community Mental Health Centers of Kansas, to talk about a recent award received by the Cherokee County Family Life Center. Mr. Hammond explained that the center recently received an award for a foster care diversion program. In the Cherokee County program, the number of children entering the foster care program was reduced by 50 percent during the first year of the program. An SRS representative indicated that the agency piloted this program in Cherokee County and is looking at further grants to expand these types of programs. Programs like this are trying to avoid children going to foster care because of unmet mental health needs. The program provides for diversion specialists to be available to law enforcement officers immediately when a child is placed in police protective custody. It is calculated that a $55,000 grant from SRS has saved the state $1.3 million in foster care services.

Additional comments from roundtable participants indicated this program is being replicated in two additional counties in Kansas, and is producing good success. The availability of a diversion specialist, a Social and Rehabilitation Services representative, the mental health center, and the judge all provide the opportunity for at-risk children to be placed in other than foster care homes when necessary. A representative of ComCare in Sedgwick County spoke about its diversion program called Project 275. The project was slated to serve 275 children, but a total of 400 children has been served. Of this number, 98 percent have been kept out of foster care.

A Committee member then asked whether the foster care system was working. One of the participants stated that there are lots of ways to evaluate, including how children go back home and process indicators of how contractors are performing. A number of performance measurements are included in the current reintegration contracts. Another participant stated that the state needs to do more on transition services as children age out. In response to this statement, one of the other participants noted that the current reintegration contracts require contractors to provide a stable adult contact when a youth leaves services, and also requires children age eight and over to have an independent living program. Another Committee member stated that measuring success may be more long-term and difficult.

Issues involving medication and proper monitoring of those medications was the next topic addressed by the participants and Committee members.

One participant commented that it is very difficult to get children a medical evaluation on a regular basis to monitor their medications. It is a state requirement that monitoring be done every 30 days for medications. The availability of psychiatrists who can prescribe and monitor medications, especially in rural areas, was noted as a continuing problem. An SRS representative indicated that the agency will be hiring a psychiatrist effective January 15, 2006, to deal with issues related to psychiatric provider supplies, payment schedules, and other mental health issues.

Another participant noted the importance of collaboration between child welfare contractors, private providers, and others involved in a child's case and the importance of maintaining a continuity of providers. Maintaining continuity of care is very important to guard against what is known as "cocktail medicating." In particular, one participant noted that once children leave the child welfare system, they may have to change providers which can cause problems in terms of medication management. One provider indicated that pediatric physicians are being considered to work in conjunction with a child's psychiatrist to ensure proper levels of medication.

One disconcerting fact is that the insurance companies often want quick results, which often contributes to mixtures of drugs that are not being regulated properly. Another participant stated that unless Medicaid wants to pay adequately for psychiatrists and psychologists to provide services, you will "get what you pay for" to a large extent. The participant further noted that the push to medicate is a reflection of society's desire to have a pill for everything to get quick results. An SRS representative did note that medication evaluations are actually better reimbursed by Medicaid than private insurance. Another participant stated that some insurance companies want medications prescribed early because it can make other types of therapies more effective.

With regard to medications, the group also discussed the consequences of having children on multiple medications. One consequence is that it can be difficult to determine whether behaviors are due to medications or their true behaviors.

A Committee member expressed concern about children being over-medicated and suggested that medication should not be the first option and that there needs to be someone who monitors medications carefully. One participant reminded the group that medications can be very helpful if prescribed and managed properly and that it is everyone's responsibility who is working with a child to know what medications are being prescribed.

One parent of a mentally ill child on the panel stressed the need to have communication about children's needs. Unfortunately, providers may have limited time to fully educate families about the medications their child is taking. She also noted that parents will likely not look for medications immediately, but that there is definitely an increase of families asking about medications. Another parent participant stated that it is also the parents' responsibility to keep track of medications and

make sure they communicate with providers. Another parent stressed the need for more parent education about their child's conditions, not just the medications.

