

Kansas Legal Services

A non-profit law firm and community education organization helping low and moderate income people in Kansas

www.kansaslegalservices.org



CARC Newsletter Spring 2022

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Introduction: What is CARC?

The Children's Advocacy Resource Center (CARC) is a statewide program dedicated to providing legal advice or services to families caring for children in or at risk of entering the foster care system. CARC also provides resources for legal professionals who represent children or work as Guardians ad Litem.

CARC is funded through the Access to Justice grant through the Kansas Office of Judicial Administration.

Under the CARC program, Kansas Legal Services operates a Guardian ad Litem/foster care hotline that takes direct calls from foster families, foster youth, grandparents, community direct service providers, and others throughout Kansas in order to offer advice, representation, resource referral, or technical assistance on child welfare-related issues in Kansas.

Additionally, this is the second CARC Newsletter issue in the revival of the newsletter, a resource for child-related legal issues, updates, and spotlights on other child-focused programs and projects throughout Kansas.

It is our hope that this newsletter will help educate the Kansas legal community about changes in law within the state and expose the legal community to other resources in our community.

Please consider sharing this [newsletter link](#) with peers and colleagues who have an interest in child welfare and child legal representation.

Thank you for the work you do to improve the lives of children and youth throughout Kansas.

When Foster Youth Have Their Own Kids, Our Support Disappears

By [Vivek Sankaran](#), University of Michigan Law School. Feb. 21, 2022

The young woman on the phone recounted a story all too familiar. She had aged out of the foster care system after living in 25 different placements. Upon exiting the system, she became homeless, suffered from mental health issues and had her own child. She checked herself into a mental health facility and let her child live with the father's relatives.

After the child's father severely abused the child while the young woman was away, the agency immediately petitioned for the child to not only be put into foster care, but to be available immediately for adoption. Just a few years after the agency was this young woman's legal parent, it was now asking the court to immediately terminate her rights to her own child. It had given up on her, not even wanting to give her a chance to participate in services. In their mind, she was permanently unfit, hopeless as a parent.

Attend any meeting or conference discussing the child protection system and you'll hear advocates coalesce upon our need to support kids aging out of foster care. Let's extend the amount of time they can stay in the system. Let's provide them with financial assistance. Let's give them housing. These policy solutions fit into what we know about youth who have experienced so much trauma in their lives. They need significant support to overcome the barriers they face and to achieve their hopes and dreams. Because they have the same hopes and dreams that all young adults do.

To their credit, policymakers in Washington and around the country have heeded those calls. But when these older youth have children, the system starts singing a different tune, one much less nurturing.

Professionals overlook a lengthy history of trauma, and instead view choices and behaviors in isolation. They wrongly assume that, somehow, having a child erases the childhood trauma a parent experienced. They overlook the impact that a child's stay in foster care — and the abuse or neglect they might have experienced while in foster care — might have impacted their parenting abilities.

This dangerous mindset that adulthood heals childhood trauma extends to all parents experiencing the child welfare system. In my two decades representing families in the child protection system, I've never met a parent who themselves hadn't experienced significant trauma in their own childhood: time in foster care; abuse from their parent; neglect by an adoptive parent; human trafficking. The list goes on and on.

And all too often, these parents never had the opportunity to process the trauma they experienced as children. As a result, as theologian Richard Rohr describes, they "assuredly transmit it." Our collective challenge is how to change this trajectory.

Ignoring the trauma history of parents and simply discarding them and treating them as hopeless will certainly not accomplish this. Instead, we can and should adopt a different approach, one that looks to nurture the entire family when a child comes into contact with the child protection system. We can recognize the trauma experienced by all members of the family. We can devise ways of keeping children safe while keeping them closely connected to their parents. Rather than accusing parents of being monsters unworthy of caring for their children, we can recognize their incredible potential to love their children and keep them safe with the right support.

Don't these values better align with the child protection system we wish to build?

I later learned that the young woman on the phone had her rights terminated by the court without

ever being offered a service by the agency. Her fate now rests in the appellate courts. She's in school to be a nurse, has housing and is addressing her mental health issues. But the void in her life cannot be filled. Until we learn to invest in parents like her, these tragic stories will continue to flood our phone lines.

