

BRIEF ANALYSIS
OF THE KANSAS LEGISLATIVE DIVISION OF POST AUDIT
PERFORMANCE AUDIT REPORT
CHILDREN IN NEED OF CARE: REVIEWING SELECTED ISSUES RELATED TO
HANDLING THEIR CASES

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Many of the issues, and statistics, summarized below are discussed in detail in NCCPR's in-depth report on Kansas child welfare, Return of the Cruelty, available online at <http://www.nccpr.org/reports/kansas.pdf> Please see that publication for details, and full citations concerning any data below.

EXECUTIVE SUMMARY

The August, 2009 Performance Audit Report, *Children in Need of Care: Reviewing Selected Issues Related to Handling Their Cases* is an admirable attempt to come to grips with issues that are, at the same time, profound and arcane.

The Audit makes a useful contribution to the debate over child welfare in Kansas. But its usefulness is somewhat undermined by some crucial errors of fact and misjudgments in methodology. Among the problems:

- The Audit is mistaken in claiming that the rate of child removal in Sedgwick County is not unusually high. In using a three-year average to draw this conclusion, the Audit failed to account for the fact that, prior to 2007, the reported rate-of-removal in Sedgwick County was artificially low because, in that county, any child sent home within 144 hours was not officially counted as having been removed, while in all other counties this applied only to children held for under 72 hours. According to the Sedgwick County District Attorney's office itself, this made a significant difference in the number of officially-recorded entries into care.

- The report is mistaken in saying that rates of removal cannot be compared among states. In fact, there is a uniform federal definition for what constitutes an entry into foster care. We know of only one state that effectively ignores that definition: Kansas.

- The methodology of the report inevitably underestimates the extent to which caseworkers are bullied by district attorney's offices, whether in Sedgwick County or anywhere else in the state.

- The report appears to assume that the kind of conflict it documented in Kansas between caseworkers who investigate child abuse and the lawyers who bring those cases to court is normal, and the only issue is, in effect, whether everyone is "fighting fair." In fact, this kind of conflict is unusual, unnecessary and enormously harmful to children and families. That's why most state and local child welfare agencies are structured in a way that promotes vigorous debate within the agencies but without the severe drawbacks of the Kansas system.

RATES OF CHILD REMOVAL

The Audit claims that it is not possible to compare rates of removal among states but it is possible to compare them within regions of Kansas. The first claim is mistaken, the second claim is partially in error.

In both cases, the problems revolve around Kansas' bizarre interpretation of a simple, straightforward federal regulation.

Comparisons among states

That regulation clearly state that a child enters foster care if that child is out of her or his home for more than 24 hours and under the *placement, care or supervision responsibility* of the state child welfare agency. Contrary to what is said in the Audit, the child does *not* have to be in the agency's "custody" for the placement to count.

As we noted in *Return of the Cruelty*, our December 2007 report on Kansas child welfare (updated in June, 2008):

When it comes to such placements in Kansas:

- *It is SRS that often asks law enforcement to take custody in the first place.*
- *The children generally are placed in a home or institution that must be licensed by a sister agency, the Department of Health and Environment....*
- *SRS workers visit the child while in the facility.*
- *In the case of the Wichita Children's Home SRS workers even are on site to oversee the case.*
- *SRS develops the plan to either send the child home, place the child in informal care with a relative, find a foster home with strangers, or keep the child in an institution.*
- *SRS foots the bill. SRS reimburses institutions like the Wichita Children's Home for the cost of these placements.*

That sure sounds a lot like "placement, care or supervision responsibility."

And whether or not the placement "counts" to SRS, whether or not it "counts" to the Sedgwick County District Attorney's office, and whether or not it "counts" to the Administration for Children and Families, we may be sure of one thing: It counts to the child.

But Kansas has chosen to play a bizarre game of "let's pretend." Kansas says that because the physical act of removing the child was done by a police officer, the child is not really in foster care – instead he's in "police protective custody" – until the first court hearing.

If the child is sent home before that first hearing, the placement is never counted at all – though, as we noted above, you may be sure it counted to the child.

We know of no other state that engages in this kind of manipulation of data. So while the audit seeks to duck state-by-state comparisons by arguing that because "other states' laws

may differ on when a child comes into custody, comparing removal rates across states would be flawed” [emphasis added], in fact we know of only two different ways this particular federal regulation is interpreted: the way Kansas does it and the way everybody else does it. The Audit itself cites no other state that follows the Kansas model of shamefully manipulating entry data. The fact that the federal government has chosen to look the other way makes Kansas’ practice no less reprehensible.

Even if one sticks only to officially-reported entries into care, Kansas takes children at a rate well above the national average, and significantly above the rate in systems widely regarded as models for keeping children safe. But if Kansas *honestly* counted all the children it really takes away, the same way as other states, the rate of removal probably would more than double and Kansas would be a contender for child removal capital of America.