An SRS representative noted some of the positive activities in Kansas with regard to medication management. These include a grant from one pharmaceutical manufacturer, Lilly, for a medication monitoring program where doctors look at other doctors' medication regimen and provide feedback; financial assistance for psychiatrists who provide care in underserved counties, in Kansas this covers 100 of the 105 counties; and some additional data gathering on what is working or not working.

The discussion then moved briefly to the use of tele-psych to provide services in areas where the provider supply is limited. A Committee member encouraged providers to look at these technologies and SRS to look at reimbursement for these types of services

The final topic was a Committee member's concern that non-qualified professionals within the education system may be making diagnoses and recommendations on treatment. A participant who works as a school psychologist indicated that the schools work mostly with children who already have Individual Education Plans (IEPs) and thus have been previously diagnosed. This participant noted that it is difficult to find enough time to deal with the kids with IEPs and that they must work to make time for other types of activities such as crisis counseling. Another participant indicated that school psychologists do not diagnose, but may refer parents to an outside provider to get a diagnosis and help that provider get information about a child.

Presentation on Transitioning from Foster Care to Adulthood

Chris Petr, MSW, PhD, a Kansas University professor of social welfare, gave a summary from a publication entitled *Transition to Adulthood for Kansas Youth in Foster Care*, published by Kansas Action for Children in May 2005. The publication is available from Kansas Action for Children or on their website at www.kac.org. One of the recommendations in the study was the creation of an educational ombudsman position established by the State to oversee the quality of education programming at foster care group facilities and to ensure that school records of foster children are properly transferred between schools. Both of these activities are targeted at making sure foster care children do not fall behind in their education.

In answer to questions from the Committee regarding the potential ombudsman position, Dr. Petr indicated that there are many details to be worked out, but that he envisioned the ombudsman would focus mainly on those still in custody who are being moved to various schools. Another participant addressed the issue of student transfers from one school system to another by stating that when kids move, they are clearly behind in various areas and generally lose six months of instruction. To solve this problem, an advocate for children in the system who are moved frequently could facilitate getting records transferred. In addition, the ombudsman could be tasked with studying the system and figuring out where the problems are occurring and provide recommendations to solve the problem. One of the Committee members stated that she was intrigued by the idea of having the ombudsman studying the issues, working as an advocate for kids, and helping develop policies to make the system work properly. This member also noted that the ombudsman could be a good resource for the Legislature as an expert on the how the child welfare and educational systems are working. Other comments from participants and members included a statement that the state is making efforts and legislation was passed last year to address the issue and a recommendation that this be addressed to the State Board of Education which has the constitutional responsibility to educate children. Finally, one Committee member expressed concern that privacy laws do not let

caseworkers have access to appropriate records and that the Legislature may want to look at allowing caseworkers access so records could be transferred more easily.

A member of the Committee recommended that someone needs to go to the State Board of Education to seek resolution to the problem of placement of transferred children in the educational system. This member stated that there must be someone in the Department of Education who could take on the responsibility of an ombudsman.

Dr. Petr closed his remarks by stating that reintegration contractors are responsible for a child until the age of 18 and, after that, SRS is responsible. This a crucial point of transition for young people and they need to know whom they can contact for post-custody benefits long before they turn 18.

The Chairperson recessed the meeting until Thursday, October 13, 2005, at 9:00 a.m.

Thursday, October 13
Morning Session

Senator Kay O'Connor, Vice-Chairperson, who chaired the meeting due to the absence of Representative DeCastro, called the meeting to order and asked participants to introduce themselves.

A representative of the Office of Judicial Administration (OJA) reviewed several pieces of information regarding the Child In Need of Care (CINC) process. The first piece of information referred to was a flowchart showing steps in the process (Attachment 1). After comments from Committee members that the chart was very complex, several participants noted that this was actually a simplified version. It was explained that the chart was written primarily for programmers setting up a new computer system for the courts and not for families and children to use.

The OJA representative then referred the Committee to a map of the 31 Kansas Judicial Districts by county (Attachment 2). He explained that there are 149 judges hearing cases of juvenile offenders and CINC cases. In addition, there are 73 district magistrate judges and 76 district judges statewide. He stated that during the last fiscal year, 5,821 cases were filed and that number is comparable with the three previous years. A growth rate of approximately 25 percent over the last ten years has not significantly changed the court process. He noted that Kansas ranks 30th in the United States in the number of children placed in foster care.

