PERFORMANCE AUDIT REPORT

Foster Care: Reviewing Decisions To Remove Children From Their Homes

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

06PA08

Legislative Post Audit Committee
Legislative Division of Post Audit

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October 10, 2006

To: Members, Legislative Post Audit Committee

Senator Les Donovan, Chair	Representative John Edmonds, Vice-Chair
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This report contains the findings, conclusions, and recommendations 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 any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton
Legislative Post Auditor

READER'S GUIDE

Get the Big Picture

Read these Sections and Features:

1. **Executive Summary** - an overview of the questions we asked and the answers we found.
2. **Conclusion** and **Recommendations -** are referenced in the Executive Summary and appear in a box after each question in the report.
3. **Agency Response** - also referenced in the Executive Summary and is the last Appendix.

Helpful Tools for Getting to the Detail

- In most cases, an "**At a Glance**" description of the agency or department appears within the first few pages of the main report.
- **Side Headings** point out key issues and findings.
- **Charts/Tables** may be found throughout the report, and help provide a picture of what we found.
- **Narrative text boxes** can highlight interesting information, or provide detailed examples of problems we found.
- **Appendices** may include additional supporting documentation, along with the audit **Scope Statement** and **Agency Response(s)**.

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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. *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.* ....page 9

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. *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:* ....page 14

- *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. *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.*

................page 15

While investigating two cases, SRS staff didn't interview all individuals who might have been able to provide relevant information about the case. *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.*

................page 16

Child support billing practices didn't always appear to be accurate, fair, or consistent. *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.*

................page 17

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. *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.*

................page 18

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. *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.* ....page 18

One judge took a more active role in foster care cases outside the courtroom setting than other judges whose cases we reviewed. *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.* ....page 19

Parents weren't always asked certain questions necessary to ensure that they understood the effect of agreeing with statements made in their cases. *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.* ....page 20

Variations in court caseloads can impact the amount of time or evidence allowed for temporary custody hearings. *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.* ....page 21

Court billing practices weren't always accurate. *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.* ....page 21

No official transcripts exist for numerous court hearings from 2003. *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* ....page 21

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. *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.*

................page 22

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. *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.*

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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. *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.*

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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. *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.*

................page 25

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.

Foster Care: Reviewing Decisions To Remove Children from Their Homes

Kansas' foster care system primarily involves both the Department of Social and Rehabilitation Services (SRS) and district courts. SRS' role includes investigating reports of child abuse or neglect and assessing whether a child is out of control—such as a child is truant, has run away, or has other behavior problems—and, through private contractors, providing family preservation, foster care, reintegration, and adoption services.

If preventive services are not successful, or if the danger to the child appears to warrant action, SRS may ask the county attorney to petition the court to place the child in the custody of the Secretary of SRS.

After a court places a child in SRS custody, unless the court orders otherwise, SRS has the discretion to place the child with his or her family, with relatives or friends of the family, with a foster family, in a group home, or in an appropriate State-operated facility.

A major goal of the foster care program is to reunite the child with his or her family. If that's not possible, then adoption or other options are considered. The court makes the final determination as to whether it would be in the best interest of the child to be returned to the family or whether other permanent living arrangements should be pursued.

Over the years, legislators have received numerous complaints from families who thought that SRS didn't have good justification for seeking the removal of their children from their homes, or for keeping them away once removed. Those legislators requested this audit as an independent review of the facts of those cases to determine whether it appeared officials acted appropriately.

To address these questions and concerns, this performance audit answers the following question:

> **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?**

To answer this question, we reviewed State laws governing child-in-need-of-care cases, as well as SRS' policies and procedures for the foster care program. We also identified best practices for removing children from their families and compared them to

SRS' criteria for removing children. We also spoke with various officials to better understand the role SRS, the courts, local law enforcement, and county and district attorneys have in child-in-need-of-care cases.

For our case studies, we reviewed concerns raised by families in 12 cases that legislators or others suggested to us. Those 12 cases included 31 children who were removed from their family. To determine whether the actions taken appeared to be justified, for each case we reviewed court records, SRS and contractor files, and in some instances law enforcement records and court transcripts. We also interviewed at least one of the parents of the children who had been removed, and social workers, attorneys, court staff, and law enforcement officials, as necessary, to help us understand what happened in each case.

Finally, we obtained foster care case data from SRS and analyzed it by county to determine how often children are removed from their homes, how often adoption becomes the goal for children in need of care, and whether these rates vary across the State.

A copy of the scope statement for this audit approved by the Legislative Post Audit Committee is included in ***Appendix A***.

In conducting this audit, we followed the applicable government auditing standards set forth by the U.S. Government Accountability Office except that, because of time constraints, we didn't test the reliability of the computer data SRS provided to us regarding child in need of care and adoption case plan goal rates. These data were used to provide information about the quantity and frequency of certain aspects of the foster care system and were not essential to the findings and conclusions of this report.

Our findings begin on page 9, following an overview of the foster care system.

The Decision To Remove A Child from the Family Is a Complex Process That Involves Many Players and Steps

Under State law, a child who is under 18 years of age can be declared a child in need of care (CINC) for any of the following 13 reasons:

- being without adequate parental care, control, or subsistence, and the condition isn't due solely to the lack of financial means of the child's parents or other custodian
- being without the care and control necessary for the child's physical, mental, or emotional health
- being physically, mentally, emotionally, or sexually abused
- being physically, mentally or emotionally neglected
- residing in the same residence with another person under 18 who has been physically, mentally or emotionally abused or neglected, or sexually abused
- being placed for care or adoption in violation of the law
- being abandoned or not having a known living parent
- not attending school as required by State law
- committing an act that children under 18 are prohibited from doing (e.g. underage drinking)
- being willfully or voluntarily absent from home without the consent of the child's parent or other custodian (a runaway)
- being willfully or voluntarily absent at least a second time from a court-ordered placement
- being less than 10 and having had criminal possession of a firearm
- being less than 10 and committing a felony or misdemeanor

Figure OV-1
Listing of Key Players and Their Responsibilities
In the Foster Care System

SRS & SRS Contractors...	...receive, investigate, and assess reports that a child is a child in need of care. Provide family preservation, foster care, reintegration, or adoption services to children and their families.
Law Enforcement Officials...	...receive and investigate reports that a child is a child in need of care. Will take a child into custody if the child is at imminent risk of serious harm, or if a judge has ordered the child to be taken into custody.
District or County Attorneys...	...can file child in need of care petitions, and represent the State in these cases (arguing for removing the child from the family).
District Court Judges...	...determine whether a child should be declared a child in need of care, who should have custody of the child, whether adequate progress is being made toward reunification, whether adoption should be pursued, whether parental rights should be severed, and whether the child should be returned home.
Guardians *Ad Litem* (GAL)...	...appointed by the court to represent the best interests of the child.
Court Appointed Special Advocates (CASA)...	...volunteers who investigate the child's situation, monitor the case, and advocate for the child.
Parent Attorneys...	...attorneys hired by the parents or appointed by the court to represent the parents if they can't afford one.
Parent Allies...	...friends or family members who volunteer to support the parents in court by attending court hearings, listening to the proceedings, and taking notes.

Source: LPA analysis of child-in-need-of-care laws and Judicial Branch Parent Ally Training Program

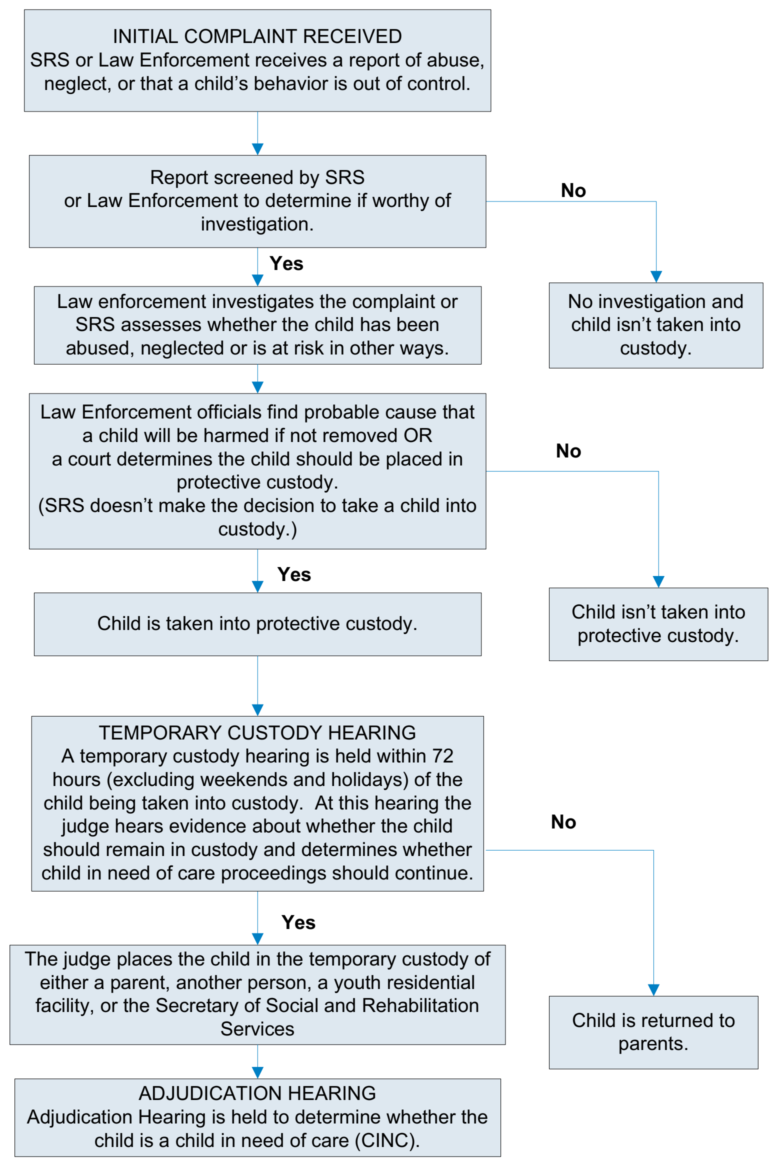
Any child who meets at least one of these criteria can be removed from his or her family.