ABOUT THE AUTHOR Vivek Sankaran is the director of the Child Advocacy Law Clinic and the Child Welfare Appellate Clinic at the University Michigan Law School. Follow him on Twitter at @vivekssankaran.

This article was reprinted with permission from The Imprint, Youth & Family News, <https://imprintnews.org/opinion/when-foster-youth-have-their-own-kids-our-support-disappears/62731>

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New Office of the Child Advocate in Kansas - Interview with Staff

CARC staff recently met with Kansas Child Advocate, Kerrie Lonard, to discuss her position as the head of the newly created Kansas Division of the Child Advocate with the State of Kansas. Kerrie Lonard, formerly the Managing Attorney of Kansas Legal Services - Topeka, provided insight into the procedures and policies of her new office and reflects back on how her time in the Child Advocacy Resource Center (CARC) program influenced her work today.

"CARC was a foundation for doing a lot of this work" Lonard said when discussing how the CARC program prepared her for her new position.

She noted that the CARC program allowed her to work in and observe the child welfare system from many different angles as she represented different children, parents, grandparents and other interested parties with different perspectives and struggles when approaching the Kansas child welfare system.

On October 4, 2021, Governor Laura Kelly signed Executive Orders 21-27 and 21-28, which established the Kansas Division of the Child Advocate (hereinafter: KDCA). Governor Kelly named Kerrie Lonard to lead the KDCA as the new Kansas Child Advocate on December 2, 2021. These orders came in response to lawsuits and the concerns of Kansas residents about oversight of agencies involved in the child welfare system. Through these executive orders, the Division of the Child Advocate was established to investigate allegations of misconduct within these agencies in a non-partisan manner and report back to all three branches of government regarding the state of the child welfare system in Kansas and the findings of the Child Advocate's

investigations.

The KDCA and its procedures are still a work in progress; as they work through investigations and as statutes are developed, Lonard and her team make changes to their work. Many states have offered their support and guidance to the new program. States like Washington, Georgia, Colorado, and Alaska, who have had similar programs in place for years, have spoken with Lonard as she works to find procedures that are appropriate for Kansas.

We asked Lonard what her current procedures for these complaints are as they've already received several complaints. Complaints can come from any concerned citizen as long as the complaint is regarding a child who is a resident of Kansas. These complaints may come from professionals in the child welfare system who have a concern about a practice or procedure not being followed. Reports come in from all areas of the child welfare system, such as natural parents, child welfare workers, attorneys, extended family, and more.

Concerned citizens can find the complaint form only at the

- KDCA website at childadvocate.ks.gov ,
- or by calling the Office Administrator's main line **(785) 296-8642**,
- or by calling their toll-free hotline which will be promoted soon.

Once a complaint has been submitted, a KDCA Case Analyst will get in contact with the complainant to get more information and determine whether or not the complaint fits under their scope of assistance. There are currently three levels of intervention. If the KDCA is unable to directly assist, the staff will give the complainant resources and contact information for agencies that may be able to resolve the matter. For complaints that can receive more direct intervention the KDCA can contact the agencies directly to speak with individuals and supervisors to try and resolve the issue. Any complaints that are affirmed and cannot be resolved by contacting the agencies will receive formal recommendations, with the opportunity for the agency to provide a response, which is incorporated into the final report provided to the agency and all three branches of the State government.

Aside from the citizen's complaints, KDCA has the authority to open investigations into identified systemic patterns adversely affecting children and families, even without an individual complaint. The KDCA is able to continuously monitor completed reports and will submit all recommendations to the State in annual and other timely reports. All official reports will be publicly available on the KDCA website.

The KDCA is continuing its efforts to establish and expand its work by connecting with legislators and stakeholders to determine the future ongoing role of the Child Advocate and KDCA, as Ms. Lonard works to build the policies, procedure, and infrastructure of the KDCA for the betterment of the Kansas child welfare system. The CARC team was delighted for the opportunity to meet with Ms. Lonard and learn about her work to develop the KDCA with the goal of making a meaningful improvement in the lives of Kansas kids.