Committee members were next referred to the *Parent Ally Orientation Manual*, which was mandated by the 2003 Legislature and compiled by the Office of Judicial Administration (Attachment 3). The OJA representative noted that a Spanish version also was available and that a Vietnamese version would be distributed in the near future.

Finally, participants were informed that OJA is developing a statewide software program that will coordinate Child in Need of Care cases.

Following the above introductory comments, one of the judges gave an explanation of the flow chart (see Attachment 1), clarifying what happens to a family coming into the system. He stated that dealing with a potential CINC case is a complicated procedure of scrutinizing applications for out-of-home placement. In general, petitions are filed by the district attorney, county attorney, or a private

filing. In emergency cases, a hearing is held within 72 hours. During this hearing, the parents may have an attorney present, the child has a guardian *ad litem* present and determination is made as to protective custody for the child outside the home. The petition has to be set for a hearing within 30 days and completion of a plan must be in place within two to three weeks. The judge explained that if the petition is a true disposition then consideration is given to a specific plan for reintegration. The court must have a permanency hearing within one year to determine whether reasonable efforts have been made to accomplish the permanency plan. An extension of time may be given to meet the requirements. If the court determines that reasonable effort was made and reintegration is not a viable option, then the district attorney's office has 30 days to file a termination of parental rights. Further, parents can agree to making the child available for adoption, or a permanent guardianship can be established by court order after termination of parental rights, an act which would not affect their parental rights in the future.

In further comments from participants regarding the complexity of the flow chart, it was stated that rather than giving them this chart, verbal explanation is given to parents. Several participants noted that it is the job of guardians *ad litem* and others in the court system to explain the CINC process to families. Parents are advised to hire an attorney for adequate representation. Parents who indicate that they cannot afford to hire an attorney are given a court-appointed attorney. Additionally, the Parent Ally program is in place to help translate legal language into more easily understood language of the common person.

A Committee member brought up concerns she had heard from constituents regarding court-appointed attorneys in CINC cases. First, the families do not have much contact with their court-appointed attorneys and may not see them until the day of the hearing. The second involved complaints regarding the inappropriate behavior of some court-appointed attorneys. These types of complaints cause concern about whether parents are getting the representation they need from court-appointed attorneys. One of the judges mentioned that it is up to the parents to contact the attorney once they get the assignment. Another judge indicated that the reintegration/foster care contractor in his area will distribute a packet of information with a list of the appropriate names and contacts for parents at the first meeting the contractor has with parents after a child is removed from the home. Another judge mentioned that many attorneys are not familiar with family law and CINC cases, but that in general, the court-appointed attorneys and others who work in the system all the time know the system much better. Another participant noted that SRS has made efforts to arrange training for guardians *ad litem* and CINC attorneys as well as mediation training. One of the guardians *ad litem* commented on the limited roles of court-appointed attorneys who are there to protect parents' rights in court. Specifically, he commented that attorneys are not social workers and that parents need to take responsibility and work with their case workers to meet the reunification plans.

In response to questions about the Parent Ally Program, the participants stated that it has not interfered with the court process, but believe that it gives parents another educational resource.

A guardian *ad litem* on the panel suggest the Legislature make a change in KSA 38-1505 which gives indigent parents the right to counsel and a court-appointed attorney if they are unable to pay for an attorney. The change would require that counsel be made available prior to a temporary custody hearing so that the attorney is then in place for the formal hearing. Currently, the attorney may not meet the family until the formal hearing. The Chairperson recommended that this suggestion be put in writing with all the proper references and submitted to a legislator to have introduced into the legislative process. At least one judge stated that this suggestion would cause problems in his district. Due to limited budgets, he does not want to pay an attorney to be there at the first hearing if the parent does not want them there.

