

Preventing Sex Trafficking & Strengthening Families Act

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New Federal Requirements

- Preventing Sex Trafficking and Strengthening Families Act (PSTSFA)
- Signed by President Obama on 9/29/14
- Concerns about older children in particular, sexual trafficking in our child welfare population and changes, particularly in the permanency area
- Biggest change for lawyers and state courts will be in permanency hearings

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■ PSTSFA Sec 209-Placement of Sibs Together in Foster Care

Relatives who are noticed about a removal of child into care now also includes notice to custodial parents of a sibling or a half sibling

This includes children who have been adopted!

Can use the child support parent locator service to help locate

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- K.S.A. 38-2202 definition of relative already met this test “person related by blood, marriage or adoption”
- DCF PPS policies were revised after enactment of federal law to clarify that this definition includes adopted siblings and half siblings



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Supporting “Normalcy”

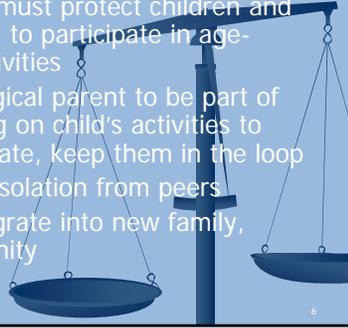
- PSTSFA Sec 111 - Foster parents have to be trained in the “reasonable and prudent parenting standard” (RPPS) to help normalize life for foster children
- To assist foster youth with normalcy in activities i.e.- “to participate in extracurricular, enrichment, cultural and social activities” - court has to specifically check this issue



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Promote “Normalcy”

- Foster parents must protect children and also allow them to participate in age-appropriate activities
- Allow the biological parent to be part of decision-making on child’s activities to extent appropriate, keep them in the loop
- Reduce child’s isolation from peers
- Help them integrate into new family, school, community



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- RPPS - "standard characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural and social activities"

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- K.S.A. 38-2202
- RPPS has been included before in Kansas licensing regulations, but federal law strengthens requirement

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Permanency Hearing Changes

- "Enter a finding as to whether the reasonable and prudent parenting standard has been met and whether the child has regular ongoing opportunities to engage in age or developmentally appropriate activities"

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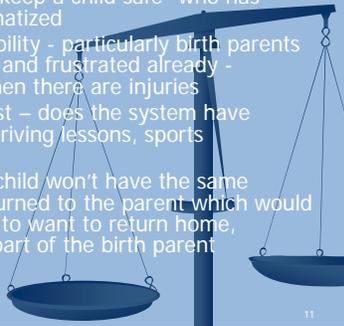
- This will be a new obligation for courts and is now in the CINC statutes
- Caseworkers will provide information to the court which will be the basis for the court to find if RPPS is being met, based on report from the agency/contract workers
- K.S.A. 38-2264



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Why would people be mean?

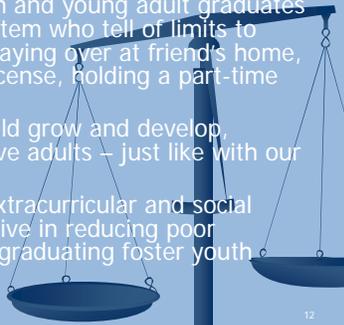
- People do not want to be mean, there are issues
- Motive is often to “keep a child safe” who has already been traumatized
- Concerns about liability - particularly birth parents who may be angry and frustrated already - choosing to sue when there are injuries
- Concerns about cost – does the system have money to pay for driving lessons, sports equipment, etc.
- Concerns that the child won't have the same opportunities if returned to the parent which would create disincentive to want to return home, frustration on the part of the birth parent



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Why is it important?

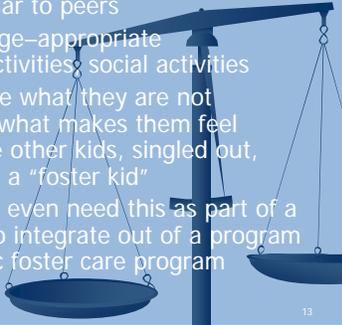
- Respond to the many and loud concerns of older foster youth and young adult graduates of foster care system who tell of limits to playing sports, staying over at friend's home, getting driver's license, holding a part-time job
- Activities help child grow and develop, become productive adults – just like with our kids
- Participation in extracurricular and social activities is effective in reducing poor outcomes of our graduating foster youth



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What does "Normalcy" mean?

