MINUTES

JOINT COMMITTEE ON CHILDREN'S ISSUES

November 20-21, 2002
Room 313-S—Statehouse

Members Present

Representative Brenda Landwehr, Vice Chair
Senator Paul Feleciano, Jr.
Senator David Jackson
Senator Nick Jordan
Senator Janis Lee
Representative Gerry Ray
Representative Sue Storm
Representative Roger Toelkes
Representative Bob Tomlinson

Members Absent

Senator Sandy Praeger, Chair

Staff Present

Hank Avila, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes Office
Renae Jefferies, Revisor of Statutes Office
Almira Collier, Committee Secretary

Wednesday, November 20
Morning Session

The Vice Chair called the meeting to order and, after welcoming the participants in the Legislative, Judicial, and Executive Dialogue on Child Welfare Issues, asked each

person to give his or her name, where he or she is from, and the role he or she plays in the child welfare system. (See Attachment 1 for a list of the participants.)

New Website in Manhattan

Becky Gassman, Chief of Social Services, Department of Social and Rehabilitation Services, Manhattan Area Office, distributed an outline of the testimony (Attachment 2) stating the Website initiative was the outgrowth of three key agencies involved with foster care children: the Juvenile Justice Authority, the Department of Social and Rehabilitation Services, and the Department of Education, coming together to resolve issues relating to foster children.

Ms. Gassman stated Salina receives a significant number of foster children from other areas of the state because the 350 available foster care beds are more than are needed to serve the children in their area. A study in point of time showed that 85 percent (161 of 187) of the foster children enrolled in the school system were from areas other than Salina. The schools, as well as other agencies in the community, are willing to provide services for these children, but frequently lack the necessary information to serve them adequately. Information from other school districts indicated this was not unique to Salina. With strong support from Secretary Schalansky, Department of Social and Rehabilitation Services, Commissioner Albert Murray, Juvenile Justice Authority, and Commissioner Andy Tompkins, Kansas Department of Education, representatives of the three agencies met in April of 2001 to identify issues involving foster care children that require collaborative efforts for resolution. Four primary goals relating to these children were established:

- Improve the school enrollment process;
- Facilitate the accumulation of credits leading to a high school diploma;
- Ensure school records are adequate to meet the child's needs; and
- Strengthen and motivate communities to serve foster care children within the child's home community.

Subcommittees, with representatives from the three state agencies, contractors, local school districts, and community case management agencies, were formed for each goal. The subcommittee for Goal No. 1 developed a process and a form—the Education Enrollment Information Form (EEIF)—which was sent to the case management agencies and the contractors with training for the staff of these agencies provided by Social and Rehabilitation Services and the Juvenile Justice Authority. In August 2001, a memorandum, sent jointly by the three state agencies, explaining the implementation of the program, with copies of the form and pertinent information enclosed (Attachment 3) was sent to all school superintendents. After a revision of the form and primer for the program, a memorandum and packet were sent to all school principals.

The EEIF is not intended to be an entire history of the child, but it provides the basic information the school needs to know at the time of enrollment if the school is to meet the needs of that child. Ms. Gassman reviewed the information included on the form. The contacts for the child and the agency chain of communication, if the primary contact cannot be reached, are listed. The fifth contact is always the Chief of Social Service in the Social and Rehabilitation Services Area Office. Under other relevant information, information such as the fact that an eight-year-old girl had been sexually molested three times by her mother's boyfriend in the last month would not be included for protection of the child. However, the fact the child is afraid of males she does not know might be included. The school then is notified not to put this child in a one-on-one situation with a male she does not know. The school does not need to know the sexual abuse history, but does need to know what to look for and be aware of in the school setting.

Tracking of the use of the EEIF after the memorandum was sent to school superintendents has been somewhat disappointing. In Salina, where its use was well tracked, 60 percent of the foster children had the form upon new enrollment between August and October of 2001. There is a positive reaction from schools, and use of the form has extended beyond the schools. Some foster parents and therapists are asking to see it, and it has been used as part of the packet for admission to group homes. Gradually, the word is spreading that if you have a new foster child enrolling in the school there should be an EEIF with that child either before or at enrollment.

The goal now is to make the EEIF electronic with no hard copies. The form has been transferred to the computer in order that authorized staff of Social and Rehabilitation Services, the Juvenile Justice Authority, the community case managers, and foster care contractors can complete the form electronically and then download it to the Kansas Department of Education website (Attachment 4). The original form can be completed, and authorized staff can make changes or add information as needed without sending a new form to the school as is done now. Salina is conducting a pilot project involving foster children from the17 counties in the Manhattan Social and Rehabilitation Services management area who are in out-of-home placement, are attending school in USD 305, and are in special education. Only a small sample is required to test the operation of the system. Staff is currently obtaining parental consent so the information can be shared electronically with other authorized persons, and the Department of Education is developing who will be given access to the information and who can enter or edit information. Entry of data into the system should begin next month. The Manhattan school district is participating in the pilot project to see if the information can be accessed from a remote location. The goal is to have the system in operation by the 2002-03 school year so an EEIF for each school age foster child can be submitted and accessed electronically. There is also a plan to make the IEP a part of this system.

Responding to questions, Ms. Gassman stated each school district will be able to access information on students. A screen comes up which says, "You can have this information on a need-to-know basis." If a person does not need to know about a particular student, access is denied. The Department of Social and Rehabilitation Services and Juvenile Justice Authority have provided training for their contractor's case managers who are required to complete the form. As with every new system it is taking time to get

everyone participating. However, teachers are becoming more aware of the form and, if they do not have it, ask for it. Foster parents also have access to this information. In the current system, the contractor may fill out the form and give it to the foster parent who brings it to the school when enrolling the child.

The conferee, in answer to a question, stated a decision was made that if the parent does not voluntarily give consent for the information to be entered on the website, the courts would be asked to issue an order based on a determination of whether or not it is in the child's best interest for the educational community to have this information available electronically. If a hearing is needed to make this determination, the request for the order could be included in the initial hearing. If the court does not order the information to be entered, a hard copy of the form would be given the school as is done now.

It was recommended that a person's name, rather than just a title, be given in the listing of contacts for children in state custody. (See listing in Attachment 3.) The Conferee stated this was not done because these people change, sometimes rather frequently. When the electronic system is in place, it will be feasible to maintain a current list.

The Vice Chair thanked Ms. Gassman for sharing the website initiative with the Committee.

Legislative, Judicial, and Executive Dialogue on Child Welfare Issues

The Vice Chair, opening up the dialogue, noted several issues that led to the meeting. When the state moved to privatization, judges, who play an important role in child welfare, were not included in the process possibly because their role and authority is not well understood. Also, before legislative decisions are made relative to issues raised by those caught up in the system, input is needed from those in the front line as to what the impact of the decisions might be on them and their ability to carry out their responsibilities. Another concern has been stories of inconsistencies throughout the state relative to the provision of needed services and judicial decisions.

