

**REPORT OF THE JUDICIAL COUNCIL JUVENILE OFFENDER / CHILD IN NEED OF CARE
ADVISORY COMMITTEE ON 2015 S.B. 159 ENACTING THE SAFE FAMILIES ACT**

DECEMBER 4, 2015

In June 2015, Senator Jeff King asked the Judicial Council to study 2015 S.B. 159, which would enact the Safe Families Act. Under the bill, a parent or legal guardian could execute a power of attorney delegating the care and custody of a child to another person for up to one year. The Judicial Council accepted the study and assigned it to the Juvenile Offender/Child in Need of Care (JO/CINC) Advisory Committee.

COMMITTEE MEMBERSHIP

The members of the Judicial Council JO/CINC Advisory Committee are:

Honorable Maritza Segarra, Chair, Junction City; District Court Judge in the 8th Judicial District and member of the Judicial Council.

Kathy L. Armstrong, Shawnee Mission; Assistant Director for Legal Services, Kansas Department for Children and Families.

Marc A. Bennett, Wichita; Sedgwick County District Attorney.

Hon. Dan Brooks, Wichita; District Court Judge in the 18th Judicial District.

Charlene Brubaker, Hays; Assistant Ellis County Attorney.

Kathryn Carter, Topeka; Director of the Racial Profiling /Bias-Based Policing Unit of the Kansas Attorney General's Office.

Jeff Cowger, Topeka; Deputy General Counsel with the Kansas Department of Corrections - Juvenile Services.

Donald W. Hymer, Olathe; Assistant District Attorney in Johnson County.

Hon. Jeffrey L. Jack, Parsons; District Court Judge in the 11th Judicial District.

Professor Richard E. Levy, Lawrence; J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law.

Senator Julia Lynn, Olathe; State Senator from the 9th District and Assistant Majority Leader.

Rachel Y. Marsh, Halstead; attorney with Saint Francis Community Services.

Representative Janice L. Pauls, Hutchinson; attorney and State Representative from the 102nd District.

Dawn Rouse, Topeka; Court Improvement liaison, non-voting member.

BACKGROUND

As originally introduced, S.B. 159 contained a provision regarding when a law enforcement officer is required to take a child into custody. The provision was not part of Senator King's study request, and the JO/CINC Committee did not review it. The bill was then amended by the Senate Committee of the Whole to include the Safe Families Act. The language of the Safe Families Act was originally introduced in S.B. 148, a bill that the Senate Judiciary Committee had recommended favorably for passage.

Senate Bill 159, as amended to include the Safe Families Act, passed the Senate. The bill was then heard in House Judiciary, but that Committee took no further action on the bill. In his study request letter, Senator King indicated that a legislative conference committee believed the Safe Families Act would be a good topic for a Judicial Council study.

APPROACH

The JO/CINC Committee held four meetings and one conference call during the late summer and fall of 2015 to conduct the study of S.B. 159. The Committee considered a number of background materials, including S.B. 159 (attached at page 5); minutes and testimony from legislative hearings on S.B. 159 and S.B. 148; and background information on the Safe Families program, including enabling legislation from other states.

DISCUSSION

According to legislative testimony submitted during hearings on the bill, the purpose of S.B. 159 is to create a legal framework to implement the Safe Families for Children program (Safe Families) in Kansas -- hence its title, the "Safe Families Act." The Safe Families program, which began in Illinois in 2003, is a volunteer organization that trains host families to provide temporary respite care for children when their parents are in crisis. Host families are screened and monitored and provide temporary care for children without compensation. Safe Families and the host families they recruit are not part of the foster care system. By its own report, Safe Families is currently operating in 28 states.

In Kansas, Lifeline Children's Services, a child placement agency in Topeka, is already working with Safe Families to provide respite care for struggling families. Lifeline conducts screenings, background checks and training for host families, which are recruited mainly from churches that partner with Safe Families. Placements under this program are currently limited to 90 days under K.A.R. 28-4-801.

After consulting with Senator King about his study request, the Committee understood that its task was not to make a policy recommendation as to whether private groups like Safe Families should be allowed to operate independently of the foster care system -- that is a decision the legislature will make on its own. Rather, the Committee was being asked for its technical expertise on whether S.B. 159 works and how it will mesh with existing Kansas law.