- Experiences similar to peers
- Participation in age-appropriate extracurricular activities, social activities
- Ask youth in care what they are not "allowed" to do, what makes them feel different, not like other kids, singled out, even a stigma as a "foster kid"
- Some youth may even need this as part of a treatment plan to integrate out of a program like a therapeutic foster care program



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How will it help youth?

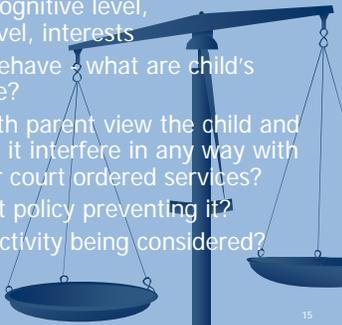
- Help youth take on increasing levels of responsibility and leadership
- More successful transition to adulthood
- More opportunity to interact with community, make friends, find mentors, see what else there is out there
- Reduces risk of alienation, risk for sexual trafficking



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How is it supposed to be done?

- Consider the child's age, maturity, mental and physical health, cognitive level, developmental level, interests
- How does child behave - what are child's skills and aptitude?
- How does the birth parent view the child and this activity? Will it interfere in any way with visitation or other court ordered services?
- Is there any court policy preventing it?
- How safe is the activity being considered?



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What exactly are others doing?

- Discussing good practices
- Listing activities that people may want to consider

- Vacations
- School trips
- Overnight socializing
- Camps
- Using public transportation alone
- Hanging out/shopping/ driving with friends
- Curfews
- Part-time jobs
- Dating, information on sex, birth control, parenting

- Sports – easy and more difficult safety decisions – ping pong, swim teams, football, hockey, ATV, hunting
- Scouting, religious activities, social media, cell phones
- Driving
- Proms
- Clubs
- Volunteering
- Haircuts, tattoos, piercings

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Thoughts for the foster parent

- “Would I let my own child do this?” “If this was my own child, would I allow this?”
- “Do I know this child well enough to make this decision?”
- “What do I know about the safety of this particular activity?”
- “Would this activity violate any court order or policy?”
- “Would this interfere with visitation?”
- “Is it appropriate to consult with the birth parent or the caseworker about this?”

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Some Questions Coming Up

- What is the “balance of power” between the agency, the foster parent, the birth parent, and the court? Who is really going to make the decision? Will it depend on the decision involved?
- Liability for injury during an activity?
- What does it mean that the court is supposed to inquire about it – and what about having an advocate regarding this issue?
- What is the role of the attorneys?
- What about money – is the state going to provide more money for these activities?

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Where can I read more?

- <http://www.aecf.org/resources/what-young-people-need-to-thrive/>
- <https://www.childwelfare.gov/topics/outof-home/resources-foster-families/parenting-normalcy/>



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Another Planned Permanent Living Arrangement (APPLA) Changes

- PSTSFA Sec 112 - no APPLA goals for youth under age 16, no exceptions
- Court will have to reassess APPLA goal at every perm hearing and determine why other goals are not in the child's best interest (ICBI) – court must ask child directly what is being done, unsuccessfully, to achieve another goal
- Court must ask child



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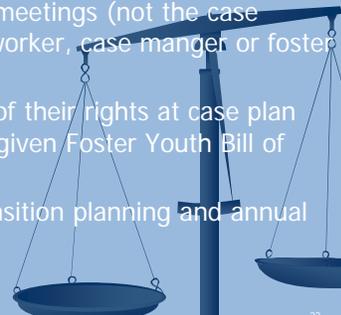
Kansas law - APPLA changes

- Where child has APPLA goal – court must ask the child about their desired goal
- Document "intensive, ongoing" but to date "unsuccessful" efforts to achieve other goals
- Determine why APPLA is the best goal and why there are compelling reasons why it is not in the child's best interests to have another goal
- K.S.A. 38-2264



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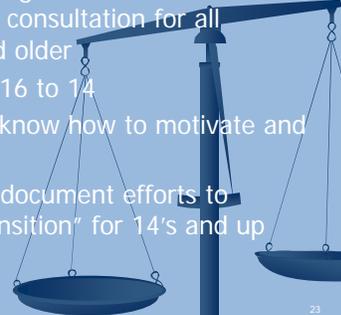
- PSTSFA - Sec 113 - for all youth over 14:
 1. have involvement in case plan and can have up to 2 persons the youth has chosen at the case plan meetings (not the case planner, caseworker, case manager or foster parent)
 2. are to be told of their rights at case plan meetings and given Foster Youth Bill of Rights
 3. must have transition planning and annual credit checks