As many as four agencies can be involved in decisions to remove children from their families. SRS, local law enforcement, the county or district attorney, and the district court all can play a role in that decision. In addition to these agencies, other personnel are involved in representing the interests of the parents or the child.

Figure OV-1 summarizes the involvement of all these players.

The process for declaring a child in need of care begins with the removal of the child from the family. Anyone can call SRS or local law enforcement officials and report that a child has been abused or is otherwise thought to be in need of care. Depending on when the report is called in and the circumstances of the complaint, either SRS staff or law enforcement officials will respond. ***Figure OV-2*** illustrates the investigative process and subsequent steps that can lead to a child being declared a child in need of care.

Figure OV-2
How the Child In Need of Care (CINC) Removal Process Works



Source: LPA Analysis of the Child in Need of Care Process

If a child is removed from his or her home, a temporary custody hearing is required to be held within 72 hours, excluding weekend and holidays. If the judge finds the health or welfare of a child may be endangered, the child is at risk of harming himself or someone else, or the child is not likely to be taken out of the jurisdiction of the court, the court may place the child with one of the following:

- a parent
- another person, such as a relative or friend of the family
- a youth residential facility
- the Secretary of SRS

Once a child has been placed in temporary custody, the court schedules an adjudication hearing. At the adjudication hearing, the judge hears evidence and decides whether to declare the child a child in need of care. If the judge declares the child to be in need of care, a disposition hearing is scheduled.

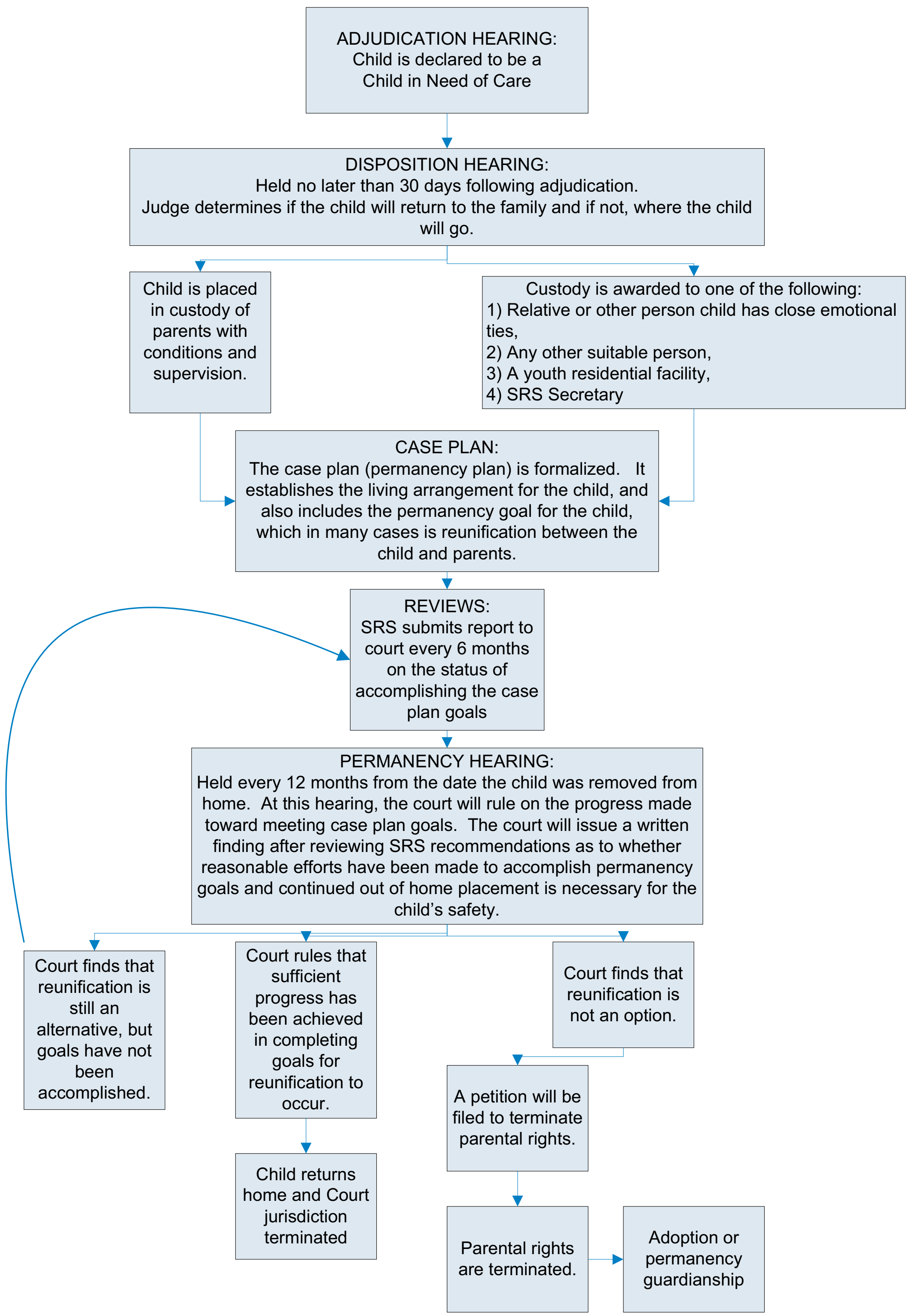
The process for reuniting a child with the family can begin as soon as SRS is given custody of the child. This work begins with the development of a case plan, which includes tasks for the parents, children, and social workers to complete. These tasks are focused on correcting the problems or issues that contributed to the children being taken into protective custody. For example, if the parents were using inappropriate discipline at home, the case plan may include tasks for the parents to attend parenting or anger-management classes as well as counseling.

Following the adjudication decision, SRS or contractor staff work with the family to refine the case plan, as necessary. ***Figure OV-3*** on the next page shows how the system is supposed to work.

Although reuniting a child with the family is the main goal of the foster care program, sometimes that goal isn't attainable. In some cases, parents may not want their child back. In other cases, SRS or the courts may determine the parents may not be able to provide adequate care for the child. Other ways a child may exit the foster care program include:

- adoption
- permanent guardianship—an arrangement where an adult caretaker exercises all the rights and responsibilities of a parent, without the on-going oversight of SRS
- "aging" out of the system

Figure OV-3
How the Reunification Process Works



Source: LPA Analysis of the Reunification Process

The Federal Adoption and Safe Families Act requires, in most cases, the State take action to terminate parental rights once a child has been in foster care 15 of the past 22 months. The purpose of this requirement is to move children towards permanency rather than allow them to languish in the system.

SRS Currently Contracts With Four Agencies To Provide Foster Care and Reintegration Services

Since 1997, SRS has contracted with private agencies to provide foster care and reintegration services. Currently four contractors provide these services. ***Appendix B*** shows the counties and regions served by each contractor. Services provided by the foster care and reintegration contractors include:

- case planning, which includes assessing the strengths and needs of the family and deciding what services will be provided
- service delivery, which includes services such as counseling and medical care
- supervision of children to ensure they are attending school, receiving adequate care, and the like, as well as supervision of families to ensure they are participating as required.

State Law Requires All Parents Whose Children Enter the Foster Care System To Pay Child Support to SRS

Under K.S.A. 39-718b, parents are liable for the entire cost of providing reintegration and foster care services while their children are in SRS custody. Rather than pursuing repayment of the actual costs, SRS officials have decided that, in most cases, the financial obligation of parents should be determined using a sliding scale based on the parent's income.

SRS uses the scale that's been set by the Kansas Supreme Court. Under this scale, for example, a family with a single child between 0-6 years-old and a combined gross monthly income of $2,500 would pay $340 a month in child support to SRS.

House Bill 2352, Which Takes Effect January 2007, Makes Several Significant Changes To the Foster Care System

The 2006 Legislature passed House Bill 2352 which makes a number of changes to the Kansas Code for the Care of Children. The more significant substantive and procedural changes in that legislation include the following:

- To maintain compliance with the Federal Adoption and Safe Families Act, certain requirements must be met before a child is removed from his or her home for the FIRST time. In general, efforts to preserve the family must have been made (and failed), or an emergency situation which requires the immediate removal of a child must exist.
- Any person who makes a false report of suspected child abuse or neglect can be convicted of a Class B misdemeanor.
- Changes will be made to the court's notice and service process for child-in-need-of-care hearings. For example, if a parent can't be located with due diligence at the beginning of the proceedings, it will no longer be necessary to send a second notice before terminating parental rights. Another change is to allow certain court documents to be mailed using return receipt delivery rather than certified mail.

- Court proceedings pertaining to adjudication hearings—which had been closed in the past—now will be open to the public. In certain circumstances, the court still will be able to close the hearing or restrict who can attend.

By making the change to allow the adjudication hearing to be open to the public in most instances, Kansas will join approximately 15 other states that have a similar practice.

Foster Care and Adoption Program
AT A GLANCE

Authority: Kansas Code for Children created in 1982 by K.S.A. 38-1501 et seq.

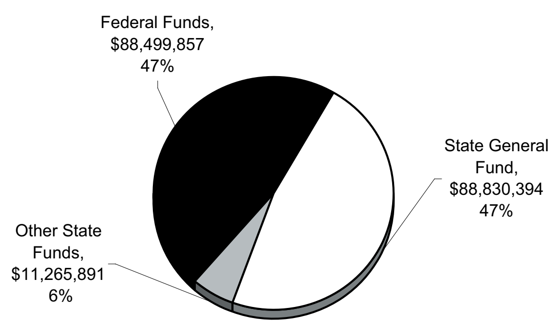
Staffing: SRS has 476 full-time equivalent positions allocated to provide the following services: Child Protective Services, Family Services, Family Preservation, Foster Care, Adult Protective Services, Independent Living, and Adoption Services.

Budget: In fiscal year 2005, total expenditures for the foster care and adoption program were nearly $190 million. Nearly half of the funding came from the State General Fund, and other State funds covered an additional six percent of the total costs. Federal funds provide the rest of the funding. During this year, nearly 3,000 children went into and out of the foster care program. In addition, 675 went into the adoption program and about 750 exited that program.

FY 2005 Expenditures

Type	Amount	% of Total
Out of Home Service Contracts	$129,140,342	68%
Medical Costs	$41,017,953	22%
SRS Staff Costs	$18,437,847	10%
Total Expenses:	**$188,596,142**	**100%**

Sources for Funding for Expenditures



Total Funding: **$188,596,142**

Source: SRS fiscal year 2005 financial reports and records.

