

MINUTES

JOINT COMMITTEE ON CHILDREN'S ISSUES

December 2-3, 2004
Room 313-S—Statehouse

Members Present

Representative Brenda Landwehr, Vice-Chairperson
Representative Sue Storm, Ranking Minority Member
Senator Dave Jackson
Senator Janis Lee
Representative Willa DeCastro
Representative Roger Toelkes

Members Absent

Senator Nick Jordan, Chairperson
Senator David Corbin
Senator Henry Helgerson
Representative Patricia Barbieri-Lightner

Staff Present

Emalene Correll, Legislative Research Department
Hank Avila, Legislative Research Department
Mike Corrigan, Office of Revisor of Statutes
Jill Wolters, Office of Revisor of Statutes
Ann McMorris, Secretary

Others Present

See attached list.

December 2, 2004

The meeting was called to order by the Vice-Chairperson, who noted the format of the meeting was a roundtable discussion involving judges, district and county attorneys, and members of the Committee. The roundtable discussion will center on the Kansas child-in-need-of-care system and the Child In Need of Care Code.

Each person seated around the table was asked to introduce himself or herself by name and affiliation (Attachment 1).

Recommendations for Legislation

Legislative Research staff had prepared a listing of recommendations taken from the *Report of the Joint Committee on Children's Issues to the 2004 Legislature*. Staff briefed the roundtable participants on the origin of the recommendations and the Committee positions. The Vice-Chairperson suggested the roundtable participants discuss the recommendations and determine whether there should be further recommendations to the 2005 Legislature (Attachment 2).

Authorization to Extend Orders of Informal Supervision

There was discussion of KSA 33-1544 in regard to cases that cannot be completed within one year, the time limit currently set out in the statute, and of the circumstances in which the family may not be able to complete the services ordered by the court. Among the reasons cited for not meeting the requirements set by the court were the lack of availability of services in some areas, the parents' work schedule which affects their ability to access services at the times they are offered, the parents' inability to pay for court-ordered services, and the delay in getting psychological evaluations done. All are valid reasons for delay in proceeding in a timely fashion. Committee members asked for additional information about delays in accessing psychological evaluations and counseling services. In response, various of the judges gave examples of experiences in their jurisdictions. The examples given were in accord with the information received by the Committee in other roundtable discussions, *i.e.*, travel time to access services, lack of some services, delay in getting appointments, lack of funding, and the availability of services other than during the normal work day. In the court process, scheduling of cases takes several days before a hearing can be rescheduled, and a time lapse is unavoidable, but waiting for evaluations can delay the case for a period of 60 to 90 days. It was the consensus that the sooner therapy can be started, the better for the child. The availability of services in urban areas is much better than in rural areas where the parents must travel to access services.

Several aspects of expediting these cases were considered and it was the consensus that allowing an extension in cases involving an order for informal supervision would be beneficial. It was suggested KSA 33-1544 be amended to allow for the extension of an order for informal supervision beyond one year if circumstances warrant. An additional extension may prevent cases from proceeding to adjudication and may prevent children being removed from the home.

Retaining Jurisdiction

One of the issues discussed in a previous roundtable was that of having all cases involving a child who comes into the judicial system as a child in need of care handled in the same court. In the larger judicial districts, once parental rights have been severed, any subsequent adoption proceedings involving the child move to the probate section of the court. This means the judge who

has all the information about the child, his birth family, and the services that have been provided is not the judge who handles the adoption of that child. This may delay permanent placement of the child. In some of the judicial districts, there are arrangements made to keep the case in one court through informal agreements or other arrangements, but this does not always happen. In the smaller judicial districts, one judge handles all cases and there is no transfer to another court.

It was noted each jurisdiction is different. There is a need for more flexibility. Any code changes should give the judges discretion in handling each individual case.

Alternative Hearings and Child Death Investigations

At the request of the Vice-Chairperson, a Senior Assistant Revisor presented a bill draft that would establish an administrative hearing procedure for all proceedings pursuant to the Code for the Care of Children. An attached memorandum summarizes the proposed legislation ([Attachment 3](#)). There was discussion on what the proposed legislation would accomplish. The possibility of referring the proposal to the Judicial Council for study was considered. The Vice-Chairperson asked the judges and personnel from the Department of Social and Rehabilitation Services to provide input to the Committee after they had had an opportunity to study the proposed draft.