A Committee member asked about the compensation of attorneys handling CINC cases as court-appointed attorneys. Participants responded that although the amount of compensation varies across the state, many jurisdictions have a set rate that does not vary based on the number of cases worked during a period. In other words, the attorneys that either work for the court or who work on a contract basis are paid a set amount to do all of the cases that are assigned to them. In one district, these attorneys are paid $2,500 per month to do all CINC cases assigned to them and a number of other non-CINC cases. In another district, this amount is $2,000. In some districts, contract attorneys received an hourly rate that was generally linked to what attorneys are paid by the Board of Indigents' Defense Services (BIDS). The Committee member who asked the question expressed some concern about the adequacy of pay for these attorneys given what is expected from them.

The Chairperson opened a discussion on suggestions to improve Kansas adoption law, which was brought to the Committee at the previous meeting in September (Attachment 4). Attorney Kent Vincent suggested that the grounds of unfitness be added to KSA 59-2136 which deals with the termination of a father's rights. After a discussion about the court case upon which this suggestion is based, there was consensus among the panelists that the statutory language could use some tweaking and one of the participants indicated they had some suggested language.

A second issue brought by Mr. Vincent regarding Kansas adoption law would be to allow the assessment of court-appointed fees to the county in appropriate cases. This involves cases where a birth father contests an adoption and is appointed an attorney if he cannot afford one. Because there is currently no requirement for the county to pay these costs, the adoptive family is often required by the court to pay the costs although this is not required in statute. After a lengthy discussion on this topic, no consensus was reached on the issue. The discussion focused on the need to balance philosophical consideration about the birth father's rights and fairness to adoptive families versus the fiscal reality of controlling costs in the judicial system. The potential cost of these services can vary widely. For instance in some districts, attorneys are appointed and paid a fee of $50 per hour, but in others, the court will allow the attorney's normal hourly charges. Other parts of the discussion concerned the motivation of attorneys to control their costs and judicial oversight of these costs; the amount of flexibility the court should have in determining payment of costs; the need for some uniformity across the state to help adoptive families predict costs; and the need for caution before interfering with the process that is already in place to monitor the issue. During the discussion, a Committee member commented that it seems inequitable to make the adoptive parent pay fees for a father who has largely abandoned the child but decides to come back into the process.

In response to the concern about potentially high costs for adoptive families, one judge suggested that maybe there should be a cap on attorney's fees in this situation. Responses to that suggestion focused on the belief that judges need to have some discretion in particular cases; a suggestion that maybe the attorney's fees should be compared to other fees in the case; and the fear that although it would control costs for adoptive parents, caps may chill the willingness of attorneys to represent birth fathers in these cases.

A discussion followed on the topic of adoption costs and whether the state should step in to help control costs. One topic focused on federal and state tax credits that are available to offset the costs of adoption. However, these credits do not come into play until the next tax filing and families may still not have the money up front. Another participant stated that a third party pay structure (as in the case of the birth father requiring appointed counsel) allows for price gouging of the adoptive parents who may not have the resources to complete the adoption process.

The discussion then flowed to the issues created by families intervening late in the adoption process. A Committee member requested clarification in the situation where parental rights have

been severed, an adoptive family has been chosen, and then a relative expresses an interest in adopting the child. According to one participant, some foster parent families are being told by SRS that they can adopt a child for whom they served as foster parents for months or years, and then when a relative comes on the scene and wants custody, the foster parents are denied the adoption in favor of the relative. This same participant stated that people are often told that if they want to adopt, they need to be a foster parent first. Finally, the participant stated that adoptive families seem to have no recourse in this situation. One of the judges stated that he believes foster parents do have the ability to object, under some new unpublished case law.

Several participants stated that the issue of interruptions in the adoption process, particularly when relatives are involved, is a significant problem that is not simple to address. However, one of the judges noted that he does not necessarily believe it is as much an SRS issue but an issue with statutory language that indicates a relative preference for placement. In defense of SRS, one of the participants stated that SRS's decision is not an arbitrary process and the agency brings people together to make decisions. Basically, SRS has discretion as to who can adopt subject to judicial review for reasonableness. However, KSA 38-1584 states that in making an order for adoption "...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 to a relative of the child and second to granting such custody to a person with whom the child has close emotional ties."