Staff of the Kansas Division of Child Advocate, left to right, Elizabeth Pfalzgraf, Director Kerrie Lonard, Brook Town, and Sarah Gisick

The mission of the Division of the Child Advocate (KDCA) is to safeguard that all Kansas children, who have the right to be cherished and the opportunity to thrive, are safe from abuse, neglect, and harm by providing independent oversight and increased accountability of our State child welfare services, improving delivery and deepening confidence in the child welfare system. KDCA completes an impartial, independent review of Kansas child welfare policies, procedures, and practices, including an independent investigation and evaluation of concerns voiced by children, families, and other individuals.

The Division of the Child Advocate is committed to independence, transparency, accountability, voice, and impactful change. KDCA will act according to the highest standards of ethics, honesty, respect, and dignity. KDCA will operate in a thorough, competent, and efficient manner to effectuate change.

Kansas Division of Child Advocate Mission Statement

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Case Study

by [Lowell Paul](#), Kansas Legal Services

In re F.C., 313 Kan. 31, 482 P.3d 1137 (2021)

Facts: This was a child in need of care case, in which the mother appealed from an adjudication finding F.C., a 13 year old girl, to be a child in need of care. The state alleged that F.C. was without the care or control necessary for her physical, mental or emotional health under K.S.A. 38-2202(d)(2), and that she had been physically, mentally or emotionally abused or neglected or sexually abused under K.S.A. 38-2202(d)(3). F.C. lived with her mother and stepfather, with whom she had lived since she was a small child, and the allegations centered upon the stepfather's behavior. He had a drinking problem, and when he drank, he became angry and verbally abusive. He routinely walked around the house in the nude, required that the showers have see-through shower curtains, prohibited locking the bathroom door, and frequently walked into the bathroom naked when F.C. was in the shower. And he had punished F.C. by making her stand on a snowy porch in her stocking feet for 10-15 minutes, making her do pushups while pressing on her back, and taking off the door to her bedroom and removing her bed, phone and TV for three days, replacing the bed with a cot. Prior to the filing of the CINC action, the mother entered into a safety plan, and the stepfather agreed to adjust his behavior. He stopped drinking and walking around the house nude. A week or two later, the stepfather's employer, the U.S. Army, which had been informed of the allegations, asked him to move out of the home, which he did. Nonetheless, the state eventually filed a CINC action, and F.C. was removed from the home.

After an adjudication hearing eight months later, the trial court found F.C. to be a child in need of care under both K.S.A. 38-2202(d)(2) and (3). However, it did not specifically relate its findings of fact to one or other of these two subsections. It stated that it did not know very many people that would say it is OK to raise a child by running around nude in the house, and that although it didn't appear to be sexual, a 13 year old girl shouldn't have to see her stepfather walking around

naked, let alone having him walk in on her in the shower. It found that the stepfather's drinking was out of control and compounded his anger control problems, and that the discipline he imposed was over the edge. It found that all of the facts added together constituted emotional abuse. And it based its conclusion in part on its finding that F.C. was a credible witness, and that both she and her mother appeared to be afraid of the stepfather during their testimony. The mother appealed the adjudication to the Court of Appeals, which reversed the trial court's decision, finding that the trial court's decision was not supported by clear and convincing evidence in the record. The Supreme Court granted the state's petition for review.

Discussion: In a 5-2 decision, the Supreme Court reversed the decision of the Court of Appeals and affirmed the trial court's decision finding F.C. to be a child in need of care. Turning first to the trial court's finding that the criteria of K.S.A. 38-2202(d)(2) were satisfied, the court unanimously held that the plain language of this statute, i.e., that the child "is without the care or control necessary for the child's physical, mental or emotional health," requires the trial court to consider the sufficiency of the care or control as of the date of the adjudication hearing, and that this is a situation that is amenable to change between the time the CINC petition is filed and the time the adjudication hearing is held. This is the same conclusion that the Court of Appeals had reached, and the Supreme Court agreed. Because the trial court had not restricted its consideration of the evidence pertinent to this subsection to this timeframe, its determination that the criteria of this subsection were satisfied was reversed. However, the majority held that the Court of Appeals went too far into the realm of fact-finding when it independently assessed the evidence in the record and determined that it did not establish that F.C. lacked the necessary care or control on the date of the adjudication hearing by clear and convincing evidence. Instead, it found that the matter should have been remanded to the trial court to consider the evidence under the appropriate time frame mandated by subsection (d)(2).

