

**REPORT OF THE JUDICIAL COUNCIL
JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE
ON 2008 HB 2820 AND PROPOSED AMENDMENTS TO THE REVISED KANSAS CODE
FOR CARE OF CHILDREN AND THE REVISED KANSAS JUVENILE JUSTICE CODE**

(November 21, 2008)

The Juvenile Offender/Child in Need of Care Advisory Committee (hereinafter “the Committee”), while reviewing aspects of the Revised Kansas Code for Care of Children (hereinafter “the CINC code”) and the Revised Kansas Juvenile Justice Code (hereinafter “the JO code”), determined that certain child in need of care orders or juvenile offender orders should take priority over similar orders in other domestic cases such as divorce, paternity, protection from abuse, and guardianship or conservatorship. This has been the practice generally, but it has not been clarified by statute. It was brought to the attention of the Committee that 2008 House Bill 2820 related to these matters but was not adopted by the 2008 Legislature. Additionally the committee was asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. Finally, the Committee continued to review the CINC code and the JO code for consistency, to facilitate compliance with federal law to maximize federal financial participation, and to respond to the June 2008, Kansas Supreme Court case, *In re L.M.*, 186 P.3d 164 (Kan 2008) which held that juveniles 14 years of age or older who are charged with a felony have the right to a jury trial under the Kansas Constitution.

COMMITTEE MEMBERSHIP

The members of the Committee taking part in the study and drafting of the proposed legislation are as follows:

Honorable Jean F. Shepherd, Chair, Lawrence. Judge Shepherd is a district judge, a member of the Judicial Council and handles juvenile matters in Douglas County.

Wade H. Bowie, Jr., Topeka. Mr. Bowie is an assistant district attorney in Douglas County who works exclusively in the juvenile area.

Kathryn Carter, Concordia. Ms. Carter is a practicing attorney and former district magistrate judge.

Ann Henderson, Olathe. Ms. Henderson is an attorney with K.V.C. Inc., an S.R.S. contractor.

Honorable Timothy H. Henderson, Wichita. Judge Henderson is a district judge in the Sedgwick County Juvenile Department.

Professor Richard E. Levy, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

Sue Lockett, Topeka. Mrs. Lockett is former Executive Director of C.A.S.A. of Shawnee County.

Roberta Sue McKenna, Topeka. Mrs. McKenna is the attorney for Children and Family Services of the Kansas Department of Social and Rehabilitation.

Lisa Mendoza, Topeka. Ms. Mendoza is chief counsel for the Kansas Juvenile Justice Authority.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

Honorable Kathleen Sloan, Olathe. Judge Sloan is a district judge in the Johnson County Juvenile Department.

BACKGROUND AND PROPOSED LEGISLATION

As proposed, 2008 HB 2820 would revise the Kansas Code for Care of Children and the divorce code so that orders issued in juvenile court proceedings would supersede pre-existing orders concerning custody, residency, parenting time, and child support. The Committee reviewed the language in 2008 HB 2820 and agreed that orders affecting a child's custody, residency, parenting time, visitation or child support issued in child in need of care proceedings or juvenile offender proceedings should take precedence over orders addressing the same issues whether issued by the same court or a court in another jurisdiction. The Committee's revisions are intended to preserve the orders entered under the code for care of children (hereinafter "the CINC code") or the juvenile justice code (hereinafter "the JO code") unless a change in circumstances requires further court intervention. The Committee also agreed that most of the proposed amendments pertaining to permanency in 2008 HB 2820 should be adopted. However, the Committee did not agree with some of the organization of the proposed amendments and has revised and reorganized the amendments. The Committee's proposed legislation for the CINC and JO codes is attached. The proposed CINC legislation also includes the Committee's recommended revisions to 2007 HB 2527.

COMMITTEE'S COMMENTS TO PROPOSED CINC CODE LEGISLATION (Pages 6-33)

- New Section 1: Pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in Adoption and Relinquishment proceedings and Guardians and Conservators proceedings while the CINC or JO case is pending.
- Section 2: Amends K.S.A. 38-1116 of the Kansas parentage act to include similar priority language as that in new section 1. Subsection (d) pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in parentage proceedings while the CINC or JO case is pending. Subsection (e) allows the transfer of CINC orders back into a parentage case as appropriate at the close of the CINC case.
- Section 3: Amends K.S.A. 38-1121 to give the court in parentage actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit

to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The only difference is in line 25, page 8 of the proposed amendments where the word “disposition” has been replaced with “order” and the words “shall be binding and shall supersede” have been replaced with “take precedence over”.

- Section 4: Amends K.S.A. 38-2201 to clarify that orders issued pursuant to the CINC code shall take precedence over any order under the parentage, adoption and relinquishment, guardians and conservators, divorce, protection from abuse, and protection from stalking act until jurisdiction under the CINC code is terminated.
- Section 5: Amends K.S.A. 2008 Supp. 38-2202 to include a definition of “civil custody case”.
- Section 6: Amends K.S.A. 2008 Supp. 38-2203 to include a section clarifying that a court’s order affecting a child’s custody, residency, parenting time and visitation that is issued in a proceeding under the CINC code shall take precedence over such orders in a civil custody case (as defined by the amendment in Section 5), a proceeding under the protection from abuse act or a comparable case in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 7: Amends K.S.A. 38-2208 to correct an error and thereby clarify that in any case referred to a citizen review board, the court shall conduct a hearing at least annually.
- Section 8: Amends K.S.A. 38-2212 to include the Committee’s revised amendments to 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. The proposed amendments would restrict disclosure of information from confidential reports or records relating to a child in need of care to instances where the individual or their representative has given written explicit consent unless the investigation or the filing of a petition has become public knowledge. In such instance, the authorized disclosure would be restricted to confirmation of procedural details relating to the handling of the case by professionals. Other technical amendments are suggested in subsection (f) and pertain to removing reference to “department of social and rehabilitation services” and replacing it with “secretary” to maintain consistency, and reorganizing the content of the section for clarity.
- Sections 9 and 10: Amend K.S.A. 38-2242 and 38-2243 to address the federal requirement that the judicial determination of contrary to the welfare of the child be made in the first court order authorizing out of home placement. The federal law also requires a finding that reasonable efforts were made or were unnecessary due to an emergency which threatens the safety of the child shortly after loss of parental custody. The proposed amendments are intended to reflect that orders subsequent to the initial removal order need not continue to make the findings and in some instances the child is returned home to live with a parent prior to court returning custody to the parent. The reasonable efforts requirement subsequent to the initial order is addressed in K.S.A. 38-2264 which requires that, if the child continues in foster care for 12 months, the court must determine whether reasonable efforts are being made to provide a permanent family for the child.

- Section 11: Amends K.S.A. 2008 Supp. 38-2251 to clarify the time frame within which a final adjudication or dismissal of a CINC proceeding must be completed.
- Section 12: Amends K.S.A. 38-2255 to make a few technical changes for clarity, to remove subparagraph (d)(1)(B) as the Committee determined that the provision only served to cause confusion and it was not necessary, and to address the same issue as sections 9 and 10 above.
- Section 13: Amends K.S.A. 2008 Supp 38-2258 to specify that written notice of any change in placement of a child shall also be given to the petitioner, the attorney for the parents, if any, the child's court appointed special advocate and any other interested party in addition to the court, each parent, foster parent or custodian, and the child as currently listed in the statute.
- Section 14: Amends K.S.A. 2008 Supp. 38-2264 to clarify issues surrounding permanency as was intended with 2008 HB 2820.
- Section 15: Amends K.S.A. 38-2272 to make a correction pertaining to acknowledgment of consents to appointment of a permanent custodian which was apparently overlooked in the clean-up legislation of 2008 SB 435. This amendment makes the process consistent with consents to adoption.
- Section 16: Amends K.S.A. 38-2279 to address issues surrounding the modification of child support orders prior to the closing of a CINC case.
- Section 17: Amends K.S.A. 2008 Supp. 60-1610 in subparagraph (a)(6) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a divorce proceeding. Subparagraph (3)(E) is added to allow the transfer of CINC orders back into a divorce case as appropriate at the close of the CINC case.
- Section 18: Amends K.S.A. 60-3103 to add subsection (b) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a protection from abuse proceeding.
- Section 19: Amends K.S.A. 60-3107 to give the court in protection from abuse actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The difference is that the last three lines of the language in the divorce statute do not apply in this case and have not been included in the proposed language.

COMMITTEE'S COMMENTS TO PROPOSED JO CODE LEGISLATION (Pages 34-40)

- Section 1: Amends K.S.A. 2008 Supp. 38-2304 to indicate that a court's order affecting a child's custody, residency, parenting time and visitation issued in a proceeding under the JO code shall take precedence over such orders in a proceeding under the parentage, divorce, protection from abuse, adoption and relinquishment, guardians or conservators acts, or comparable cases in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 2: Amends K.S.A. 38-2305 to clarify appropriate venue in cases involving a juvenile.
- Section 3: Amends K.S.A. 38-2344 to make technical corrections which address a juvenile's right to a jury trial as set forth in *In re L.M.*, 186 P.3d 164 (Kan 2008).
- Section 4: Amends K.S.A. 38-2357 to clarify the methods of trial in juvenile offender cases. The proposed language is a combination of language taken from three statutes in the Kansas adult criminal code. (See K.S.A. 22-3403, 22-3404 and 22-3421) Most of the language is identical to that of the adult statutes. The difference is that a juvenile must request the jury trial in writing within 30 days from the entry of the juvenile's plea.
- Section 5: Amends K.S.A. 38-2364 to provide some discretion to the court when determining, under extended juvenile jurisdiction cases, whether a juvenile's juvenile portion of the sentence should be revoked and the adult portion of the sentence should be enforced. The proposed amendments provide that the court may revoke the juvenile portion of a sentence if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence. The proposed amendments remove the mandatory language included in the statute and allow the court to determine whether violations are sufficient to require revocation of the juvenile sentence and imposition of the adult portion of the sentence.
- Section 6: Amends K.S.A. 38-2365 to require the commissioner to notify a juvenile's attorney of record in addition to the juvenile's parents of any changes in placement of the juvenile.
- Section 7: Amends K.S.A. 38-2373 to correct a technical error by replacing the word "study" with the intended word "custody".

