

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SUBSTITUTE FOR SENATE BILL NO. 232**

As Recommend by House Committee on
Judiciary

Brief*

House Sub. for Sub. for SB 232 would amend law in the Kansas Code for Care of Children (Code) governing orders granting custody for adoption when parental rights have been terminated. The bill would also amend law governing jurisdiction of proceedings under the Code to specify if orders granting custody for adoption involve an Indian child, the federal Indian Child Welfare Act (ICWA) would apply instead of the Code.

Orders Granting Custody to Proposed Adoptive Parents

In an order granting custody to proposed adoptive parents, the bill would require the court to be guided by the best interests of the child. The bill would also specify in this type of order, any prior custody order would cease upon the granting of custody of the child to the proposed adoptive parents.

Orders Granting Custody to Secretary or Corporation

In an order granting custody to the Secretary for Children and Families (Secretary) or to a corporation organized to care for and surrender children for adoption as specified by the Code, the bill would specify that the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Secretary or corporation must be guided by the best interests of the child when making adoption decisions.

Adoption Selection Preference

The bill would further specify when a child is placed in the custody of the Secretary for the purposes of adoption when parental rights have been terminated or relinquished, the Secretary would be required to give preference, subject to the best interests of the child, in the following manner:

- If a child has been in the custody of the Secretary for less than one cumulative year:
 - First to a relative;
 - Second to a person with whom the child has close and healthy attachments.
- If a child has been in the custody of the Secretary for one cumulative year or more:
 - To a placement that maintains the child's close and healthy attachments.

The bill would require the Secretary to consider a foster parent as a prospective adoptive parent when:

- The child has lived more than half of the child's lifetime with the foster parent;
- The child has lived more than two years with the foster parent; or
- The Secretary otherwise determines it is in the best interests of the child.

The bill would allow a foster parent that is not selected by the Secretary for the adoptive placement, but who meets the criteria above, to request direct placement of the child by the court and could appeal such decision to the Kansas Court of Appeals.

Adoption Selection Policies, Training, and Data Collection

To implement the provisions of the bill, the Secretary would be required to:

- Develop and enforce adoption selection policies that comply with the bill and ensure caregiver and sibling attachments are appropriately considered;
- Review and update policies to reduce time to adoption permanency;
- Apply adoption selection policies consistently;
- Develop and provide training for contractors and employees;
- Collect data regarding best interest staffing conducted pursuant to the statute, including, but not limited to, data on the number of:
 - Prospective adoptive parents who request the Secretary to reconsider an initial adoptive placement decision;
 - Initial adoptive placement decisions the Secretary overturns after reconsidering the initial adoptive placement decision; and
 - Prospective adoptive parents who request the court to review the Secretary's adoptive placement decision.

Annual Report to the Legislature

The bill would require the Secretary to prepare a report on compliance with the provisions above, to be submitted to the Legislature on or before the first day of the 2024 Legislative Session and each legislative session thereafter.

Retroactivity and Effective Date

Amendments made by the bill would be required to be construed and applied retroactively to all proceedings pending before a court on the effective date of the bill.

The bill would be effective upon publication in the *Kansas Register*.

Background

The House Committee on Judiciary recommended a substitute bill containing the provisions of HB 2299, as further amended by the House Committee on Child Welfare and Foster Care, pertaining to orders granting custody for adoption after parental rights have been terminated.

Sub. for SB 232, as passed by the Senate on February 23, 2023, would have enacted the Child Advocate Act, establishing the Office of the Child Advocate as an independent state agency.

[*Note:* The House Committee on Judiciary did not retain these provisions in its substitute bill. (On April 4, 2023, a Conference Committee on Senate Sub. for HB 2070 was appointed. As it entered conference, the bill contained similar provisions concerning the Office of the Child Advocate).]

HB 2299 – Orders Granting Custody For Adoption

HB 2299 was introduced by the House Committee on Child Welfare and Foster Care at the request of Representative Humphries.

House Committee on Child Welfare and Foster Care

In the House Committee hearing on February 8, 2023, representatives of the Children’s Alliance of Kansas and FosterAdopt Connect testified as **proponents** of the bill. The

proponents generally stated the issue of considering attachment to caregivers in cases of adoption from the foster care system has developed over the last few years and believe this bill effectively balances the various considerations related to the topic. Written-only proponent testimony was provided by the Child Advocate and a representative of KVC Kansas.

No other testimony was provided.

The House Committee adopted amendments to:

- Change the bill's effective date;
- Make the bill's provisions retroactive to pending proceedings on the effective date of the bill;
- Further clarify how the Secretary shall give preference to adoptive placements;
- Further clarify what data the Secretary must collect under the bill's provisions; and
- Clarify ICWA would apply in orders granting custody involving an Indian child.

On February 23, 2023, the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations (HAPP). On March 1, 2023, the bill was withdrawn from HAPP and rereferred to the House Committee on Child Welfare and Foster Care.

On March 15, 2023, the House Committee further amended the bill to clarify language concerning the right of a foster parent to request direct placement of a child when certain criteria are met.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2299, as introduced, the Office of Judicial

Administration indicates that enactment of the bill would have a fiscal effect on expenditures of the Judicial Branch. However, until the courts have had an opportunity to operate under the bill's provisions, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be given. Enactment of the bill would not have a fiscal effect on revenues to the Judicial Branch but could result in the collection of docket fees in those cases filed under the provisions of the bill, which would be deposited in the State General Fund.

The Department for Children and Families indicates enactment of the bill would have a negligible fiscal effect on the agency. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Revised Kansas Code for Care of Children; Indian Child Welfare Act; jurisdiction; child in need of care; custody; adoption; attachment; foster parent; best interest staffing; Secretary for Children and Families