To open the dialogue, the Vice Chair, referring to a round table discussion conducted by the Committee in August 2002, stated a recurring issue was that parents who are ordered by the court to have certain evaluations or participate in counseling or classes do not have the financial resources to comply. Another issue raised was the inconsistency between jurisdictions. For example, a mother might be given seven things to do in a six-month period in order for the child to be returned to the home. At the end of the six months, she has complied with only one. One judge proceeds with the severing of parental rights, but another judge gives the mother another six months based on the fact she has at least completed one requirement. One child will remain in the system at least six months longer than the other.

Several of the judges, citing specific cases, stated there are several reasons it is very important for the judge to have flexibility relative to decisions. The children, parents, and

circumstances vary. Some children cannot be reintegrated or adopted and other alternatives need to be found for them. An example of a fourteen-year-old girl with two children, where reintegration was not successful because the mother did not get her act together and neither adoption nor sheltered living was an option, was cited. Eventually, a permanent guardian was found. One mother who has completed only one of the things required may have exerted reasonable effort based on her circumstances. Another mother may have been capable of doing more, but chose not to. The ability of a child or a parent to respond to intervention varies significantly.

Another factor is the ability or inability to get services for the child and parents in a timely manner after the judge has determined an appropriate disposition order. Availability of required services and a timely delivery of those services is one of the greatest inconsistencies throughout the state. A parent may have to wait 30, 60, or 90 days for a psychological evaluation, a parenting assessment or parenting classes. Ability to pay for services is another issue. In one area the contractor offers free parenting classes, but not all contractors do. A parent may come back into court and honestly say he or she has been laid off for 45 days and does not have the money to pay for therapy or whatever was required. The judge can order Social and Rehabilitation Services to pay all or a portion of the cost, but these funds are limited and may become even more restricted. In counties where children are frequently placed outside the county because there are few foster homes available in the county, parents may not have transportation or the money for gasoline to visit the child. Gas vouchers provided by the contractors help, but are not an answer if the parent does not have a vehicle. Or, for example, a father has done everything he was asked to do, but the three children cannot go home because the father has a utility bill of over $1,000. Simple mathematics would indicate that it is cheaper for the state to pay the utility bill than to provide foster care for three children at $3,200 a month. Yet, you do not want a parent to think someone else will pay every time there is a problem. If everything the parent needed was paid for by someone else, one would not have a good picture of the parent's capabilities. There needs to be a balance which is not always easy to achieve.

A judge noted that to try to form a six-month or nine-month scenario to be applied to every case would be unjust to the child and the parent. The judge has to have the discretion to respond to each case individually and to be creative in an effort to reach the goal of salvaging the family if that truly is in the best interest of the child.

A Committee member noted that legislators hear about lack of services or inconsistencies in services, but it has been difficult to get specifics. Hopefully, meetings such as this will help address this issue. Also, the state and some local communities provide a lot of programs and services, but legislators are not sure parents are always being connected with these services. A big question is what needs to be done to make sure these connections happen.

A Committee member stated that at the September meeting, Social and Rehabilitation Services staff and the members of the Committee agreed the order of priorities should be prevention, preservation, and foster care, but, in actuality, foster care seems to be at the head of the priority list. If our laws have created this scenario, then making appropriate changes in the law needs to be addressed. If it is the system, then appropriate changes in

the system need to be addressed. However, any action needs to be based on good information from those on the front line, such as judges, and not a knee-jerk reaction.

Some judges expressed the feeling that concerted efforts are being made at providing prevention services. There are a number of areas where the caseload is actually starting to diminish due to these efforts to provide the family with the resources and support necessary to keep the family intact. If the family cannot respond or if adequate resources are not available, then the case comes into the system and the court has to deal with it. However, there needs to be an awareness that as more prevention services are provided, the cases coming into the system will be more difficult.

A judge called attention to the 1997 federal Adoption and Safe Families Act, noting compliance is necessary to preserve the flow of federal dollars into the system. So, in considering any statutory changes, the first question should be: Does it conflict with the Adoption and Safe Families Act? One positive aspect of this Act is the required review process during which a team comes in and looks at service delivery and quality of service, and interviews stakeholders. In response to the review of Children and Family Services, Social and Rehabilitation Services has completed a program improvement plan that has been approved at the federal level, and which addresses some of the issues being discussed. In developing the plan, the state agency found what the federal government would classify as a statewide problem was really a particular problem in specific areas of the state. Analysis of problems and development of solutions needs to be done by region. The federal legislation also designates judges as the gatekeepers. For years the judges signed the orders under Kansas laws but the Adoption and Safe Families Act includes additional requirements before an order placing a child in the custody of the state and in foster care is issued. There is much more emphasis on evaluating whether or not reasonable efforts have been made prior to issuing a custody order. It becomes a continual balancing act involving what the law requires, a parent's constitutionally recognized rights and the amount of due process the parents are entitled to before termination of parental rights, and what is in the best interest of the child. The judge listens and tries to balance these criteria on a case-by-case basis, taking into account what is available in the community. Reference was made to a session on reasonable effort at the last Judicial Conference. One thing discussed was holding the state agency and the private contractors accountable. A judge can find, and some judges are finding, that reasonable efforts were not made to get children the services they need.

A Committee member noted, after six years of privatization, efforts can now be shifted from putting out fires to fine tuning the system. It is good to hear there are judges willing to find that the criteria of reasonable effort has not been met. However, there is still some concern that a few people, who get the press, may be spoiling it for the whole system.

A judge stated that some parents who have had several children in the system know exactly what strings to pull. In one area there is a mother that stands in the hall and passes out the telephone number for Judicial Ethics to any parent who is not happy with the judge's decision. Some parents have learned how to use legislators. For example, a legislator called and asked how dare a child be removed from the home for missing school. The paper work says the child was removed from the home because of truancy because that

was the way the case was filed. However, the child was removed because she was missing school to get an abortion each time her mother's boyfriend got her pregnant.

Legislators, a Committee member stated, want to know both sides of a story when they are called so they can assist the parent, sometimes by using "tough love." However, getting information raises the issue of confidentiality, an issue which needs to be addressed.

Reference was made to legislation introduced, but not passed, in the 2002 Legislative Session that would have allowed biological parents to have up to two people as observers, not participants, in the courtroom with them. These observers would be of the parent's choosing, not appointed by anyone. The parent is often scared and does not always hear what is said accurately. The observers could hear what is really said because they would be less emotionally involved and could help correct misconceptions the parents might have about what the judge said or asked them to do. Specific language in the bill allowed the judge to remove any observer who was disruptive. Some judges allow this now, but guardians ad litem have objected. The judges, based on their experience, expressed concern over who parents might bring with them. If it is an ally, they will hear what the parent hears. Often it is Mom's boyfriend. Sometimes it is a person who has been through the system and has an axe to grind.

