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Brenna Visocsky, Just Campaign Director
Kansas Appleseed Center for Law and Justice
Written Testimony in Opposition to HB 2311
House Committee on Child Welfare and Foster Care

Chair Howerton, Ranking Member Ousely and Members of the House Committee on Child Welfare and Foster Care,

Thank you for the opportunity to provide this testimony. I am writing in opposition to House Bill 2311, which would prohibit DCF from adopting and enforcing policies for placement or appointment of a custodian that may conflict with sincerely held religious or moral beliefs regarding sexual orientation or gender identity. The bill would also create a right of action for any violations.

Kansas Appleseed has a long history of unwavering commitment to advocating for the rights and well-being of children, including improving our state's foster care system. Despite some improvements to the foster care system in recent years, it remains a system in crisis that is not always serving the best interests of the children in its care.

The foster care system in Kansas has long done a disservice to Kansas' most vulnerable children. The Settlement Agreement between DCF and plaintiffs in the *McIntyre* lawsuit (2021) outlines crucial requirements to improve the child welfare system, including addressing failures in placement and improving mental health outcomes for children in foster care. HB 2311 will not fix any of the prevailing problems in the state's foster care system. In fact, it risks further harm to the most vulnerable children affected by the foster care system by increasing their trauma, putting their safety and welfare at risk, and putting strain on the system as a whole.

LGBTQ+ youth entering foster care face unique challenges. They enter for reasons of abuse, neglect, and parental substance abuse, like their peers. However, they also have the additional experience of potentially having been rejected by their families. It is difficult to know for certain, because there is no requirement to track information about the number of LGBTQ+ kids entering foster care, but research indicates the percentage of LGBTQ+ youth in foster care is about two times the percentage of LGBTQ+ youth not in care.¹ The overrepresentation of LGBTQ+ youth in foster care could correlate with rejection from their families. 44% of LGBTQ+ youth in foster care have reported that their sexual orientation or gender identity were related to their removal from their home.²

¹ Persyn, M. K. "Kansas Judicial Branch Office of Judicial Administration Training Series: Impact of Child Toxic Stress on the Juvenile Justice System." 2023. <https://kscourts.gov/KSCourts/media/KsCourts/Trial%20court%20programs/Juvenile-Justice-Session-3-presentation.pdf>

² Kaasbøll, J. and Paulsen, V. "What is known about the LGBTQ perspective in child welfare services? A scoping review protocol." *BMJ Open*. 2019. <https://pmc.ncbi.nlm.nih.gov/articles/PMC6738672/>

On top of entering the system at higher rates, LGBTQ+ youth who enter foster care are facing unique challenges and increased risk of additional harm. All children who enter the foster care system are at increased risk for negative outcomes surrounding their emotional, behavioral, neurobiological, and social wellbeing³; however, for LGBTQ+ youth in foster care, that trauma is compounded. Youth who already feel rejected face even more harm and feelings of being unwanted once they enter foster care. For example:

- LGBTQ youth have a higher average number of foster care placements moves than their peers. Research shows us that placement instability can increase aggression and delinquency due to frequent changes of home. Children with placement instability are likely to develop unhealthy coping skills, leading to hopelessness and isolation. They also are at risk of developing mental health symptoms like anxiety, depression, and PTSD. They face delayed permanency and academic difficulties as well.
- LGBTQ youth are more likely to be placed in a group home placement than their peers. These homes have a host of issues that make children who live in them at higher risk for negative outcomes later in life. Children placed in groups homes are also more likely to experience physical, emotional, and sexual abuse while in those placements.⁴

The trauma LGBTQ youth face in the foster care system is inflicted on them, because the system is ill-equipped to meet their needs and presents exposure to discrimination at every interaction. For example:

- LGBTQ youth report experiences of bias and discrimination in interactions with social workers and placements.
- Research also reports that they face structural barriers preventing them from receiving the services they need.
- Additionally, they are twice as likely as their peers to report being mistreated while in foster care.⁵

Kansas already does not have any legal protections in place to ensure the safety and well being of LGBTQ children in foster care. In fact, SB 284, passed in 2018, already allows the foster care system to discriminate against LGBTQ foster parents, by allowing agencies to refuse to place children with those parents. Those are placements that could reaffirm and help LGBTQ youth form positive connections and achieve better outcomes.

The language of this bill make clear that not only can foster parents refuse to provide a stable, loving placement for a child, but it also ensures any LGBTQ child in a placement has no legal protections. HB 2311 prohibits the state from creating policies and protections for the child if a foster placement “intends to guide” a foster child to adhere to their anti-LGBTQ+ beliefs. Considering that conversion therapy is still legal in this state, there is the potential for serious harm coming to LGBTQ children placed with anti-LGBTQ foster parents.