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?

ANSWER IN BRIEF: *Legislators have heard numerous complaints over the years from families who thought there wasn't sufficient reason to remove their children and place them in foster care, or to keep them away once removed. In this audit, we were asked to conduct an independent review of the complaints made for a small sample of such cases. Overall we concluded that many aspects of these cases were handled reasonably, but we did find a number of problems with the way SRS, the courts, or attorneys handled individual cases. Most of the problems we found likely wouldn't have affected the removal and reunification decisions made about these children. Our findings and conclusions are discussed in the sections that follow.*

Legislators Have Heard Numerous Complaints Over the Years From Families Regarding Actions To Place and Keep Children in Foster Care

In this audit, we were asked to identify and review a small sample of cases in which legislators had heard serious complaints about the decisions to remove children or to not reunite them with their families. In January 2006, we sent a letter to all legislators asking them to provide us with the names of such families and we made follow-up contacts with several legislators. In all, we received the names of 35 families.

We were able to make preliminary contact with members of 31 families. After explaining the purpose of the audit and clarifying that we couldn't maintain their anonymity when reviewing their cases with SRS and court officials, some families opted not to be included. These included a number of families that had raised very significant concerns with the way their cases had been handled. Several told us they were afraid they may be retaliated against if they participated in our review.

Subsequently, we visited with members of 20 families to find out what their concerns were, and whether they had any documentation or other information they could share with us. Ultimately in this case study, we selected 12 families who had a total of 31 children removed from their home. Some basic information about these 12 families and their children is summarized in ***Figure 1-1*** on the next page. As the figure shows, more than half the children involved in these cases were five years old or younger, and most were adjudicated by the courts as children in need of care.

Figure 1-1
Basic Demographic Information About Cases Involved in this Case Study

Information About the Location of Cases We Reviewed

County	# of Cases	% of Total	# of children	% of Total
Montgomery	5	41.7%	16	51.6%
Sumner	2	16.7%	6	19.4%
Sedgwick	2	16.7%	5	16.1%
Ness	1	8.3%	2	6.5%
Shawnee	1	8.3%	1	3.2%
Elk	1	8.3%	1	3.2%
Total	12	100.0%	31	100.0%

Information About the Ages of Children When Removed From Their Family

Age Group	# of Children	% of Total
< 3 years	9	29.0%
3 - 5 years	7	22.6%
6 - 8 years	4	12.9%
9 - 11 years	3	9.7%
12 - 14 years	5	16.1%
15 - 17 years	3	9.7%
Total	31	100.0%

Information About How Children Were Removed

Removed by:	# of children	% of children
Law Enforcement (Protective Custody)	19	61.3%
Court Order (ex parte order)	12	38.7%
Total	31	100.0%

Information About How Many Children Were Adjudicated a Child In Need of Care

Adjudication Decision	# of Children	% of Children
Child in Need of Care	26	83.9%
Not a Child in Need of Care	5	16.1%
Total	31	100.0%

Source: LPA analysis of SRS and court records.

Children in our case study were removed from their families for a variety of reasons, the most common of which was lack of parental care or control. State law lists 13 criteria for defining a "child in need of care." These were listed in the Overview section of this report. Some of the criteria don't require a finding of abuse or neglect, or imply wrongdoing on the part of the parent.

Figure 1-2 shows that eight of these were cited by SRS officials or the courts as reasons for removing the children included in our case study.

Figure 1-2 Reasons Cited by Officials for Removing Children From Their Families	
Reason for Removal The child was under 18 years of age and	**Number of Times Cited**
...was without adequate parental care, control, or subsistence and the condition is not due solely to the lack of financial means of the child's parents or other custodian (focus is on the parent)	18
...was without the care and control necessary for child's physical, mental, or emotional health (focus is on the child)	17
...had been physically, mentally or emotionally neglected	12
...had been physically, mentally, emotionally or sexually abused	11
...had been residing in the same residence with a sibling or another person under 18 years of age who had been physically, mentally or emotionally abused or neglected, or sexually abused	4
...was willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian	4
...had been abandoned	3
...was not attending school as required by State law	2
Total	71
Note: In most cases, more than one reason was cited for removing the child from the family.	
Source: LPA analysis of SRS and court records.	

Children can be removed from their families either by law enforcement officials responding to a call, or as a result of an order issued by a judge. Depending on the circumstances of a case, SRS staff may or may not be involved in the decision to remove the child. As ***Figure 1-1*** showed, more than 60% of the children in our case study were removed from their families by law enforcement officials.

Figure I-3 June 2006 Status for the 31 Children in Our Case Study	
Status	**#**
Parental rights terminated; child to be adopted	10
Child still in foster care program and case is active	10
Child reunited with the family	7
Child went to live with a different parent	2
Child reached age 18 and aged out of the foster care program	2
Total	31
Source: LPA analysis of SRS and court records.	

About one-fourth of the children in our case study have been reunited with their families, while the others have had different outcomes or still are in foster care. ***Figure 1-3*** shows the status of all the children included in our case study as of June 2006.

Of the 10 children with a goal of adoption, eight were placed in the State's adoption program and two were placed in a private adoption program. Parental rights were terminated by the courts for eight of these children, and parents agreed to relinquish their parental rights for the other two.

In general, concerns expressed by the family members in these 12 cases ranged from very broad to specific, and touched on all the major players in the foster care system. That includes SRS, law enforcement officials, the courts, and attorneys. Examples of these complaints and concerns are summarized on the next page. In some instances, similar concerns were expressed by multiple people. Other concerns were more specific to the facts of an individual case.

Concerns Expressed About SRS AND ITS CONTRACTORS

- **Officials didn't investigate cases thoroughly enough before deciding children needed to be removed from the family**, including not interviewing enough people, not investigating an allegation against a parent, and not completing appropriate inspections of parents' homes.
- **Officials lied in courts and falsified official documents**, including contractor reports to the courts containing false information, the child in need of care petition containing false information, and staff lying about receiving and sending documentation and manipulating records.
- **Officials allowed bad things to happen to children while they were in foster care**, including not getting adequate medical care, getting pregnant, and contracting a sexually transmitted disease.
- **Officials wrote case plans that placed unreasonable requirements on parents to get their children back**, including requiring parents to complete unreasonable tasks such as taking drug tests or attending counseling sessions during normal work hours, and continuing to add case plan tasks in order to delay or prevent reunification.
- **SRS and contractor officials didn't follow court orders**, including not following an order to return a child to the parents' home, and not following an order requiring periodic drug tests.
- **Officials didn't consider placing children with family relatives rather than in foster care**, including not considering grandparents.
- **Officials improperly billed parents for child support**, including charging parents too much for child support, not providing an itemized bill for child support costs incurred, and agreeing to settle for a lesser amount only if that amount was paid within two days.

Concerns Expressed About the COURT SYSTEM

- **Judges acted inappropriately or showed bias in making decisions**, including not allowing witnesses to testify and placing children for adoption without SRS involvement.
- **Judges decided the outcome of cases before the hearing**, including holding meetings about the case outside of the courtroom without the families' involvement.
- **Court officials didn't allow parents to have access to certain records**, including denying parents access to all court records, losing certain records, and court transcripts being incomplete.
- **Judges removed children from home without a legal basis**, including removing children who were not substantiated for abuse and neglect, and removing children without the parent or child acting inappropriately.

Concerns Expressed About ATTORNEYS

- **Court-appointed parent attorneys provided inadequate legal representation**, including not being present during hearings, being incompetent, and coercing parents to relinquish their parental rights.
- **Parents disagreed with how the attorneys handled their case**, including disagreeing with the legal advice they received and attorneys not calling witnesses to testify or filing appeals.
- **District or county attorneys didn't file and prosecute criminal charges when they should have**, including district attorneys not filing sexual assault charges when evidence to prosecute existed.

- **County attorneys taking action outside the courtroom to influence the outcome of cases**, including sending messages that certain actions must be taken before children will be allowed to return to the family.

<u>**Concerns Expressed About LOCAL LAW ENFORCEMENT**</u>

- **Local law enforcement didn't investigate thoroughly enough before removing a child from a home**, including not interviewing witnesses, and not completing appropriate inspections of parents' homes.
- **Law enforcement removing children when they shouldn't have**, including removing children without adequate reason, over-reacting to situations, and removing children for reasons not allowed by statute.

In looking for evidence of whether these types of problems had occurred within the foster care system, we reviewed documentation from SRS, the courts, and others, and discussed concerns with parents, grandparents, SRS or contractor social workers and staff, court officials, attorneys, and others involved in the cases.

In Some Cases, Families' Encounters With the Foster Care System Were Brief

IN ONE CASE, for example, a divorced father's two boys told him they'd overheard their mother, aunt, and uncle say they were going to kill the children's father. The mother had primary custody of the boys and a younger daughter; the father had visitation rights every other weekend. The father called the police and was interviewed by two officers and a detective. The police placed all three children in protective custody because they considered the threat to be credible and wanted to get the children out of harm's way. They also were concerned about possible emotional abuse of the children.

After reviewing information from a psychological evaluation and polygraph test and interviewing the children, both parents, the family law case manager, a school social worker, and the children's babysitter, SRS officials and the police concluded the threats on the father's life weren't credible because there was no corroborating evidence. They released the boys from protective custody that day; because it was a weekday, they returned them to the mother.

Shortly thereafter, SRS received another complaint that one of the children had heard his mother and others talk about killing their father. SRS staff decided not to investigate this complaint because SRS and law enforcement officials already had assessed the situation. They didn't substantiate that emotional abuse had occurred.

ANOTHER EXAMPLE: In this case, someone called the SRS hotline to report that parents were abusing a child. The police report states that, when law enforcement officials visited the parents' home later that day, one of the parents threatened to leave with the child, and one stated the child had been pushed down the stairs and had been slapped in the back of the head. After questioning the parents and examining the child, law enforcement officials removed the child from the home. The child was placed with his grandparents, and the parents were allowed supervised visits.

SRS officials completed an investigation about two weeks later; they were unable to substantiate the claims of physical abuse. They returned the child to his parents with some required tasks, including cooperating with the social worker and keeping a journal of any bruises or falls the child may have. While the child was with his parents, the social worker conducted unannounced visits to check on the child's welfare. At the end of these visits, the social worker noted the child didn't have any bruises and was being properly cared for. SRS custody was terminated four months later.