A judge stated the statute says the proceeding is confidential and limited to the parties of interest unless there is agreement by all parties to include others and the judge approves. If someone wants to sit in as an advocate on behalf of the parent, the court has a responsibility, under current law, to ask if any of the parties of interest have an objection. If they do, the court must honor that objection even if the judge thinks it would be a good thing to have them present. In response to a question, a judge stated judges have the right to remove someone they know will be disruptive even if no interested party objects.

Reference was made to volunteer advocacy groups for both biological parents and foster parents that have been formed in Sedgwick and Johnson counties. These are volunteers who work with the parents and with Social and Rehabilitation Services to help parents do what they have been ordered to do. In response to a question, it was stated these are not CASAs. It was noted in the previous system the social worker was the advocate for the parent. The social worker attended the first hearing and followed the case throughout explaining things to the parents. Now the parent meets someone, signs some papers, and is told the contractor will be called and will be getting in touch with them.

After further discussion, there was a consensus that a parental version of the CASA program would be acceptable if it involved independent, trained advocates for parents who are disinterested parties and who could help parents do what they need to do to retain or regain custody. The problem, it was noted, would be finding enough volunteers.

In response to a request to the judges to share what they saw as problems with the present system and their suggestions for possible solutions, the following observations were shared. One issue is the contractual division into family preservation, foster care, and adoption. Having adoption separated from foster care makes it very difficult to do concurrent permanency planning. In the previous system, it would be agreed to try

reintegration but an alternate plan that would start looking for an adoptive family or a permanent guardian would also be initiated right away if a number of risk factors were involved. That is difficult to do with the split in contracts. There has been talk of some pilot projects to address this problem. Another suggestion is for the foster care contractor to provide a packet to pass on to the adoption contractor. However, foster care contractors say they cannot do this until a journal entry has been made and some other things have been done. This causes more delay than necessary between actually transferring the case and handing the case over to the next contractor.

A major issue is accountability. Adding layers, as the new system has done, has taken away accountability. Under the old system a judge could call the state agency worker directly, knew who to call, knew the call would be returned, and knew action would be taken immediately. If calls were not returned or action not taken, the judge knew the supervisor to call. Now, two different groups appear in court which means one can have a dispute between the state agency and the contractor over what services are to be provided and who is to provide them. Or the contract worker is afraid to contradict what the agency worker says and the latter does not know what the status of the case is. Privatization has made Social and Rehabilitation Services a supervisor rather than a front line player.

Another aspect of accountability is that everything seems to center around the contract. For example, there is agreement on needed services, but the contractor says that is not in their contract. Also, the contractor cannot submit reports directly to the court. The reports must go through Social and Rehabilitation Services first. It may not happen often, but, if Social and Rehabilitation Services does not like an inference given in the contractor's report that things are not going as well as they should be, that does not get to the court.

It was noted that privatization of services is very different than privatization of case management, and the current system is the latter. Now two case managers, a state worker and a contractor worker, appear at every hearing. How is that efficient or of benefit to the child? Not only is this an accountability issue, it is also an efficiency, cost, and good social work issue. Social and Rehabilitation Services is the custodian of the child and has the specific duty in law to that child, in contrast to the general duty a law enforcement officer has to a community. The state agency has contracted that specific duty. A key question which has been raised with agency is, how can the state delegate a statutory duty to a child? An alternative to the present system would be to contract for the service components with the state agency social worker retaining the case management piece. For example, a Request For Proposal could be put out for someone to provide foster homes, a Level 5 or Level 6 facility in a given region, or mental health services. The different services needed would be privatized, but the state agency social worker would manage the case.

A Committee member stated that under privatization it appears three people are being paid to do what one person was paid to do in terms of managing the care of a child. Perhaps privatization is not in itself wrong. The problem may be how we have chosen to do privatization.

In response to a question, a judge stated a contractor’s social worker tells the judge the contractor does not provide a service the judge has deemed is needed. The judge

cannot hold this person in contempt because the judge has no jurisdiction over such person. The only person the judge has jurisdiction over is the person from Social and Rehabilitation Services. So the judge asks the latter social worker why the service is not being provided and the social worker says, "Because it is not in the contract." It is a circle one keeps going around. This happens because the case management of a child is done by the contractor who has no statutory right or obligation in the current system. The Department of Social and Rehabilitation Services also says they have no recourse against the contractor. One judge stated he had told the state agency they had to provide a service and there were some hearings as to whether or not the agency would be found in contempt for failure to provide the service.

A judge stated the state Department is ultimately responsible for the delivery of services. If the services are not provided, the agency is subject to a "no reasonable effort" finding. If the court makes such a finding, the state cannot draw down Title IV-E funds for that case until the court finds that reasonable efforts are in fact being made. Some judges indicated they have invoked this finding, but try very hard not to use it. In response to a question, a judge indicated this generally brings action on the part of the state agency.

Another issue raised was the high turnover of contractor's social workers which lengthens the time it takes to handle a case. A judge shared a case involving a well-spoken, sixteen-year-old girl. When the judge stated the state asks that the Social and Rehabilitation Services report be accepted, the young lady raised her hand and said she had never seen anyone present in the courtroom and wanted to know who wrote the report. Another judge indicated the contractor's social workers had to be ordered to visit the home. Another stated a current case had 11 contractor's social workers in seven months. Under the old system, one social worker was assigned to the county and another social worker was sent in if the load got too heavy. The judge knew them. Now, sometimes the judge has to ask a person who they are and what they are doing in the courtroom only to find out it is a new social worker.

One piece that seems to be missing, that was in the old system, is the mentoring of new social workers who are just out of school. There is a feeling the contractors do not understand the job well enough to provide training nor do they have staff experienced in this area to do the mentoring. The new social worker becomes frustrated, as some former state agency social workers who transferred to a contractor have. If they are competent, they feel they cannot do what is best for the child because the contract does not allow the needed service.

A Committee member stated the Department of Social and Rehabilitation's answer to a query about the advantage of having at least two social workers was there are two professionals who can bounce ideas off each other. However, there was an admission that very often there is an unhealthy competition between the state agency social workers and the contractor's social workers.

A question was raised relative to whether it would have been better to put the funding into additional social workers for the state and maintained the old system. A Committee member noted that reinstituting the old system is not financially feasible, would take too long

to accomplish, and would be too involved to make it practical. Legislators hear the system is working when apparently it is not, and it is costing the state twice as much now as it did in the beginning. The question is, what do we do to improve the current system.

A judge noted that managed care drove privatization and respectfully disagreed that we cannot go back to the previous system. The judge noted, as bad as that system might have been perceived, it is not better today and there is not any great hope that it is going to be better than before. Privatization was driven by managed care which does not function well in this arena or has not up until now. Throwing dollars at it will not fix it. What is needed is getting fewer, not more, people involved in individual cases. Sometimes it is difficult for the judge to figure out who the players are. How much more confusing it must be for the parent with a tenth grade education whose child has just been taken out of the home.

Fewer players may be preferable, but the quality of those players is important. There is a lack of information about how our social workers are being trained. This Committee submitted a post audit request to study this issue last year. Encouraging the Post Audit Committee to address this request was suggested.