Although the purpose of S.B. 159 is to implement the Safe Families program, its provisions are much broader than that. Under the bill, a parent or legal guardian would be allowed to execute a power of attorney delegating the care and custody of a child to another person for up to one year. Parents would retain full parental rights and could revoke the power of attorney at any time. Once a parent revoked the power of attorney, the bill would require the child to be returned as soon as reasonably possible. Execution of a power of attorney delegating parental authority would not constitute abandonment, abuse or neglect unless the parent failed to take custody of the child or execute a new power of attorney once the one-year period had elapsed.

While recognizing the value of providing respite care to families, Committee members expressed a number of concerns about the bill's broad provisions and possible unintended consequences. Although the bill purports to enable the Safe Families program in Kansas, the pilot project currently operating in Topeka has more safeguards than the bill contemplates.

Some of the Committee's concerns included the following:

- The bill does not make clear whether a power of attorney would trump any pending investigation or court order. The Committee strongly agreed that parents should not be able to execute a power of attorney placing their child with a third party to avoid a DCF investigation or a court order, whether in a CINC or domestic case.
- The bill does not make clear that a non-delegating parent retains any parental rights he or she already has. The Committee was concerned that the bill might enable one parent to use a power of attorney to give the child to a third person and effectively hide the child from the other parent.
- The bill would allow placement of a child with a complete stranger, with no agency or court oversight. This could make it easier to "rehome" children, making them more vulnerable to human trafficking.

The Committee reviewed statutes from Oklahoma, Oregon and Wisconsin that have enabled the Safe Families program to operate in those states. The Committee was especially interested in the Wisconsin statute, W.S.A. 48.979, because it contains a number of safeguards that S.B. 159 does not. For example, the Wisconsin statute makes clear that a power of attorney does not prevent or supersede an investigation or court order.

The Committee also reviewed 2015 H.B. 2244 as amended by the House Committee on Health and Human Services. This bill contains the same Safe Families Act language as S.B. 159, but includes the following amendments: changing the title to the Supporting Families Act; requiring background checks on non-relative attorneys-in-fact; deleting the power of attorney form from the statute; and making the attorney-in-fact a mandatory reporter of child abuse and neglect. The Committee agreed that some of these amendments were helpful but they did not completely cure the deficiencies in the underlying bill.

The Committee also noted that, under the common law, parents in Kansas can and already do execute powers of attorney delegating parental authority, though there is no specific statute authorizing them. For example, parents commonly execute a power of attorney giving parental authority to a temporary caregiver when they are going on vacation. The Committee thought it was important that any new statute authorizing a parental power of attorney not unduly restrict a parent's existing right to use a power of attorney.

Ultimately, the Committee agreed that a completely new approach was needed. The Committee crafted a new bill that would enable programs like the current Safe Families pilot project in Topeka to operate so long as they contained the same safeguards as that program. The new bill would also contain a number of additional safeguards not present in S.B. 159. Because the bill would only address powers of attorney used to place a child with a host family through a Safe Families or similar program, it would have no effect on other delegations of parental authority via a power of attorney.

The new bill incorporates the following concepts:

- A licensed child placement agency may establish a program in which it coordinates with private organizations to provide temporary care for children.
- Any such program must involve screening and background checks of potential host families.
- A parent may use a power of attorney to place a child with a host family that is participating in such a program.
- Any placement of a child under such a program is voluntary and not to be considered an out-of-home placement by the state.
- Any placement of a child under such a program does not supersede a CINC, domestic or other court order, nor does it prevent any investigation of suspected abuse or neglect.
- The execution of a power of attorney placing a child with a host family under such a program does not constitute evidence of abandonment, abuse or neglect.
- Any placement of a child under such a program by one parent does not affect the rights of the other parent.
- Host families are not mandatory reporters of abuse and neglect.
- The Judicial Council will be responsible for drafting an appropriate power of attorney form for use by such programs.

RECOMMENDATION

If the legislature chooses to enable programs like Safe Families to operate in Kansas, the Committee recommends that it use the proposed legislation attached at page 11 to accomplish that goal rather than S.B. 159, which is too broad and could have too many unintended consequences.