Due to the frequent occurrence of this issue, the Committee was informed that a continuing legal education course is scheduled.

The participants had a lengthy discussion about the issues created due to the relative preference in the statute and how far the relative preference should extend. One of the participants noted that legislators need to be careful of unintended consequences when crafting statutory language like the relative preference. For instance, one of the consequences of family preference may be delays in adoptions due to the families jumping in during the process or searching for out-of-state relatives which often requires six months to a year to complete. This same participant felt that it was not really fair to the child for the relative to jump in later, especially those that have not been in close contact with the child. If a relative does not come forth at the outset of the case but knows what is happening, it is not fair to take the child from a bonded family unit. Ultimately, we need to keep the best interest of the child in mind so relative preference should not take precedence over the best interest of the child in any case.

A Committee member countered some of the above statements and expressed support for placement with relatives. The member stated that if a relative comes in later, she does not see that it is that traumatic to take a child out of foster care and place them with a relative, especially in instances where they have moved around in placements. The member further stated that older children will likely have already bonded with grandparents and thus it would be an appropriate placement regardless of other factors.

During this conversation, one participant expressed concern about the timely notification and involvement of relatives. One of the judges stated that relatives often stay out of things to begin with and try not to step in until later when things are not going well. Another participant stated that there is some provision in the process for notification to grandparents for their early involvement with the child. Another participant stated that the relative care preference can cause stress for social workers who feel they must take a child out of the home of a good foster parent because of the presumption for family care. Another judge tries to make it clear to families up front what the consequences are of not getting involved at the front end. For example, he explains that if a child is placed elsewhere and bonds with the resource family, it will make it more difficult to re-place children with relatives later and will be harder on the child.

One of the judges reminded participants to take note of grandparents' ability to bond with the child when the child is taken out of the home. For instance, there could be limitations on visitations due to geographic or other factors. The lack of visitation time or visitations outside of home settings could make bonding more difficult. Another participant noted that weekly bonding visits by relatives for a child in foster care are in jeopardy because of a depletion of transportation funding.

In wrapping up this topic of conversation, one of the judges suggested that some language change in the statute could correct some of the issues with the family preference by giving additional latitude and clarifying the intent of the law. Another participant suggested that language be in place for SRS and the contractor to have flexibility in order to keep from disrupting long-term placement. Another judge suggested that Committee members may want to visit with their local judges and observe local courts to get first hand information on how the CINC system works.

An additional facet in the arena of placement with relatives prompted a comment from a Committee member regarding financial constraints of some families, particularly grandparents who may wish to adopt. With young children, the cost of daycare often exceeds the amount of subsidy per child. One of the judges commented that an underused option is permanent guardianship where parental rights are not severed. This can allow a child to continue a better relationship with the birth family and have the opportunity to return that family. However, permanent guardianships are not adequately funded which makes them a less attractive option.

The next topic the panel discussed was another suggestion from Kent Vincent regarding the Interstate Compact for the Placement of Children (ICPC) (see Attachment 4). Presently, the adoption administrator must allow an out-of-state venue to a non-resident mother who gives birth in Kansas. Mr. Vincent suggested the Kansas administrator be allowed to initiate the adoption process. An attorney on the panel informed the Committee that Congress already is working on changes that may address these types of issues and may nearly eliminate the ICPC which would make state action on this issue unnecessary. The consensus of the Committee was to wait for the outcome of the federal decision.

Next, the issue of the undisclosed father came before the Committee as one of Mr. Vincent's suggestions for change (see Attachment 4). An attorney on the panel noted that the case referred to in Mr. Vincent's suggestions was a case he was involved in and described the facts of the case to the panel. Basically, the case involved fraud by the mother in naming the father which ultimately resulted in a father claiming rights after the adoption was finalized because he had not been notified. The participant summed up the lesson of the case by saying that Kansas needs to have some mechanism to avoid these types of issues and make adoptions more permanent to avoid causing uncertainty for adoptive parents and disruptions for children. Participants did agree that the focus of any proposed changes should be finality for the child. In support of finality, one of the judges suggested that the Legislature could pass a law to set a drop-dead date of two years on challenges of adoption in lieu of creating a registry he does not believe will work. He stated that in a two-year period, family relationships may be firmly established and any disruption of that relationship is detrimental to a child.