A staff turnover in the mental health area was also noted. A child just gets attached to the mental health worker and that person disappears. The process of establishing a relationship has to start all over.

A judge noted that sometimes a contractor does unnecessary work. For example, the contractor does home adoption studies of relatives the court had determined are not acceptable as foster parents 18 months earlier.

Services for families is not covered in any depth in the contracts and creates another issue. The system may help the child but, if nothing has been done to help the parents, you send the child back into the same environment.

A judge stated it appears adoption workers are not doing adequate home studies or are not trained to give adoptive parents the information and support they need. Adoptive parents are coming back into court wanting to relinquish children who have already lost their birth parents. An adoptive parent deserves to know everything about the child early in the process before any decision is made. A Committee member noted there are indications this is not always happening.

There also seems to be a problem with keeping track of children still in custody. One judge indicated that the contractor does not know where eight children placed in foster homes are. One child had not been seen for three months and, by then, the family had moved. This contractor's concept of aftercare is visiting the biological family once a month. If the family was so dysfunctional the child was removed, this does not seem adequate.

Encouraging the new Governor to convene a task force to study these issues in depth to see what can be done to make the system function as it was intended to function was suggested.

A judge stated there are a lot of negatives but privatization of family preservation has worked well, perhaps because there is not a custody relationship with the family. This is a large factor in the decrease in court cases. Most of the judges agreed, but one stated the foster care contractor also does family preservation and it is not working well.

The Committee adjourned for lunch.

Afternoon Session

The Vice Chair reconvened the meeting.

Marilyn Jacobson, referring to remarks made at the morning session, stated that either Social and Rehabilitation social workers or contractor social workers saying it is not in the contract or it is the other person's responsibility is not an acceptable response. Judges were asked to report these occurrences to the Service Chief in their area so the problem can be addressed.

Referring to the issue of when prospective adoptive parents see the complete file on a child, one judge stated as soon as someone is identified as a possible adoptive parent this file is open to them. Another judge stated that, at the time of the final adoption, the adoptive parents are asked if they have received complete information on the child and do they have any questions. The importance of prospective adoptive parents receiving complete information early in the process was emphasized. This is perhaps less of a problem when the child is a ward of the state than in private adoptions.

In a discussion of the provision in HB 2945 which was introduced in the 2002 Session, a judge stated that requiring validations and confirmations to be done through the district attorney's office with a jury component would have an incredible fiscal impact. The number of validations would overwhelm the system. If the legislative intent is to restrict who is on the central registry and guarantee a higher level of "due process," an alternative would be to place only those people who have been convicted of a crime where the child is the victim on the central registry. This would guarantee a higher standard of proof, right to counsel, and a jury trial. A judge noted finding a person to be an abuser under the juvenile code is based on clear and convincing evidence. In criminal cases it is based on beyond a reasonable doubt. The district attorney may determine the evidence is clear and convincing but not beyond a reasonable doubt, so chooses not to prosecute the case. The district attorney is the real gatekeeper in these cases. A judge offered to share with the Committee written testimony relative to this matter which was presented to a committee last year. A person may be found guilty of abuse either by pleading guilty or the judge may find the person guilty based on clear and convincing evidence. At a child-in-need-of-care proceeding, the judge could find by the evidence heard or on the judge's stipulation, there is abuse. If the case proceeds, the person would be entitled to an attorney, due process, and appeal.

In a discussion of the provision in HB 2907 considered in the 2002 Session, which would have given foster parents interested party status, the following points were made. This would take persons out of the role of a foster parent which is to provide a safe and stable environment for the child and to help facilitate the reintegration of the child back into the home of the birth parent unless the court deems that is not a viable option. The role is not one of advocacy for the child. In many courts it is common practice for foster parents to be encouraged to come to court and they are given an opportunity to address the court on anything they believe the court should know. Foster parents are required to submit written reports to the court. Foster parents may feel the judge has not read the report because the judge did not follow their recommendation. It can also put the foster parent who may want to adopt the child in an adversarial role. The foster parent would lose what they now have if they become an interested party. Now, the foster parent can communicate directly with the judge without other parties to the case being present. If the foster parent becomes an interested party, the letter or report sent to the judge becomes discoverable by the other interested parties. By giving foster parents immediate and irrevocable continual interested party status, you put them on the same footing as the biological parent with the same constitutional rights. This also puts the foster parent in a superior legal position to the state agency which is not a party to the action. A U.S. Supreme Court decision in 1977 stated if the foster family relationship were to occupy the same constitutional plane as that of the natural family, conflict between the constitutional rights of natural parents and foster parents would be totally irreconcilable. In cases where there have been multiple foster families, there could be 10 to 20 foster parents in court, all with the same legal rights as the biological parents. Making this change would create both extra time lines and extra hearings before moving to permanency. Also, counsel would have to be appointed for the foster parents which would create a significant fiscal note and, in rural communities, it would be difficult to find enough attorneys. This change might also mean the judge would not get pertinent information. For example, a foster parent might be reluctant to say the contractor's social worker had not been to see the child if this information is available to the contractor who is the foster parent's employer. An alternative might be to include in the statute that "the foster parent shall have the right to appear at court proceedings and advise the court of the status of the child." Another suggestion was, at least in terms of permanency hearings at a minimum, require that foster parents be given notice of the hearing and be given an opportunity to be heard. The state could then define "opportunity to be heard." In response to a question, the consensus of the judges appeared to be that "foster parent" would mean only the current foster parent. Perhaps a provision that if the child has been in the current foster home less than a month, the previous foster parents would be notified could be put in rules and regulations. A judge indicated the current foster parent could always refer to information received from the prior foster parent. Also, if the child had been removed from the previous foster home because of abuse or neglect, the child would have to face the perpetrator in court.

Speaking to the issue of parents needing an advocate to help them through the system, a judge suggested consideration be given to having a system similar to the public defender system for juvenile court. Attorneys serving as guardian *ad litem*, attorneys representing parents, and attorneys representing juvenile offenders paid a salary comparable to the assistant district attorney and be provided with an office and support staff. Currently, these attorneys are treated differently than the attorneys who prosecute cases.

They ought to be on a level playing field in terms of their ability to represent their clients. However, because of the low stipend, they must do other work to make a living. It will cost money to establish such a system but pay dividends in terms of better delivery of service and a better and more efficient handling of cases. Counties could be assessed the amount they are currently paying for these services and the state could make up the difference. This system would provide attorneys with time, dedication, and experience. It would also address the problem in rural counties where the judge may have to get an attorney from 100 miles away to serve as a guardian ad litem. This system would not put an attorney in every town. In rural areas there could be a district office. The attorney could travel within a reasonable radius and cover all the cases. This system would also address the issue of the reluctance of some district attorneys or county attorneys in small communities to file cases because they know the people involved. It was suggested that looking at what is happening in other states might be helpful.