Turning to the trial court's finding that the evidence supported the conclusion that F.C. was a child in need of care due to emotional abuse by the stepfather, the court noted that, in contrast to K.S.A. 38-2202(d)(2), subsection 2202(d)(3) is phrased solely in the past tense, and that the court may consider evidence of abuse or neglect at any time in determining whether this subsection has been satisfied. The Court of Appeals found that the evidence in the record failed to rise to the level of clear and convincing evidence that F.C. had been abused or neglected, but a majority of the Supreme Court disagreed. The court noted the evidence supporting the trial court's findings with respect to the stepfather's drinking and anger issues, his walking around the house nude and entering the bathroom while F.C. was showering, and his disciplinary practices. In addition, it noted F.C.'s statement that the stepfather was verbally abusive, making her want to run away, that she did not feel safe around him, and the trial court's observation of the fear in her face and that of her mother when they described the stepfather's anger and drinking issues. It found that the Court of Appeals had accorded too little deference to the trial court's findings of fact, which extended not only to what the witnesses said, but also to the trial court's findings concerning credibility and the demeanor of the witnesses, which only the trial court could make. It held that the trial court was entitled to rely on its observations of the witnesses as part of the evidence supporting a conclusion that the cumulative effect of the stepfather's behavior constituted emotional abuse.

Justice Luckert wrote a separate opinion concurring in the majority's ultimate conclusions, but

disagreeing with part of its reasoning. She stated that she agreed with much of the dissent's argument that K.S.A. 38-2202(d)(3) was vague and overbroad and could lead to excessive intervention into the rights of a parent to discipline children. But she found that this was not such a case, holding that she credited the judge who saw the witnesses and assessed the effect of the stepfather's behavior on them, and that appellate courts should not reweigh that assessment.

Justice Stegall, joined by Justice Wall, wrote a stinging dissent, agreeing with the Court of Appeals that clear and convincing evidence in the record did not support a finding that F.C. suffered emotional abuse. He criticized the trial court's finding as being based not on any objective evidence of or standard for emotional abuse, but on the judge's own subjective biases with respect to what constitutes acceptable parenting, and much of his opinion is a long discourse on the inherent problems of subjective bias in judicial decision-making, focusing on this area of the law in particular. He discounted the majority's giving weight and deference to the trial court's discernment of fear in F.C. and her mother when testifying about the stepfather's drinking and anger problems as merely supporting a finding that the stepfather must be an intimidating guy, and stated that this is not the type of credibility determination judges are permitted to make when observing facial expressions and body language. He did not elaborate further on that statement.

Comment: This is a puzzling decision in some ways, and is not likely to provide much clarity to either advocates or judges. Although the court was unanimous in holding that the trial court erred in not restricting its findings that F.C. was without the necessary care or control under K.S.A. 38-2202(d)(2) to evidence relating to circumstances existing at the time of the adjudication hearing, it did not explain why it believed that the Court of Appeals overstepped its bounds by finding that the evidence in the record would not support a finding that it was highly probable that F.C. was a child in need of care under this subsection. In making that assessment, the Court of Appeals applied the undisputed standard of review for trial court determinations of this nature, which is whether, after reviewing all of the evidence in the light most favorable to the state, the court is convinced that a rational factfinder could have concluded that it is highly probable that the child is a child in need of care. The Supreme Court did not criticize the Court of Appeals' application of this standard of review; it simply stated that the Court should not have made it in the first place. But it is not clear what the trial court could do on remand, short of receiving additional evidence, which does not appear to have been contemplated, that would result in a different conclusion that would stand up on appeal.

With respect to what constitutes acceptable "objective" evidence of emotional abuse, the dissent does not adequately explain why a trial court's perception of fear in a child when testifying about a stepparent's inability to control his drinking and anger does not rise to that level; it simply asserts that this is not the sort of finding judges are allowed to make. It cites with approval the opinion of the Court of Appeals below, which held that although a psychological evaluation is not necessary, there must be some evidence that emotional abuse was inflicted on the child. But the Court then gave two examples from prior cases that constituted acceptable evidence, one of which was a finding that a teacher's description of a child's appearance as crying and distraught was fully consistent with a finding of emotional harm—the child was visibly upset. It is not clear why emotion displayed through a crying and distraught appearance is acceptable evidence of

emotional abuse, but emotion displayed by a fearful appearance is not, and the dissent does not explain. In some ways it appears that the majority and the dissent are just talking past one another, with the majority relating the trial court perception of fear in F.C. to the stepfather's excessive drinking and displays of anger, while the dissent relates it to a conclusion relating to the stepfather's appearance as "intimidating." Regardless, this does little to provide further guidance for judges or attorneys.