Proposed Legislation for 2009
Revised Kansas Code for Care of Children

1 AN ACT concerning children in need of care; relating to permanency; relating to priority of certain
2 CINC and JO orders over orders in probate, divorce, parentage, protection from abuse or protection
3 from stalking; amending K.S.A. 2008 Supp. 38-2202, 38-2203, 38-2243, 38-2251, 38-2258, 38-2264,
4 60-1610 and K.S.A. 38-1116, 38-1121, 38-2201, 38-2208, 38-2212, 38-2242, 38-2255, 38-2272, 38-
5 2279, 60-3103, 60-3107 and repealing the existing sections.

6
7 **New Section 1. Jurisdiction; priority.** *Any custody or parenting time order, or order relating to*
8 *the best interests of a child, issued pursuant to the revised Kansas code for care of children or the*
9 *revised Kansas juvenile justice code, shall take precedence over any order under article 21 of*
10 *chapter 59 of the Kansas Statutes Annotated, and amendments thereto, or article 30 of chapter 59 of*
11 *the Kansas Statutes Annotated, and amendments thereto, until jurisdiction under the revised Kansas*
12 *code for care of children or the revised Kansas juvenile justice code is terminated.*

13 **Section 2. K.S.A. 38-1116. Jurisdiction; venue.** (a) The district court has jurisdiction of an action
14 brought under the Kansas parentage act. The action may be joined with an action for divorce,
15 annulment, separate maintenance, support or adoption.

16 (b) If any determination is sought in any action under the Kansas parentage act for custody,
17 residency or parenting time, the initial pleading seeking that determination shall include that
18 information required by K.S.A. 38-1356, and amendments thereto;

19 (c) The action may be brought in the county in which the child, the mother or the presumed or
20 alleged father resides or is found. If a parent or an alleged or presumed parent is deceased, an action
21 may be brought in the county in which proceedings for probate of the estate of the parent or alleged
22 or presumed parent have been or could be commenced.

23 (d) *Any custody or parenting time order, or order relating to the best interests of a child, issued*
24 *pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code,*
25 *shall take precedence over any order under article 11 of chapter 38 of the Kansas Statutes Annotated,*
26 *and amendments thereto, until jurisdiction under the revised Kansas code for care of children or the*
27 *revised Kansas juvenile justice code is terminated.*

28 (e) *If a court of competent jurisdiction within this state has entered an order pursuant to the*
29 *revised Kansas code for care of children regarding custody or support of a child or children who are*
30 *involved in a proceeding filed pursuant to this section, and such court has determined pursuant to*
31 *K.S.A. 38-2264(i)(2), and amendments thereto, that the orders in that case shall become the custody*
32 *orders in the parentage case, such court shall file, after consultation with the judge presiding over any*
33 *proceeding filed pursuant to this section, a certified copy of the orders with the civil case number in*
34 *the caption and then close the case under the revised Kansas code for care of children. Such orders*
35 *shall be binding on the parties, unless modified based on a material change in circumstances, even if*
36 *such courts have different venues.*

37 **Section 3. K.S.A. 38-1121. Judgment or order.** (a) The judgment or order of the court determining
38 the existence or nonexistence of the parent and child relationship is determinative for all purposes, but
39 if any person necessary to determine the existence of a father and child relationship for all purposes
40 has not been joined as a party, a determination of the paternity of the child shall have only the force
41 and effect of a finding of fact necessary to determine a duty of support.

42 (b) If the judgment or order of the court is at variance with the child's birth certificate, the court
43 shall order that a new birth certificate be issued, but only if any man named as the father on the birth
44 certificate is a party to the action.

45 (c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for
46 support and education of the child including the necessary medical expenses incident to the birth of the
47 child. The court may order the support and education expenses to be paid by either or both parents for

1 the minor child. When the child reaches 18 years of age, the support shall terminate unless: (1) The
2 parent or parents agree, by written agreement approved by the court, to pay support beyond that time;
3 (2) the child reaches 18 years of age before completing the child's high school education in which case
4 the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of
5 the school year during which the child became 18 years of age if the child is still attending high school;
6 or (3) the child is still a bona fide high school student after June 30 of the school year during which the
7 child became 18 years of age, in which case the court, on motion, may order support to continue
8 through the school year during which the child becomes 19 years of age so long as the child is a bona
9 fide high school student and the parents jointly participated or knowingly acquiesced in the decision
10 which delayed the child's completion of high school. The court, in extending support pursuant to
11 subsection (c)(3), may impose such conditions as are appropriate and shall set the child support
12 utilizing the guideline table category for 16-year through 18-year old children. Provision for payment
13 of support and educational expenses of a child after reaching 18 years of age if still attending high
14 school shall apply to any child subject to the jurisdiction of the court, including those whose support
15 was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides
16 for termination of support before the date provided by subsection (c)(2), the court may review and
17 modify such agreement, and any order based on such agreement, to extend the date for termination of
18 support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July
19 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court
20 may review and modify such agreement, and any order based on such agreement, to extend the date for
21 termination of support to the date provided by subsection (c)(3). For purposes of this section, "bona
22 fide high school student" means a student who is enrolled in full accordance with the policy of the
23 accredited high school in which the student is pursuing a high school diploma or a graduate
24 equivalency diploma (GED). The judgment may require the party to provide a bond with sureties to
25 secure payment. The court may at any time during the minority of the child modify or change the order
26 of support, including any order issued in a title IV-D case, within three years of the date of the original
27 order or a modification order, as required by the best interest of the child. If more than three years has
28 passed since the date of the original order or modification order, a requirement that such order is in the
29 best interest of the child need not be shown. The court may make a modification of support retroactive
30 to a date at least one month after the date that the motion to modify was filed with the court. Any
31 increase in support ordered effective prior to the date the court's judgment is filed shall not become a
32 lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.

33 (d) If both parents are parties to the action, the court shall enter such orders regarding custody,
34 residency and parenting time as the court considers to be in the best interest of the child.
35 If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best
36 interest of the child. This presumption may be overcome and the court may make a different order if
37 the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest
38 of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed
39 parenting plan to the court for consideration at such time before the final hearing as may be directed by
40 the court.

41 (e) *Nonparental custody. If during the proceedings the court determines that there is probable*
42 *cause to believe that the child is a child in need of care as defined by subsections (d)(1), (d)(2), (d)(3)*
43 *or (d)(11) of K.S.A. 2007 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have*
44 *residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult*
45 *sibling, or, another person or agency if the court finds by written order that: (1)(A)The child is likely*
46 *to sustain harm if not immediately removed from the home;*

47 (B) *allowing the child to remain in home is contrary to the welfare of the child; or*

48 (C) *immediate placement of the child is in the best interest of the child; and*

49 (2) *reasonable efforts have been made to maintain the family unit and prevent the unnecessary*
50 *removal of the child from the child's home or that an emergency exists which threatens the safety to the*

1 *child. In making such a residency order, the court shall give preference, to the extent that the court*
2 *finds it is in the best interests of the child, first to awarding such residency to a relative of the child by*
3 *blood, marriage or adoption and second to awarding such residency to another person with whom the*
4 *child has close emotional ties. The court may make temporary orders for care, support, education and*
5 *visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of*
6 *temporary orders provided for in K.S.A. 2007 Supp. 38-2243 and 38-2244, and amendments thereto,*
7 *and shall remain in effect until there is a final determination under the revised Kansas code for care of*
8 *children. An award of temporary residency under this paragraph shall not terminate parental rights*
9 *nor give the court the authority to consent to the adoption of the child. When the court enters orders*
10 *awarding temporary residency of the child to an agency or a person other than the parent, the court*
11 *shall refer a transcript of the proceedings to the county or district attorney. The county or district*
12 *attorney shall file a petition as provided in K.S.A. 2007 Supp. 38-2234, and amendments thereto, and*
13 *may request termination of parental rights pursuant to K.S.A. 2007 Supp. 38-2266, and amendments*
14 *thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final*
15 *determination is made that the child is not a child in need of care, the county or district attorney shall*
16 *notify the court in writing and the court, after a hearing, shall enter appropriate custody orders*
17 *pursuant to this section. If the same judge presides over both proceedings, the notice is not required.*
18 *Any order pursuant to the revised Kansas code for care of children take precedence over any order*
19 *under this section.*

20 ~~(e)~~ *(f)* In entering an original order for support of a child under this section, the court may award
21 an additional judgment to reimburse the expenses of support and education of the child from the date
22 of birth to the date the order is entered. If the determination of paternity is based upon a presumption
23 arising under K.S.A. 38-1114 and amendments thereto, the court shall award an additional judgment
24 to reimburse all or part of the expenses of support and education of the child from at least the date the
25 presumption first arose to the date the order is entered, except that no additional judgment need be
26 awarded for amounts accrued under a previous order for the child's support.

27 ~~(f)~~ *(g)* In determining the amount to be ordered in payment and duration of such payments, a
28 court enforcing the obligation of support shall consider all relevant facts including, but not limited to,
29 the following:

- 30 (1) The needs of the child.
- 31 (2) The standards of living and circumstances of the parents.
- 32 (3) The relative financial means of the parents.
- 33 (4) The earning ability of the parents.
- 34 (5) The need and capacity of the child for education.
- 35 (6) The age of the child.
- 36 (7) The financial resources and the earning ability of the child.
- 37 (8) The responsibility of the parents for the support of others.
- 38 (9) The value of services contributed by both parents.

39 ~~(g)~~ *(h)* The provisions of K.S.A. 23-4,107, and amendments thereto, shall apply to all orders of
40 support issued under this section.

41 ~~(h)~~ *(i)* An order granting parenting time pursuant to this section may be enforced in accordance
42 with K.S.A. 23-701, and amendments thereto, or under the uniform child custody jurisdiction and
43 enforcement act.

44 **Section 4. K.S.A. 38-2201. Citation; construction of code; policy of state.** K.S.A. 2007 Supp. 38-
45 2201 through 38-2283, and amendments thereto, shall be known as and may be cited as the revised
46 Kansas code for care of children.