In response to a question, a judge stated that a guardian ad litem should be an attorney since this person is protecting the rights of the child. The person should be familiar with the legal system and how to protect the interests of the child. The child may not agree with what the guardian ad litem is doing, but the guardian ad litem's job is to do what is in the best interest of the child. A child 14 or older has the right to address the court to present his or her view and, in some courts, the guardian ad litem is asked to state what the child wants if this differs from the recommendation. Also, if the guardian ad litem is an attorney the Supreme Court has the authority to govern the guardian ad litem's responsibilities, continuing education requirements, and qualifications. If the person does not perform the duties, he or she is subject to the jurisdiction and discipline of the court.

It was noted that if we figure out how to put fewer children in the system and have fewer children lingering in the system, the amount of money available could be used to start doing other things. It is not about reducing the budget by reducing the number of children in the system. It is about better utilization of the dollars available.

Answering questions, judges stated the number of guardians ad litem in relation to the number of cases makes it difficult for the guardian ad litem to perform his or her duties adequately, especially when he must rely on other legal work for subsistence. If they do not follow the rules, the judge may be faced with having either a guardian ad litem not functioning as well as the judge would like or no guardian ad litem. When the hearing is set within 72 hours, it is difficult to find time to see the child. Also, it is not the guardian ad litem's responsibility to set appointments. Judges stated they found it difficult to believe that a child did not know he or she had a guardian ad litem. Some judges explained how they make sure the child understands they have a guardian ad litem and that it is their responsibility to set an appointment.

In a discussion of representation for parents, a judge stated the parent is encouraged to have counsel and, if they cannot afford an attorney, one will be appointed for them. If the parent is employed but at 125 percent of poverty and cannot afford an attorney, the case is continued and the parent is asked to get letters from two attorneys saying the person does not have sufficient funds to retain the attorney's services. Then an attorney is appointed for the parent. It was noted attorneys hired by a parent are not familiar with the juvenile courts.

They may come into it in an adversarial role and may give the client bad advice. The juvenile court tells the person how to win and wants the person to win.

Having a bulleted type pamphlet explaining to parents what their rights are was suggested. The need to have it in languages other than English was noted. While not a total solution to educating parents, this was seen as one way to approach the issue.

The issue of the fine line between child-in-need-of-care cases and juvenile offender cases was mentioned. There are a lot of children on the verge of moving into the juvenile offender category, a lot of children in need of care are just juvenile offenders who have not been "caught," and a lot of juvenile offenders are in-need-of-care children. A judge stated there are a lot of dual adjudications. One designates which the case is, and often the designation is based on what services are available.

The issue of the inability of parents to pay for the services ordered by the court was reintroduced. A suggestion was to require the court to determine the financial ability of the parents to pay for the services and specify in the order the portion of the cost the parents should pay. The need for statistics relative to how often parents are able or unable to pay all or part of the cost was raised. It was noted it should not be too difficult to get this information since a judge gets financial information if the parent makes application for an attorney or if child support is considered.

An issue often related to a parent's ability to pay is child support enforcement. One sector of Social and Rehabilitation Services is demanding child support while another is telling the parent you have to meet certain requirements which involve a cost if you want your child back. Yet the parent does not have the financial resources to do both. There is no communication between these two areas of the state agency. Taking money the parent needs to comply with the court order as child support may not be in the best interest of the child. It would probably be cheaper in the long run to get the child back home. One judge stated he takes up the child support issue under the code instead of letting state child support attorneys get involved. Then a zero child support order is entered based on the parent's inability to pay child support because the money is needed to accomplish reintegration requirements. Another judge stated he orders a child support work sheet to be submitted within 15 days of the date of disposition to protect the parent from a huge child support obligation created in a court over which he has no control.

There was consensus that, while problems relating to children occur in families in all socio-economic levels, most of the cases coming to the court involve families in the lower socio-economic categories. This is primarily due to the fact that families in the upper levels have the financial resources and knowledge to get help outside of Social and Rehabilitation Services and the court system.

Reference was made to the changes proposed in the definition section of HB 2945 (Attachment 5). It was noted the current laws exist because the state no longer considers children chattel and has assumed an interest in the safety, protection, and welfare of children. It is a legislative policy decision as to how much protection the state is to provide children and how much flexibility is to be given to those entities carrying out the law.

Making the law more restrictive will increase the likelihood of a child being injured before there can be any intervention, as opposed to the current law which allows intervention when there is probable cause to believe the child is in imminent danger or has been physically, emotionally, or sexually abused or neglected. It is practically impossible to get agreement within or among the entities involved if such a fine point is put on definitions. Two other factors which have to be considered are the diverse populations and cultures in the state and the fact that an action in and of itself might not be considered abuse, but when the child's history and its emotional impact on the child is known, it is abuse.

Reference was made to the provision, "an unclean house shall not constitute neglect." A judge pointed out there are houses which might be considered unclean and then there are houses that are unclean because the toilet has not worked for some time and there is feces all over the floor. Other examples were given. It was noted that some of the proposed definitions are more broad than current law. For example, abuse would include not only inflicting physical, mental, or emotional injury but also permitting the child to be in a situation where such abuse occurs. A judge stated this would create a hole lawyers could drive a truck through.

There appeared to be consensus among the judges that making definitions more restrictive is not a viable solution. Guidelines can be provided, but it is necessary if the state is to fulfill its obligation to children to rely on social workers, district and county attorneys, law enforcement officers, and judges to use discretion and common sense based on the facts of each individual case. Mistakes may be made because no system or persons within the system are perfect. However, changing what have been reasonably functional definitions for a number of years to address isolated incidents and creating definitions that could negatively impact the safety and protection of the children in Kansas is not the way to go.

It was noted that requiring a court appointed physician or psychologist to evaluate whether or not mental or emotional abuse has occurred, as proposed in the bill, is a good idea, but would have a large fiscal impact. Also, there would a problem in finding a sufficient number of professionals.

A legislator stated another area of concern arises from mandatory reporting. For example, a family has gone for mental health services. In a session with a psychologist the mother says, "Yes, I backhanded Johnny." The psychologist reports it to Social and Rehabilitation Services whose staff appear on the parent's doorstep. This is an experience that creates fear in most people. Now, the parents "clam up" and stop getting mental health services for the family. What has been done to this family? A judge pointed out the general public has the misconception that corporal punishment or physical discipline is against the law, which it is not. There are also those covered by mandatory reporting requirements who are not clear on what does or does not constitute abuse, so they err on the side of caution. Since some of the public has an erroneous perception of what constitutes abuse or neglect and there is confusion on the part of some mandated reporters as to what should be reported, education is one obvious approach. The courts may need to be involved because often it is important for people to hear from those in authority that certain things are or are not considered child abuse or neglect. The need for confidentiality is also a factor. It appears that a child was removed from the home because the parent spanked the child, but,

in fact, the child was removed for a different reason which cannot be revealed because of confidentiality. This perpetuates the idea that spanking per se is abuse. A question was raised as to whether or not any training is provided to persons mandated to report abuse and neglect.