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Involvement in Case Plan

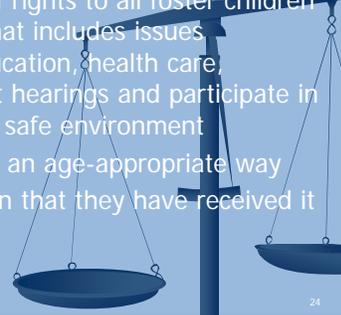
- Kansas law changed to include this requirement of consultation for all children 14 and older
- Changed from 16 to 14
- Worker has to know how to motivate and engage
- Court's role – "document efforts to prepare for transition" for 14's and up
- K.S.A. 38-2264



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List of Rights

- An actual list of rights to all foster children 14 and older that includes issues concerning education, health care, visitation, court hearings and participate in them, rights to safe environment
- Must explain in an age-appropriate way
- Youth must sign that they have received it



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Annual Credit Checks

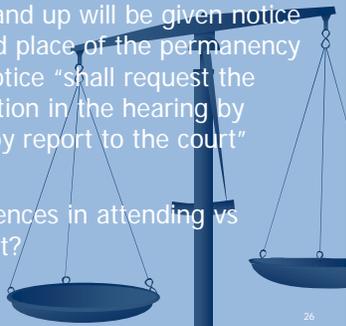
- Why?
- Not just checked, but also fixed



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- All children 14 and up will be given notice of the “time and place of the permanency hearing” and notice “shall request the child’s participation in the hearing by attendance or by report to the court”
- K.S.A. 38-2265
- What are differences in attending vs sending a report?



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Children in Court

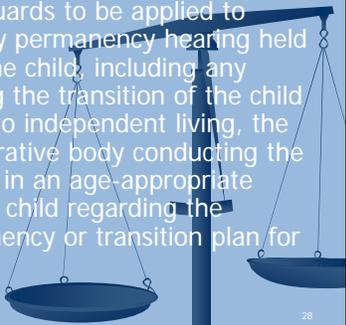
“Permanency hearing...which shall include age-appropriate consultation with the child...”



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Child and Family Service Improvement Act of 2006

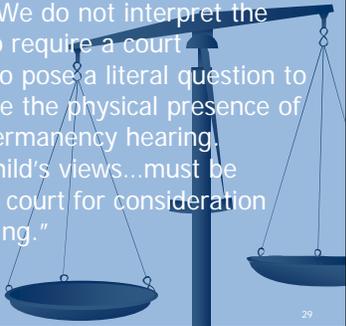
Procedural safeguards to be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child



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Does "consult" mean child has to be present in court?

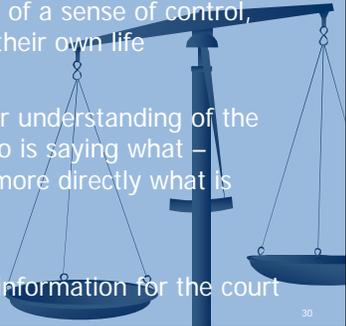
- Feds say no – "We do not interpret the term 'consult' to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child's views...must be obtained by the court for consideration during the hearing."



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Benefits when youth participate...

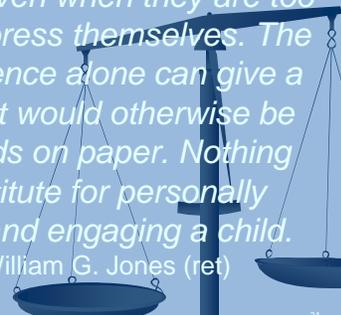
- Youth has more of a sense of control, involvement in their own life
- Youth has better understanding of the process and who is saying what – understanding more directly what is occurring
- More complete information for the court



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The presence of children in court proceedings that affect them is invaluable, even when they are too young to express themselves. The child's presence alone can give a face to what would otherwise be simply words on paper. Nothing can substitute for personally observing and engaging a child.

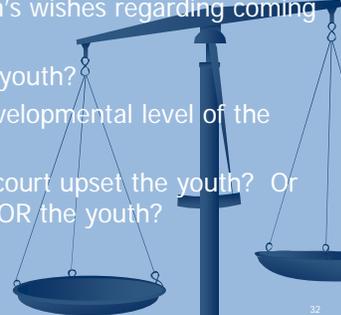
-Judge William G. Jones (ret)



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Practice Considerations

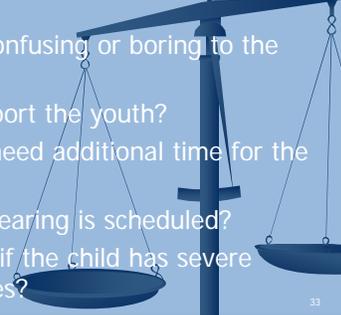
- What are youth's wishes regarding coming to court?
- How old is the youth?
- What is the developmental level of the youth?
- Will attending court upset the youth? Or are we upset FOR the youth?