The reader should be aware that case studies like this one have certain limitations, and that some concerns and complaints couldn't be addressed. Those limitations include the following:

- although a case study can allow us to look more deeply into complaints about various aspects of individual cases than a broader sample would allow, findings from these cases can't be projected to the system as a whole because the cases weren't randomly selected.

- it's important to remember that foster care cases involve highly emotional and personal situations, not only for the parents and other family members whose children are being taken from them, but also for social workers, judges, and others who are charged with protecting children from harm. Invariably, people's perceptions about what was said, how it was said, what was meant, and how various situations were handled, will be affected by the stresses the foster care system imposes on people.

- some of the concerns family members expressed dealt with people in the system lying, threatening, coercing, acting inappropriately, or being mean to them over the course of their case. In such instances, we often couldn't determine whether these actions occurred because there was no documentation to review, or because the only evidence we had was one person's word against another.

- Family members raised a number of concerns related to court actions that we weren't able to fully investigate or substantiate within the scope of this audit. We will pass those concerns and any information we had related to them onto the Commission on Judicial Qualifications for its review.

Despite these limitations, we were able to obtain a fairly thorough understanding of the circumstances surrounding these 12 cases. The remainder of this question describes our findings.

We Found Several Problems Within Individual Cases, but Most of Them Likely Would Not Have Affected The Major Decisions Made About These Children

There are very few "black-and-white" situations in foster care cases. In many instances, based on everything we heard or read, we sometimes thought that different actions <u>could</u> 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, we had a number of general observations about how these 12 cases were handled:

- For the most part, the initial decisions made to remove these children from their homes appeared to be reasonable.
- SRS and law enforcement officials generally appeared to conduct reasonably thorough investigations. We also saw considerable evidence in the files that social workers were meeting with family members, encouraging parents to meet their case plan obligations and improve their parenting skills, and working toward placing the child back with the parents as long as reintegration appeared to be a viable option.

- 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. When new tasks were added, we generally saw evidence it was done in response to a new situation within the family.
- In reading transcripts and talking with various family members and attorneys, we found evidence that court-appointed attorneys frequently submitted various legal documents and called and cross-examined witnesses.
- We saw considerable evidence during our reviews of judges trying to ensure that family members had a fair hearing and understood the issues before them, being patient with family members, and being concerned about taking actions which represented the best interests of the child.
- Final placement decisions for these children generally did not appear to be unreasonable.
- Although we couldn't find any evidence to support many of the concerns family members had raised, that's not to say at least some of these concerns weren't valid. As noted above, the only information we had sometimes was what parents told us, or was one person's word against another. If parents have been verbally pressured or threatened to do or not do something, or been told to "just go along if you ever want to see your kids back," as some of them told us they'd been, it would be very difficult for an outside party to determine whether that had happened.

The remainder of this section describes the specific problems we identified during our case reviews with the way these cases were handled. In addition, some specific concerns and the findings related to them are summarized in ***Appendix C*** to help give the reader a better idea of the types of things we looked at and saw during this review.

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.

In one case, a social worker for The Farm had not required the mother to perform the twice-monthly random urine drug tests ordered by the court. In this case, the mother had her child removed partially because of her own substance abuse issues. The court ordered random drug tests so the mother could prove she was staying drug free. However, the social worker didn't require the mother to perform those tests. The social worker attempted to contact her twice during the first month but never reached her, and made no attempts during the second month. This was important to the case, because the court didn't get the information it wanted to prove the mother was clean. In this same case, the court previously had ordered random drug tests of the mother at the SRS contractor's discretion. At that time, the mother didn't complete drug rehabilitation as recommended by a drug and alcohol evaluation that had been ordered by the court. As a result, the social worker hadn't requested that the parent complete any drug tests for six months.

In one case where the parent reported that a social worker for St. Francis Academy had falsified records to say the parent had tested positive for marijuana use, the case file had no documentation of the results of those positive drug tests. In this case, the judge authorized SRS or its contractor to conduct random drug and alcohol tests on a parent, even though she denied being a drug user. We determined that over a span of 26 months this parent had at least eight negative drug test results. However, the social worker reported to SRS and the court that two tests taken toward the end of that period showed positive for marijuana. We found supporting documentation in the file for three of the eight negative test results. However, the only documentation of the positive test results we found were case log notes from the social worker.

In one case, a social worker for United Methodist Youthville didn't take the initiative to reschedule missed visits between the parents and their children in foster care, as expected. In this case, the parents were supposed to have weekly supervised visits with their children. The parents and social worker cancelled several visits for a variety of reasons, including bad weather, a parent's illness, and a contractor staff's emergency. In these instances, the family visits were missed through no fault of the family. An SRS official told us that, since foster care was privatized in 1997, SRS has expected contractors to attempt to reschedule missed visits between families and their children in foster care. Such visits are viewed as important to the efforts to reintegrate the child into the home. We saw no evidence the contractor had attempted to reschedule these visits. Nor did we see any documentation that the parents requested they be made up.

While investigating two cases, SRS staff didn't interview all individuals who might have been able to provide relevant information about the case.

In one case, SRS officials didn't interview the parents of the children who were removed from the home. In this case, two children had been removed from the home after the father asked police to pick up the older child for serious behavioral problems. The police interviewed one child and one of the parents, and SRS staff interviewed the other child after they had been removed, but didn't interview the parents. In this case, SRS staff were familiar with the family's situation because they had provided family preservation services in response to an earlier abuse incident, and SRS policies don't require that the parents be interviewed if they have been interviewed by the police. However, an SRS internal review of this case concluded it would have been a good idea to interview the parents.

In the other case, SRS staff didn't interview other siblings in the home, or anyone outside the home. One child in this family was removed from home after claiming at school to have been physically abused by a step-parent. During the investigation to substantiate the abuse, SRS staff only interviewed the child, the parent living in the home, and the step-parent. The three younger siblings in the house weren't interviewed. In addition, although it's not required, SRS staff did not interview anyone outside the home, including neighbors, school officials, or the other natural parent living outside the home. When the three younger siblings made the same claim almost two years later and were removed from the home, SRS staff also did not interview anyone outside the home. Based on the information they had, SRS staff were unable to substantiate that abuse had occurred. By interviewing these other individuals, however, SRS may have obtained additional information that would have pertained to the allegations of physical abuse.

A Parent's Drug Abuse Was a Major Factor In Several Cases: Some Examples

IN ONE CASE, a mother gave birth in June 2002. Shortly after the baby was born, the mother tested positive for amphetamines and opiates, and the infant tested positive for amphetamines. The baby was allowed to go home with its mother, but was removed from home a month later because of concerns about the baby ingesting drugs through breast milk, and because the water had been shut off to the mother's home for about two weeks.

The mother's case plan included tasks related to improving her parenting skills and participating in substance abuse rehabilitation. While the child was in foster care, the mother continued to struggle with substance abuse and other legal troubles. Her case plan was modified to require her to attend narcotics anonymous meetings and obey all local, state and federal laws.

By November 2004 the mother had completed all her case plan tasks and proved she had not used drugs in the past six months with a hair drug test. The next month, the judge ordered the child be returned home for a 30-day trial period. The child subsequently was permanently placed in the home and the case was closed.

IN ANOTHER CASE, a teenage girl gave birth to a child that allegedly was fathered by an older relative. The baby tested positive for several controlled substances, including marijuana and barbiturates. Hospital staff called the police when the family attempted to leave the hospital with the baby soon after it was born, against the doctor's advice, and police officers placed the child in protective custody because of possible lack of adequate parental care and medical neglect. The mother asked to be placed in temporary SRS custody so she could bond with her child, and both were placed in the same foster care home.

Two months later, the mother took her child and ran away with her family to another state. The family was found four days later, and the mother and her child were returned to foster care. Three months later she ran away again. The judge changed the goal for the child to adoption because the mother had run away, hadn't completed tasks in her case plan, and continued to have contact with the alleged father of her baby when she ran away from foster care. This case is on-going.

Child support billing practices didn't always appear to be accurate, fair, or consistent.

State law makes parents or guardians liable to repay SRS for any assistance it provides on the child's behalf, regardless of the specific program. That would include children who are in foster care. To implement this requirement, SRS staff can calculate the amount of child support owed by a parent using two different methodologies—cost of service, or income of parents. SRS staff told us that the income methodology almost always resulted in the parent owing a smaller amount, and that they attempted to follow this policy unless unique circumstances existed. Since 1997, SRS has used Kansas Child Support Income Guidelines to establish the amount of child support obligations parents will have using the income method.

In one case, SRS staff used the cost-of-service method to calculate that the parent owed nearly $10,000 for child support. Evidence in the file suggests that the cost method was used because the family hadn't provided the income information needed for the income-based method. Both the parent and the attorney signed the court order requiring the parent to pay $10,000, which was paid over time. Information in the file dated the same day the court order was signed showed that income information apparently had been provided, and on that basis, the parent would have owed about $1,600, rather than $10,000. Although SRS could have gone back to the judge to try to get the court order amended based on the parent's ability to pay, it didn't do so.

In the other case, SRS child support enforcement staff used the cost method to calculate that a parent owed $53,200 for child support. SRS subsequently determined the initial calculation was in error, and the correct amount should have been $45,000. However, after discussions with the parent's lawyer, SRS agreed to base the amount of child support on the parent's income, instead of the cost method. This resulted in the parent owing $12,700 in child support, or nearly $40,000 less than the original amount. There was no explanation why SRS used the cost method initially rather than the income method; in this situation, SRS staff were aware that the parent was having financial difficulties. The parent is in the process of paying off this charge.

In one case, SRS child support enforcement staff said they would increase the amount of child support they would attempt to collect if the parents insisted on receiving an itemization of SRS expenses. In this case, child support enforcement staff calculated that the parents owed SRS $10,656 using the income method and guidelines for calculating costs. When the parents requested an itemization of the costs incurred, SRS staff informed the parents by phone that those records weren't maintained, and that if the parents insisted on getting that information, staff would use the higher cost-based figure rather than the income-based figure as the basis for seeking reimbursement. Eventually, the parents rescinded their request. SRS' response in this case appeared to us to be unnecessarily heavy-handed The foster care system can be complex and confusing, and parents deserve a respectful explanation of why things are the way they are.