Staff from the Office of Revisor of Statutes presented a second bill draft that would create the Kansas Oversight Committee on Child Deaths; setting out its membership and duties; delineating the duties of the State Child Death Review Board; and providing for investigations by the Attorney General. The attached memorandum summarizes the proposed legislation ([Attachment 4](#)).

Discussion of the proposal followed the staff presentation. Objection was voiced by several roundtable members to the proposed open records provisions. Current law provides penalties for disclosure of records. There was also discussion of the action taken by the 2004 Legislature in cases involving children in the custody of the state who die or come close to death while in foster care.

Truancy

During the roundtable discussion, it was suggested a more accurate method for defining truancy is needed. A daily report covering a specific period of time would assist the court in truancy cases. It was noted there are variances in the reporting of truants among the school districts.

Representation in Cases Involving Children and Youth

It was suggested a system be created under which a group of attorneys similar to those who represent indigent adults in criminal cases be created to serve as attorneys for children and youth involved in child in need of care cases. Having a group of attorneys who specialize in such cases and who are familiar with the system would enhance the level of representation. Currently, each judicial district has a different system for appointing guardians for the child and for reimbursing such persons. The counties are responsible for funding the system, and there are differing levels of support and reimbursement across the state. Caseloads may be so burdensome that the court-appointed guardian has little time to spend on individual cases. Often new and inexperienced attorneys are appointed to represent the child because they are willing to take such cases.

Families in Need of Services

There was discussion of a subject touched on in the roundtable held in 2003, *i.e.*, the creation of a new code definition that would allow a finding of "families in need of services." In this type of case, the child would not need to be found a child in need of care and be removed from his or her home. Rather, the natural parents would enter into an agreement to participate in necessary services. The court would retain jurisdiction and could take further action should the family be unable to resolve the problems that led to the filing of a petition. The use of this type of alternative to adjudication could reduce the number of children who are placed in foster care and could place the emphasis where it should be, *i.e.*, preserving the family. The basic concept is an emphasis on making services available that will enable the natural parent or parents to be responsible for their children rather than turning responsibility over to the state. It was noted that to make this idea work, there needs to be a real commitment to insuring that needed court-ordered services are available and affordable. As earlier discussion indicated, that is not the case presently.

It was suggested consideration be given to legislation that would require a mediation program to assist the court in determining the status of services for a family. This also may be an avenue to solve a number of cases without extensive court involvement. It was pointed out that a family sitting down with a trained mediator can negotiate some of the issues that cause the child to be at risk without engendering the hostility that may result from court proceedings.

Parent Advocate Pilot

Following discussion, the Vice-Chairperson noted the authorization for the pilot parent advocate program expires on July 1, 2005. It was the consensus to recommend making the pilot a statewide program available in all judicial districts. The Committee also recommends funding be sought to distribute the CD and hard copy text of the material prepared by the Office of Judicial Administrator to assist parents and parent advocates widely across the state.

The Vice-Chairperson thanked the members of the judiciary and the district and county attorneys for their participation in the roundtable discussion. It was noted input from the judicial viewpoint to the Committee and to the Legislature through the Committee plays a valuable part in finding ways to improve the child welfare system. This type of communication has not always taken place and, the hope was expressed that roundtable participants would contact members of the Committee to express their views on the proposed legislation that was reviewed earlier in the day and on other issues that may come before the 2005 Legislature.

Action on August Minutes

It was moved the minutes of the August 5, 2004, meeting be approved. There was a second, and the motion was adopted.

December 3, 2004

Expanded Services for Pregnant Women Under HealthWave

Due to unforeseen occurrences, Bobbie Graf-Hendrixon, Senior Manager of Health Care Delivery Systems, Social and Rehabilitation Services, was unable to appear and Nialson Lee, Administrator, who was present did not have a written report. He noted Social and Rehabilitation Services had been asked to provide a list of services and procedures not covered now by Medicaid or the Children's Health Insurance Program and also to report on what other states are doing. The research section had been asked to delineate those procedures considered as experimental that are currently reimbursable. The report will be made available to the Committee when it is completed. The Vice-Chairperson asked Social and Rehabilitation Services to provide a complete report on prenatal care to the Committee at the start of the Session in January 2005 and expressed frustration that the report was not forthcoming at this meeting, as requested by the Committee at an earlier meeting.