47 (a) Proceedings pursuant to this code shall be civil in nature and all proceedings, orders, judgments
48 and decrees shall be deemed to be pursuant to the parental power of the state. *Any orders pursuant to*
49 *this code shall take precedence over any order under article 11 of chapter 38 of the Kansas Statutes*
50 *Annotated, and amendments thereto (determination of parentage), article 21, of chapter 59 of the*

1 *Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), article 30 of*
2 *chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators),*
3 *article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), article*
4 *31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (protection from abuse*
5 *act), and article 31a of chapter 60 of the Kansas Statutes Annotated, and amendments thereto*
6 *(protection from stalking act), until jurisdiction under this code is terminated.*

7 (b) The code shall be liberally construed to carry out the policies of the state which are to:

8 (1) Consider the safety and welfare of a child to be paramount in all proceedings under the code;

9 (2) provide that each child who comes within the provisions of the code shall receive the care,
10 custody, guidance control and discipline that will best serve the child's welfare and the interests of the
11 state, preferably in the child's home and recognizing that the child's relationship with such child's
12 family is important to the child's well being;

13 (3) make the ongoing physical, mental and emotional needs of the child decisive considerations in
14 proceedings under this code;

15 (4) acknowledge that the time perception of a child differs from that of an adult and to dispose of
16 all proceedings under this code without unnecessary delay;

17 (5) encourage the reporting of suspected child abuse and neglect;

18 (6) investigate reports of suspected child abuse and neglect thoroughly and promptly;

19 (7) provide for the protection of children who have been subject to physical, mental or emotional
20 abuse or neglect or sexual abuse;

21 (8) provide preventative and rehabilitative services, when appropriate, to abused and neglected
22 children and their families so, if possible, the families can remain together without further threat to
23 the children;

24 (9) provide stability in the life of a child who must be removed from the home of a parent; and

25 (10) place children in permanent family settings, in absence of compelling reasons to the contrary.

26 (c) Nothing in this code shall be construed to permit discrimination on the basis of disability.

27 (1) The disability of a parent shall not constitute a basis for a determination that a child is a child in
28 need of care, for the removal of custody of a child from the parent, or for the termination of parental
29 rights without a specific showing that there is a causal relation between the disability and harm to the
30 child.

31 (2) In cases involving a parent with a disability, determinations made under this code shall
32 consider the availability and use of accommodations for the disability, including adaptive equipment
33 and support services.

34 **Section 5. K.S.A. 2008 Supp. 38-2202. Definitions.** As used in the revised Kansas code for care of
35 children, unless the context otherwise indicates:

36 (a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate
37 provision for substitute care, cease providing care for the child.

38 (b) "Adult correction facility" means any public or private facility, secure or nonsecure, which is
39 used for the lawful custody of accused or convicted adult criminal offenders.

40 (c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or
41 chronic, life threatening neglect of a child.

42 (d) "Child in need of care" means a person less than 18 years of age at the time of filing of the
43 petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2007 Supp. 38-2242,
44 and amendments thereto, who:

45 (1) Is without adequate parental care, control or subsistence and the condition is not due solely to
46 the lack of financial means of the child's parents or other custodian;

47 (2) is without the care or control necessary for the child's physical, mental or emotional health;

48 (3) has been physically, mentally or emotionally abused or neglected or sexually abused;

49 (4) has been placed for care or adoption in violation of law;

50 (5) has been abandoned or does not have a known living parent;

1 (6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments thereto;
2 (7) except in the case of a violation of K.S.A. 21-4204a, 41-727, subsection (j) of K.S.A. 74-8810
3 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided in
4 paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited
5 by state law, city ordinance or county resolution but which is not prohibited when done by an adult;
6 (8) while less than 10 years of age, commits any act which if done by an adult would constitute
7 the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto;
8 (9) is willfully and voluntarily absent from the child's home without the consent of the child's
9 parent or other custodian;

10 (10) is willfully and voluntarily absent at least a second time from a court ordered or designated
11 placement, or a placement pursuant to court order, if the absence is without the consent of the person
12 with whom the child is placed or, if the child is placed in a facility, without the consent of the person
13 in charge of such facility or such person's designee;

14 (11) has been residing in the same residence with a sibling or another person under 18 years of
15 age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

16 (12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a, and
17 amendments thereto; or

18 (13) has had a permanent custodian appointed and the permanent custodian is no longer able or
19 willing to serve.

20 (e) "Citizen review board" is a group of community volunteers appointed by the court and whose
21 duties are prescribed by K.S.A. 2007 Supp. 38-2207 and 38-2208, and amendments thereto.

22 (f) "*Civil custody case*" includes any case filed under article 11 of chapter 38 of the *Kansas*
23 *Statutes Annotated*, and amendments thereto, article 21 of chapter 59 of the *Kansas Statutes*
24 *Annotated*, and amendments thereto, article 30 of chapter 59 of the *Kansas Statutes Annotated*, and
25 amendments thereto, or article 16 of chapter 60 of the *Kansas Statutes Annotated*, and amendments
26 thereto.

27 (g) "Court-appointed special advocate" means a responsible adult other than an attorney
28 guardian *ad litem* who is appointed by the court to represent the best interests of a child, as provided in
29 K.S.A. 2007 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

30 (h) "Custody" whether temporary, protective or legal, means the status created by court order or
31 statute which vests in a custodian, whether an individual or an agency, the right to physical
32 possession of the child and the right to determine placement of the child, subject to restrictions placed
33 by the court.

34 (i) "Extended out of home placement" means a child has been in the custody of the secretary
35 and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at
36 which a child in the custody of the secretary was removed from the home.

37 (j) "Educational institution" means all schools at the elementary and secondary levels.

38 (k) "Educator" means any administrator, teacher or other professional or paraprofessional
39 employee of an educational institution who has exposure to a pupil specified in subsection (a) of
40 K.S.A. 72-89b03, and amendments thereto.

41 (l) "Harm" means physical or psychological injury or damage.

42 (m) "Interested party" means the grandparent of the child, a person with whom the child has
43 been living for a significant period of time when the child in need of care petition is filed, and any
44 person made an interested party by the court pursuant to K.S.A. 2007 Supp. 38-2241, and
45 amendments thereto or Indian tribe seeking to intervene that is not a party.

46 (n) "Jail" means:

47 (1) An adult jail or lockup; or

48 (2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the
49 facility meets all applicable standards and licensure requirements under law and there is: (A) Total
50 separation of the juvenile and adult facility spatial areas such that there could be no haphazard or

1 accidental contact between juvenile and adult residents in the respective facilities; (B) total separation
2 in all juvenile and adult program activities within the facilities, including recreation, education,
3 counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and
4 adult staff, including management, security staff and direct care staff such as recreational, educational
5 and counseling.

6 ~~(n)~~(o) "Juvenile detention facility" means any secure public or private facility used for the lawful
7 custody of accused or adjudicated juvenile offenders which must not be a jail.

8 ~~(o)~~(p) "Juvenile intake and assessment worker" means a responsible adult authorized to perform
9 intake and assessment services as part of the intake and assessment system established pursuant to
10 K.S.A. 75-7023, and amendments thereto.

11 ~~(p)~~(q) "Kinship care" means the placement of a child in the home of the child's relative or in the
12 home of another adult with whom the child or the child's parent already has a close emotional
13 attachment.

14 ~~(q)~~(r) "Law enforcement officer" means any person who by virtue of office or public employment
15 is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty
16 extends to all crimes or is limited to specific crimes.

17 ~~(r)~~(s) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A.
18 2007 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child
19 in need of care.

20 ~~(s)~~(t) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of
21 a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are
22 not due solely to the lack of financial means of the child's parents or other custodian. Neglect may
23 include, but shall not be limited to:

24 (1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health
25 of the child;

26 (2) failure to provide adequate supervision of a child or to remove a child from a situation which
27 requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities
28 and that results in bodily injury or a likelihood of harm to the child; or

29 (3) failure to use resources available to treat a diagnosed medical condition if such treatment will
30 make a child substantially more comfortable, reduce pain and suffering, or correct or substantially
31 diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who
32 does not provide specified medical treatment for a child because of religious beliefs shall not for that
33 reason be considered a negligent parent; however, this exception shall not preclude a court from
34 entering an order pursuant to subsection (a)(2) of K.S.A. 2007 Supp. 38-2217, and amendments
35 thereto.

36 ~~(t)~~(u) "Parent" when used in relation to a child or children, includes a guardian and every person
37 who is by law liable to maintain, care for or support the child.

38 ~~(u)~~(v) "Party" means the state, the petitioner, the child, any parent of the child and an Indian
39 child's tribe intervening pursuant to the Indian child welfare act.

40 ~~(v)~~(w) "Permanency goal" means the outcome of the permanency planning process which may be
41 reintegration, adoption, appointment of a permanent custodian or another planned permanent living
42 arrangement.

43 ~~(w)~~(x) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant
44 to K.S.A. 2007 Supp. 38-2272, and amendments thereto.

45 ~~(x)~~(y) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional
46 harm or the causing of a deterioration of a child and may include, but shall not be limited to,
47 maltreatment or exploiting a child to the extent that the child's health or emotional well-being is
48 endangered.

49 ~~(y)~~(z) "Placement" means the designation by the individual or agency having custody of where and
50 with whom the child will live.

1 ~~(z)~~(aa) "Relative" means a person related by blood, marriage or adoption but, when referring to a
2 relative of a child's parent, does not include the child's other parent.

3 ~~(aa)~~(bb) "Secretary" means the secretary of social and rehabilitation services or the secretary's
4 designee.

5 ~~(bb)~~(cc) "Secure facility" means a facility which is operated or structured so as to ensure that all
6 entrances and exits from the facility are under the exclusive control of the staff of the facility, whether
7 or not the person being detained has freedom of movement within the perimeters of the facility, or
8 which relies on locked rooms and buildings, fences or physical restraint in order to control behavior of
9 its residents. No secure facility shall be in a city or county jail.

10 ~~(ee)~~(dd) "Sexual abuse" means any contact or interaction with a child in which the child is being
11 used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall
12 include allowing, permitting or encouraging a child to engage in prostitution or to be photographed,
13 filmed or depicted in pornographic material.

14 ~~(dd)~~(ee) "Shelter facility" means any public or private facility or home other than a juvenile
15 detention facility that may be used in accordance with this code for the purpose of providing either
16 temporary placement for children in need of care prior to the issuance of a dispositional order or
17 longer term care under a dispositional order.

18 ~~(ee)~~(ff) "Youth residential facility" means any home, foster home or structure which provides 24-
19 hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the Kansas
20 Statutes Annotated, and amendments thereto.