It is difficult to avoid the conclusion that the greater willingness of the majority to defer to and credit the perceptions of the trial judge who observed the witnesses than either the dissent or the Court of Appeals panel is in part related to the fact that four of the five justices in the majority have prior experience as trial court judges themselves, whereas neither of the dissenting justices do, and only one of the three judges on the Court of Appeals panel was previously a trial court judge. As the composition of the court shifts over time, it will be interesting to see whether there is a shift in this area as well.

ABOUT THE AUTHOR **Lowell Paul** is the Senior Research Attorney at Kansas Legal Services

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This is Not How You Fix Things

Testimony from a transgender teen in Texas

By [Kayden Asher](#) 3/14/2022

*In early March, 2022, the Texas Family and Protective Services Council had **a meeting** where scores of people spoke in support of trans youth receiving **gender-affirming care**, and the families and doctors providing the medical treatment.*

Here is the testimony from one transgender youth, lightly edited for clarity and published with their permission.

My name is Kayden Asher and I am a transgender foster alumni. I came out for the first time at 13, but knew something was different about me since I was 4 or 5. Growing up I acted the part I was told to. When puberty hit and my body started to change I began to hate myself. I could feel that there was something wrong with the way I looked. I didn't even know there was a word for what I was feeling until I did my own research. That's when I realized I was trans.

When I finally came out to my family I was immediately told it was a phase and not to tell anyone. I knew back then I would be bullied but being bullied was better to me than being in the closet. When I was 15, I met another trans person at my school and decided to finally come out to everyone. When I did, my assistant principal called my father and outed me without my permission.

That day, when I got home, we got in a huge fight that led to me being held down on my bed so I wouldn't move while my father yelled at me. It got to a point where I couldn't breathe because my dad's girlfriend was sitting on my chest so I screamed. My dad slapped me and told me to stop exaggerating. That day I tried again to kill myself. The next week I told my principal about what happened. When I got home my dad had apparently been told by my school that I reported him.

The next weekend I overdosed on all of my medication and had to go to the hospital. While in the ambulance, I could hear him complaining in the front seat about having to go to the hospital with me. I went to a mental hospital for the fourth time within two months that day. The doctor knew by then it wasn't me, but my dad, so he called CPS.

CPS almost sent me home after all of that. The only reason they didn't was because I said if I went back I would kill myself within 24 hours. Even while in foster care and being out as trans, people didn't take me seriously. At 17 I decided to start testosterone.

At first, my caseworker supported the idea, but my Court Appointed Special Advocate stated only a judge could make that decision. Which wasn't true. In actuality, we just needed to inform CPS based on policy. I even got therapist, doctor and psychologist letters of recommendation for it. Four months later I was finally able to start after they went to the regional director to ask if I could do it. That was 11 months ago.

Since starting, my mental health has improved more than I ever imagined. I was finally able to get off my antidepressants and only be on ADHD meds. The feeling of my voice lowering was pure bliss. Sounds weird, but it made the world of a difference. Now my sex identifier on official documents says male as well. I am and always will be a man.

When we say that gender-affirming care isn't child abuse we mean it. Without it, I would be dead. I was actually abused and the thought that supportive parents can be charged with abuse for loving their children is unacceptable. I've met many parents of trans kids this past year and they are the kindest people ever. As someone who went through the system and was failed multiple times by it, this is not how you fix things. All this does is raise foster care numbers and ruin lives. This needs to stop now.



Photo from Kayden Asher

ABOUT THE AUTHOR Kayden Asher is an advocate for LGBTQ+ youth in foster care. They currently reside in Austin, Texas.

This article was reprinted with permission from The Imprint, Youth & Family News, <https://imprintnews.org/opinion/testimony-from-transgender-teen-in-texas/63370>

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How CARC Reaches Out to Our Kansas Communities

As part of our ever-expanding community outreach, CARC staff attended the local Community Resource Fair in Topeka hosted by The Boys and Girls Club on January 8th, 2022.