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Policy and Practice Considerations

- Will attending court disrupt the youth's routine?
- Will court be confusing or boring to the youth?
- Who will transport the youth?
- Will the court need additional time for the hearings?
- What type of hearing is scheduled?
- What happens if the child has severe emotional issues?



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Considerations

- KSA 38-2264(d)(1) – Child has opportunity to speak about desired permanency outcome “by attendance at the hearing, or by report to the court”
- Have the youth physically present throughout the hearing or determine if it is really necessary for them to step out at some point
- Consider an advance visit to the courthouse
- GAL could present the child’s statements in court if they feel that they will not be able to speak or need to be coached a bit

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Consider:

- Who will decide if child comes?
- Who will prep child?
- How will child tell court?
- Can child speak alone/with GAL in chambers?
- Timing regarding school and other problems
- Court facilities adequate?
- Transportation?

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Youth say they need help with:

- Placement problems (this is the #1 issue)
- Visitation and their preferences
- Practical stuff: computers, phones, privacy issues, driver’s license, jobs, college questions, high school needs like sports equipment, prom attire, permission to do things that non-foster kids do – the NORMALCY issue!!

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Children in Court

- Let's talk
- Is it happening? What are the barriers?
- Kansas project!! The youth responded VERY positively to being included in court proceedings and wanted to be there. This continued even after being there.



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We can give children a more meaningful voice in their lives; lives which are not so great at this point

We can show them that how they feel and what they want is important to us

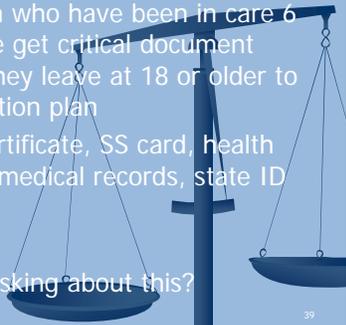
We can make permanency hearings be more meaningful by giving each child the attention and time that they rightly deserve



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Youth Leaving Care

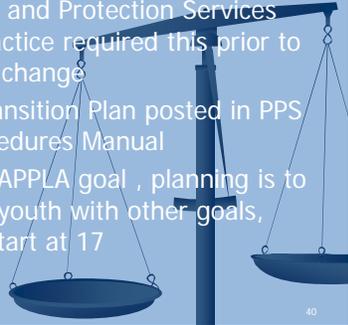
- Sec 114 - Youth who have been in care 6 months or more get critical document records when they leave at 18 or older to help with transition plan
- What? Birth certificate, SS card, health insurance info, medical records, state ID with a picture
- Court Role?
- When to start asking about this?



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Youth Leaving Care- Transition Plans

- DCF Prevention and Protection Services policies and practice required this prior to the federal law change
- Reflected in Transition Plan posted in PPS Policy and Procedures Manual
- For youth with APPLA goal , planning is to start at 16, for youth with other goals, planning is to start at 17



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Sex Trafficking

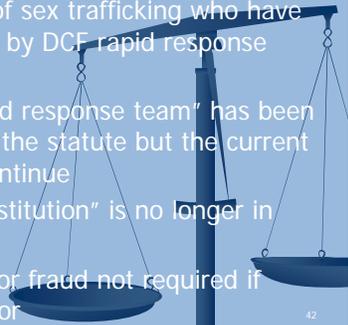
- PSTFA - Sec 101 – Requires states to ID and collect data on sex trafficking on children who are involved in the child welfare system - not just placed in foster care
- What is it? – Child under 18 engaged in a commercial sex act – prostitution, stripping, porn, live sex shows, exchanging sex for food or shelter (survival sex) – could be recruited, transported and could be by force or coercion