21 **Section 6. K.S.A. 2008 Supp. 38-2203. Jurisdiction; age of child, presumptions.** (a) Proceedings
22 concerning any child who may be a child in need of care shall be governed by this code, except in
23 those instances when the court knows or has reason to know that an Indian child is involved in the
24 proceeding, in which case, the Indian child welfare act of 1978 (25 U.S.C. §1901 et seq.) applies.
25 The Indian child welfare act may apply to: The filing to initiate a child in need of care proceeding
26 (K.S.A. 2007 Supp. 38-2234, and amendments thereto); ex parte custody orders (K.S.A. 2007 Supp.
27 38-2242, and amendments thereto); temporary custody hearing (K.S.A. 2007 Supp. 38-2243, and
28 amendments thereto); adjudication (K.S.A. 2007 Supp. 38-2247, and amendments thereto); burden of
29 proof (K.S.A. 2007 Supp. 38-2250, and amendments thereto); disposition (K.S.A. 2007 Supp. 38-
30 2255, and amendments thereto); permanency hearings (K.S.A. 2007 Supp. 38-2264, and amendments
31 thereto); termination of parental rights (K.S.A. 2007 Supp. 38-2267, 38-2268 and 38-2269, and
32 amendments thereto); establishment of permanent custodianship (K.S.A. 2007 Supp. 38-2268 and 38-
33 2272, and amendments thereto); the placement of a child in any foster, pre-adoptive and adoptive
34 home and the placement of a child in a guardianship arrangement under chapter 59, article 30 of the
35 Kansas Statutes Annotated, and amendments thereto.

36 (b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 38-1336
37 through 38-1377, and amendments thereto, the district court shall have original jurisdiction of
38 proceedings pursuant to this code.

39 (c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code or
40 upon issuance of an *ex parte* order pursuant to K.S.A. 2007 Supp. 38-2242, and amendments thereto.
41 When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the
42 child has: (1) Attained the age of 21 years; (2) been adopted; or (3) been discharged by the court. Any
43 child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court
44 cease. The court shall give notice of the request to all parties and interested parties and 30 days after
45 receipt of the request, jurisdiction will cease.

46 (d) When it is no longer appropriate for the court to exercise jurisdiction over a child, the court,
47 upon its own motion or the motion of a party or interested party at a hearing or upon agreement of all
48 parties or interested parties, shall enter an order discharging the child. Except upon request of the child
49 pursuant to subsection (c), the court shall not enter an order discharging a child until June 1 of the
50 school year during which the child becomes 18 years of age if the child is in an out-of-home

1 placement, is still attending high school and has not completed the child's high school education.

2 (e) When a petition is filed under this code, a person who is alleged to be under 18 years of age
3 shall be presumed to be under that age for the purposes of this code, unless the contrary is proved.

4 (f) *A court's order affecting a child's custody, residency, parenting time and visitation that is*
5 *issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil*
6 *custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and*
7 *amendments thereto (protection from abuse act), or a comparable case in another jurisdiction, except*
8 *as provided by Kansas Statutes Annotated, 38-1336 et seq., and amendments thereto.*

9 **Section 7. K.S.A. 38-2208 Same; duties and powers.** (a) The citizen review board shall have the
10 duty, authority and power to:

11 (1) Review each case referred to them, and such additional cases as the board deems appropriate, of
12 a child who is the subject of a child in need of care petition or who has been adjudicated a child in need
13 of care, receive verbal information from all persons with pertinent knowledge of the case and have
14 access to materials contained in the court's files on the case;

15 (2) determine the progress which has been made to acquire a permanent home for the child in need
16 of care;

17 (3) suggest an alternative case goal if progress has been insufficient; and

18 (4) make recommendations to the judge regarding further actions on the case.

19 (b) The initial review by the citizen review board may take place any time after a petition is filed
20 for a child in need of care.

21 (c) ~~The citizen review board will review each referred case~~ *In any case referred to a citizen review*
22 *board, the court shall conduct a hearing at least once each year.*

23 (d) The judge shall consider the citizen review board recommendations in making an authorized
24 dispositional order pursuant to K.S.A. 2007 Supp. 38-2255, and amendments thereto, and may
25 incorporate the citizen review board's recommendations into an order in lieu of a hearing.

26 (e) Three members of the citizen review board shall be present to review a case.

27 (f) The court shall provide a place for the reviews to be held. The citizen review board members
28 shall travel to the county of the family residence of the child being reviewed to hold the review.

29 **Section 8. K.S.A. 38-2212. Appropriate and necessary access; exchange of information; court**
30 **ordered disclosure; limited public information.** (a) *Principle of appropriate access.* Information
31 contained in confidential agency records concerning a child alleged or adjudicated to be in need of care
32 may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of
33 providing access ~~only~~ to persons or entities with a need for information that is directly related to
34 achieving the purposes of this code.

35 (b) *Free exchange of information.* Pursuant to K.S.A. ~~2007~~ 2008 Supp. 38-2210, and amendments
36 thereto, the secretary, ~~agents of the secretary~~ and juvenile intake and assessment agencies shall
37 participate in the free exchange of information concerning a child who is alleged or adjudicated to be
38 in need of care.

39 (c) *Necessary access.* The following persons or entities shall have access to information from
40 agency records. Access shall be limited to information reasonably necessary to carry out their lawful
41 responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or
42 to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information
43 authorized to be disclosed pursuant to this subsection shall not contain information which identifies a
44 reporter of a child who is alleged or adjudicated to be a child in need of care.

45 (1) A child named in the report or records, a guardian *ad litem* appointed for the child and the
46 child's attorney.

47 (2) A parent or other person responsible for the welfare of a child, or such person's legal
48 representative.

49 (3) A court-appointed special advocate for a child, a citizen review board or other advocate which
50 reports to the court.

1 (4) A person licensed to practice the healing arts or mental health profession in order to diagnose,
2 care for, treat or supervise: (A) A child whom such service provider reasonably suspects may be in
3 need of care; (B) a member of the child's family; or (C) a person who allegedly abused or neglected the
4 child.

5 (5) A person or entity licensed or registered by the secretary of health and environment or approved
6 by the secretary of social and rehabilitation services to care for, treat or supervise a child in need of
7 care.

8 (6) A coroner or medical examiner when such person is determining the cause of death of a child.

9 (7) The state child death review board established under K.S.A. 22a-243, and amendments thereto.

10 (8) An attorney for a private party who files a petition pursuant to subsection (b) of K.S.A. 2006
11 Supp. 38-2233, and amendments thereto.

12 (9) A foster parent, prospective foster parent, permanent custodian, prospective permanent
13 custodian, adoptive parent or prospective adoptive parent. In order to assist such person's in making an
14 informed decision regarding acceptance of a particular child, to help the family anticipate problems
15 which may occur during the child's placement, and to help the family meet the needs of the child in a
16 constructive manner, the secretary shall seek and shall provide the following information to such
17 person's as the information becomes available to the secretary:

18 (A) Strengths, needs and general behavior of the child;

19 (B) circumstances which necessitated placement;

20 (C) information about the child's family and the child's relationship to the family which may affect
21 the placement;

22 (D) important life experiences and relationships which may affect the child's feelings, behavior,
23 attitudes or adjustment;

24 (E) medical history of the child, including third-party coverage which may be available to the child;
25 and

26 (F) education history, to include present grade placement, special strengths and weaknesses.

27 (10) The state protection and advocacy agency as provided by subsection (a)(10) of K.S.A. 65-5603
28 or subsection (a)(2)(A) and (B) of K.S.A. 74-5515, and amendments thereto.

29 (11) Any educational institution to the extent necessary to enable the educational institution to
30 provide the safest possible environment for its pupils and employees.

31 (12) Any educator to the extent necessary to enable the educator to protect the personal safety of
32 the educator and the educator's pupils.

33 (13) Any other federal, state or local government executive branch entity or any agent of such
34 entity, having a need for such information in order to carry out such entity's responsibilities under the
35 law to protect children from abuse and neglect.

36 (d) *Specified access.* The following persons or entities shall have access to information contained in
37 agency records as specified. Information authorized to be disclosed pursuant to this subsection shall not
38 contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in
39 need of care.

40 (1) Information from confidential agency records of the department of social and rehabilitation
41 services, a law enforcement agency or any juvenile intake and assessment worker of a child alleged or
42 adjudicated to be in need of care shall be available to members of the standing house or senate
43 committee on judiciary, house committee on corrections and juvenile justice, house committee on
44 appropriations, senate committee on ways and means, legislative post audit committee and any joint
45 committee with authority to consider children's and families' issues, when carrying out such member's
46 or committee's official functions in accordance with K.S.A. 75-4319 and amendments thereto, in a
47 closed or executive meeting. Except in limited conditions established by 2/3 of the members of such
48 committee, records and reports received by the committee shall not be further disclosed. Unauthorized
49 disclosure may subject such member to discipline or censure from the house of representatives or
50 senate. The secretary of social and rehabilitation services shall not summarize the outcome of

1 department actions regarding a child alleged to be a child in need of care in information available to
2 members of such committees.

3 (2) The secretary of social and rehabilitation services may summarize the outcome of department
4 actions regarding a child alleged to be a child in need of care to a person having made such report.

5 (3) ~~Public disclosure of i~~nformation from confidential reports or records of a child alleged or
6 adjudicated to be a child in need of care ~~shall be limited to~~ *may be disclosed to the public when:*

7 (A) ~~Confirmation of factual details with respect to how the case was handled, provided, however,~~
8 ~~that the information does not violate the privacy of the child, or the child's siblings, parents or~~
9 ~~guardians.~~

10 (B) (A) ~~Confidential information may be released to the public only with the express written~~
11 ~~permission of the individuals involved or their representatives have explicitly consented in writing- or,~~

12 (B) *the investigation of the abuse or neglect of the child or the filing of a petition alleging a child*
13 *to be in need of care has become public knowledge, providing the agency limits disclosure to*
14 *confirmation of procedural details relating to the handling of the case by professionals.*

15 (e) *Court order.* Notwithstanding the provisions of this section, a court of competent jurisdiction,
16 after in camera inspection, may order disclosure of confidential agency records pursuant to a
17 determination that the disclosure is in the best interests of the child who is the subject of the reports or
18 that the records are necessary for the proceedings of the court and otherwise admissible as evidence.
19 The court shall specify the terms of disclosure and impose appropriate limitations.

