



State of Kansas

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Senate Judiciary Committee

Testimony in Opposition to SB 160
Requiring Action by a Court Regarding Termination of
Parental Rights in a Child in Need of Care Case

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Thank you for the opportunity to testify in opposition to Senate Bill 160. I am Mark Gleeson, Director of Trial Court Programs for the Kansas Supreme Court's Office of Judicial Administration. Senate Bill 160 has been reviewed by the Kansas Supreme Court's Permanency Planning Task Force, the membership of which includes judges from across the state, prosecutors, guardians *ad litem*, and representatives of Court Appointed Special Advocate (CASA) Programs, Citizen Review Board Programs, the Kansas Department of Corrections Juvenile Services, the Kansas Department for Children and Families (DCF), local mental health centers, and the tribal nations within our borders. This group has reviewed and supports this testimony.

Senate Bill 160 would amend the Kansas Code for the Care of Children in ways that would significantly impact the lives of children and their parents by requiring the court to take action to terminate parental rights within six months after a court finds that a parent is unfit. We do not disagree with the goal of achieving permanence for children as soon as possible. Children thrive on stability, consistency, and certainty. While termination of parental rights may seem like the fast track to adoption and permanence, the unfortunate reality is that the six month period does not provide families with a sufficient opportunity to demonstrate compliance with a court approved plan. Terminating parental rights without a reasonable opportunity for permanence diminishes stability, consistency, and certainty in that child's life. Doing so early in the process without a reasonable prospect for adoption or permanent custodianship extends that time of instability.

On December 31, 2014, there were 6,092 children in DCF custody. Of those, 75%, or 4,539 children, had been in DCF custody for six months or more. Before taking action that might have a significant detrimental impact on this large number of children, I urge this body to consider the following questions:

- Why have these 4,539 children been in custody for more than six months?
- Are the services provided to children and their parents adequate to help these children achieve permanence?
- What due process protections exist for children and parents?
- What unintended consequences might result if the standards set out in SB 160 become law?

Following are what I believe to be some answers to those questions.

- Terminating parental rights is the family law equivalent of the death penalty. There is no legal recovery from the termination of parental rights. It is irrevocable, and therefore must be carefully considered only after reasonable efforts have failed.
- Substance abuse or mental health issues, or both, are present in a large number of these families. Treatment for substance abuse, in particular, requires 12 to 18 months before parents achieve stability and are able to effectively and safely parent. Results cannot be achieved within the six month period allowed by SB 160.
- It is not unusual for a parent to wait two to four months or more to receive therapy or substance abuse treatment.
- Children want to be with their biological parents. When children age out of the foster care system, they often return to their parents as young adults.
- SB 160 presents unique challenges for Native American children who are subject to the Indian Child Welfare Act.
- Courts are actively reviewing these cases at least every six months. Most courts review cases more frequently.
- Prosecutors, guardians *ad litem*, attorneys for parents, social workers, CASA volunteers, and judges provide a high standard of procedural fairness that more often than not engenders trust and confidence in the Kansas child welfare system among parents and children.
- There are not sufficient adoptive homes or permanent custodians for the number of children that would need them if the SB 160 six month standard were in place.
- We do not understand the emotional, psychological, or economic impact of terminating parental rights within a time frame that does not allow parents a realistic opportunity to demonstrate fitness.
- Petitions to terminate parental rights may be filed as soon as the child comes into custody if the prosecutor believes the facts of the case meet the criteria outlined in K.S.A. 2014 Supp. 38-2269.
- The schedules of courts, prosecutors, guardians *ad litem*, attorneys for parents, and child welfare contractors would not be capable of meeting the expedited requirements of SB 160, and county budgets, which pay for prosecutors, guardians *ad litem*, and attorneys for parents, would not be able to absorb this unfunded mandate.

Other aspects of SB 160 are troubling. It is unknown whether SB 160 would jeopardize federal funding. The federal Adoption and Safe Families Act allows families 15 to 22 months to work toward integration. Before moving forward on this bill, it should be determined if there is any consequence to requiring termination of parental rights before this federal standard is met.

Two provisions of the bill could create potential conflict or confusion. The Kansas Code for the Care of Children, in K.S.A. 2014 Supp. 38-2271, sets out 12 criteria for the court to consider in making a determination that a parent is unfit. Subsection (5) applies when a child has been in an out-of-home placement for one year and the parent has “substantially neglected or refused to carry out a reasonable plan.” It is important to note that there is substantial case law setting forth how a court determines that a parent is unfit to care for a child. If SB 160 were to pass, it would create a conflict with those criteria in K.S.A. 2014 Supp. 38-2271. Further, the proposed language in K.S.A. 2014 Supp. 38-2269(h)(2) and (3) could create confusion. The bill changes from “may” to “shall” the steps the court will take following a decision to terminate or not terminate parental rights. The options that follow (adoption, permanent custodianship, or continued permanency planning) appear to be the only options that exist and that, therefore, changing from “may” to “shall” would have no real effect. In other words, the same result is reached whether the court “may” or “shall” authorize these options. Clarification regarding intent of this section would be appreciated.

The most important factor to note in considering SB 160, however, is the detrimental impact of potentially creating approximately 4,500 legal orphans if the court were required to take action to terminate parental rights within six months. These victims of child abuse and neglect deserve timely permanence, rather than more uncertainty, once parental rights have been severed.

The existing Kansas child welfare system has a number of built in checks and balances to move children to permanency in a thoughtful and reasoned manner. In addition to the court and social workers, the following child welfare professionals play important roles in the present system of checks and balances.

- Prosecutors play a vital role in this process. Prosecutors are elected officials who are charged with the responsibility of protecting our most vulnerable citizens. They do not hesitate to petition the court to terminate parental rights very early in a case when they believe the maltreatment is severe and the facts support the petition for termination.
- Guardians *ad litem* are attorneys appointed by the court to represent the best interests of the child. In rare instances, an attorney can also be appointed to represent the wishes of a child but this, again, is a relatively rare occurrence. The guardian *ad litem* is obligated to conduct an independent investigation and can recommend termination of parental rights when doing so is in the best interests of the child.

- CASA programs are present in 23 of our 31 judicial districts. CASA volunteers perform one function: They watch over the best interests of the child to whom they are assigned, and they perform that function very well.

The collective knowledge, experience, perspectives, and efforts of these professionals are all working toward and collectively pulling for one goal – permanent families for children in need of care. These individuals must be given the time necessary to do this vitally important work on behalf of our children.

Thank you for the opportunity to testify. I would be happy to stand for any questions.