



PERFORMANCE AUDIT REPORT

Foster Care: Reviewing Decisions
To Remove Children From Their Homes

Executive Summary *with Conclusions and Recommendations*

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
October 2006

Legislative Post Audit Committee

Legislative Division of Post Audit

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To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, *Foster Care: Reviewing Decisions To Remove Children from Their Homes*.

The report also contains an appendix showing examples of some of the concerns family members expressed to us that we checked out. In some cases, we determined these issues were not problems, while in other instances we were unable to conclude whether the events happened.

This report includes recommendations which should help ensure that SRS foster care contractors follow court orders and maintain adequate documentation. Another recommendation should help ensure that families receive better information about why they must pay child support when their children are in the foster care system. Other recommendations made to the Office of Judicial Administration should help ensure that judges properly handle and oversee foster care cases. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

If you would like a copy of the full audit report, please call our office and we will send you one right away.

A handwritten signature in black ink that reads "Barbara J. Hinton". The signature is written in a cursive, flowing style.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

Overview

Under State law, a child under 18 can be declared a child in need of care (CINC) for any of 13 reasons, including being without adequate parental care, being physically, mentally, emotionally, or sexually abused, being abandoned, and not attending school as required by law.

The process for declaring a child in need of care begins with the removal of the child from the family. If the child continues to reside away from the family, the court eventually will hold an adjudication hearing. At this hearing, a judge hears evidence and decides whether to declare the child in need of care.

Efforts to reunite a child with the family can begin as soon as SRS is given custody of the child. Sometimes this work starts before the adjudication hearing. This work includes the development of a case plan, which includes tasks for the parents, children, and social workers to complete.

Do There Appear To Be Any Problems with Decisions Made in Selected Cases To Seek Removal of Children from Their Families or To Not Reunite Them?

In this audit, we identified and reviewed 12 cases in which legislators had heard serious complaints about the decisions to remove children or not reunite them. page 9
These 12 families had a total of 31 children removed from their home primarily because of a lack of parental care or control. About one-fourth the children have been reunited with their families; the rest have had different outcomes or still are in foster care.

In general, the concerns expressed by family members in these 12 cases ranged from very broad to specific, and touched on all the major players in the foster care system: SRS, law enforcement officials, the courts, and attorneys.

We found several problems within individual cases, but most of them would not have affected the major decisions made about these children. page 14
There are few “black and white” situations in foster care cases. In many instances, we sometimes thought that different actions could have been taken in some of these 12 cases, but we also had to conclude that the actions taken didn’t appear to us to be unreasonable. Given that, our general observations about these cases included:

- *for the most part, initial decisions to remove these children from their homes appeared reasonable*

- *SRS and law enforcement officials generally appeared to conduct reasonably thorough investigations*
- *the case plan tasks that families and children were being required to complete didn't seem unreasonable or designed to intentionally delay placing the child back home*
- *court-appointed attorneys frequently submitted various legal documents and called and cross-examined witnesses*
- *we saw considerable evidence of judges trying to ensure that family members had a fair hearing and understood the issues*
- *for the most part, final placement decisions for these children generally appeared reasonable*

Nonetheless, we did find a number of problems with the way some aspects of these cases were handled.

FINDINGS RELATED TO SRS AND ITS CONTRACTORS

SRS contractors didn't always follow court orders or SRS requirements, and had no documentation to show that a parent actually had had a positive drug test. page 15
In one case, a social worker hadn't required a mother to perform twice-monthly random urine tests ordered by the court. In another case where a parent said a social worker had falsified records regarding positive drug tests, the case file had no documentation of those test results. In another case, a social worker didn't reschedule missed visits between the parents and their children, as should have occurred.

While investigating two cases, SRS staff didn't interview all individuals who might have been able to provide relevant information about the case. page 16
In one case, SRS officials didn't interview the parents of the children who were removed from the home. In the other case, SRS staff didn't interview other siblings in the home, or anyone outside the home.