Some judges expressed concern over the way initial removal of children is sometimes handled and the irreparable harm that can be done, especially when the removal is inappropriate. In larger communities there may be juvenile detectives who understand the trauma that may occur when a child is removed from the home, but they are not on duty at night or on weekends. The law enforcement officers' focus on catching criminals is commendable, but needs to be broadened if they are responsible for the removal of children from the home. There was consensus that mandatory training of law enforcement officers on juvenile issues and philosophies and how removal of children should be handled needs to be addressed. Approaching the Training Center staff and those responsible for providing continuing education for law enforcement officers was suggested. Since training and continuing education are in place, adding specialized training relative to children should not entail a fiscal note. This is an area the Legislature could address.

The need for information about who is involved in making the decision when a law enforcement officer removes a child from the home and how the decision is made was noted. Involving judges, through issuance of a warrant to take a child into custody, was suggested. Judges noted they are not always at work when emergency situations arise and it would not always be feasible for the law enforcement officer to go to the office, type out an affidavit for a warrant, go to the judge's home to get a signature, and then return to the home for the child. Where do you draw the line when you have to get a warrant and when you do not? Either it is an emergency situation or it is not. A judge stated that, notwithstanding the request of Social and Rehabilitation Services to remove a child from the home, the officer does not have to take the child if he feels it is not necessary. There are also instances in which an officer finds a child who is obviously in immediate danger and, if the parents are going to jail, the children have to be removed. When a parent locks a teenager out of the house, the officer should have the right to place the teenager in a safe place until morning. In response to having a judge give a verbal decision, a judge stated he would feel totally inadequate to make that call from the comfort of his home. The officer should have the training to make the decision based on what is occurring on the spot. It was noted law enforcement officers are having to make social worker type decisions. A judge stated that social workers are required to have so many hours of continuing education in ethics. Perhaps law enforcement officers should be required to get three to six hours of training related to family and child issues. There was general agreement with this suggestion.

The section of HB 2907 requiring that a hearing be held within 72 hours of an emergency removal was included to clarify the current statute so all judicial districts understand the hearing must be held within this time frame. In response to a question, a judge stated in Sedgwick County, the District Attorney interprets the current law to mean there is 72 hours in protective custody and, if there is an ex parte order at that point, there can be another 72 hours before the hearing. There is some indication this is also happening in other areas.

The Vice Chair stated members of the Committee would appreciate the judges sharing steps they think the Legislature should consider and providing input on bills which are introduced. It is better to base legislation on information from the experts than on a knee-jerk reaction based on a few phone calls. Judges were asked to share any further thoughts on how to be sure foster parents are not excluded from hearings without giving them interested party status and on advocates for parents in the courtroom. Should the latter be written into the law or should there be a pilot project to determine the pros and cons?

It was noted the child welfare system is so large it is never going to be perfect. There will always be complaints. The task of the Legislature is to provide a balance between protecting the safety of children and their rights with the rights of the parents and making sure actions can be taken expeditiously. Input from those on the front lines is very important if the Legislature is to accomplish this task. Communication lines need to be kept open. Meetings such as the one today help us see each other as assets in achieving commonly held goals rather than seeing each other as adversaries.

The Vice Chair thanked the judges for taking time out of their busy schedules to meet with the Committee and expressed the hope they would continue as participants in ongoing discussions relating to problems and possible solutions. The judges indicated they would be willing and ready to continue providing information to the Committee and to the Legislature. An openness that allows talking about imperfections and that develops an understanding of each other's perspective is welcomed. It is important that legislators know what judges have to deal with in practice and the judges understand the policy issues legislators face.

The meeting was recessed until 9:00 a.m., Thursday, November 21, 2002.

Thursday, November 21

The meeting was reconvened by the Vice Chair at 9:15 a.m.

September Minutes

A motion was made and seconded to approve the minutes of the September meeting. Motion carried.

Confidentiality in the Child Welfare System

Marilyn Jacobson presented written testimony relative to the issue of confidentiality in the child welfare system, including an overview of state and federal law used in the training of state and contractor supervisors (Attachment 6). The purpose of the confidential-

ity laws, Ms. Jacobson stated, is to protect the child and family. Generally, information can be shared on a need-to-know basis to assist the child. Professionals routinely err on the side of caution when deciding whether or not to share information. This is understandable when one looks at the number of applicable statutes at the state and federal level and the fact there is little or no coordination among them. State agency staff have long had the discretionary authority to share information which would be helpful to a teacher. However, if this information is shared in writing, it becomes a part of the educational record which might be devastating for a child or a family. Ms. Jacobson, noting it is not possible to memorize every statute that may be relevant, set out five questions that can be asked in determining whether or not information can be shared (Attachment b, page 2).

In response to a question, Ms. Jacobson said an individual who is willing to have information shared can waive the right to privacy by signing a release of information form. Then confidential information, which would normally be protected, could be shared. Noting the frustration some legislators feel when trying to get "the other side of the story," a question was raised as to whether or not confidentiality could be considered waived when the parent has provided written documentation, and has provided the names of all the players. Ms. Jacobson stated, from an attorney's point of view, the person has waived the right to privacy to that specific information only. The release does not waive the right to information not provided by the person.

In response to additional questions, Ms. Jacobson noted if a judge has looked at the precautions proposed to protect the child and family and issues a court order to release the information, the information can be released. It was noted there was a recent tightening of the confidentiality laws pertaining to child care facilities, but the law pertaining to the child-in-need-of-care has been in place for some time. There are no rules and regulations pertaining to confidentiality as it relates to the child-in-need-of-care. The Legislature could open up confidentiality in the state statutes, provided the change does not violate any federal statutes. In the child-in-need-of-care code, there is a list of exceptions to the rule of confidentiality. The Legislature might consider adding legislators to this list. It was noted legislators who are contacted by a parent need to get information relative to the other side of the story if they are to respond to the parent appropriately. In some cases, even after the parent had signed a waiver, all the Department could or would share was a substantiation or clarification of the allegations raised by the parent. There is some concern that abuses may be hidden behind the guise of confidentiality. Based on prior experience, it appears there may have been a change in policy regarding confidentiality or a change in the interpretation of the law.

A Committee member stated there is also a need to talk to judges, recognizing the judge is the one person whose objectivity is counted on by all the parties involved. Another aspect of confidentiality mentioned was the need to build a relationship of trust with social workers and judges.

Noting a child also has a right to confidentiality, a question was raised as to whether or not a parent could waive this right for a child. It is the child who may be most damaged by breaches of confidentiality.

Agency staff and judicial staff were asked to find a way to make an exception for legislators so legislators can be an asset to the people of Kansas and to the agencies dealing with children. An invitation was given to others in the audience to participate. It is hoped a proposal can be developed that all parties can support.