In some situations, the Kansas Department of Health and Environment (KDHE) has no way of knowing about people who operate or work in a day care and have had a child declared a child in need of care based on an allegation of abuse or neglect.

This wasn't an issue families expressed a concern about, but it was something we noted based on our review of one of the cases. K.S.A. 65-516(a)(4) prohibits anyone who has had a child declared a child in need of care based on an allegation of abuse or neglect from operating or working in a day care home or facility. That declaration is made by the court, and SRS officials would be aware of it if they were involved with the case.

Depending on the circumstances, the names of people who've been confirmed for abuse or neglect sometimes will be entered into the Central Abuse Registry maintained by SRS, which KDHE can and does search during the annual licensure process. But for those people whose names aren't entered into the Registry or another criminal database, or for people who operate a day care but weren't confirmed as—or weren't—the perpetrator of the abuse or neglect that occurred in the home, the only way KDHE can know they exist is if someone files a complaint, or if the person truthfully provides that information on the annual licensure form.

Because of time constraints, we couldn't explore this issue further. However, in order to allow KDHE to properly administer the requirements of State law we think SRS, KDHE, and potentially the courts would need to examine this issue and assess potential solutions and their costs.

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.

A judge in Montgomery County ordered a baby removed from the hospital and placed for adoption immediately after birth, even though SRS officials thought the parents had made significant improvements in both their house and parenting skills. In this case, four older children had been removed from the family's care because of concerns about the condition of the home and the lack of parenting skills. According to a case worker, about a year after the fourth child was removed the judge had said he wanted the county attorney to inform the mother she shouldn't get pregnant again. We didn't see where that directive was written as a formal court order or added to the mother's case plan.

A little over a year after her youngest child was removed, the mother did get pregnant, and acknowledged it a few months later to SRS staff. According to court transcripts, staff didn't tell the judge immediately that the mother was pregnant because of concerns they might violate federal Health Insurance Portability and Accountability Act (HIPAA) requirements. After the mother signed a waiver releasing that information, they told the judge she was pregnant. At the hearing where this was disclosed, the judge threatened to throw the social workers in jail in the future if they failed to disclose information as soon as they knew it.

In the two years since the fourth child was removed, SRS staff noted that the parents had remodeled part of their house, were down to only a few pets, and had attended parenting classes and counseling sessions. About a month before the fifth child was born, an SRS worker told the family she had no concerns about the baby's safety, and wouldn't recommend removal. After the child was born, the county attorney filed a child-in-need-of-care petition to have the child removed. The petition listed the same reasons and facts as the original petitions from two years earlier, without acknowledging any changes. The judge approved the petition and ordered the police to remove the child from the hospital and place him with adoptive parents. The child later was adopted by these parents.

One judge took a more active role in foster care cases outside the courtroom setting than other judges whose cases we reviewed.

A judge in Montgomery County actively communicates outside of court with SRS and contractor officials. SRS workers we talked with in some parts of the State told us they rarely have contact with the judge in their cases outside of court, and our review of cases in other counties confirmed that. In one county, however, we saw evidence that the judge receives and sends e-mails and regularly participates in meetings outside a court hearing with SRS and contractor social workers where foster care cases are discussed.

Among the families with cases before this court, such actions have generated the perception that their cases are being reviewed, discussed, and decided without their knowledge or participation. Holding meetings outside the courtroom has been an issue in this judicial district in the past. In March 2005, the district court chief judge issued a memo stating there would no longer be any out of court meetings between the court and the agencies and/or attorneys, and that all communications between the court, counsel, and the agencies should be held in open court on the record. The chief judge has since retired. It's not clear to us whether the current meetings being held would satisfy the intent of the former chief judge's memo. In addition, officials in the Office of the Judicial Administrator told us there are no specific guidelines regarding judges' use of e-mail.

An Out-of-Control Teenager Was a Major Cause in Some Cases for the Decision To Remove Children in Several Cases: An Example

IN ONE CASE, for example, a father hit his teenage daughter with a weight belt for having sex with men in their 20s. SRS staff and police investigated this incident and found the daughter had significant bruising on her back and buttocks. The police took both the daughter and a younger sibling into protective custody. Both children were returned home within a week, and SRS began providing family preservation services, including in-home family treatment, parenting education, targeted case management, family support services, and individual therapy for the daughter. While these services were being provided, the daughter was taken into police protective custody because she ran away from home and wasn't attending school. She also ran away from the facility the police placed her in.

Family preservation services were stopped several months later. Records show the daughter continued to have behavior problems, including stealing money from her parents, getting into a physical fight with her mother, and twice stealing her parent's car and running away from home. While away from home, she reported using alcohol and drugs. She was taken into custody as a juvenile offender at the parents' request, but a few days later the parents asked the juvenile court to release her from custody, assuming she had learned her lesson.

Because of the previous incident of abuse, and because of allegations the daughter made about her mother (which she later recanted), the district attorney's office instead sought and received a court order to place both the daughter and her younger sibling in protective custody. At the temporary custody hearing, the parents agreed to both children remaining in SRS custody.

The parents asked that the children be placed with their grandparents, but they initially were placed in separate foster homes. During a nine-month period, the daughter was in five different foster homes or facilities. She continued to have behavioral problems, was arrested for shoplifting, and while she was placed with her grandparents she got pregnant. The younger sibling was in four different foster homes or facilities over a five-month period.

While the children were in foster care, SRS contractors provided services to both the children and their parents. The case plans cited a number of tasks for the parents or children, including clinical interviews and assessments, age-appropriate parenting classes, random drug and alcohol tests, family counseling, individual therapy, and anger management. The daughter also was to have no contact with an adult male she had been seeing.

In March 2005, the court determined the family had made adequate progress toward completing nearly all the required tasks, and the younger sibling was returned to the parent's home. Four months later, the court ruled that the daughter had made enough progress to be reunited with her parents as well.

Parents weren't always asked certain questions necessary to ensure that they understood the effect of agreeing with statements made in their cases.

In four cases in Montgomery County, the transcripts don't show that the judge asked parents all five questions required under K.S.A. 38-1553 before accepting the parents' stipulations to allegations stated in the child-in-need-of-care petition. Members of two families we spoke with expressed concerns that the information in the petition inaccurately described the condition of their house, or that their attorney had tricked them into agreeing that their children were in need of care. We didn't see any direct evidence of either concern. However, before a parent stipulates or agrees to the allegations stated in the petition, State law requires a judge to ask questions about whether the parents understand that a stipulation is an admission that an allegation is true. In this way, the judge can assure himself and the people making the stipulation that they understand what they are agreeing to and the consequences of doing so. In four cases where a parent had stipulated to the facts in the petition and we had reviewed the transcripts as part of our audit work, there was nothing in the transcript to show a judge had asked all five questions when parents stipulated to those facts.

Variations in courts' caseloads can impact the amount of time or evidence allowed for temporary custody hearings.

Depending on their caseloads, courts in different counties can handle temporary custody hearings very differently. In some counties, courts allow witnesses to testify and present evidence regarding the alleged abuse or neglect, and are able to spend more time considering the information submitted before deciding whether to place a child in SRS custody. In counties with high caseloads, however, witnesses may not be allowed to testify or present evidence at the initial temporary custody hearing, and the hearing may last as little as 15 minutes. In such cases, judges may not be able to consider enough relevant information before having to decide whether to place the child in SRS custody.

This concern was expressed in one case we reviewed in Shawnee County. At the temporary custody hearing, the parents' attorney was allowed to present evidence, but stated that if one of the parents could testify, the parent could explain that the comments stated in the police report were taken out of context. She also stated that if a second person could testify, he would have stated that he witnessed the child accidentally fall down the stairs at a Christmas party. Because witnesses aren't allowed to testify at the initial temporary custody hearing in this county, those witnesses were not called.

In this case, the judge ordered the child to be placed in SRS custody. The child was placed with his grandparents. At the adjudication hearing about four months later, the judge determined the child was not a child in need of care and terminated SRS' custody.

Court billing practices weren't always accurate.

In one case in Sumner County, district court officials erroneously overstated the cost for providing transcripts of hearings that occurred in 2001. Court stenographers' records and electronic recordings of hearings generally are transcribed only when the case is on appeal or someone requests a hard-copy transcript. District courts have developed per-page charges for producing a transcript of all or part of a hearing, and charge the requestor to produce it.

In this case, the parent had requested transcripts of two hearings involving the parent's child. The estimated price quoted to produce the court transcripts was $1,800. When we requested transcripts for those same hearings, the estimated price to produce them was $910, or half as much as the earlier estimate. A court official told us the difference between the two price estimates likely was the result of a mathematical error by a court official who no longer works for the county.

No official transcripts exist for numerous court hearings from 2003.

An electronic recording device in Montgomery County wasn't working for a year, affecting one hearing for the cases we reviewed. In our 12 cases, we noted that courts often used an electronic recording device as the official record for court hearings, rather than have a court reporter in the courtroom. According to the judge in that county, in 2003 district court staff were unaware the recording device they were using had malfunctioned and wasn't working. As a result, the court has no official record for 14 child-in-need-of-care hearings that occurred in 2003. In all, the recording device wasn't working for 12 months, and there's no record for court hearings that occurred on 28 days during the year.

The percentage of children with a permanency goal of adoption is much higher in Montgomery County than in other Kansas counties.

Several family members in our case study from Montgomery County had 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. In Montgomery County, 59 children had been removed from their homes. Of those children, 51% (30 children) had a permanency goal of adoption as of June 21, 2006—the Statewide average was 20%. Using a statistical model to control for poverty, we projected that Montgomery County should have had 12 children with a permanency goal of adoption. 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.

In one case in Montgomery County, the attorney appointed by the court to represent a parent had her license to practice law temporarily suspended after the appointment. In addition, court transcripts for the adjudication hearing show the attorney didn't know who she was representing when the proceeding started, or how the parent had pled at the previous hearing. That attorney's license later was indefinitely suspended, partly for providing inadequate legal representation.

After the attorney was suspended, the court didn't appoint a new attorney for four months. During that time, the parent went to two hearings without any legal representation present. K.S.A 38-1505(b) gives parents the right to be represented by an attorney at all foster care hearings before the court, but the foster care program is designed so that a parent must ask for legal representation at or immediately before the first hearing in the case. In this case the parent had asked for an attorney initially. We couldn't tell when the parent asked to be represented by another attorney, but it seemed to us like the onus should have been on the court at that point.