There was discussion of the fact that coverage of pregnancy services and procedures reimbursed by Medicaid and Title XXI is restricted by federal law limiting coverage to procedures that are medically necessary. Those are the procedures that are currently reimbursed by the programs. Representatives of the state agency noted a procedure that might benefit the fetus would not be reimbursable unless it were medically necessary for the mother. Experimental or procedures not widely accepted by the medical community are not covered services.

Mike Hutfles, representing FirstGuard Kansas, indicated he could answer some questions about available services for pregnant women and the fetus. The differences between HealthWave Title XIX and XXI services were clarified and various procedures available to the fetus and the mother were defined. Eligibility requirements and experimental procedures were discussed.

Committee members determined there are two areas of concern. The first is making more pregnant women eligible for perinatal services under HealthWave. The second is the addition of procedures that could benefit the fetus, although not medically necessary for the pregnant woman. The Committee would like a listing of procedures that are generally accepted medical practices that could benefit the fetus and result in less expenditure for newborn care. Social and Rehabilitation Services should find out how other states are dealing with this issue and what their experience has been in terms of cost effectiveness. The Committee also desires cost estimates for expanding eligibility for pregnant women and adding coverage for procedures not currently covered services.

Discussion of Committee Recommendations

It was decided to introduce and support a bill to amend KSA 33-1544 to authorize an additional 12-month extension of an order for informal supervision to allow a family to complete court-ordered services and other requirements if the child or children who are the subject of court oversight are in the family home rather than an out-of-home placement. Extension past the original 12-month limit on an order for informal supervision would be subject to the same reviews and be at the discretion of the court. It is understood the order can be reconsidered at any time if there are changes in the case or if there is noncompliance with the orders of the court.

There was discussion of legislation authorizing the court having jurisdiction in a child-in-need-of care case to handle any action involving that child if there is an adoption proceeding or an action for the appointment of a permanent guardian. It is recognized that some courts are currently transferring cases or otherwise utilizing the information and experience gained by the judge handling

the child-in-need-of-care case and subsequent severance of parental rights. It is recognized there are issues relating to the availability of records and access to records that vary between actions under the Probate Code and the Child in Need of Care Code. Mark Gleeson is to bring a recommendation to the Committee.

The roundtable discussions in the last two years have revealed that cases are often delayed because the parents appear in court without an attorney. There needs to be some way the judge can know prior to the hearing whether it is necessary to appoint an attorney to represent the parents. If a cadre of attorneys similar to public defenders in adult cases who are trained in representing the natural parents or guardian in child-in-need-of-care cases was available, these cases could be handled more expeditiously. At the present, counties are involved in funding court appointed attorneys representing the parents. More information is needed on current funding and possible methods of funding a group having responsibility only for representing parents. The Committee needs information on how other states are handling this matter. The representative of the Judicial Branch agreed to prepare a proposal. Information on comparable costs will be requested from various committees.

Kansas Code Procedural Analysis

Wade Boyd, Attorney for the Juvenile Justice Authority, summarized some of the new procedural changes that jurisdictions around the country are making in regard to child welfare and how they are implemented in the different jurisdictions. There are two main categories of procedural change. One option for Kansas is Alternative Dispute Resolution (ADR). The three main areas that relate to alternative dispute resolution that are important for Kansas to evaluate are mediation, a family court system, and keeping the adversarial system, but decreasing the adversarial aspect in child-in-need-of-care cases. All three of these areas have benefits and drawbacks and are discussed in the paper that was distributed to an interim committee. The second main category of procedural change is in the area of open records and proceedings (Attachment 5).

Further Recommendations

In earlier discussion, it had been noted adjudication under the Juvenile Offender Code has lifelong consequences in terms of employment and other aspects of adult life. A question had been raised as to whether some actions taken by the Legislature had more far-reaching consequences than anticipated or intended. The staff reviewed the definitions of various terms as they appear in the Juvenile Code in relation to children, age limits, and how juvenile charges can affect one's adult life. It was recommended the Juvenile Justice Authority and the Judiciary consider whether the Code does what was intended or if it is having unintended and unfortunate results.

It was noted the judges had suggested the Judicial Council study how mediation could be used in lieu of the administrative process proposed in one of the bill drafts reviewed on the previous day. It was decided the Committee would not address the subject matter of 2004 HB 2950.