SENATE BILL No. 159

By Committee on Judiciary

2-5

1 AN ACT concerning ~~the revised Kansas code for care of children;~~
2 *{enacting the safe families act;}* relating to when law enforcement
3 officers shall take a child into custody; amending K.S.A. 2014 Supp.
4 38-2231 and repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 *{New Section 1. Sections 1 through 6, and amendments thereto,*
8 *shall be known and may be cited as the safe families act.*

9 *New Sec. 2. As used in the safe families act:*

10 (a) *"Attorney in fact" shall have the same meaning as defined in*
11 *K.S.A. 58-651, and amendments thereto.*

12 (b) *"Serving parent" means a parent who is a member of the*
13 *reserves of the army, navy, air force, marine corps or coast guard of the*
14 *United States or the commissioned corps of the national oceanic and*
15 *atmospheric administration or the public health service of the United*
16 *States department of health and human services detailed by proper*
17 *authority for duty with the army or navy of the United States, or who is*
18 *required to enter or serve in the active military service of the United*
19 *States under a call or order of the president of the United States or to*
20 *serve on state active duty.*

21 *New Sec. 3. (a) A parent or legal custodian of a child may by a*
22 *properly executed power of attorney provided in section 4, and*
23 *amendments thereto, delegate to another person known as the attorney*
24 *in fact, for a period not to exceed one year, except as provided in*
25 *subsection (f), any of the powers regarding the care and custody of the*
26 *child, except the power to consent to marriage or adoption of the child,*
27 *the performance or inducement of an abortion on or for the child, or the*
28 *termination of parental rights to the child. A delegation of powers under*
29 *this section shall not deprive the parent or legal custodian of any*
30 *parental or legal authority regarding the care and custody of the child.*

31 (b) *The parent or legal custodian of the child shall have the*
32 *authority to revoke or withdraw the power of attorney authorized by*
33 *subsection (a) at any time. Except as provided in subsection (f), if the*
34 *delegation of authority lasts longer than one year, the parent or legal*

1 *custodian of the child shall execute a new power of attorney for each*
2 *additional year that the delegation exists. If a parent withdraws or*
3 *revokes the power of attorney the child shall be returned to the custody*
4 *of the parents as soon as reasonably possible.*

5 *(c) Unless the authority is revoked or withdrawn by the parent the*
6 *attorney in fact shall exercise parental or legal authority on a*
7 *continuous basis without compensation for the duration of the power of*
8 *attorney authorized by subsection (a) and shall not be subject to any*
9 *laws or rules or regulations dealing with the licensing or regulation of*
10 *foster care homes.*

11 *(d) Except as otherwise provided by law, the execution of a power of*
12 *attorney by a parent or legal custodian, as authorized in subsection (a),*
13 *shall not constitute abandonment, abuse or neglect as defined in K.S.A.*
14 *38-2202, and amendments thereto, unless the parent or legal custodian*
15 *fails to take custody of the child or execute a new power of attorney after*
16 *the one-year time limit has elapsed.*

17 *(e) Under a delegation of powers as authorized by subsection (a),*
18 *the child or children subject to the power of attorney shall not be*
19 *considered as placed in foster care and the parties shall not be subject to*
20 *any of the requirements or licensing laws, rules or regulations for foster*
21 *care or other regulations relating to community care for children.*

22 *(f) A serving parent may delegate the power designated in*
23 *subsection (a) for a period longer than one year if on active duty service.*
24 *The term of delegation, however, may not exceed the term of active duty*
25 *service plus 30 days.*

26 *New Sec. 4. (a) The following statutory form of power of attorney to*
27 *delegate parental or legal authority as authorized by section 3, and*
28 *amendments thereto, is legally sufficient:*

29 *Statutory Form for Power of Attorney to Delegate Parental or Legal*
30 *Custodian Powers*

31 *1. "I certify that I am the parent or legal custodian of:*

32 _____
33 *(Full name of minor child) (Date of birth)*

34 _____
35 *(Full name of minor child) (Date of birth)*

36 _____
37 *(Full name of minor child) (Date of birth)"*

38 *2. "I designate _____*
39 *(Full name of Attorney in fact),*

40 _____
41 *(Street address, city, state and zip code of Attorney in fact)*

42 _____
43 *(Home phone of Attorney in fact) (Work phone of Attorney in fact)*

1 as the attorney in fact of each minor child named above."