Comparisons within Kansas

The Audit’s error when comparing regions within Kansas is rooted in this same statistical gamesmanship.

The Audit compared rates of removal by comparing the average number of entries into care for each region in FY 2006, 2007 and 2008. But for half that time, Sedgwick County was waiting up to 144 hours before the first court hearing, while all other counties waited no more than 72. That means Sedgwick County had a much larger proportion of “off the books” removals than the rest of the state. So the official figure for Sedgwick County in 2006 was artificially low – even when compared to other counties in Kansas.

Starting in January, 2007, Sedgwick County was forced to obey the law, just like everyone else. As a result, there was a sharp increase in officially-reported entries into care that year. Indeed, the District Attorney’s office actually acknowledges this in its own response to the Audit. And the change is starkly visible in the table on the following page, which tracks entries into care in Sedgwick County month-by-month.

The change in the law was one of two factors that sent removals soaring in FY 2007; the other was the Wichita foster-care panic of 2006, the surge in removals following intensive news coverage of severe abuse of children previously “known to the system.” The panic, fueled in part by the District Attorney’s office, is described in detail in *Return of the Cruelty*.

So the averaging process hides the fact that, in 2007, the first year in which one truly is comparing apples to apples, the rate of removal in Sedgwick County was indeed significantly higher than the state average.

Interestingly, in FY 2008, officially-reported entries into care in Sedgwick County went down again – the drop began toward the end of, 2007; just as advocates for families were protesting loudly about the needless destruction of families in the county, and just as NCCPR was researching and then releasing *Return of the Cruelty* at a forum in Wichita organized by Citizens for Change.

Fortunately, as pressure on the District Attorney’s office has mounted, particularly in the wake of SRS Secretary Don Jordan’s remarks about bullying, this trend has continued, and the

CHILDREN TAKEN FROM THEIR PARENTS IN SEDGWICK COUNTY (Officially-reported removals only)

Fiscal Year	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
2005-06	22	30	35	44	41	42	39	46	40	33	30	25	427
2006-07	46	57	38	59	59	33	74	105	62	110	74	74	791
2007-08	62	83	83	68	44	47	60	49	38	42	52	24	652
2008-09	37	39	63	42	34	30	47	28	43	34	17	28	442

Key dates:

July, 2006: Intensive coverage of children severely abused even though their plight was “known to the system” sets off a foster-care panic. The panic is fueled by comments from the District Attorney’s office.

January, 2007: Sedgwick County is forced to obey the law, just like every other county, and hold a first court hearing after removing a child within 72 hours, reducing the number of “off the books” placements.

Late 2007: Local groups such as Citizens for Change, begin protesting the high rate of removal in Sedgwick County; NCCPR releases a report on Kansas child welfare.

June, 2008: Don Jordan’s comments alleging bullying by the Sedgwick County District Attorney’s office become public.

Source for entry data: Kansas Department of Social and Rehabilitative Services. Data available online by going to <http://www.srskansas.org/CFS/datareports09.html> and clicking on the link called “Reintegration Referral Summary” for each year.

official rate of removal in Sedgwick County continued to decline in 2009. It is now roughly back to where it was before the foster-care panic of 2006. (For sources for these data, see the chart above.)

But this healthy trend will continue only as long as both SRS and the Sedgwick County District Attorney’s office continue to be pressured to reduce needless removal of children from their homes. It is only states and localities that have reduced unnecessary removals that actually have succeeded at improving child safety.

And both Sedgwick County, and the state as a whole, still have a long, long, way to go.

This official figure for 2009 in Sedgwick County still is a higher rate-of-removal than, among others, metropolitan Chicago, the State of Illinois, and the State of Alabama, all of which are national models for improving child safety.

And, again, these are only the officially-reported removals. Add in all those off-the-books removals, and the number probably more than doubles – an estimate that is discussed in detail in *Return of the Cruelty* and is based in part on comments from the Sedgwick County District Attorney’s office itself.

So we still don’t know how many children *really* endure the trauma of being torn from everyone they know and love – in Sedgwick County or anywhere else in Kansas. We know only that the number is very, very high.

BULLYING

The key failing here is hard to avoid. In any effort to survey people about a personal experience, those with bad experiences are simply less likely to respond. Think of it as the high school reunion principle. If you had a great time in high school you're more likely to show up at the reunions. If you were miserable during those years, you're more likely to stay away.

When the specific topic is intimidation, this problem is likely to be even worse. It should be obvious that those who were successfully intimidated are likely to be too intimidated to come forward and say so, even if promised anonymity.

The fact that, in spite of these inherent limits, fully half the caseworkers in Sedgwick County said they were intimidated at least once should be cause for alarm, rather than the sanguine reaction seen in some quarters.