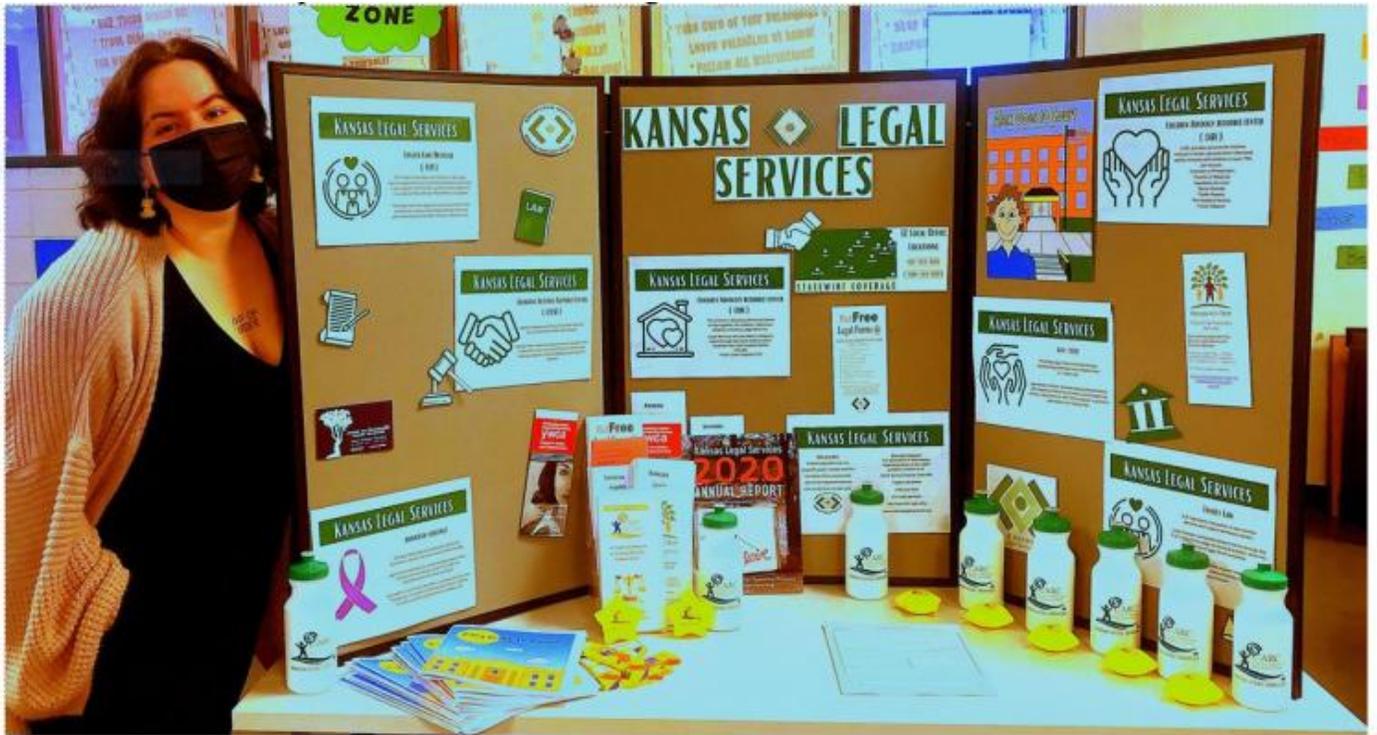
The Community Resource Fair hosted numerous local organizations to connect them with members of the community. Our staff had the opportunity to meet with community members looking for assistance as well as with representatives from other organizations whose resources can benefit our shared client population.

Creating these valuable partnerships enables us to connect our clients to needed resources. That could be connecting them with a low income project through Kansas Gas Service or a support group through the Family Service and Guidance Center, among other supportive services.

We're looking forward to attending the next Community Resource Fair on April 9th, 2022 at the Boy and Girls Club of Topeka – Adams Club.

We hope to see you there, if you happen to be local and want to stop by, and we welcome suggestions for other opportunities to engage in community outreach across the state.

You can contact us by phone 1-877-298-2674 or email lichtera@klsinc.org



CARC Staff Member Andrea Lichter at the CARC display at the Community Resource Fair in Topeka, January 8, 2022.

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