The conversation then turned generally to problems caused when mothers cannot or will not name a father. One of the judges commented these mothers cause significant delays in the adoption process because efforts must be made to identify and then properly notify the biological father.

The conversation about undisclosed or otherwise unknown birth fathers led to a discussion of putative/birth father registries. The Committee members had discussed this topic at the September meeting and asked for input from other participants on the value and risks of such registries. One of the attorneys participating estimated that putative/birth father registries are in place

in 18 to 20 states and that they have been upheld by courts in other states. No consensus was reached by Committee members on making a positive recommendation for establishing a registry in Kansas but several members expressed interest in pursuing the topic further. Participants noted that there are already requirements for attorneys, social workers, and others to search for the father built into the current system. A Committee member then noted that a registry could be just one more tool in the process and not the sole process. In general, participants agreed that registries could be a valuable tool to give closure to proceedings in order to establish permanency of the adoption and still protect the rights of the father. However, participants cautioned that the creation of such a registry must be fully considered to avoid unwanted consequences. During the conversation, other topics included were: DNA testing; difficulties with women who cannot identify the father due to multiple partners; the current necessity for the agency or private practice attorney to rely on the good faith of the birth mother to disclose a father's name; concerns about the level of honesty of participants; the potential value of the registry in avoiding delay in the termination of rights; and the fact that some fathers might not want to use the registry due to fears about child support.

A Committee member requested information about how putative/birth father registries work in other states and the cost of creating the registry. Staff will research the issue and provide information to the Committee at a later date.

The Chairperson reminded Committee members and participants that several bills have been introduced in past years to create a putative/birth father registry, but that none have made it very far in the process. The Chairperson stated that the most recent bill on the topic was 2003 SB 56, which died in Committee.

The next topic was a concern expressed by one of the judges about the availability of court-appointed attorneys in CINC cases. The judge proposed a public defender type of system for representation. Attorneys serving in this capacity would work on a basis comparable to that of an assistant district or county attorney. He noted a reasonable wage would be established, office space and staff would be provided, and the attorney's sole responsibility would be to represent CINC cases. He noted that the current system employs attorneys on a part-time basis, and does not provide them with a living wage. Contract attorneys are private attorneys who do this type of work part-time and must have other work to support themselves because of how little we pay them. The judge suggested a joint effort between the state and counties to pay for this system. Currently, counties pay all of the costs. The judge summed up by saying that parents and children would have better representation with this kind of professional service and the state ultimately would save money on the CINC system. Reaction to the proposal included a caution that rural, multi-county districts would need to be dealt with differently; a reminder that conflict of interest issues would have to be worked out; and that there would need to be legislation to implement the new system. With regard to this last comment, the Chairperson suggested that the judge craft bill language and some guidelines to establish a public defender office and relay the proposed legislation through a legislator of his choice.

A legislator participating in the discussion referenced the value of past roundtable discussions and reviewed topics discussed last year. The participant thanked the judges for their expertise and impact in the legislative process to get the Parent Ally program enacted into law. She referred the Committee to page 4 of the review of activities by the 2004 Joint Committee on Children's Issues (Attachment 5). She recommended the Committee continue to look at resolving the four main issues listed. Finally, she elicited brief comments from the roundtable participants. Comments focused on the ability to place a child in a secure facility prior to adjudication if the child has a history of "running." Participants were supportive of providing such a facility to avoid the child ending up in a detention facility later, but one judge noted that current Federal guidelines prohibit placing a runaway child awaiting adjudication in a secure facility.

The Chairperson thanked participants and adjourned the meeting at 1:00 p.m.

Prepared by Secretary Florence Deeter
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Approved by Committee on:

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