20 (f) (1) Notwithstanding any other provision of law to the contrary, except as provided in paragraph
21 ~~(2)~~(4), in the event that child abuse or neglect results in a child fatality or near fatality, reports or
22 records of a child *alleged or adjudicated to be* in need of care, received by the ~~secretary~~ ~~department~~
23 ~~of social and rehabilitation services~~, a law enforcement agency or any juvenile intake and assessment
24 worker shall become a public record and subject to disclosure pursuant to K.S.A. 45-215, and
25 amendments thereto.

26 (2) Within seven days of receipt of a request in accordance with the procedures adopted under
27 K.S.A. 45-220, and amendments thereto, the secretary shall notify any affected individual that an open
28 records request has been made concerning such records. The secretary or any affected individual may
29 file a motion requesting the court to prevent disclosure of such record or report, or any select portion
30 thereof. If the affected individual does not file such motion within seven days of notification, and the
31 secretary has not filed a motion, the secretary shall release the reports or records. ~~In reviewing such~~
32 ~~motion~~ *If such motion is filed*, the court shall consider the effect such disclosure may have upon an
33 ongoing criminal investigation, a pending prosecution, or the privacy of the child, if living, or the
34 child's siblings, parents or guardians. ~~Nothing herein is intended to require that an otherwise privileged~~
35 ~~communication lose its privileged character.~~ ~~If the court grants such motion,~~ The court shall make
36 written findings on the record justifying the closing of the records *and shall provide a copy of the*
37 *journal entry to the affected parties and the individual requesting disclosure pursuant to the open*
38 *records act, K.S.A. 45-215 et seq., and amendments thereto.*

39 (3) For reports or records requested pursuant to this subsection, the time limitations specified in this
40 subsection shall control to the extent of any inconsistency between this subsection and K.S.A. 45-218,
41 and amendments thereto. As used in this section, "near fatality" means an act that, as certified by a
42 person licensed to practice medicine and surgery, places the child in serious or critical condition.

43 ~~(2)~~(4) Nothing in this subsection shall allow the disclosure of reports, records or documents
44 concerning the child and such child's biological parents which were created prior to such child's
45 adoption. *Nothing herein is intended to require that an otherwise privileged communication lose its*
46 *privileged character.*

47 **Section 9. K.S.A. 38-2242. Ex parte orders of protective custody; application; determination of**
48 **probable cause; period of time; placement; procedures; orders for removal of child from custody**
49 **of parent, limitations.** (a) The court, upon verified application, may issue *ex parte* an order directing
50 that a child be held in protective custody and, if the child has not been taken into custody, an order

1 directing that the child be taken into custody. The application shall state for each child:

2 (1) The applicant's belief that the child is a child in need of care;

3 (2) that the child is likely to sustain harm if not immediately removed from the home;

4 (3) that allowing the child to remain in the home is contrary to the welfare of the child; and

5 (4) the facts relied upon to support the application, including efforts known to the applicant to
6 maintain the family unit and prevent the unnecessary removal of the child from the child's home, or
7 the specific facts supporting that an emergency exists which threatens the safety of the child.

8 (b) (1) The order of protective custody may be issued only after the court has determined there is
9 probable cause to believe the allegations in the application are true. The order shall remain in effect
10 until the temporary custody hearing provided for in K.S.A. 2007 Supp. 38-2243, and amendments
11 thereto, unless earlier rescinded by the court.

12 (2) No child shall be held in protective custody for more than 72 hours, excluding Saturdays,
13 Sundays and legal holidays, unless within the 72-hour period a determination is made as to the
14 necessity for temporary custody in a temporary custody hearing. The time spent in custody pursuant
15 to K.S.A. 2007 Supp. 38-2232, and amendments thereto, shall be included in calculating the 72-hour
16 period. Nothing in this subsection shall be construed to mean that the child must remain in protective
17 custody for 72 hours. If a child is in the protective custody of the secretary, the secretary shall allow
18 at least one supervised visit between the child and the parent or parents within such time period as the
19 child is in protective custody. The court may prohibit such supervised visit if the court determines it
20 is not in the best interest of the child.

21 (c) (1) Whenever the court determines the necessity for an order of protective custody, the court
22 may place the child in the protective custody of:

23 (A) A parent or other person having custody of the child and may enter a restraining order
24 pursuant to subsection (e);

25 (B) a person, other than the parent or other person having custody, who shall not be required to
26 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

27 (C) a youth residential facility;

28 (D) a shelter facility; or

29 (E) the secretary.

30 (2) If the secretary presents the court with a plan to provide services to a child or family which the
31 court finds will assure the safety of the child, the court may only place the child in the protective
32 custody of the secretary until the court finds the services are in place. The court shall have the
33 authority to require any person or entity agreeing to participate in the plan to perform as set out in the
34 plan. When the child is placed in the protective custody of the secretary, the secretary shall have the
35 discretionary authority to place the child with a parent or to make other suitable placement for the
36 child. When the child is presently alleged, but not yet adjudicated, to be a child in need of care solely
37 pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2007 Supp. 38-2202, and amendments thereto, the
38 child may be placed in a juvenile detention facility or other secure facility pursuant to an order of
39 protective custody for a period of not to exceed 24 hours, excluding Saturdays, Sundays and legal
40 holidays.

41 (d) The order of protective custody shall be served pursuant to subsection (a) of K.S.A. 2007
42 Supp. 38-2237, and amendments thereto, on the child's parents and any other person having legal
43 custody of the child. The order shall prohibit the removal of the child from the court's jurisdiction
44 without the court's permission.

45 (e) If the court issues an order of protective custody, the court may also enter an order restraining
46 any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in
47 the child's home; visiting, contacting, harassing or intimidating the child, other family member or
48 witness; or attempting to visit, contact, harass or intimidate the child, other family member or
49 witness. Such restraining order shall be served by personal service pursuant to subsection (a) of
50 K.S.A. 2007 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order

1 is directed.

2 (f) (1) The court shall not enter ~~an~~ *the initial* order removing a child from the custody of a parent
3 pursuant to this section unless the court first finds probable cause that: (A)(i) the child is likely to
4 sustain harm if not immediately removed from the home;

5 (ii) allowing the child to remain in home is contrary to the welfare of the child; or

6 (iii) immediate placement of the child is in the best interest of the child; and

7 (B) reasonable efforts have been made to maintain the family unit and prevent the unnecessary
8 removal of the child from the child's home or that an emergency exists which threatens the safety to
9 the child.

10 (2) Such findings shall be included in any order entered by the court. If the child is placed in the
11 custody of the secretary, the court shall provide the secretary with a written copy of any orders
12 entered upon making the order.

13 **Section 10. K.S.A. 2008 Supp. 38-2243. Orders of temporary custody; notice; hearing;**
14 **procedure; findings; placement; orders for removal of child from custody of parent, limitations.**

15 (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody
16 and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

17 (b) A hearing pursuant to this section shall be held within 72 hours, excluding Saturdays, Sundays
18 and legal holidays, following a child having been taken into protective custody.

19 (c) Whenever it is determined that a temporary custody hearing is required, the court shall
20 immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be
21 given to all parties and interested parties.

22 (d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing.
23 The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party
24 or interested party, proceed with the hearing at the designated time. If an order of temporary custody is
25 entered and the parent or other person having custody of the child has not been notified of the hearing,
26 did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without
27 unnecessary delay.

28 (e) Oral notice may be used for giving notice of a temporary custody hearing where there is
29 insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice.

30 (f) The court may enter an order of temporary custody after determining that the: (1) Child is
31 dangerous to self or to others; (2) child is not likely to be available within the jurisdiction of the court
32 for future proceedings; or (3) health or welfare of the child may be endangered without further care.

33 (g) (1) Whenever the court determines the necessity for an order of temporary custody the court
34 may place the child in the temporary custody of:

35 (A) A parent or other person having custody of the child and may enter a restraining order pursuant
36 to subsection (h);

37 (B) a person, other than the parent or other person having custody, who shall not be required to be
38 licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

39 (C) a youth residential facility;

40 (D) a shelter facility; or

41 (E) the secretary.

42 (2) If the secretary presents the court with a plan to provide services to a child or family which the
43 court finds will assure the safety of the child, the court may only place the child in the temporary
44 custody of the secretary until the court finds the services are in place. The court shall have the authority
45 to require any person or entity agreeing to participate in the plan to perform as set out in the plan.
46 When the child is placed in the temporary custody of the secretary, the secretary shall have the
47 discretionary authority to place the child with a parent or to make other suitable placement for the
48 child. When the child is presently alleged, but not yet adjudicated to be a child in need of care solely
49 pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2007 Supp. 38-2202, and amendments thereto, the
50 child may be placed in a juvenile detention facility or other secure facility, but the total amount of

1 time that the child may be held in such facility under this section and K.S.A. 2007 Supp. 38-2242, and
2 amendments thereto, shall not exceed 24 hours, excluding Saturdays, Sundays and legal holidays. The
3 order of temporary custody shall remain in effect until modified or rescinded by the court or a *an*
4 adjudication order is entered but not exceeding 60 days, unless good cause is shown and stated on the
5 record.

6 (h) If the court issues an order of temporary custody, the court may also enter an order restraining
7 any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the
8 child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact,
9 harass or intimidate the child, other family members or witnesses. Such restraining order shall be
10 served by personal service pursuant to subsection (a) of K.S.A. 2007 Supp. 38-2237, and amendments
11 thereto, on any alleged perpetrator to whom the order is directed.

12 (i) (1) The court shall not enter ~~an~~ *the initial* order removing a child from the custody of a parent
13 pursuant to this section unless the court first finds probable cause that: (A)(i) the child is likely to
14 sustain harm if not immediately removed from the home;

15 (ii) allowing the child to remain in home is contrary to the welfare of the child; or

16 (iii) immediate placement of the child is in the best interest of the child; and

17 (B) reasonable efforts have been made to maintain the family unit and prevent the unnecessary
18 removal of the child from the child's home or that an emergency exists which threatens the safety to the
19 child.

20 (2) Such findings shall be included in any order entered by the court. If the child is placed in the
21 custody of the secretary, upon making the order the court shall provide the secretary with a written
22 copy.

