



2020 Special Committee on Foster Care Oversight

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Quality of Legal Representation in Foster Care

Presented by:

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Testimony of:

Laura Howard, Secretary

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Chair Concannon, Vice Chair Baumgardner, and Members of the Committee:

Thank you for the opportunity to provide information on the topic of legal representation in foster care.

The advice, counsel and advocacy of qualified, experienced attorneys knowledgeable about the child welfare system is critical to ensuring the best outcomes for children and families in Kansas. Once a child is placed in DCF custody, courts rely on the parent's attorney's to ensure the child's parent's rights are protected and that they are receiving adequate services from their foster care case managers. The court also relies on the child's guardian ad litem, the attorney appointed to advocate for the child's needs, to argue for adequate visits between the child and the parent, timely enrollment in a new school district, and continued access to medications and mental health services.

There are several provisions set out in state statute in the Child in Need of Care Code (CINC) related to legal representation for children and families involved in child welfare proceedings. Before I speak to those provisions, I would note that Kansas' CINC system is set up in such a way that DCF is usually not a party to CINC cases and plays only a minor role in the legal proceedings. Additionally, the court, not DCF, is the entity responsible for appointing and funding legal representation for parties involved in CINC cases.

A Child in Need of Care case commences when a district or county attorney files a CINC petition. DCF must recommend that the county or district Attorney file a CINC petition if it determines it is not possible to provide services to protect the child's safety but for the filing of a petition. Likewise, a county or district attorney may decide to file a CINC petition independent of DCF. If the child is found to be in need of care the court will hold hearings and enter orders concerning custody and a case plan.

K.S.A. 38-2205 lays out parties' right to counsel in CINC cases. All children who are the subject of a CINC petition are appointed an attorney – known as a guardian ad litem - to represent their best interests. K.S.A. 38-2205 (a) states that upon the filing of a CINC petition the court “shall appoint an attorney to serve as guardian ad litem for a child who is the subject of proceedings under this code”. The guardian ad litem's role is to make an independent investigation of the facts of the case and represent the best interests of the child before the court.

Parents of children alleged or adjudicated to be in need of care may be represented by an attorney. K.S.A. 38-2205 (b) requires the court provide parents and custodians of an alleged or adjudicated child in need of care with a pamphlet advising the parents of their rights in connection with all proceedings. Statute also requires the court appoint an attorney for parents who at any time during the proceedings become financially unable to employ an attorney so long as that parent has not missed or refused to attend a hearing. Additionally, the court shall appoint an attorney for any parent who is a minor, mentally ill, or a disabled person.

A consideration for legal representation for “interested parties” is also included in statute. An interested party is defined in statute as someone who the child has resided with at any time, someone who is within the fourth degree of relationship to the child or someone whom the child has close emotional ties with. Examples could include foster parents or family friends interested in supporting the child. Individuals may petition the court to become interested parties in a case or the court may make any person an interested party if it determines it is in the best interest of the child to do so. Grandparents are automatically given interested party status as long as the court does not consider doing so is against the best interest of the child.

K.S.A. 38-2205 (c) requires the court also distribute a pamphlet advising interested parties of their rights in the proceedings. Interested parties may be represented by an attorney. The court is not required to provide an attorney to interested parties but may do so if the interested party becomes financially unable to employ an attorney and has not missed or refused to attend a hearing.

Fees for court appointed attorneys in CINC proceedings are paid for by the county in which the proceedings are taking place. No DCF funds are expended on court appointed attorneys.

Research shows that quality legal representation has the potential to support more timely permanency, increased parental engagement, better access to services, more frequent and timelier visitation, better judicial decision making, and cost savings.¹ Knowing this, DCF has made efforts in recent years to increase opportunities for families to access legal representation beyond what is required in statute.

One such effort is the Kinship Navigation grant awarded to Kansas Legal Services (KLS) last October as part of the Family First Prevention Services Act. Through this grant, KLS attorneys provide legal advice, representation, mediation services, and general legal assistance with issues impeding case progress for youth at risk for out-of-

¹ <https://www.casey.org/quality-parent-representation/>

home placement and their kin caregivers. KLS employs a program known as Kinship Interdisciplinary Navigation Technologically-Advanced Model (Kin-Tech) in these efforts.

Kin-Tech is a program aimed at supporting kinship caregivers. Examples of kinship caregivers are relatives other than parents, such as grandparents, aunts, and uncles, who care for children that are not theirs biologically. A kinship caregiver could also be an individual such as a family friend, teacher, or coach that has built a strong, kin-like connection with a child. Kinship caregivers that participate in the Kin-Tech program are provided legal assistance for their specific situation and are also connected with resources through multiple channels. The ultimate goal of the program is to divert youth from foster care by assisting kinship caregivers to create formal alternate care arrangements and making sure they have the resources and education they need to make that arrangement work.

Families can be referred to KLS for Kin-Tech services by DCF or a grantee. Since the program began taking referrals in October, 76 families have been referred for Kin-Tech services.

As we move forward, DCF is committed to continuing to explore innovations to increase quality legal representation for all families involved in the child welfare system., We look forward to further discussions on this topic, whether they involve the legislature, OJA, or other stakeholders

Thank you again for the opportunity to address this important topic. I am happy to answer questions at the appropriate time.