Child support billing practices didn't always appear to be accurate, fair, or consistent. page 17
In one case, SRS staff used the cost-of-service method to calculate that the parent owed nearly \$10,000 for child support. In another case, we determined that SRS child support enforcement staff threatened to increase the amount of child support they would attempt to collect if the parents insisted on receiving an itemized statement of the expenses SRS incurred to keep their children in foster care.

In some situations, the Kansas Department of Health and Environment (KDHE) wouldn't know about people who operate or work in a day care and have had a child declared a child in need or care based on an allegation of abuse or neglect. page 18
K.S.A. 65-516(a)(4) prohibits such people from operating or working in a day care facility. In general, the only way KDHE can know whether such a situation exists would be if someone files a complaint, or if the operator truthfully provides that information on the annual licensure form.

FINDINGS RELATED TO THE COURT SYSTEM

Judicial decisions didn't always appear to consider families' changing situations, or could give the appearance of being biased. page 18
In one case, a judge in Montgomery County ordered a baby removed from the hospital and placed for adoption immediately after birth, even though SRS officials reported they had no concerns about the child's welfare because the parents had made significant improvements in both their house and parenting skills.

One judge took a more active role in foster care cases outside the courtroom setting than other judges whose cases we reviewed. page 19
Parents complained that judges held meetings with SRS officials and others to make decisions about cases without the parents' involvement. We noted that a judge in Montgomery County does actively communicate outside of court with SRS and contractor officials. SRS workers in other parts of the State told us they rarely have contact with the judge in their cases outside the courtroom.

Parents weren't always asked certain questions necessary to ensure that they understood the effect of agreeing with statements made in their cases. page 20
State law requires a judge to ask questions about whether parents understand that a stipulation is an admission that an allegation is true. In four cases in Montgomery County, the transcripts don't show that the judge asked the parents all the questions required under K.S.A. 38-1553 before accepting the parents' stipulations to allegations stated in the child-in-need-of-care petition.

Variations in court caseloads can impact the amount of time or evidence allowed for temporary custody hearings. page 21
Some counties allow witnesses to testify and present evidence and spend more time considering the submitted information before deciding whether to place a child in SRS custody. Courts in counties with higher caseloads may limit the presentation of evidence before making custody decisions. In one Shawnee County case we reviewed, concerns were expressed that witnesses weren't allowed to testify at the initial temporary custody hearing. This action may have delayed the child's reunification with his parents.

Court billing practices weren't always accurate. page 21
In one Sumner County case, the parent had requested transcripts of two court hearings. Court officials quoted a price of \$1,800 to produce them. The parent complained these high costs prevented them from getting access to the records. Court officials quoted us a price of \$910 to produce them, and said the earlier quote was the result of a mathematical error.

No official transcripts exist for numerous court hearings from 2003. page 21
Parents complained that court records were incomplete or lost. We found that an electronic recording device in Montgomery County wasn't working for a year. As a result, there's no record for court hearings that

occurred on 28 days during that year. A hearing for one of the cases in our sample was among those not recorded.

The percentage of children with a permanency goal of adoption is much higher in Montgomery County than in other Kansas counties. page 22
Several people from Montgomery County expressed concerns that their children were being placed for adoption when they should have been reunited with their families. We analyzed Statewide SRS data for children who were removed from their families in 2004. As of June 2006, the Statewide average for children who had a permanency goal of adoption was 20%. For Montgomery County, that percentage was 51%. We were unable to determine why the data for Montgomery County are so different from other Kansas counties.

FINDINGS RELATED TO LEGAL REPRESENTATION

In three cases, the legal representation provided didn't appear to be adequate, or it wasn't provided at all. page 22
In one Montgomery County case, the attorney appointed by the court to represent a parent had her license to practice law temporarily suspended after the appointment. After the attorney was suspended, the court didn't appoint a new attorney for four months, during which time the parent went to two hearings without any legal representation present. In the second case, the Elk County district court didn't appoint the parent's legal counsel until after the temporary custody hearing. In the third case, the parents' court-appointed attorney in Sumner County chose to not call the children's mother or the court services officer to testify at the temporary custody hearing because, according to the court transcript, it was getting late in the day.