2 3. "I delegate to the attorney in fact all of my power and authority
3 regarding the care, custody and property of each minor child named
4 above, including, but not limited to, the right to enroll the child in
5 school, inspect and obtain copies of education records and other records
6 concerning the child, the right to attend school activities and other
7 functions concerning the child, and the right to give or withhold any
8 consent or waiver with respect to school activities, medical and dental
9 treatment, and any other activity, function or treatment that may
10 concern the child. This delegation shall not include the power or
11 authority to consent to marriage or adoption of the child, the
12 performance or inducement of an abortion on or for the child, or the
13 termination of parental rights to the child." or

14 4. "I delegate to the attorney in fact the following specific powers
15 and responsibilities (write in): _____

16 (In the event paragraph 4 is completed paragraph 3 does not apply).

17 This delegation shall not include the power or authority to consent to
18 marriage or adoption of the child, the performance or inducement of an
19 abortion on or for the child, or the termination of parental rights to the
20 child."

21 5. "This power of attorney is effective for a period not to exceed one
22 year, beginning _____, 20__, and ending _____,
23 20__. I reserve the right to revoke this authority at any time."

24 6. "I am a serving parent as defined in the safe families act. My
25 active duty is estimated to be completed on _____. I
26 acknowledge that in no event may this delegation of power last more
27 than one year or the term on my active duty plus 30 days, whichever is
28 longer.

29 By: _____
30 (Parent/Legal Custodian signature)"

31 7. "I hereby accept my designation as attorney in fact for

32 _____
33 (Minor child(ren)) as specified in this power of attorney.

34 _____
35 (Attorney in fact signature)

36 State of _____

37 County of _____

38 **ACKNOWLEDGMENT**

39 Before me, the undersigned, a Notary Public, in and for
40 _____ County and this State on this ____ day of
41 _____, 20__, personally appeared _____
42 (Name of Parent/Legal Custodian) and _____
43 (Name of Attorney in fact), to me known to be the identical persons who

1 *executed this instrument and acknowledged to me that each executed the*
2 *same of such person's free and voluntary act and deed for the uses and*
3 *purposes set forth in the instrument.*

4 *Witness my hand and official seal the day and year above written.*

5 _____
6 *(Signature of notarial officer) (Seal, if any)*

7 _____
8 *(Title and Rank)*

9 *My commission expires: _____ "*

10 *(b) The power of attorney is legally sufficient under the safe*
11 *families act, if the wording of the form complies substantially with*
12 *subsection (a), the form is properly completed and the signatures of the*
13 *parties are acknowledged.*

14 *New Sec. 5. During any child protective investigation by the Kansas*
15 *department for children and families that does not result in an out-of-*
16 *home placement resulting from abuse of a child, a child protective*
17 *investigator shall provide information to the parent or custodians who*
18 *are under financial distress, unemployed, homeless or experiencing*
19 *other family crises about community service programs that provide*
20 *respite care, voluntary guardianship, other support services for families*
21 *in crisis, including churches and other organizations that work with safe*
22 *families for children, and the safe families act.*

23 *New Sec. 6. Any attorney in fact delegated authority under the safe*
24 *families act by a parent or legal custodian is not subject to the*
25 *requirements of any other child care facility licensing statutes, rules or*
26 *regulations or foster care licensing laws or rules or regulations, and will*
27 *not constitute an out-of-home child placement under the child in need of*
28 *care code, K.S.A. 38-2201 et seq., and amendments thereto.*

29 *New Sec. 7. The Kansas department for children and families is*
30 *hereby authorized to work with families who are in financial distress,*
31 *unemployed, homeless or experiencing other family crises by detailing*
32 *community resources available to such families in the community,*
33 *including, but not limited to, respite care, voluntary guardianship under*
34 *the safe families act and information regarding churches and other*
35 *organizations that work as host families for safe families for children in*
36 *the state.}*

37 ~~Section 1: {Sec. 8.}~~ K.S.A. 2014 Supp. 38-2231 is hereby amended to
38 read as follows: 38-2231. (a) A law enforcement officer or court services
39 officer shall take a child under 18 years of age into custody when:

40 (1) The law enforcement officer or court services officer has a court
41 order commanding that the child be taken into custody as a child in need
42 of care; or

43 (2) the law enforcement officer or court services officer has probable

1 cause to believe that a court order commanding that the child be taken into
2 custody as a child in need of care has been issued in this state or in another
3 jurisdiction.

