

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 435**

As Agreed to April 30, 2008

Brief*

SB 435 would amend the Revised Kansas Code for Care of Children, the Revised Kansas Juvenile Justice Code, and the law that requires the Kansas Sentencing Commission (KSC) to annually produce the Juvenile Correctional Facility population projections. The bill would cure a conflict in the definitions section of the Revised Kansas Juvenile Justice Code. The bill also would:

- Clarify that a custodian may give consent for medical treatment when a child's parents refuse to give consent, or are not available to give consent, and surgical or medical care is determined by a physician to be necessary for the welfare of the child;
- Authorize service of process upon a confined parent to be made to the confined parent, in care of the person in charge of the institution in which the parent is confined or that person's designee;
- Clarify that in evidentiary hearings for termination of parental rights, the case may proceed with a proffer of evidence from a party who is not present for the hearing, unless that party is represented by counsel and has instructed the counsel to object to the proceeding;

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- Clarify that persons entitled to notice of hearing in a Child in Need of Care proceeding have the right to be heard;
- Clarify the law so that a court may not enter an order approving the removal of a child from the home of a parent unless the Court makes certain findings;
- Clarify the start time for scheduling permanency hearings;
- Clarify that relinquishment from an incarcerated parent or a parent living out of state may be accomplished in writing so long as it is acknowledged by either a judge or a notary;
- Add a definition of “infectious disease” that broadens permitted testing to all infectious disease rather than limiting it to HIV and Hepatitis B;
- Clarify that the definition of Commissioner of Juvenile Justice also would apply to the Commissioner’s designee;
- Add language to the statute on permanent custodianship that would require the consent of the parent to be in writing and acknowledged before a judge or officer authorized by law to take acknowledgments. If the acknowledgment is before the judge, the judge would be required to advise the consenting parent of the consequences of the consenting to the permanent custodianship;
- Add language to authorize a court to consider the result of action or inaction attributable to the parent when determining the unfitness of a parent in order to terminate the parental rights of the parent; and
- Requires the KSC to annually produce the Juvenile Correctional Facility population projections, subject to appropriations.

Conference Committee Action

The Conference Committee adopted the House amendments to the bill with the following changes:

- To add language to the statute on permanent custodianship that would require the consent of the parent to be in writing and acknowledged before a judge or officer authorized by law to take acknowledgments. If the acknowledgment is before the judge, the judge would be required to advise the consenting parent of the consequences of the consenting to the permanent custodianship;
- To add language to authorize a court to consider the result of action or inaction attributable to the parent when determining the unfitness of a parent in order to terminate the parental rights of the parent;
- To require the KSC to annually produce the Juvenile Correctional Facility population projections, subject to appropriations; and
- To cure a conflict in the definitions section of the Revised Kansas Juvenile Justice Code.

Background

In 2006, the Legislature passed the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code, both effective January 1, 2007. The bill was requested by the Kansas Judicial Council and contains technical and clarifying amendments to the revisions, and amendments required to remain in compliance with federal acts or regulations. The proponent of the bill in the Senate Committee was Judge Tim Henderson, District Judge of the 18th Judicial

District (Sedgwick County), on behalf of the Kansas Judicial Council. There was no testimony in opposition to the bill.

The Senate Committee on Judiciary made technical and clarifying amendments to the bill as requested by Randy Hearrell, Executive Director of the Kansas Judicial Council. The bill passed as amended on a vote of 40 yeas and 0 nays in the Senate Committee of the Whole.

The proponent of the bill in the House Committee was Judge Jean Shepherd, 7th Judicial District (Douglas) on behalf of the Kansas Judicial Council. There was no testimony in opposition to the bill.

The House Committee amended the bill to do the following:

- Clarify the definition of Commissioner; and
- Strike the Senate Committee on Judiciary amendment which would have authorized a court to consider extended out-of-home placement as a factor when determining unfitness of a parent in a termination hearing.

The bill passed as amended on a vote of 123 yeas and 0 nays in the House Committee of the Whole. The Senate nonconcurrent with the amendments made by the House and requested a Conference Committee. The request for a conference was acceded to by the House.

The Conference Committee was provided correspondence from Judge Jeff Jack, Eighth Judicial District (Parsons, Pittsburg, Girard, and Columbus) requesting an additional amendment which would add language to the bill regarding permanent custodianship which would mirror the provision in the bill on relinquishment. The added language would require the consent of the parent to be in writing and acknowledged before a judge or officer authorized by law to take acknowledgments. If the acknowledgment is before the judge, the judge would be required to advise the consenting parent of

the consequences of the consent to the permanent custodianship.

Additionally, the Conference Committee determined that the purpose of the Senate Committee amendment, which was stricken by the House and which would have authorized a court to consider extended out-of-home placement as a factor when determining unfitness of a parent in a termination hearing, would be accomplished by adding language which would authorize a court to consider the result of the action or inaction attributable to the parent when determining the unfitness of a parent in order to terminate the parental rights of the parent.

The fiscal note from the Division of the Budget states the bill, as introduced, would have no fiscal effect.