In the second case, the Elk County district court didn't appoint the parent's legal counsel until after the temporary custody hearing. Again, we couldn't tell if the parent had requested an attorney before or after the hearing.

In the third case, the parents' court-appointed attorney in Sumner County chose not to 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. Although there's no way for us to know whether the outcome of the temporary custody hearing would have been any different if these two individuals would have been allowed to testify, allowing them to testify might have given the judge relevant information to consider in deciding whether the children should remain out of the home.

We also reviewed one case in Sedgwick County which the parents told us their legal counsel didn't call five witnesses who they wanted to have testify—including school staff, the mother, the youngest child, and a day-care client—because the attorney didn't want these particular witnesses to testify. The attorney told us he probably told the parents there wasn't a need to call the witnesses, but that he would have put these witnesses on the stand if the parents had insisted. Although we understand there can be legitimate legal or strategic reasons for calling or not calling certain witnesses, we think it's important for attorneys—who are the ones familiar with the system—to fully explain to parents why they are or aren't calling witnesses whom the parents believe can assist them in their case, and to let parents know that they'll call witnesses to testify if the parents insist.

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.

The primary advocate for parents in foster care cases is the parent attorney. It's not uncommon for this person to be appointed by the court because families don't have the financial resources to hire one. During this audit, we noted that 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 SRS 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.

We also noted that court-appointed attorneys sometimes changed during the case because the previous attorney didn't renew his or her contracts as a court-appointed attorney. In such situations, through no fault of their own, parents lose the continuity of their legal representation.

The foster care system is complex, and its primary emphasis is ensuring that children are protected from harm. As our work progressed during this audit, however, it became increasingly clear to us that parents and other family members often didn't understand—and sometimes may not have been told—how and why certain actions were being taken. Although SRS officials, judges, and others have a responsibility for making sure parents understand what is happening and why, court-appointed attorneys also should play a key role in this area.

To help provide additional support to parents in foster care cases, the Legislature passed a law in 2003 creating the "parent ally program." Extended Statewide in 2005, this program allows up to two people, both of whom are required to have participated in a "parent ally orientation program," to attend child-in-need-of-care proceedings on parents' behalf. Parent allies serve as another set of eyes and ears for the parents in the courtroom, and can help the parents understand what was said and what actions the court is taking.

Problems with court-appointed attorneys can contribute to parents' or family members' feeling that they can't get their side of the story across, or that the foster care system is stacked against them.

Families Sometimes Had a Long History of Involvement with the Foster Care System: Some Examples

IN ONE CASE involving five children, SRS began providing services to the mother in 1993, a court declared three of her children to be in need of care in 1995, and the children's grandmother subsequently obtained custody of the two oldest children. Our review was limited to what has happened since 2000 with the two youngest children.

In August 2000, the mother reportedly asked a friend to come over and whip her 9-year-old daughter. Police found that the child's buttocks and thighs had been bruised, and took her into protective custody. Based on a doctor's examination and SRS' investigation, SRS confirmed that the girl had been abused. The judge subsequently determined she was a child in need of care, and ordered her to remain in SRS custody. SRS continued to provide services to the mother.

The next year, a younger sibling was reported to be bruised and have other injuries. SRS staff investigated this situation and concluded the child was unsafe. The county attorney filed a child-in-need-of-care petition, but later asked the judge to dismiss the case. The child remained at home with the mother.

In March 2002, the court ordered the older child to be placed back in the home for a 30-day trial period, but the child was removed after the mother hit her. Also that month, the police took the younger sibling into protective custody because of unexplained injuries to the face and thigh. The investigation confirmed that abuse had occurred, and the judge placed the younger child in SRS custody.

During the next year, both children were placed back into their mother's home, but remained in SRS custody. Police later removed the older child from the home at the mother's request because of her manic behavior. At the time, the mother had been evicted from her house, and the family was living at a motel. The child was again placed in foster care. Several months later, the younger child again was removed from the home because of inappropriate discipline and concerns about the child's lack of bathing and hygiene, lack of supervision by a licensed sitter, and incidents of truancy.

In March 2005, the judge determined the mother had failed to carry out reintegration plans approved by the court for both daughters and terminated her parental rights for both children. Earlier this year, the State Court of Appeals affirmed the district court's decision to terminate this mother's parental rights.

IN ANOTHER CASE, a mother abandoned her two children to her aunt in late 2003. They were passed from relative to relative for almost a year, when they went to live with their grandmother, who was living in a one-bedroom apartment with the mother's brother and his three children. After the family was evicted from the apartment, police placed all five children into protective custody because they were effectively homeless and without adequate parental care. Both the mother and her brother agreed at court hearings that their children were children in need of care. Among other things, case plans written for each of the two families required them to maintain a stable home and attend parenting classes.

The mother subsequently had another child, which was removed because of ongoing concerns about neglect. SRS records also show that neither the mother, her brother, or their respective mates had completed many of the case plan tasks assigned to them. None of their children were returned to live with them, and their parental rights were severed in early 2005.

In this case, the mother's sister also has had three children removed from her home. One child was born with severe health problems. Over a six-month period in 2005, someone reported the parents to SRS four times for not adequately meeting the baby's medical needs, and for not appropriately feeding her children. The county attorney filed a child-in-need-of-care petition in August, but the judge ordered family preservation services for the family and continued to monitor the case.

In March 2006, SRS officials reported that the family no longer was complying with the court order, and the judge removed all three children. SRS officials wrote a case plan for the parents detailing a series of tasks to complete, with the goal of returning the children to their home. At the time of the audit the parents have not yet completed all tasks and the children were still in foster care.

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.

A social worker for St. Francis Academy 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 one of the tasks included in the family's case plan as something that had to be done before the children would be returned home. We also didn't see that it was part of a court order. As a result, family members didn't know what tasks they needed to complete before the deputy county attorney would support having the children reunified with their family.

District and County attorneys didn't always pursue allegations of sexual abuse or assault.

In two of three cases we reviewed where girls under age 16 became pregnant, district and county attorneys didn't file criminal charges. In one case the partner was approximately 28 at the time of the incident, and the girl who got pregnant was 14. The results of DNA tests confirmed he was the father. However, the county attorney declined to file criminal charges because of a plea agreement—the partner agreed to testify in another case concerning illegal drug charges. In the other case, the 14-year-old girl was uncooperative with the district attorney, wouldn't provide him with names, and wouldn't commit to anything happening. In the one case that's being prosecuted, the partner allegedly was a relative who was approximately 34 at the time he impregnated the 14-year-old girl.

CONCLUSION

For families whose children have been removed from their homes, we understand that 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

Recommendations To SRS

1. To help ensure that foster care contractors are following court orders and maintaining adequate documentation to support the information they provide to the court about child in need of care cases SRS should:

    a. provide copies of this report to each of the contractors

    b. review the procedures each contractor has in place to address such things as adhering to court orders and caseplan requirements, documenting the results of drug tests, and rescheduling family visits that have been missed due to situations outside the family's control, and revise those procedures as necessary.

    c. request that the contractors provide reminders to all their staff about the procedures relevant to the problems noted in this report.

    d. periodically spot check to see that those procedures are being followed

2. To help ensure that families do not perceive that they are being threatened with higher charges for asking about basic information about the costs of their child's case, SRS should provide guidance to its staff about how to deal with questions regarding child support and actual costs incurred.

3. To help ensure that the provisions of State law related to who can legally operate childcare facilities are adhered to, SRS Children and Family Services officials should meet with Childcare Licensing and Registration Program officials at the Department of Health and Environment to explore what can be done to promptly notify KDHE when a child care facility operator would be in violation of K.S.A. 65-516.

Recommendations To The Judicial Branch

1. To help ensure that child-in-need-of-care cases are handled and recorded properly, and that families are represented by legal counsel, the Office of Judicial Administration should do the following:

a. Develop guidelines for judges who handle child in need of care cases governing such things as:

- the types of meetings that can be held outside of a formal court hearing and who may or must be in attendance.
- the types of e-mail communications that would be considered appropriate between a judge and other parties involved in a child in need of care case.

b. Send a notice to judges who handle child in need of care cases reminding them of the importance of

- ensuring that any family that can't afford an attorney is provided one as required by K.S.A. 38-1505

- asking all questions specified in K.S.A. 38-1553 before allowing families to stipulate to facts contained in a child in need of care petition

- periodically checking recording equipment used in lieu of a court reporter or official stenographer to ensure that the equipment is functioning

2. To help ensure adoption is only being pursued when appropriate, the Office of Judicial Administration should review the Statewide data we assembled on the rates at which adoption is being pursued in various counties, and investigate the reasons why some counties may deviate significantly from the Statewide averages.

APPENDIX A
Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on January 30, 2006. This audit was requested by Representative Frank Miller.

Foster Care: Reviewing Decisions To Remove Children From Their Homes

Kansas' foster care program is administered by the Department of Social and Rehabilitation Services. The program is charged with protecting children who may be physically or mentally abused or neglected. The Department may provide preventive services to a family when child abuse is suspected, with the goal of keeping the child in the home. However, if preventive services are not successful, or if the danger to the child appears to warrant action, the Department may ask the county or district attorney to petition the court to place the child in the custody of the Secretary of Social and Rehabilitation Services.

After a court order puts a child in the custody of the Secretary, the child may be placed back with the family with the written permission of the court, or with relatives or friends of the family, with a foster family, in a group home, or in an appropriate State-operated facility. A major goal of the program is to reunite the child with his or her family. If that is not possible, then adoption or another stable, family-like option is to be considered.