23 (j) If the court enters an order of temporary custody that provides for placement of the child with a
24 person other than the parent, the court shall make a child support determination pursuant to K.S.A.
25 2007 Supp. 38-2277, and amendments thereto.

26 **Section 11. K.S.A. 2008 Supp. 38-2251. Adjudication.** (a) If the court finds that the child is not a
27 child in need of care, the court shall enter an order dismissing the proceedings.

28 (b) If the court finds that the child is a child in need of care, the court shall enter an order
29 adjudicating the child to be a child in need of care and may proceed to enter other orders as authorized
30 by this code.

31 ~~(c) A finding that a child subject to this code is a child in need of care shall be entered without~~
32 ~~undue delay. If the child has been removed from the child's home, an order of adjudication shall be~~
33 ~~entered as soon as practicable but not more than 60 days from the date of removal unless an order of~~
34 ~~informal supervision or an order of continuance for good cause has been entered. A final adjudication~~
35 ~~or dismissal shall be entered within 60 days from the date of the filing of the petition, unless good~~
36 ~~cause for a continuance is shown on the record.~~

37 **Section 12. K.S.A. 38-2255. Authorized dispositions.** (a) *Considerations.* Prior to entering an order
38 of disposition, the court shall give consideration to:

39 (1) The child's physical, mental and emotional condition;

40 (2) the child's need for assistance;

41 (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;

42 (4) any relevant information from the intake and assessment process; and

43 (5) the evidence received at the dispositional hearing.

44 (b) ~~Placement~~ *Custody with a parent.* The court may place the child in the custody of either of the
45 child's parents subject to terms and conditions which the court prescribes to assure the proper care and
46 protection of the child, including, but not limited to:

47 (1) Supervision of the child and the parent by a court services officer;

48 (2) participation by the child and the parent in available programs operated by an appropriate
49 individual or agency; and

50 (3) any special treatment or care which the child needs for the child's physical, mental or emotional

1 health and safety.

2 (c) *Removal of a child from custody of a parent.* The court shall not enter ~~an~~ *the initial* order
3 removing a child from the custody of a parent pursuant to this section unless the court first finds
4 probable cause that:

5 (1)(A) The child is likely to sustain harm if not immediately removed from the home;

6 (B) allowing the child to remain in home is contrary to the welfare of the child; or

7 (C) immediate placement of the child is in the best interest of the child; and

8 (2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary
9 removal of the child from the child's home or that an emergency exists which threatens the safety to the
10 child.

11 (d) *Custody and placement of a child removed from the custody of a parent.* If the court has made
12 the findings required by subsection (c), the court shall enter an order awarding custody to a relative of
13 the child or to a person with whom the child has close emotional ties, to any other suitable person, to a
14 shelter facility, to a youth residential facility or to the secretary. Custody awarded under this subsection
15 shall continue until further order of the court.

16 (1) When custody is awarded to the secretary, the secretary shall consider any placement
17 recommendation by the court and notify the court of the placement or proposed placement of the child
18 within 10 days of the order awarding custody.

19 ~~(A)~~ After providing the parties or interested parties notice and opportunity to be heard, the court
20 may determine whether the secretary's placement or proposed placement is contrary to the welfare or in
21 the best interests of the child. In making that determination the court shall consider the health and
22 safety needs of the child and the resources available to meet the needs of children in the custody of the
23 secretary. If the court determines that the placement or proposed placement is contrary to the welfare or
24 not in the best interests of the child, the court shall notify the secretary, who shall then make an
25 alternative placement.

26 ~~(B) The secretary may propose and the court may order the child to be placed in the custody of with~~
27 ~~a parent or parents if the secretary has provided and the court has approved an appropriate safety action~~
28 ~~plan which includes services to be provided. The court may order the parent or parents and the child to~~
29 ~~perform tasks as set out in the safety action plan.~~

30 (2) The custodian designated under this subsection shall notify the court in writing at least 10 days
31 prior to any planned placement with a parent. The written notice shall state the basis for the custodian's
32 belief that placement with a parent is no longer contrary to the welfare or best interest of the child.
33 Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or
34 may set the date for a hearing to determine if the child shall be allowed to return home. If the court sets
35 a hearing on the matter, the custodian shall not return the child home without written consent of the
36 court.

37 (3) The court may grant any person reasonable rights to visit the child upon motion of the person
38 and a finding that the visitation rights would be in the best interests of the child.

39 (4) The court may enter an order restraining any alleged perpetrator of physical, mental or
40 emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting,
41 harassing or intimidating the child, other family member or witness; or attempting to visit, contact,
42 harass or intimidate the child, other family member or witness. Such restraining order shall be served
43 by personal service pursuant to subsection (a) of K.S.A. 2007 Supp. 38-2237, and amendments thereto,
44 on any alleged perpetrator to whom the order is directed.

45 (5) The court shall provide a copy of any orders entered within 10 days of entering the order to the
46 custodian designated under this subsection.

47 (e) *Further determinations regarding a child removed from the home.* If custody has been
48 awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or
49 prepared pursuant to K.S.A. 2007 Supp. 38-2264, and amendments thereto. If a permanency plan is
50 provided at the dispositional hearing, the court may determine whether reintegration is a viable

1 alternative or, if reintegration is not a viable alternative, whether the child should be placed for
2 adoption or a permanent custodian appointed. In determining whether reintegration is a viable
3 alternative, the court shall consider:

4 (1) Whether a parent has been found by a court to have committed one of the following crimes or to
5 have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted,
6 conspired or solicited the commission of one of these crimes: Murder in the first degree, K.S.A. 21-
7 3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto,
8 capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403,
9 and amendments thereto, or a felony battery that resulted in bodily injury;

10 (2) whether a parent has subjected the child or another child to aggravated circumstances;

11 (3) whether a parent has previously been found to be an unfit parent in proceedings under this code
12 or in comparable proceedings under the laws of another state or the federal government;

13 (4) whether the child has been in extended out of home placement;

14 (5) whether the parents have failed to work diligently toward reintegration;

15 (6) whether the secretary has provided the family with services necessary for the safe return of the
16 child to the home; and

17 (7) whether it is reasonable to expect reintegration to occur within a time frame consistent with the
18 child's developmental needs.

19 (f) *Proceedings if reintegration is not a viable alternative.* If the court determines that reintegration
20 is not a viable alternative, proceedings to terminate parental rights and permit placement of the child
21 for adoption or appointment of a permanent custodian shall be initiated unless the court finds that
22 compelling reasons have been documented in the case plan why adoption or appointment of a
23 permanent custodian would not be in the best interests of the child. If compelling reasons have not
24 been documented, the county or district attorney shall file a motion within 30 days to terminate
25 parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a
26 hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily
27 relinquish parental rights or consent to the appointment of a permanent custodian.

28 (g) *Additional Orders.* In addition to or in lieu of any other order authorized by this section:

29 (1) The court may order the child and the parents of any child who has been adjudicated a child in
30 need of care to attend counseling sessions as the court directs. The expense of the counseling may be
31 assessed as an expense in the case. No mental health provider shall charge a greater fee for court-
32 ordered counseling than the provider would have charged to the person receiving counseling if the
33 person had requested counseling on the person's own initiative.

34 (2) If the court has reason to believe that a child is before the court due, in whole or in part, to the
35 use or misuse of alcohol or a violation of the uniform controlled substances act by the child, a parent of
36 the child, or another person responsible for the care of the child, the court may order the child, parent
37 of the child or other person responsible for the care of the child to submit to and complete an alcohol
38 and drug evaluation by a qualified person or agency and comply with any recommendations. If the
39 evaluation is performed by a community-based alcohol and drug safety program certified pursuant to
40 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for
41 the care of the child shall pay a fee not to exceed the fee established by that statute. If the court finds
42 that the child and those legally liable for the child's support are indigent, the fee may be waived. In no
43 event shall the fee be assessed against the secretary.

44 (3) If child support has been requested and the parent or parents have a duty to support the child,
45 the court may order one or both parents to pay child support and, when custody is awarded to the
46 secretary, the court shall order one or both parents to pay child support. The court shall determine, for
47 each parent separately, whether the parent is already subject to an order to pay support for the child. If
48 the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the
49 court and the court has personal jurisdiction over the parent, the court shall order the parent to pay
50 child support in an amount determined under K.S.A. 2007 Supp. 38-2277, and amendments thereto.

1 Except for good cause shown, the court shall issue an immediate income withholding order pursuant to
2 K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this
3 subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay
4 child support under this subsection shall be notified, at the hearing or otherwise, that the child support
5 order may be registered pursuant to K.S.A. 2007 Supp. 38-2279, and amendments thereto. The parent
6 shall also be informed that, after registration, the income withholding order may be served on the
7 parent's employer without further notice to the parent and the child support order may be enforced by
8 any method allowed by law. Failure to provide this notice shall not affect the validity of the child
9 support order.

10 **Section 13. K.S.A. 2008 Supp. 38-2258 Change of placement; removal from home of parent,**
11 **findings by court.** (a) Except as provided in K.S.A. 2007 Supp. 38-2255(d)(2) and 38-2259, and
12 amendments thereto, if a child has been in the same foster home or shelter facility for six months or
13 longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give
14 written notice of any plan to move the child to a different placement unless the move is to the selected
15 preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court
16 having jurisdiction over the child; (2) *the petitioner*; (3) *the attorney for the parents, if any*; ~~(2) (4)~~
17 each parent whose address is available; ~~(3) (5)~~ (5) the foster parent or custodian from whose home or
18 shelter facility it is proposed to remove the child; ~~(4) (6)~~ (6) the child, if 12 or more years of age; ~~and (5)~~
19 (7) the child's guardian *ad litem*; (8) *the child's court appointed special advocate*, and (9) *any other*
20 *interested parties*.

21 (b) The notice shall state the placement to which the secretary plans to transfer the child and the
22 reason for the proposed action. The notice shall be mailed by first class mail 30 days in advance of the
23 planned transfer, except that the secretary shall not be required to wait 30 days to transfer the child if
24 all persons enumerated in subsection (a) (2) through (5) consent in writing to the transfer.