4 (b) A law enforcement officer shall take a child under 18 years of age
5 into custody when the officer:

6 (1) Reasonably believes the child will be harmed if not immediately
7 removed from the place or residence where the child has been found;

8 (2) has probable cause to believe that the child is a missing person
9 and a verified missing person entry for the child can be found in the
10 national crime information center missing person system; ~~or~~

11 (3) reasonably believes the child is a victim of human trafficking,
12 aggravated human trafficking or commercial sexual exploitation of a
13 child; *or*

14 (4) ~~reasonably believes that there is~~ **has probable cause to believe**
15 **that a violation of article 57 of chapter 21 of the Kansas Statutes**
16 **Annotated, and amendments thereto, is occurring in the child's residence**
17 **that and reasonably believes such violation threatens the safety of the**
18 **child.**

19 (c) (1) If a person provides shelter to a child whom the person knows
20 is a runaway, such person shall promptly report the child's location either
21 to a law enforcement agency or to the child's parent or other custodian.

22 (2) If a person reports a runaway's location to a law enforcement
23 agency pursuant to this section and a law enforcement officer of the
24 agency has reasonable grounds to believe that it is in the child's best
25 interests, the child may be allowed to remain in the place where shelter is
26 being provided, subject to subsection (b), in the absence of a court order to
27 the contrary. If the child is allowed to so remain, the law enforcement
28 agency shall promptly notify the secretary of the child's location and
29 circumstances.

30 (d) Except as provided in subsections (a) and (b), a law enforcement
31 officer may temporarily detain and assume temporary custody of any child
32 subject to compulsory school attendance, pursuant to K.S.A. 72-1111, and
33 amendments thereto, during the hours school is actually in session and
34 shall deliver the child pursuant to ~~subsection (g) of~~ K.S.A. 2014 Supp. 38-
35 2232(g), and amendments thereto.

36 ~~Sec. 2: {9,}~~ K.S.A. 2014 Supp. 38-2231 is hereby repealed.

37 ~~Sec. 3: {10,}~~ This act shall take effect and be in force from and after
38 its publication in the statute book.

Section 1. Sections 1 through 3, and amendments thereto, shall be known and may be cited as the host families act.

Sec. 2. As used in the host families act:

(a) "Child placement agency" means a business or service conducted, maintained or operated by a person engaged in finding homes for children by placing or arranging for the placement of such children for adoption or foster care and licensed by the state of Kansas pursuant to K.S.A. 2015 Supp. 65-501, and amendments thereto.

(b) "Host family" means an individual or family who provides temporary care under this act.

(c) "Parent," when used in relation to a child or children, includes a guardian and every person who is by law liable to maintain, care for or support the child.

Sec. 3. (a) A child placement agency may establish a program in which it coordinates with private organizations to provide temporary care of children by placing a child with a host family.

(b)(1) A program established pursuant to subsection (a) shall include screening and background checks for potential host families. [Note: This will be similar to the check conducted on prospective foster parents – the Revisor will work with DCF staff to get the language right.]

(2) A host family shall not receive payment other than reimbursement for actual expenses of providing temporary care for the child.

(c) Any placement of a child into a program established pursuant to subsection (a):

(1) Shall be voluntary and shall not be considered an out-of-home placement by the state;

(2) shall not supersede any order under the revised Kansas code for care of children or any other court order; and

(3) shall not preclude any investigation of suspected abuse or neglect.

(d) (1) A parent may place a child into a program established pursuant to subsection (a) by executing a power of attorney delegating to a host family any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

(2) A power of attorney executed pursuant to this subsection shall not exceed one year in duration, except that such power of attorney may be renewed for one additional year.

(3) A delegation of powers pursuant to this subsection shall not deprive any parent of any parental or legal authority regarding the care and custody of the child.

(4) A parent executing a power of attorney pursuant to this subsection shall have the authority to revoke or withdraw the power of attorney at any time. If a parent withdraws or revokes the power of attorney, the child shall be returned to the custody of the parent as soon as reasonably possible.

(5) The execution of a power of attorney by a parent pursuant to this subsection shall not be evidence of abandonment, abuse or neglect as defined in K.S.A. 2015 Supp. 38-2202, and amendments thereto.

(6) A power of attorney executed pursuant to this subsection shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council. The judicial council shall develop a form for use under this subsection.