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Sex Trafficking – Kansas

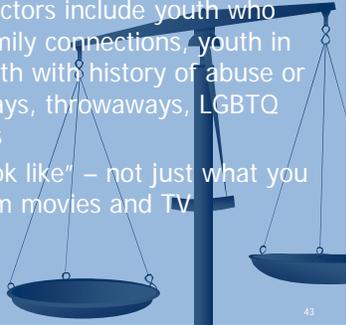
- Kansas will track all children suspected of being victims of sex trafficking who have been assessed by DCF rapid response team
- The term “rapid response team” has been removed from the statute but the current process will continue
- The word “prostitution” is no longer in the statute
- Proof of force or fraud not required if victim is a minor



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Sex Trafficking

- Common risk factors include youth who have limited family connections, youth in foster care, youth with history of abuse or neglect, runaways, throwaways, LGBTQ youth, dropouts
- What can it “look like” – not just what you think about from movies and TV



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PSTSFA - Sex Trafficking

- Looking for youth who have been involved or are “at risk” and providing appropriate services
- Sec 102 requires agency informing law enforcement within 24 hours
- Sec 103 requires data to be kept
- Sec 104 requires state have a plan to locate youth who have run away from foster care including reporting within 24 hours to law enforcement and national databases



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Kansas

- This has been addressed in both statute and in policy



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Sex Trafficking/Labor Trafficking

The legal definition of a Child in Need of Care has been amended to specifically include a child subjected to labor trafficking and/or sex trafficking. K.S.A. 38-2202(d)(14) - "has been subjected to an act which would constitute human trafficking....commercial sexual exploitation,..."

The legal definition of "sexual abuse" under the CINC code still includes all sex trafficking. K.S.A. 38-2202(ff)(2)

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Sex Trafficking/Labor Trafficking

- Where there is reason to believe child in custody may be trafficked, **court** must refer child to agency for assessment to determine safety, placement, treatment and service needs

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Runaways

Law enforcement officers **must take a child into police protective custody** when the officer has probable cause to believe the child is a runaway or a missing person or is entered into NCIC. K.S.A. 38-2231(b)(2) and must notify department to begin assessment regarding child's safety, appropriate placement and services to meet child's immediate needs

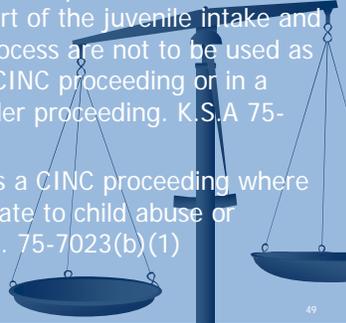
*Previously a child was only "missing" if the child was entered into NCIC.

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Juvenile Intake Records

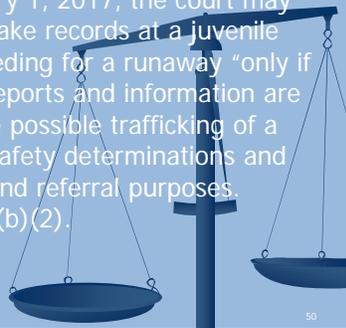
Normally records, reports and information obtained as part of the juvenile intake and assessment process are not to be used as evidence in a CINC proceeding or in a juvenile offender proceeding. K.S.A. 75-7023

An exception is a CINC proceeding where the records relate to child abuse or neglect. K.S.A. 75-7023(b)(1)



Runaways

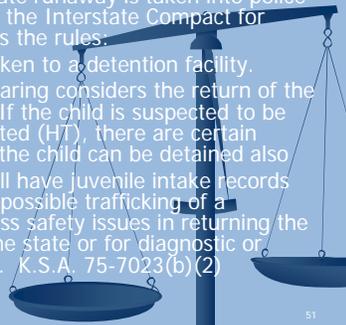
Effective January 1, 2017, the court may use juvenile intake records at a juvenile offender proceeding for a runaway "only if such records, reports and information are in regard to the possible trafficking of a runaway" for safety determinations and for diagnostic and referral purposes. K.S.A. 75-7023(b)(2).



Out of State Runaways

When an out of state runaway is taken into police protective custody the Interstate Compact for Juveniles (ICJ) sets the rules:

- 1) The juvenile is taken to a detention facility.
- 2) The detention hearing considers the return of the child under ICJ. If the child is suspected to be abused or neglected (HT), there are certain situations where the child can be detained also
- 3) Now the court will have juvenile intake records "in regard to the possible trafficking of a runaway" to assess safety issues in returning the child to their home state or for diagnostic or referral purposes. K.S.A. 75-7023(b)(2)



- More data to be collected on various issues : pregnancy and parenting in foster care, congregate care, disrupted adoptions/guardianships that result in foster care placements
- Foreshadowing?



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COMMENTS and QUESTIONS??



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