25 (c) Within 10 days after receipt of the notice, any person receiving notice as provided above may
26 request, either orally or in writing, that the court conduct a hearing to determine whether or not the
27 change in placement is in the best interests of the child concerned. When the request has been received,
28 the court shall schedule a hearing and immediately notify the secretary of the request and the time and
29 date the matter will be heard. The court shall give notice of the hearing to persons enumerated in
30 subsection (a) (2) through (5). The secretary shall not change the placement of the child, except for the
31 purpose of adoption, unless the change is approved by the court.

32 (d) When, after the notice set out above, a child in the custody of the secretary is removed from the
33 home of a parent after having been placed in the home of a parent for a period of six months or longer,
34 the secretary shall request a finding that: (1)(A) The child is likely to sustain harm if not immediately
35 removed from the home;

36 (B) allowing the child to remain in home is contrary to the welfare of the child; or

37 (C) immediate placement of the child is in the best interest of the child; and

38 (2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary
39 removal of the child from the child's home or that an emergency exists which threatens the safety to the
40 child.

41 (e) The secretary shall present to the court in writing the efforts to maintain the family unit and
42 prevent the unnecessary removal of the child from the child's home. In making the findings, the court
43 may rely on documentation submitted by the secretary or may set the date for a hearing on the matter.
44 If the secretary requests such finding, the court, not more than 45 days from the date of the request,
45 shall provide the secretary with a written copy of the findings by the court for the purpose of
46 documenting these orders.

47 **Section 14. K.S.A. 2008 Supp. 38-2264. Permanency hearing; purpose; procedure; time for**
48 **hearing.** (a) A permanency hearing is a proceeding conducted by the court or by a citizen review
49 board for the purpose of determining progress toward accomplishment of a permanency plan as
50 established by K.S.A. 2007 Supp. 38-2263, and amendments thereto.

1 (b) The court or a citizen review board shall hear and the court shall determine whether and, if
2 applicable, when the child will be:

3 (1) Reintegrated with the child's parents;

4 (2) placed for adoption;

5 (3) placed with a permanent custodian; or

6 (4) if the secretary has documented compelling reasons why it would not be in the child's best
7 interests for a placement in one of the placements pursuant to paragraphs (1), (2) or (3) placed in
8 another planned permanent arrangement.

9 (c) The court shall enter a finding as to whether the person or entity having custody of the child
10 has made reasonable efforts to accomplish the permanency plan in place at the time of the hearing.

11 (d) A permanency hearing shall be held within 12 months of the date the court authorized the
12 child's removal from the home and not less frequently than every 12 months thereafter.

13 (e) If the court determines at any time other than during a permanency hearing that reintegration
14 may not be a viable alternative for the child, a permanency hearing shall be held no later than 30 days
15 following that determination.

16 (f) When the court finds that reintegration continues to be a viable alternative, the court shall
17 determine whether and, if applicable, when the child will be returned to the parent. The court may
18 rescind any of its prior dispositional orders and enter any dispositional order authorized by this code
19 or may order that a new plan for the reintegration be prepared and submitted to the court. If
20 reintegration cannot be accomplished as approved by the court, the court shall be informed and shall
21 schedule a hearing pursuant to this section. No such hearing is required when the parents voluntarily
22 relinquish parental rights or consent to appointment of a permanent custodian.

23 (g) If the court finds reintegration is no longer a viable alternative, the court shall consider
24 whether: (1) The child is in a stable placement with a relative; (2) services set out in the case plan
25 necessary for the safe return of the child have been made available to the parent with whom
26 reintegration is planned; or (3) compelling reasons are documented in the case plan to support a finding
27 that neither adoption nor appointment of a permanent custodian are in the child's best interest. If
28 reintegration is not a viable alternative and either adoption or appointment of a permanent custodian
29 might be in the best interests of the child, the county or district attorney or the county or district
30 attorney's designee shall file a motion to terminate parental rights or a motion to appoint a permanent
31 custodian within 30 days and the court shall set a hearing on such motion within 90 days of the filing
32 of such motion.

33 (h) If the court enters an order terminating parental rights to a child, or an agency has accepted a
34 relinquishment pursuant to K.S.A. 59-2124, and amendments thereto, the requirements for permanency
35 hearings shall continue until an adoption or appointment of a permanent custodian has been
36 accomplished. If the court determines that reasonable efforts or progress have not [been] made toward
37 finding an adoptive placement or appointment of a permanent custodian or placement with a fit and
38 willing relative, the court may rescind its prior orders and make others regarding custody and adoption
39 that are appropriate under the circumstances. Reports of a proposed adoptive placement need not
40 contain the identity of the proposed adoptive parents.

41 (i) *If permanency with one parent has been achieved without the termination of the other parent's*
42 *rights, the court may, prior to dismissing the case, enter child custody orders including residency,*
43 *parenting time and child support, that the court determines to be in the best interests of the child. The*
44 *court shall complete a parenting plan pursuant to K.S.A. 60-1625, and amendments thereto. Child*
45 *support orders shall be consistent with the requirements of K.S.A. 2007 Supp. 38-2277, and*
46 *amendments thereto.*

47 (1) *Before entering a custody order under this subsection, the court shall inquire whether a*
48 *custody order has been entered or is pending in a civil custody case by a court of competent*
49 *jurisdiction within the state of Kansas.*

50 (2) *If a civil custody case has been filed or is pending, a certified copy of the custody, residency,*

1 *parenting time, and child support orders shall be filed in the civil custody case. The court in the*
2 *child in need of care case may, after consultation with the court in the civil custody case, include in*
3 *the ~~permanency~~ order a declaration that the custody order in the child in need of care case shall*
4 *become the custody order in the civil custody case.*

5 (3) *A district court, on its own motion or upon the motion of any party, may order the*
6 *consolidation of the child in need of care case with any open civil custody case involving the child*
7 *and both of the child's parents. Orders entered in consolidated child in need of care and civil*
8 *custody cases take precedence over any previous orders affecting both parents and the child that*
9 *were entered in the civil custody case regarding the same or related issues. Following entry of a*
10 *custody order in a consolidated case, the court shall dismiss the child in need of care case and, if*
11 *necessary, return the civil custody case to the original court having jurisdiction over it.*

12 (4) *If no civil custody case has been filed, the court may direct the parties to file a civil custody*
13 *case and to file the ~~permanency~~, and custody and child support orders from the child in need of care*
14 *case in that case. Costs of the civil custody case may be assessed to the parties.*

15 (5) *Nothing in this subsection shall operate to expand access to information that is confidential*
16 *under K.S.A. 38-2209, and amendments thereto, and the confidentiality of such information shall be*
17 *preserved in all filings in a civil custody case.*

18 (j) *When permanency has been achieved to the satisfaction of the court, the court shall enter an*
19 *order closing the case.*

20 **Section 15. K.S.A. 38-2272. Appointment of permanent custodian.** (a) A permanent custodian
21 may be appointed:

22 (1) With the consent and agreement of the parents and approval by the court;

23 (2) after a finding of unfitness pursuant to K.S.A. 2007 Supp. 38-2269, and amendments thereto;
24 or

25 (3) after termination of parental rights pursuant to K.S.A. 2007 Supp. 38-2270, and amendments
26 thereto.

27 (b) Upon the appointment of a permanent custodian, the secretary's custody of the child shall
28 cease. The court's jurisdiction over the child shall continue unless the court enters an order
29 terminating jurisdiction.

30 (c) Subject to subsection (d), a permanent custodian shall stand *in loco parentis* and shall exercise
31 all of the rights and responsibilities of a parent except the permanent custodian shall not:

32 (1) Consent to an adoption of the child; and

33 (2) be subject to court ordered child support or medical support.

34 (d) When the court retains jurisdiction after appointment of a permanent custodian, the court, in
35 its order, may impose limitations or conditions upon the rights and responsibilities of the permanent
36 custodian including, but not limited to, the right to:

37 (1) Determine contact with the biological parent;

38 (2) consent to marriage;

39 (3) consent to psychosurgery, removal of a bodily organ or amputation of a limb;

40 (4) consent to sterilization;

41 (5) consent to behavioral and medical experiments;

42 (6) consent to withholding life-prolonging medical treatment;

43 (7) consent to placement in a treatment facility; or

44 (8) consent to placement in a psychiatric hospital or an institution for the developmentally
45 disabled.

46 (e) Absent a judicial finding of unfitness or court-ordered limitations pursuant to subsection (d), a
47 permanent custodian may share parental responsibilities with a parent of the child as the permanent
48 custodian determines is in the child's best interests. Sharing parental responsibilities does not relieve
49 the permanent custodian of legal responsibility for the child.

50 (f) Parental consent to appointment of a permanent custodian shall be ~~on the record~~ *in writing and*

1 ~~shall be or executed by the parent of the child and~~ acknowledged before a judge of a court of record
2 ~~or before an officer authorized by law to take acknowledgments.~~ *If the consent is acknowledged*
3 *before a judge of a court of record, it shall be the duty of the court before which the consent is*
4 *acknowledged to advise the consenting parent of the consequences of the consent, including the*
5 *following:*

6 (1) Do you understand that your parental rights are not being terminated and you can be ordered
7 to pay child support and medical support for your child?

8 (2) Do you understand that to get the rights you still have with your child, you must keep the
9 court up to date about how to contact you? This means that the court needs to always have your
10 current address and telephone number.

11 (3) Do you understand that if your child is ever placed for adoption, the court will try to let you
12 know by using the information you have given them? If your address and telephone number are not
13 up to date, you might not know your child is placed for adoption.

14 (4) Do you understand that if you want information about your child's health or education, you
15 will have to keep the information you give the court about where you are up to date because the
16 information will be sent to the latest address the court has?

17 (5) Do you understand that you may be able to have some contact with your child, but only if the
18 permanent custodian decides it is in the child's best interests and if the court allows the contact?

19 (6) Do you understand that unless the court orders differently, the permanent custodian has the
20 right to make the following decisions about your child: The amount and type of contact you have with
21 the child; consent to your child's marriage; consent to medical treatment; consent to mental health
22 treatment; consent to placement in a psychiatric hospital or an institution for the developmentally
23 disabled; consent to behavioral and medical experiments; consent to sterilization and consent to
24 withholding life-prolonging medical treatment?

25 (g) (1) A consent is final when executed, unless the parent whose consent is at issue, prior to
26 issuance of the order appointing a permanent custodian, proves by clear and convincing evidence that
27 the consent was not freely and voluntarily given. The burden of proving the consent was not freely
28 and voluntarily given shall rest with that parent.