Further cause for alarm is the fact that, even though the Audit was only mildly critical, the Sedgwick County District Attorney's office issued a long and belligerent response. That the office would react so defensively to such mild criticism is, in itself, a red flag.

In addition, it appears that the auditors didn't always understand the significance of what they saw.

At one point, discussing several counties, not just Sedgwick, the Audit notes that "We saw several instances where the petition filed by the District Attorney's Office omitted some information from the social worker's application, such as the mother claiming she's of Indian heritage."

Without any context, one might assume this is a trivial difference – indeed the auditors may have made that assumption. In fact, when a parent is of Indian heritage, a federal law known as the Indian Child Welfare Act often applies – and under that law, the standard of proof needed to take away a child is higher (at least in theory), and the efforts that must be made to keep the family together are greater (again, at least in theory). So this can be a very significant omission.

The other evidence that the problem is widespread is simply the fact that Don Jordan brought it up in the first place. Does anyone really believe he'd have taken back his comment had he not been caught on tape?

In any event, when dealing with child abuse itself, it often is said, correctly, that even one case is one too many. So is even one case of a caseworker being intimidated into putting material into a report that shouldn't be there, or leaving out material that should.

And that leads to the issue of some disingenuous hairsplitting from the Sedgwick County District Attorney's office. In effect, they're claiming vindication because no one said they were told to tell an outright lie in a court document.

But, in court documents, as in journalism, context is everything. What is emphasized and what is left out is every bit as important as the literal veracity of the words in the report.

CONFLICT BETWEEN THE AGENCY AND THE LAWYERS

Furthermore, many more workers complained of being treated with disrespect and having their recommendations ignored. So, in effect, many workers are saying: They treat us like dirt, but they don't actually bully us. That's hardly reassuring.

Just as bad is the suggestion by some judges that the whole process of having caseworkers and lawyers disagree placed at odds the way they are in Kansas somehow is healthy as long as everyone, in effect, fights fair. In fact, this process, in itself can do enormous harm to children. And that's why most places don't do it this way.

In many jurisdictions, the lawyers who bring allegations of child abuse to court actually work for the child welfare agency. In other places, the child welfare agency is represented by a state attorney general's office or a county attorney's office. But the key word is *represented*.

In all of these arrangements, the child welfare agency is the client. And, as in any lawyer-client relationship, the lawyer advises on the law, but the client makes the ultimate decision.

That's better for children for two reasons.

First, under the current Kansas system, a family can be whipsawed between two different entities, each of which, to some degree, controls the fate of their child. Each may have its own set of demands – they even may contradict each other. In effect, a district attorney's office can act as its own rogue child welfare agency whenever it so chooses.

So, for example, a family may do everything to comply with an SRS service plan to get their children back – they may jump through every hoop, only to find that, when they go back to court, the District Attorney's office says, in effect, "we don't care about what SRS told you to do, and we don't care that you did it. *We* think you should lose your children forever, so we will make that case to the judge." (And, as is discussed in *Return of the Cruelty*, judges are notorious for rubber-stamping such requests.)

But also, paradoxically, this can leave SRS without an effective voice in court. That can be just as harmful as the common practice of no effective representation for families. A judge can make a good decision only when every side has a chance to make the strongest possible case.

In Kansas the problem is compounded by the state/local divide. Child welfare is a state function in Kansas, which means there should be one set of standards for decision-making; one set of criteria for what constitutes maltreatment and what to do about it. But that's impossible if every county District Attorney, or equivalent, decides to impose her or his personal whims and biases – and, perhaps, a desire to be re-elected – on SRS in that county.

All of this explains why, while the Kansas approach is not unique, it is rare.

This does not mean that, in places where the child welfare agency calls the shots, the

lawyers are silenced. There is just as much vigorous debate among caseworkers and lawyers – but in the end, the agency decides how to proceed.

Typically, the agency will defer to the lawyers on matters of law, while having the final say on determining what it thinks is best for a child.

This also does not mean that district attorneys have to ignore criminal behavior. They are always free to file separate criminal charges, in a criminal court, with criminal standards of proof, if they feel it is warranted.

Unfortunately, and notwithstanding the hypothetical examples above, this also does not mean that fewer children will be taken from their parents. The notion that law enforcement always takes a hard line and caseworkers don't is not borne out by available evidence from around the country. In Florida, the entire investigative process was turned over to law enforcement in several counties – but typically they were no more, or less, likely to take away children than their caseworker counterparts elsewhere.

So the benefit for children of having one agency make these decisions is clarity and consistency for families, not fewer disruptions of those families – unfortunately.

AND FINALLY...

The report is right, of course, in noting that, having raised the issue of bullying, Don Jordan failed to actually do anything about it – one more reason he shouldn't be holding the job.