Another area mentioned for consideration was mandatory reporting. It was noted the law provides for mandated reporters who can be charged with criminal charges for failure to report and provides relief from civil liability for voluntary reporters. Virtually all mandated reporters are persons who are licensed or otherwise credentialed by the state and most are required to do continuing education. The Committee could recommend the various regulatory boards, over which the Legislature has some authority, initiate a continuing education session on what constitutes abuse and neglect and the type of things that should be reported. Social and Rehabilitation Services and others could assist in developing the content for these sessions. Professional organizations, although they do not include every member of a profession, can also be helpful. It was suggested that priority be given to initiating training for mental health professionals, educators, and appropriate law enforcement officers.

In response to a question, Ms. Jacobson stated she did not have specific case figures for abuse and neglect with her. In fiscal year 2002, the Department received almost 43,000 reports of abuse or neglect. Of these, 18,000 reports were actually investigated and 7,000 reports fell in the category of non-abuse or non-neglect. Some in the latter category would have been found to need services and would have received services. Some cases are screened out because the person reporting the incident did not know the perpetrator's name and address. There are a lot of reports in divorce cases where the court order regarding visitation is not being followed.

Report on Review of the Child Protective Services Program

Ms. Jacobson presented written testimony relative to the Department's efforts to gather some public input on the definitions of abuse and neglect (Attachment 7). Ms. Jacobson stated in an investigation the definitions used to determine whether or not abuse or neglect has occurred are outlined in the *Kansas Administrative Regulations*. The judge uses the definitions in the *Kansas Statutes Annotated* to find whether or not there is abuse or neglect in a child-in-need-of care case. Participants in the forums held in the summer of 2002 felt the fact the definitions are not the same has caused confusion, especially for families who are involved in an investigation and a child-in-need-of-care court case. The recommendation was to use the statutory definitions in both the investigation and child-in-need-of-care court proceedings.

In response to a question, Ms. Jacobson stated participants were given a side-by-side comparison of the two sets of definitions. The participants felt that in each case the statutory definition was more clear and more understandable. Ms. Jacobson was asked to provide Committee members and the members of the Judicial Council Committee working on the child-in-need-of-care code with copies of the side-by-side comparison of definitions.

Ms. Jacobson continued by stating the standard used in an investigation for determining whether or not abuse or neglect has occurred is "preponderance of evidence" or more likely than not, the lowest standard of evidence. The Kansas statutes require a judge to use "clear and convincing evidence," a higher standard, but less than "beyond a reasonable doubt," in determining whether or not abuse or neglect has occurred in child-in-need-of-care cases. The recommendation was the standard used in an investigation be the same as the standard used by the judge which will require a change in the rules and regulations and the policy manual of the Department. It was noted by a legislator that the proposed change in regulations raises the standard for determining if a person is put on the central child abuse and neglect registry which has been a major concern. Ms. Jacobson was encouraged to provide information to the legislators for whom this had been a major concern and to the advocacy groups in Wichita and Kansas City as a way to let them know the Department heard them and responded.

Responding to a question, Ms. Jacobson stated, whether or not there is substantiation of abuse or neglect, does not necessarily relate to whether or not a family receives services. If it is felt the family needs help, services are provided in order to keep the situation from becoming more serious. In response to further questions, she stated the changes in rules and regulations will be sent to all staff and some training will be provided. The goal is to have the changes made by the end of the 2003 Session.

Ms. Jacobson continued her presentation, noting since July 1997, the Department of Social and Rehabilitation Services has had four case finding options and levels: unsubstantiated, substantiated incident, substantiated perpetrator, and validated perpetrator. Participants in the forums held around the state liked the current system and the ability to substantiate a perpetrator without validating and putting them on the central registry. Not making any finding unless a situation rises to a level at which the perpetrator should be validated because he or she poses a danger to children was discussed. Although this would not change the goal of the Department, it would place emphasis on assessment for services. The majority of the participants felt this concept merits further study.

It was suggested, if the Committee agrees with the changes in the rules and regulations, the minutes and the report should reflect this so the Committee on Administrative Rules and Regulations will know this Committee has studied the issue at some length and feels the changes are appropriate. It was suggested that since the Committee has not looked at the side-by-side comparison, the report should indicate that the Committee feels the Department is moving in the right direction.

In answer to a question, Ms. Jacobson stated there is an expungement procedure. The person appears before the expungement panel and presents evidence as to why his or her name should be removed. If a name is expunged, the Kansas Department of Health and Environment is notified electronically. A person who is validated and whose name is going on the Central Registry can appeal to the Administration's Fair Hearing Board. If the person disagrees with the Board's decision, the case can be taken to the State Appeals Committee. The appeal can continue through a review by a district judge, the Court of Appeals, and the Supreme Court. A person is not put on the Central Registry until the time for appeal has run out or a decision has been made.

Child Welfare Mental Health Partnership Update

A memo from Laura Howard, Assistant Secretary, Department of Social and Rehabilitation Services, was distributed (Attachment 8). The memo stated community and state leaders of the community mental health and child welfare system met on November 15, 2002 to discuss the progress and the remaining challenges for the Child Welfare Mental Health Partnership. There was unanimous agreement that the successes realized by the Partnership were strong and consistent and progress made during the first year was significant. There are some new challenges, but other challenges are being addressed and some have been resolved. The memo also included information about the Steering Committee's oversight of the Partnership planning process. Currently, the Steering Committee is focusing on the referral process.

The memo also included information addressing concerns regarding the ten-day access standard for connecting children to community-based services. Ten days is the longest amount of time allowed, but many, if not most, children are connected sooner. Also, other access standards override the ten-day standard if the child needs emergent or urgent care. Other points included in the memo referenced the fact that child welfare contractors and community mental health centers are committed to working together to overcome the challenges and are moving toward common goals for children; data is being used in a positive way to aid in decision making and planning; and there is now a focus on course corrections.

Randy Clouse, Executive Director, Family Consultation Service in Wichita, and President, Association for Community Mental Health Centers, referring to a meeting which had included representatives of community mental health centers, privatized contractors, and the state agency, stated there is strong leadership in each of the regions, and the community mental health centers and privatized providers are making progress in working together. He thanked the Department of Social and Rehabilitation Services for bringing the two groups together and acting as the facilitator of the progress which has been made.

David Weebe, Executive Director, Johnson County Mental Health Center, stated the Center's Clinical Director, who attended the November 15 meeting, reported essentially what was in Ms. Howard's memo. His observation is that privatized contractors and community mental health centers are very close to being on the same page now in terms of how the system should work in the delivery of mental health services.

It was noted the Association of Community Mental Health Centers and the Mental Health Consortium, the entities testifying before the Committee, will be held accountable for community mental health centers and the delivery of services. Looking at how urban community mental health centers can extend assistance, or increase the assistance, to the smaller centers located close to the urban area was suggested.

Responding to a question, Ms. Jacobson stated she thought the portion of the revised rules and regulations concerning the licensing of community mental health centers the Committee and others had agreed at the time of the September meeting should be given further consideration were still being reviewed. The Vice Chair complimented the agency

on its willingness to listen and respond to stakeholders who asked that further review be given to a part of the proposed rules and regulations.