The Committee reviewed the issue of creating a new Code definition that would provide for a finding of "families in need of services." It was decided to recommend the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary consider this proposal.

The discussion of truancy was reviewed and it was decided to bring this issue to the attention of the House and Senate Education Committees, with the recommendation that judges be asked to present testimony.

Staff was directed to prepare a bill draft on making the parent advocate authorization statewide with no sunset for introduction in the 2005 Session.

Other Issues

The Committee discussed other issues that had been identified during the interim and determined the type of comments or recommendations they wished to make.

Mental Health. Mental health services for children in foster care who have a medical card, *i.e.*, children and youth with severe emotional problems (SED), have been the focus of Committee concerns for the past several years. While there appear to have been some improvements in the system, roundtable discussions continue to focus on issues that relate to access to services, including availability, lack of professionals experienced with treating certain disorders, and failure to provide services in a timely manner.

Staff will prepare a list to be reviewed by the Committee at its next meeting at the beginning of the 2005 Session. The Committee has directed the members of The Consortium, Social and Rehabilitation Services staff, and representatives of providers in private practice to sit down and develop plans for allowing private practitioners to be affiliated with community mental health centers in order that clients in foster care and HealthWave may access services not otherwise easily accessible. The parties are to respond during the Legislative Session.

Mandated Reporting of Drug Affected Infants. This is an issue that arose during a roundtable discussion. The issue was identified in terms of the need to identify infants in order that services can be provided and the potential for abuse and neglect may be assessed. It was suggested consideration be given to mandating that such newborns and infants be reported to Social and Rehabilitation Services and procedures be developed to make such reports available to county and district attorneys. The Committee makes no recommendation on this proposal, but the members believe the issues involved should be further explored.

HealthWave. The Committee believes there may be cost savings in expanding health care to include additional pregnant women and increasing the procedures that are reimbursable under Medicaid and the Children's Health Insurance Program. In particular, the Committee is interested in the tradeoff that would result in including *in utero* procedures that do not benefit the mother, but may lead to expensive services for the newborn. Social and Rehabilitation Services has been asked to report additional information to the Committee by the beginning of the 2005 Session when the Committee can discuss any recommendations further.

There are concerns about the future of adequate funding for the Children's Health Insurance Program, including possible federal changes and the potential for needing additional state funding to continue to serve the current and future caseloads if additional federal money is not forthcoming. This issue will be followed by the Social Services subcommittee of the House Appropriations Committee.

The Committee recommends the state agency make a greater effort to discontinue the issuing of monthly paper cards for children and youth who enter HealthWave through the Medicaid program and replace the paper cards with the same type of plastic card issued for a 12-month period as those received by those who enter through Title XXI eligibility. It is the belief of the Committee that the Legislature intended HealthWave to be operated in a manner as close to private health insurance as is possible and that any identification with "welfare" that might deter parents from enrolling their children for health care should be discouraged. It is also the Committee's belief that HealthWave should be identified in the public's mind as a health insurance program for children. In order to retain

this image, renaming the adult clients enrolled in the program is desirable. The Committee further notes these recommendations were also made in 2003.

The Committee believes the recommendation of the Kansas Dental Association that dental providers be reimbursed through one entity for dental services provided to children and youth who are HealthWave participants has merit and recommends Social and Rehabilitation Services consider the actions necessary to implement the recommendation.

Foster Care Contracts. As it did in 2003, the Committee recommends that the same contractors who provide foster care services should provide adoption services for children in their care whose parental rights are severed in order that there be less disruption in such children's lives. Testimony from roundtable participants and the judges indicates the transfer of the case from one contractor to another may lead to delay in placing the child with an adoptive family or permanent guardian in addition to a replication of some procedures such as home studies.

The Committee also has concerns about the timing of the requests for proposals which effectively cut the Legislature out of an opportunity to have input into the process.

The Chairperson will send a letter to the leadership about the formation of a subcommittee to identify programs for children age 0 to 5 that will be studied during the 2005 interim.

January Meeting

The Committee will try to schedule a meeting for the opening day of the 2005 Legislature in order to review recommendations and to receive any requested reports.

Minutes

There was a motion and a second to approve the minutes of the November 4 and 5, 2004, meeting. The motion was adopted.

The meeting was adjourned.

Prepared by Ann McMorris
Edited by Emalene Correll

Approved by Committee on:

August 10, 2005
(date)