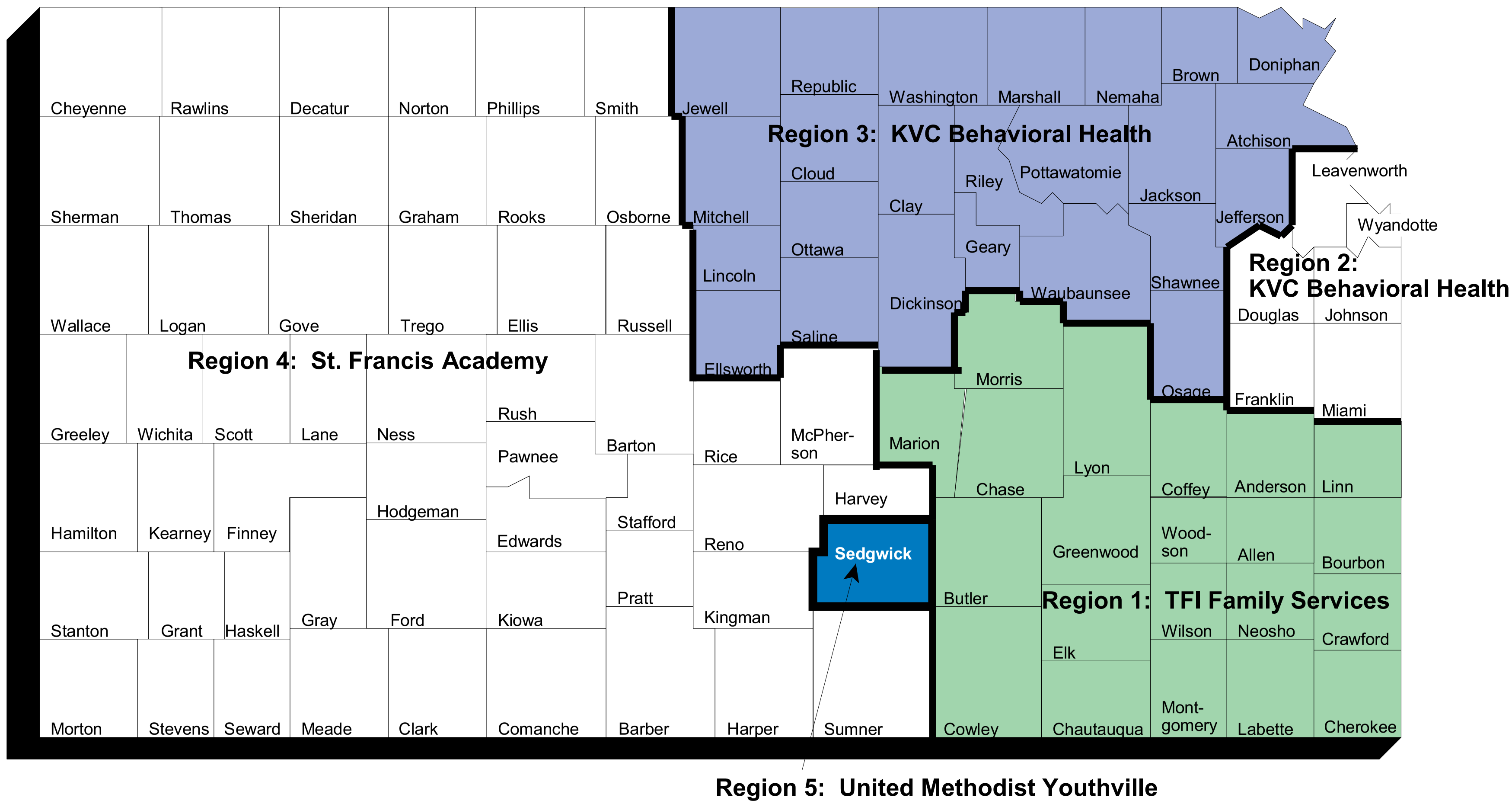
Over the years, legislators have received numerous complaints from families who thought that SRS didn't have good justification for seeking the removal of their children from their homes or for keeping them away once removed. Those legislators are looking for an independent review of the facts of those cases to determine whether it appeared officials acted appropriately in those cases.

A performance audit of this topic would address the following question.

1. 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? To answer this question, we would identify a sample of 15 or 20 cases in which legislators have heard complaints about decisions to seek removal of children or not to re-unite them with their families. For each case, we would review available documentation on the circumstances of the case, interview social workers, parents, judges, children (if they are old enough), and other relevant parties to determine what circumstances existed at the time the child was removed from the home, and what has transpired since that time. Based on that information, we would assess whether we thought there was justification for the actions officials took.

Estimated Time to Complete: 8 weeks

APPENDIX B
Foster Care and Reintegration Service Providers Effective July 1, 2005



Source: SRS Website

APPENDIX C
Examples of Concerns That Did Not Appear To Be Problems or That Couldn't Be Determined

Concerns Raised by Family Members of Children in the Foster Care Program	
Examples of Concerns Raised by Family Members That We Found Evidence To Support, But That Didn't Appear To Rise to the Level of a Problem	
Concern	**What We Found**
1. The parents weren't allowed to attend mental health staffings, which are meetings between the family's therapists, SRS staff, and the social worker.	1. An SRS official told us it was up to the therapist to decide whether family members are invited to attend these meetings. The parents' attorney was allowed to attend these meetings.
2. The parents requested but weren't provided copies of foster care records from SRS, the court, and their attorney.	2. The parents were provided copies of the child-in-need-of-care petition, court journal entries, motions filed with the court, and the judge's protective custody order. However, K.S.A. 38-1506 doesn't give parents access to the district court's social file, which includes information such as reports from SRS contractors, therapists, and others. In addition, the parents also asked SRS and their attorney to provide them with copies of certain records. The request was denied based on K.S.A. 38-1507 and related sections that prohibit disclosure of child abuse/ neglect records.
3. SRS child support enforcement staff charged the parents child support for the time that their children lived with relatives while in the foster care program.	3. State law makes parents liable to repay SRS for any assistance provided on the child's behalf. The amount parents are charged generally is based on their income level, rather than on actual costs. Although the children in this case stayed with relatives for several months, they still were in SRS custody, and SRS would have incurred costs during that time, including paying the contractor a case-management fee.
4. A judge said that a baby shouldn't go to his grandparents because of the way the grandparents had raised the baby's father.	4. The court transcript shows that the judge did make this comment, but that the judge also considered other factors in making a decision on where the child should be placed.
5. Courts aren't conducting temporary custody hearings each time a child is removed from the parent.	5. K.S.A. 38-1543 requires an initial temporary custody hearing to be held within 72 hours of when a child is taken into protective custody (excluding weekends and legal holidays) . The only time we saw courts removing children without a temporary custody hearing was when the children were back in the home, but still in SRS custody. In these types of cases, court hearings aren't required.
6. A parent alleged that tasks were added to the family case plan unnecessarily.	6. When tasks were added to the original case plan, we saw appropriate reasons for the additional tasks to be added. For example, a parent who had been arrested for drugs had the tasks of completing a drug and alcohol evaluation and attending Alcoholics or Narcotics Anonymous meetings added to the case plan.

7. SRS and the district attorney had intentionally falsified documents submitted to the court. Specifically, the statement in the child-in-need-of-care petition that there was domestic violence in the home was wrong.	7. Much of the information contained in the petition came from statements the parents' child had made to authorities, and the petition's language made it clear the child's statement were the basis for many of the allegations. Although the child later admitted that her earlier statements weren't true, there was no way for the authorities to have known this at the time the petition was drafted.
8. A family member alleged that the hospital staff had no right to administer a drug test to a newborn baby.	8. The hospital's admission form authorizes the doctor or his designee to perform necessary treatment and procedures. An official with the Board of Healing Arts told us the language in the admission form would give the doctor and hospital consent to perform a drug test on the newborn infant. The doctor ordered the drug test because the baby received little prenatal care, was having trouble feeding, and was gagging. The drug test came back positive for tricyclic antidepressants, barbiturates, and marijuana.
Examples of Concerns Raised by Family Members Where the Evidence We Saw Didn't Support the Concern	
Concern	**What We Found**
1. SRS didn't investigate allegations that the parent wasn't appropriately caring for the children.	1. The allegations were investigated by SRS, and SRS found the allegations to be true.
2. SRS didn't consider placing the children with a relative rather than in foster care with strangers.	2. SRS did consider placing the children with this relative, but determined the relative was not an acceptable placement because she had a past history of allowing her own children to be sexually abused.
3. Parents stated that a record of the initial complaint which alleged child abuse didn't exist.	3. We determined that the initial complaint was received through the SRS hotline for abuse and neglect complaints, and obtained a copy of the intake form documenting the call.
4. A parent expressed concerns about the accuracy and completeness of court transcripts. The parent expressed concerns that key statements and comments made by the judge were omitted from the transcript.	4. We listened to tapes of four hearings that occurred between 2004 and 2006 and compared them to the court transcript. All substantive comments were included: occasionally, we noticed that comments such as "ah," "um," and other pauses were omitted from the transcript, and sometimes comments made from people in the gallery were inaudible.
5. A parent said that the SRS case plan required him to attend parenting classes that occurred during his normal working hours. This parent worked about 35 hours a week at a restaurant, generally in the evenings.	5. Officials from the agency that conducts the parenting classes told us that the classes currently are held several times a month, and at times designed to fit any schedule. We analyzed one of their recent parenting class schedules. During a two-month period, the agency offered 68 different sessions of parenting classes. The sessions generally ran for a period of two hours. The classes were offered Monday through Friday between 9 a.m. and 6 p.m. The classes were scheduled two months in advance so that parents could adjust their work schedules as necessary to attend.

Examples of Concerns Raised by Family Members That We Were Unable To Conclude Whether Certain Events Happened	
Concern	**What We Found**
1. Members of one family told us their attorney locked them in a room at the courthouse and coerced them into giving up their parental rights.	1. We talked with the parents in this case and read a court transcript about the hearing in question. The transcript stated that the attorney told the judge he spoke with his clients for about an hour and a half before the hearing started, and they had agreed to relinquish their parental rights. At that hearing, the judge asked a series of questions to make sure they understood what they were doing by relinquishing the rights to their children.
2. One parent told us a contractor social worker asked if she would be willing to sign away her parental rights in exchange for pictures and updates about her child.	2. We reviewed SRS and contractor files and spoke with the social worker. The social worker confirmed that the different options of reintegration, guardianship, and adoption were discussed with the parent at case plan meetings as was required. However, she told us she didn't ask the parent to relinquish parental rights and didn't promise that the parent would receive pictures and updates.
3. Parents alleged that when their child was removed from the family, law enforcement officials stated the child would undergo a medical examination.	3. We read the police report and materials submitted by the parents, and interviewed the parents and the responding officer. Despite these efforts, we couldn't determine exactly what was said between law enforcement officials and the parents the day that the child was removed from the home.
Source: Interviews with family members and LPA analysis of SRS and court records	

APPENDIX D

Agency Response

On September 28, 2006, we provided copies of the draft audit report to the Office of Judicial Administration and Department of Social and Rehabilitation Services (SRS). Their responses are included as this appendix.

