

Approved by the Judicial Council December 4, 2009

**REPORT OF JUDICIAL COUNCIL JUVENILE OFFENDER/  
CHILD IN NEED OF CARE ADVISORY COMMITTEE  
ON 2009 HOUSE BILL 2208**

In May, 2009, House Judiciary Committee Chair Lance Kinzer requested that the Judicial Council study and make a formal or informal recommendation on 2009 HB 2208. The bill requires that all child in need of care reports be forwarded to the County or District Attorney's office prior to any investigation by Social and Rehabilitative Services (SRS). In its June, 2009, meeting, the Judicial Council agreed to undertake the study and assigned the task to the Juvenile Offender / Child in Need of Care (JO/CINC) Advisory Committee.

**COMMITTEE MEMBERS**

**Honorable Jean F. Shepherd**, Chair, Lawrence. Judge Shepherd is a district judge, a member of the Judicial Council and handles family court matters in Douglas County.

**Wade H. Bowie, Jr.**, Topeka. Mr. Bowie is an assistant district attorney in Douglas County who works exclusively in the juvenile area.

**Charlene Brubaker**, Hays. Ms. Brubaker is an assistant county attorney in Ellis County who works exclusively in child in need of care and juvenile offender matters.

**Kathryn Carter**, Concordia. Ms. Carter is a practicing attorney and former district magistrate judge.

**Ann Henderson**, Olathe. Ms. Henderson is an assistant district attorney in Johnson County who works exclusively in the juvenile area.

**Honorable Timothy H. Henderson**, Wichita. Judge Henderson is a district judge in Sedgwick County.

**Honorable Jeffrey L. Jack**, Parsons. Judge Jack is a district judge in Labette County.

**Professor Richard E. Levy**, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

**Rachel Y. Marsh**, Halstead. Ms. Marsh is an attorney with Saint Francis Community Services, a contract provider for family preservation, reintegration, and adoption services with the Kansas Department of Social and Rehabilitation Services.

**Roberta Sue McKenna**, Topeka. Mrs. McKenna is Assistant Director of Children and Family Services of the Kansas Department of Social and Rehabilitation Services responsible for legal services including liaison with the judicial branch and coordination with the legislature.

**Lisa Mendoza**, Topeka. Ms. Mendoza is chief counsel for the Kansas Juvenile Justice Authority.

**Jayne Morris-Hardeman**, Manhattan. Ms. Morris-Hardeman serves as the Executive Director of Sunflower CASA Project, Inc., which provides core CASA, Child Exchange and Visitation Center, and Child Advocacy Center services to Riley, Clay, and Pottawatomie Counties.

**Senator Thomas C. (Tim) Owens**, Overland Park. Senator Owens is an attorney, a state senator and is the chair of the Senate Judiciary Committee.

**Representative Janice L. Pauls**, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

**Honorable Steven M. Roth**, Westmoreland. Judge Roth is an attorney and is a district magistrate judge in Pottawatomie County.

## **DISCUSSION**

The JO/CINC committee considered HB 2208 at its June, 2009 meeting. The committee reviewed minutes from the House Judiciary hearing on the bill as well as the written testimony provided. In addition, the committee reviewed a Child in Need of Care Intake Report for FY 2008 provided by SRS. The report indicated that in FY 2008, there were over 53,000 reports statewide alleging a child might be a child in need of care. After initial screening of those reports, 27,423 or 51% contained information which, if true, meant the child might be in need of care and were investigated by SRS. The report also indicated that the six largest counties account for over 50% of the reports.

Currently K.S.A. 38-2230 provides that when a person furnishes information to SRS about a potential child in need of care, SRS must make a preliminary inquiry to determine whether the interests of the child require further action. This preliminary inquiry typically includes an investigation of the circumstances surrounding the report, the home and environmental situation and the previous history of the child. If there are reasonable grounds to believe abuse or neglect exists, SRS must take immediate steps to protect the child. If SRS determines that it is not possible to provide services necessary to protect the interests of the child, it must recommend to the county or district attorney that a petition be filed. See K.S.A. 38-2230.

The proposed amendment in 2009 HB 2208 would require SRS to forward all reports of a potential child in need of care to the prosecutor's office prior to any of these investigative steps or a recommendation from SRS that a petition be filed. However, SRS currently screens each report it receives for specific criteria to determine whether the report indicates a child may be in need of care. If the report is not "screened in" during this initial phase, further investigation as described in K.S.A. 38-2230 is not completed. The committee expects that this screening would still be applicable if the proposed legislation is implemented. Therefore, the committee anticipates that the reports forwarded to the prosecutor's office would exclude those that are "screened out" by SRS initially.

The committee discussed the positives and negatives of having all of these reports sent to prosecutors prior to SRS investigation. On the positive side, it was suggested that sending all the reports to the prosecutors could increase the possibility that they could act on any potential criminal aspects of the reports. For example, if a report comes in to SRS that a child is in a household with drugs sitting out on the table the usual response is that SRS investigates the

report. If it is determined that there are reasonable grounds to believe that the child is in need of care and it is not possible for SRS to provide necessary services to protect the interests of the child, then SRS sends the report on to the prosecutor for action. At this point, although the prosecutor can still act on the child in need of care (CINC) issues, it is often too late for the prosecutor to act on the potential criminal drug activity alleged in the initial report. If prosecutors were to receive all of the screened in reports from SRS, they could take immediate action and potentially file a criminal case.

Another positive reason for having the reports automatically forwarded to the prosecutors is that two reviews are often beneficial. Right now SRS has the burden of reviewing all of the reports received; it is possible that SRS could miss some instances where action is needed simply because of the number of reports it reviews on a regular basis. A second analysis of the reports by an independent entity could decrease the chance that a valid report could be missed.

However, the bill presents problems. There are a large number of CINC intakes that are no more than vendetta reports, those in which family members are upset with one another. To expect a prosecutor's office to work through those reports when SRS could easily determine whether they are valid does not seem to make much sense. Furthermore, if the prosecutor does receive all of the reports, he then would have to review each one to avoid missing the one or two reports that actually do need action. In some counties this review could be a full-time job.

The pure volume of these reports raises another potential problem. Currently, prosecutor's offices are often overloaded. SRS has expressed a concern that there are already times when it is difficult to get the necessary responses back on recommendations that have been forwarded to prosecutors. Having all reports sent to the prosecutor's office as proposed by this

legislation could exacerbate this problem, and requests that a petition be filed could end up getting lost in all of the other paper work. In that case, it may be that personal delivery of the petition requests would be the best way to ensure a timely response to those requests, and that will take time that does not exist with current SRS staffing levels.

More generally, the committee agreed that at the very least the bill should include some language that limits the types of reports that are forwarded to the prosecutor's office. Rather than have all 53,000 reports (or the 27,423 screened in reports) sent, SRS could develop criteria that would make the number more manageable. The committee suggested that it might be beneficial to poll prosecutors about their standards for evaluating each report they receive. Their responses could help with developing the criteria to use when deciding which reports should be forwarded, and their responses could also lead to more reporting consistency between the different agencies.

## **CONCLUSION**

As the discussion concluded, the committee members recognized that they had not come to a consensus, positive or negative, regarding the proposed amendment in 2009 HB 2208. It is possible that passing the amendment in the bill could result in action being taken on a case that would not have otherwise occurred and thus be beneficial to a child in need of care. On the other hand, the amendment in the bill could result in prosecutors' offices being inundated with reports that may or may not be worth the time and staff it takes to review them. Therefore, the committee concluded that it would be unable to make a positive or negative recommendation on the bill.