Another memo from Ms. Howard, giving the basis for the Department's authority to take licensing disciplinary action against a community mental health center, other than suspension or revocation of the center's license, was also distributed (Attachment 9). Cited are KSA 75-3307b(4) and KAR 30-60-6(e). The new proposed regulations, presented to the Committee earlier, are undergoing a final revision.

Committee Actions and Directions for the Committee Report

Reference was made to the project in Salina which resulted in the creation of a hard copy portfolio that can follow a child and is now being developed as an electronic version. By consensus, the Committee recommended the appropriate standing committees in the House of Representatives and the Senate receive information about this project, including an update on the status.

The Committee's previous discussion of allowing parents to have an observer or an advocate in the courtroom was noted. Referring to this as a CASA-type program might clarify the intent of the Committee.

After a discussion of the implications of giving foster parents interested party status, *a motion was made and seconded to reconsider the Committee's previous action to reintroduce HB2907 in the 2003 Legislature. The motion carried.* Staff was asked to draft a new bill that would include the language relative to foster parents suggested yesterday by the judge; providing for the current foster parent to receive notice of the hearing, but not to preclude the judge listening to previous foster parents, social workers, or case managers; provide for a pilot project, with a sunset provision, in an urban area and in a rural area that would allow parents to have an observer in the courtroom; (in an urban area and a rural area) and clarifying the current law by adding the language on page 2, Section 3(b) relating to emergency removals and requiring a hearing within 72 hours. Having one bill relating to the foster parent issue, which judges indicated a willingness to support, and another bill for the other issues on which there might be less unanimity, was suggested. After discussion, the consensus was that if continued dialogue with the judges does not result in an agreement on the issue of observers in the courtroom, that issue would be addressed in a separate bill. If agreement is reached, all provisions will be included in one bill. The bill, or two bills, are to be introduced in the House of Representatives and the Senate by request of the Joint Committee on Children's Issues.

The input from the judges relative to problems created by having separate contractors for foster care and adoption is to be noted in the Committee report. By consensus, the Committee recommended the Department of Social and Rehabilitation Services study this issue to determine if a change to having one contractor for both foster care and adoption is warranted and submit a report of their findings and recommendation during the 2003 Session. It was noted this recommendation does not imply the Committee either agrees or disagrees with the recommendation of the judges.

The judges' concern about accountability and the duplication of social workers, especially as it relates to case management, was noted. Ms. Jacobson stated the Department of Social and Rehabilitation Services is ultimately responsible for the children in their custody. The Department could take a look at the issues raised by the judges, make some recommendations, and submit a report at the next session. The timing would be good, if any changes are to be made, because the Department will start writing the Request For Proposals for the next four-year contract period in about six months.

The possible connection between accountability and the large turnover of social workers, especially contractor's social workers, was mentioned. The judges made a comparison between what used to be when case workers were Department of Social and Rehabilitation employees and what we have now, noting the positive impact of longevity, experience, and mentoring in the previous system. The need for more information relating to the turnover rate and the reasons for the turnover was noted. Exit interviews would be a source of information which should be considered. The need for a possible revamping of the education for social workers, realizing there are national standards which have to be met, was noted. The Committee report is to include a discussion of what the Committee heard from conferees relative to the social worker issue.

Staff was asked to send copies of the post audit request relative to social workers submitted on behalf of the Committee last year. Committee members were asked to look at the scope section of the post audit request to determine if any changes need to be made and then make a recommendation to Post Audit that serious consideration be given to studying the social worker issues because of the large impact on the child welfare system.

Recommending a penalty provision be included in the next contracts was discussed. However, it was felt this could increase the cost and could mean fewer entities would be willing to submit bids. Perhaps a better approach would be to restructure how payments are made. The original contracts provided an incentive for contractors to move children out of the system, while the current payment structure seems to provide a disincentive.

Reference was made to the judges' comments that privatization should be a privatization of services not the current privatization of case management. Ms. Jacobson stated this is part of what the Department is studying. What are the positives and negatives of moving in that direction? The report is to include a note that the judges feel privatization of family preservation has worked.

The comment from a mother in a family that had received help because of the behavior of one child that the system is used to working with children who have foster parents or non-parental guardians, but it is not geared to working with birth parents, especially birth parents who stay involved, was discussed. Care needs to be taken so the system does not discourage parents with a difficult child from keeping that child at home. Ms. Jacobson was asked to see if this is a problem in family preservation.

Developing a guardian ad litem system modeled after the public defender system was noted as something that needs further discussion and research. The judicial staff might be asked to look at the feasibility of this approach.

Responding to a question, Ms. Jacobson stated that when the Department gets a report of possible abuse, an investigation is done to determine whether or not abuse has occurred. A packet of information is sent to the district or county attorney who determines if there is enough evidence to file criminal charges or a child-in-need-of-care case. Nothing in the Kansas statutes requires a case to be filed even if the Department has determined there is abuse or neglect. District and county attorneys are the gatekeepers, and it is totally up to their discretion as to which cases get filed. It was noted that a judge had suggested developing a state prosecutor system for filing these cases.

Ms. Jacobson, in answer to a question, stated the system in Sedgwick County, which is the only county with a Department of Social and Rehabilitation Services attorney, was started as a pilot project about 20 years ago. The Department's attorney does not file cases but takes over the case when it reaches disposition and carries it forward. A negative to that system is the break in continuity. The Department's attorney knows nothing about the case and does not know the child or the family at the time the case is transferred which can cause delays. The Department of Social and Rehabilitation Services should take the lead and involve the judiciary in studying the system in Sedgwick County. The Committee is not saying the system should be changed, only that it should be studied.

The report is to state that who determines if a child is to be removed from a home, how the removal of the child is handled, and whether there is adequate training for persons—especially law enforcement officers—involved in removing a child from a home are issues that have been raised by this Committee and by judges. Legislators can be encouraged to meet with their chief of police to find out who determines the child is to be removed and how the removal is handled. Interest was expressed in pursuing required continuing education, especially for law enforcement officers who are involved in the removal of a child from the home.

In terms of HealthWave, the problems of provider shortages and participation facing Kansas are being experienced nationwide. Kansas is not the only state experiencing a shortage of dentists to provide services to Medicaid and HealthWave participants. However, Kansas does have more physician providers serving the Medicaid population. The report is to include the importance of continued monitoring of the issue of children being dropped from HealthWave when qualifications change from Medicaid to HealthWave. Have the computer program glitches been corrected? The Committee agreed the Vice Chair will add something on HealthWave based on a review of the testimony presented to the Committee.

Committee members were asked to submit any suggestions or items they would like included in the report to staff. Any additions made by the Vice Chair and suggestions from Committee members will be highlighted in the draft of the Committee report. Any recommendations or changes to the draft are to be submitted to staff.

The meeting was adjourned at 2:00 p.m.

Prepared by Almira Collier
Edited by Emalene Correll

Approved by Committee on:

January 13, 2003