³ Leve, L. D., Harold, G. T., Chamberlain, P., Landsverk, J. A., Fisher, P. A., and Vostanis, P. “Practitioner Review: Children in foster care—vulnerabilities and evidence-based interventions to promote resilience processes.” *Journal of Child Psychology and Psychiatry* 53(12). 2012. <https://pmc.ncbi.nlm.nih.gov/articles/PMC3505234/>

⁴ Casey Family Programs. “What impacts placement stability?” 2023. <https://www.casey.org/placement-stability-impacts/> and Human Rights Campaign. “LGBTQ Youth In the Foster Care System.” <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>

⁵ Human Rights Campaign. “LGBTQ Youth In the Foster Care System.” <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>

This potential for harm is not an abstraction either. Studies have shown:

- 78% of LGBTQ youth were removed or ran away from their foster placements as a result of hostility toward their sexual orientation or gender identity.
- 100% of LGBTQ youth in group homes reported verbal harassment.
- 70% of LGBTQ youth in group homes reported physical violence.⁶

A child needing safety because their home environment is not providing it, should not mean they are placed in unsafe conditions, abused, or faced with a hostile environment due to their identity..

This bill harms vulnerable children and breaks the promises made to them for their safety, wellbeing, and ability to thrive in the future presented in the Representative Gail Finney Youth in Foster Care Bill of Rights. It ensures that children be treated with respect, and that they have safe and comfortable placements, as well as the fewest number of placements possible. Kansas should be focusing our efforts on this need; we should be working to address the issues that reduce the availability of foster homes, to establish an abundance of placement options, so every child in care can reside in a supportive placement regardless of their gender identity or sexual orientation.

Not only does this bill harm LGBTQ children, it harms all children in the foster care system by making the system worse. The Settlement Agreement between DCF and plaintiffs in the *McIntyre* lawsuit (2021) outlines crucial requirements to improve the child welfare system, including addressing failures in placement and improving mental health outcomes for children in foster care. However, recent monitoring of DCF's progress has shown that the state is struggling to make the necessary changes and improvements. For example, the most recent monitoring report found:

- Kansas **did not** meet several requirements to improve placement stability for youth. Children entering the State's custody in 2023 averaged 7.94 placement moves per 1,000 days, almost 60% higher than the benchmark goal of 5 or fewer moves. Despite the State's commitment to end night-to-night placements by December 31, 2021, 822 youth experienced 2,057 one-night placements, an increase of 36% from the previous year. The State's plan to address this alarming placement instability remains unclear.
- The data shows a failure to provide required mental health services and a substantial decline in performance from previous years. Of the children and youth whose cases were reviewed, 75 percent showed evidence of a mental health need, and only 52 percent of those in need received appropriate mental health services. Of the youth who received appropriate services, 58 percent experienced a delay in accessing those services.⁷

Yet, as previously noted, LGBTQ children already face higher levels of placement instability and report not getting the services they need. This bill will only increase the harm, lack of services, and placement instability LGBTQ children face in the Kansas foster care system by refusing to provide them safe, stable placements that can support them. Additionally, Kansas already struggles to find qualified foster care placements for many children. The additional strain of

⁶ Human Rights Campaign. "LGBTQ Youth In the Foster Care System." <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>

⁷ Center for the Study of Social Policy. "Progress Report, McIntyre v. Howard." 2024. <https://cssp.org/wp-content/uploads/2024/09/McIntyre-v.-Howard-Period-3-Report.pdf>

placements discriminating against children placed with them will only harm all children in need of safe, stable placements due to additional instability in the number and quality of homes able to provide for children and their needs.

HB 2311 also creates risks to the Department of Children and Families by allowing for the recovery of, “actual and punitive damages, [and] injunctive relief” if an individual believes the parameters set forth in HB 2311 have been violated; meaning a foster parent could sue DCF for something as minimal as expectations to use “they/them” pronouns. Passage of this legislation creates specific and damaging risks, requiring time and resources our already extremely overburdened system struggles to provide.

We have the capacity to create a more compassionate and effective child welfare system that prioritizes the well-being of children and families. Let us ensure that every child in foster care has the safe and supportive environment we have promised them, so they can thrive regardless of their sexual orientation or gender identity. Families are best together, and when that isn’t possible, stable, supportive alternative placements ensure the best outcomes. I urge you to oppose HB 2311, in order to make sure the most vulnerable children in Kansas have the best opportunities for successful futures.

Thank you for your time,

Brenna Visocsky