The agencies generally concurred with the report's findings, conclusions, and recommendations. As a result of their review of the draft report, we made some minor corrections and clarifications to the draft audit report that didn't affect any of our findings or conclusions.

KANSAS

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SOCIAL AND REHABILITATION SERVICES
GARY J. DANIELS, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

October 6, 2006

RECEIVED
OCT - 6 2006
LEGISLATIVE DIVISION OF POST AUDIT

Ms. Barbara Hinton
Legislative Post Auditor
Legislative Post Audit
800 SW Jackson St., Suite 1200
Topeka, KS 66612-2212

Dear Ms. Hinton:

Thank you for the opportunity to review and comment on the LPA audit report, *Foster Care: Reviewing Decisions To Remove Children From Their Homes.*

My staff have reviewed the report and find the recommendations supportive of current efforts to improve child welfare practice. While a small, non representative sample may not be relied upon as an accurate picture of the system as whole, it can and will be useful in our ongoing efforts to improve the system. We look forward to participating fully in that effort.

The first recommendation addresses child welfare service delivery. Currently child welfare service delivery is monitored through data analysis, monthly reports, case reads and case reviews. Case reads monitor for compliance with applicable laws, policy and court orders as well as evidence of best practices. Case reviews involve reading selected cases plus follow up interviews with participants. Additionally, periodic stakeholder meetings in communities across the state provide insights into areas needing improvement and promising practices. Technical assistance is provided and corrective action plans developed as necessary to address concerns identified. Progress is monitored specifically or in subsequent case reads and reviews. The CFS performance improvement process itself is under review to assure it is effective. A copy of this audit report will be provided to all child welfare community based service providers under contract for child welfare services, SRS staff and community stakeholders to assure we derive maximum benefit from this effort.

Our response to the second recommendation concerning child support enforcement will include distribution of the report along with relevant statutes, case law and policies to CSE program administrators and attorneys. This material will be the subject of a conference call on October 12, 2006 and subsequent local meetings. A work group will be created by November 10, 2006 to develop and present training to assure all parents receive consistent information. Consistent and complete information is the right of every parent and our obligation. However, I would be remiss if I failed to be clear about the purpose of the Child Support Enforcement Division. It is CSE's mission to collect the maximum amount of money from parents at the least possible cost in order to minimize the burden on

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Ms. Barbara Hinton
Legislative Post Audit
October 6, 2006
Page 2

taxpayers. In order to accomplish that mission, CSE is unlikely to renegotiate judgements with parents who did not come to the negotiating table earlier. State law requires collection based on actual costs of the child's care but allows negotiation between parties prior to judgement being rendered by the court.

The third recommendation involves the enforcement of statutory requirements for homes regulated by KDHE. We are happy to collaborate with KDHE and the court system to improve communication between the district courts and KDHE.

Child welfare is a complicated and, too often, confusing process for those it intends to serve. We appreciate your efforts and will use them to improve our work. Thank you.

Sincerely,

Gary J. Daniels

Gary J. Daniels
Secretary

GJD:SM
cc: Candy Shively
Sandra Hazlett
Mary Hoover

RECEIVED
OCT 5 2006
LEGISLATIVE DIVISION
OF POST AUDIT

Supreme Court of Kansas

Kansas Judicial Center
301 S.W. 10th
Topeka, Kansas 66612-1507

HOWARD SCHWARTZ
Judicial Administrator

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October 5, 2006

Ms. Barbara J. Hinton
Legislative Post Auditor
800 Southwest Jackson Street, Suite 1200
Topeka, KS 66612-2212

Dear Ms. Hinton:

Thank you for the opportunity to respond to the Division's performance audit, *Foster Care: Reviewing Decisions to Remove Children from Their Homes*. I appreciate many of the comments you made regarding the child in need of care and foster care system in general, including Post Audit's conclusion that you "couldn't disagree with the removal and final placement decisions for these children." You correctly note that "foster care cases involve highly emotional and personal situations, not only for the parents and other family members whose children are being taken from them, but also for social workers, judges, and others who are charged with protecting children from harm," and acknowledge "the stresses the foster care system imposes on people."

As stated in your report, this was not a scientific or even representative review of child in need of care cases in Kansas. In fact, the 12 cases that were reviewed amounted to approximately 0.21 percent (just over two tenths of one percent) of the 5,821 cases that were filed during the last fiscal year for which caseload statistics are available. (See attached table.) Because the 12 cases reviewed were identified as being disposed of over multiple years, these percentages would be even more minuscule if that were taken into account. Further, this two-tenths of one percent review of these matters did not in any fashion come from a random sample of child in need of care cases. Rather, Post Audit sought out legislators who had heard complaints from constituents whose children had been removed from their home based on a finding that they were children in need of care.

At the outset, I must note that Kansas judges treat children in need of care and their families with concern, fairness, and impartiality, keeping the best interest of the child as their utmost consideration. Our judges and staff enjoy a national reputation for the expeditious and fair treatment of these matters and frequently are called upon to speak about the Kansas children and families programs, including child in need of care cases.

Despite the Division's intensive critical focus on the judicial decisions made in these 12 cases, the Division "couldn't disagree with the removal and final placement decisions for these children." While I agree with this conclusion, the true judge of the reasonableness of these decisions is the Kansas Court of Appeals or the Kansas Supreme Court, not the Legislative Branch's Division of Post Audit. That review is established by statute and by the separation of powers doctrine embodied in our state Constitution. Moreover, appellate review can be had at no cost to the appellants in these matters. K.S.A. 2005 Supp. 38-1505 provides that the court shall appoint an attorney for any parent who so desires but is financially unable to do so. This applies at all stages of the proceedings, including any appellate proceedings.

As a footnote before specifically addressing the recommendations, I believe there may be a fundamental lack of understanding by the audit team about the relationship of the courts to the Executive Branch agencies. On page 3, the auditors identify the judiciary as one of "as many as four *agencies*" that can be involved in decisions to remove children from their families. The Judicial Branch is not an agency, but a separate and co-equal branch of government, and it is that fact that runs counter to the legislative agency's recommendations. With that, following are the recommendations and our responses:

The first recommendation is that the Office of Judicial Administration develop guidelines for judges who handle child in need of care cases governing such things as the types of meetings that can be held outside of a formal court hearing and who may or must be in attendance, and the types of e-mail communications that would be considered appropriate between a judge and other parties involved in child in need of care cases. The Permanency Planning Task Force, an existing multi-disciplinary group appointed by the Supreme Court to provide review and leadership in child in need of care and other juvenile matters, will be asked to address these issues.

The second recommendation is that the Office of Judicial Administration send a notice to judges who handle child in need of care cases reminding them of the importance of:

- ensuring that any family that can't afford an attorney is provided one as required by K.S.A. 38-1505;
- asking all questions specified in K.S.A. 38-1553 before allowing families to stipulate to facts contained in a child in need of care petition; and
- periodically checking recording equipment used in lieu of a court reporter or official stenographer to ensure that the equipment is functioning.

These and other child in need of care issues will be addressed at the upcoming fall judicial conference, during which a panel of judges and a University of Kansas Law School professor will provide an update on the revised Juvenile Offender and CINC Codes. A second session, entitled *Divorce and Children: The Evidence*, will focus on the consequences of divorce and family breakup on children, focusing on short and long term effects. These same considerations are relevant to child in need of care cases. Updates on amendments to the law and case law developments are a regular occurrence, and issues related to children in need of care are a regular topic at judicial education conferences.

A review of topics offered at judicial conferences over the past ten years reveals that there have been very few conferences in which the important topic of children in need of care and related issues have not been addressed, either by panels of our own judges or by nationally recognized experts in the field. A wide range of topics have been addressed, including such topics as *Psychological Evidence Issues in Child Abuse Cases; The Judge's Role in Family Preservation; Juveniles, Families, and System Reform* (regarding lasting, permanent families); *Psychological Aspects of Separation Issues – The High Price of Legal Limbo; Family Violence: Improving the Court and Community Response; Judicial Leadership in Child Abuse and Neglect Cases; Managing Foster Care Cases; Science and Pseudo-Science in Psychological Testimony,* and a variety of other presentations.

The third recommendation is that the Office of Judicial Administration review the Post Audit statewide data on the rates at which adoption is being pursued in various counties, and "investigate the reasons why some counties may deviate significantly from the Statewide averages." As noted previously, review of the decision reached in any particular case is a function of the appellate courts. It is not appropriate for the Office of Judicial Administration to review the recommendations of the Department of Social and Rehabilitation Services, county and district attorneys, other professionals assigned to child in need of care cases, or judicial orders. However, I will note that this issue can and will be addressed from a broader policy perspective by two groups, the Permanency Planning Task Force and the federal Administration for Children and Families. The federal Adoption and Safe Families Act requires the Administration for Children and Families to conduct a formal audit, which will begin in January 2007. The audit will examine a broad range of statewide data, including adoption data, and results of the audit will be disseminated to all judges. Federal audits are a routine matter in all states, and four audits have been conducted in Kansas in the past six years.

In conclusion, the Judicial Branch is very proud of our children and families programs and of the judges' handling of these difficult and emotional cases. We believe we have an excellent judiciary that is responsive and ever mindful of the common goal that the best interests of the children come first in this difficult area of the law. We appreciate suggestions for further refinements and improvements to the system. Thank you for the opportunity to respond and for your affirmation that the best interests of the children in these 12 cases have been met.

Sincerely,

Howard Schwartz

Howard Schwartz
Judicial Administrator

HS:mr

Small Statewide Percentage of Cases Reviewed

County	Number of Cases Filed	Number of Cases Reviewed	Percent Reviewed by Post Audit
Montgomery	52	5	9.62%
Sumner	83	2	2.41%
Sedgwick	512	2	.39%
Ness	4	1	25.00%
Shawnee	333	1	.30%
Elk	14	1	7.14%
All Other Counties	4,823	-	-
Statewide Total FY 2005	5,821	12	.21%