We identified several inherent issues with court-appointed attorneys that, while they may be unavoidable, appeared to us to potentially disadvantage parents in such cases. page 23
First, court-appointed attorneys usually are assigned to the case the same day as the temporary custody hearing, which is when the initial decision to place the child in custody is made. As a result, there's often little time for these attorneys to determine the facts of the case so they can adequately represent the parents at that hearing. Second, sometimes the court-appointed attorney changed during a case because the attorney didn't renew his or her contract to act as an court-appointed attorney. This caused the parents to lose the continuity of their legal representation—through no fault of their own.

In one case, a deputy county attorney appeared to have made a decision that affected a family's chance of having the children returned home, but the family wasn't informed. page 25
A social worker confirmed the deputy county attorney told her he would not recommend to the judge that the children be allowed to return to the family until another person living in the house moved out. This requirement wasn't included in the case plan, nor was it included in a judge's order. As a result, the family didn't know whether this was a condition that needed to be achieved before the deputy county attorney would support reunification.

District and County attorneys didn't always pursue allegations of sexual abuse or assault.page 25
In two of three cases we reviewed where girls under 16 became pregnant, district and county attorneys didn't file criminal charges. In one case, a girl was 14 when she became pregnant and the father, whose identity was confirmed through DNA tests, was 28. The county attorney declined to file criminal charges because the father agreed to testify in another case involving illegal drugs. In the other case, a 14-year-old girl was uncooperative with the district attorney and wouldn't provide any specific information. In the one case that is being prosecuted, the partner allegedly was a relative who was approximately 34 at the time he impregnated a 14-year-old girl.

Conclusion.page 25
For families whose children have been removed from their homes, the actions being taken can be both frustrating and devastating. But given all that we heard and read about these 12 cases, we generally couldn't disagree with the removal and final placement decisions for these children. Although different actions certainly could have been taken in some situations, for the most part the actions taken didn't appear to be unreasonable under the circumstances. When questions arise about the appropriate actions to take, most of us would want the system to err on the side of trying to protect the children.

While many of the specific concerns families expressed showed a lack of understanding or couldn't be substantiated, a number of their concerns were real problems. Many related to actions taken by a judge or attorneys in Montgomery County—people whose role it is to advocate for the parent or ensure that all parties in a foster care case are treated fairly. When problems exist at this level, the protections built into the process for these families are essentially broken.

Some of the problems we identified can be addressed by providing reminders or better guidance about the appropriate way to treat family members, handle cases, or document actions taken. Other problems—such as the length of time attorneys have to prepare a case before the temporary custody hearing—may not have readily available solutions.

Recommendations.page 26
We recommended SRS take several actions to help ensure that foster care contractors follow court orders and maintain adequate documentation, including distributing copies of this report to each contractor and reviewing contractor procedures. We also recommended that SRS provide guidance to its staff about how to deal with questions from parents concerning child support payments. We recommended that SRS and KDHE staff explore ways to allow KDHE to receive information promptly about possible violations of K.S.A. 65-516.

We recommended that the Judicial Branch develop guidelines for judges who handle child in need of care cases in such areas as the types of meetings that can be held outside a formal court hearing, and the types of e-mail communications that would be appropriate. We also

recommended that the Judicial Branch review SRS' Statewide adoption data and investigate possible reasons for why some counties have rates that far exceed the Statewide average.

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In general, both agencies agreed with the findings and conclusions of this report.

This audit was conducted by Joe Lawhon, Levi Bowles, Brad Hoff, Amy Thompson, and Ivan Williams. Leo Hafner was the audit manager. If you need any additional information about the audit's findings, please contact Joe at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.