29 (2) If a parent has consented to appointment of a permanent custodian based upon a belief that the
30 child's other parent would so consent or would be found unfit, and this does not occur, the consent
31 shall be null and void.

32 (h) If a permanent custodian is appointed after a judicial finding of parental unfitness without a
33 termination of parental rights, the parent shall retain only the following rights and responsibilities:

34 (1) The obligation to pay child support and medical support; and

35 (2) the right to inherit from the child.

36 (3) The right to consent to adoption of the child.

37 All other parental rights transfer to the permanent custodian.

38 (i) If a permanent custodian is appointed after termination of parental rights, the parent retains no
39 right or responsibilities to the child.

40 (j) Prior to appointing a permanent custodian, the court shall receive and consider an assessment of
41 any potential permanent custodian as provided in K.S.A. 59-2132, and amendments thereto. In
42 making an order appointing a permanent custodian the court shall give preference, to the extent that
43 the court finds it in the child's best interests, to first appointing a permanent custodian who is a
44 relative of the child or second a person with whom the child has close emotional ties.

45 (k) If permanent custodians are divorced, such custodian's marriage is annulled or the court orders
46 separate maintenance, the court in that case has jurisdiction to make custody determinations between
47 the permanent custodians.

48 **Section 16. K.S.A. 38-2279. Withholding order for child support; filing; service.** (a) A person
49 entitled to receive child support under an order issued pursuant to the code may file with the clerk of
50 the district court in the county in which the judgment was rendered the original child support order

1 and the original income withholding order, if any. If the original child support or income withholding
2 order is unavailable for any reason, a certified or authenticated copy of the order may be substituted.
3 The clerk of the district court shall number the child support order as a case filed under chapter 60 of
4 the Kansas Statutes Annotated, and amendments thereto, and enter the numbering of the case on the
5 appearance docket of the case. Registration of a child support order under this section shall be
6 without cost or docket fee.

7 (b) If the number assigned to a case under the code appears in the caption of a document filed
8 pursuant to this section, the clerk of the district court may obliterate that number and replace it with
9 the new case number assigned pursuant to this section.

10 (c) The filing of the child support order shall constitute registration under this section. Upon
11 registration of the child support order, all matters related to that order, including, but not limited to,
12 modification of the order, shall proceed under the new case number. Registration of a child support
13 order under this section does not confer jurisdiction in the registration case for custody or visitation
14 issues.

15 (d) The person registering a child support order shall serve a copy of the registered child support
16 order and income withholding order, if any, upon the party or interested parties by first-class mail.
17 The person registering the child support order shall file, in the official file for each child affected,
18 either a copy of the registered order showing the new case number or a statement that includes the
19 caption, new case number and date of registration of the child support order.

20 (e) If the secretary is entitled to receive payment under an order which may be registered under
21 this section, the county or district attorney shall take the actions permitted or required in subsections
22 (a) and (d) on behalf of the secretary, unless otherwise requested by the secretary.

23 (f) A child support order registered pursuant to this section shall have the same force and effect as
24 an original child support order entered under chapter 60 of the Kansas Statutes Annotated, and
25 amendments thereto, including, but not limited to:

26 (1) The registered order shall become a lien on the real estate of the judgment debtor in the county
27 from the date of registration;

28 (2) execution or other action to enforce the registered order may be had from the date of
29 registration;

30 (3) the registered order may itself be registered pursuant to any law, including, but not limited to,
31 the uniform interstate family support act, K.S.A. 23-9,101 et seq., and amendments thereto;

32 (4) if any installment of support due under the registered order becomes a dormant judgment, it
33 may be revived pursuant to K.S.A. 60-2404, and amendments thereto; and

34 (5) the court shall have continuing jurisdiction over the child support action and the parties thereto
35 and subject matter and, except as otherwise provided in subsection (g), may modify any prior support
36 order when *the child in need of care case has been closed and a material change in circumstances is*
37 *shown irrespective of the present domicile of the child or parents. The court may make a modification*
38 *of child support retroactive to a date at least one month after the closure of the child in need of care*
39 *case the date that the motion to modify was filed with the court.*

40 (g) If a motion to modify the child support order is filed *when the child in need of care case is*
41 *closed within three months after the date of registration pursuant to this section*, if no motion to
42 modify the order has previously been heard and if the moving party shows that the support order was
43 based upon one or more of the presumptions provided in K.S.A. 2007 Supp. 38-2277, and
44 amendments thereto, or upon a stipulation pursuant to subsection (c) of K.S.A. 2007 Supp. 38-2277,
45 and amendments thereto, the court shall apply the Kansas child support guidelines adopted pursuant
46 to K.S.A. 20-165, and amendments thereto, without requiring a showing that a material change of
47 circumstances has occurred, without regard to any previous presumption or stipulation used to
48 determine the amount of the child support order and irrespective of the present domicile of the child
49 or parents. ~~Nothing in this subsection shall prevent or limit enforcement of the support order during~~
50 ~~the three months after the date of registration.~~

1 **Section 17. K.S.A. 2008 Supp. 60-1610. Decree; authorized orders.** A decree in an action under
2 this article may include orders on the following matters:

3 (a) *Minor children.* (1) *Child support and education.* The court shall make provisions for
4 the support and education of the minor children. The court may modify or change any prior order,
5 including any order issued in a title IV-D case, within three years of the date of the original order or a
6 modification order, when a material change in circumstances is shown, irrespective of the present
7 domicile of the child or the parents. If more than three years has passed since the date of the original
8 order or modification order, a material change in circumstance need not be shown. The court may
9 make a modification of child support retroactive to a date at least one month after the date that the
10 motion to modify was filed with the court. Any increase in support ordered effective prior to the date
11 the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202 and
12 amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the
13 court may order the child support and education expenses to be paid by either or both parents for any
14 child less than 18 years of age, at which age the support shall terminate unless: (A) The parent or
15 parents agree, by written agreement approved by the court, to pay support beyond the time the child
16 reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school
17 education in which case the support shall not terminate automatically, unless otherwise ordered by the
18 court, until June 30 of the school year during which the child became 18 years of age if the child is still
19 attending high school; or (C) the child is still a bona fide high school student after June 30 of the
20 school year during which the child became 18 years of age, in which case the court, on motion, may
21 order support to continue through the school year during which the child becomes 19 years of age so
22 long as the child is a bona fide high school student and the parents jointly participated or knowingly
23 acquiesced in the decision which delayed the child's completion of high school. The court, in extending
24 support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set
25 the child support utilizing the guideline table category for 12-year through 18-year old children.
26 Provision for payment of support and educational expenses of a child after reaching 18 years of age if
27 still attending high school shall apply to any child subject to the jurisdiction of the court, including
28 those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to
29 July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the
30 court may review and modify such agreement, and any order based on such agreement, to extend the
31 date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this
32 section, "bona fide high school student" means a student who is enrolled in full accordance with the
33 policy of the accredited high school in which the student is pursuing a high school diploma or a
34 graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court
35 shall consider all relevant factors, without regard to marital misconduct, including the financial
36 resources and needs of both parents, the financial resources and needs of the child and the physical and
37 emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any
38 portion of property of either the husband or wife, or both, that seems necessary and proper for the
39 support of the child. Except for good cause shown, every order requiring payment of child support
40 under this section shall require that the support be paid through the central unit for collection and
41 disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto.
42 A written agreement between the parties to make direct child support payments to the obligee and not
43 pay through the central unit shall constitute good cause, unless the court finds the agreement is not in
44 the best interest of the child or children. The obligor shall file such written agreement with the court.
45 The obligor shall maintain written evidence of the payment of the support obligation and, at least
46 annually, shall provide such evidence to the court and the obligee. If the divorce decree of the parties
47 provides for an abatement of child support during any period provided in such decree, the child
48 support such nonresidential parent owes for such period shall abate during such period of time, except
49 that if the residential parent shows that the criteria for the abatement has not been satisfied there shall
50 not be an abatement of such child support.

1 (2) *Child custody and residency. (A) Changes in custody.* Subject to the provisions of the uniform
2 child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and amendments
3 thereto), the court may change or modify any prior order of custody, residency, visitation and
4 parenting time, when a material change of circumstances is shown, but no ex parte order shall have
5 the effect of changing residency of a minor child from the parent who has had the sole de facto
6 residency of the child to the other parent unless there is sworn testimony to support a showing of
7 extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion
8 to vacate or modify the order within 15 days of the date that a party requests a hearing whether to
9 vacate or modify the order.

10 (B) *Examination of parties.* The court may order physical or mental examinations of the parties if
11 requested pursuant to K.S.A. 60-235 and amendments thereto.

12 (3) *Child custody or residency criteria.* The court shall determine custody or residency of a child
13 in accordance with the best interests of the child.

14 (A) If the parties have entered into a parenting plan, it shall be presumed that the agreement is in
15 the best interests of the child. This presumption may be overcome and the court may make a different
16 order if the court makes specific findings of fact stating why the agreed parenting plan is not in the
17 best interests of the child.

18 (B) In determining the issue of child custody, residency and parenting time, the court shall
19 consider all relevant factors, including but not limited to:

20 (i) The length of time that the child has been under the actual care and control of any person other
21 than a parent and the circumstances relating thereto;

22 (ii) the desires of the child's parents as to custody or residency;

23 (iii) the desires of the child as to the child's custody or residency;

24 (iv) the interaction and interrelationship of the child with parents, siblings and any other person
25 who may significantly affect the child's best interests;

26 (v) the child's adjustment to the child's home, school and community;

27 (vi) the willingness and ability of each parent to respect and appreciate the bond between the child
28 and the other parent and to allow for a continuing relationship between the child and the other parent;

29 (vii) evidence of spousal abuse;

30 (viii) whether a parent is subject to the registration requirements of the Kansas offender
31 registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other
32 state, or under military or federal law;

33 (ix) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, and amendments
34 thereto;

35 (x) whether a parent is residing with an individual who is subject to registration requirements of
36 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar
37 act in any other state, or under military or federal law; and

38 (xi) whether a parent is residing with an individual who has been convicted of abuse of a child,
39 K.S.A. 21-3609, and amendments thereto.

40 (C) Neither parent shall be considered to have a vested interest in the custody or residency of any
41 child as against the other parent, regardless of the age of the child, and there shall be no presumption
42 that it is in the best interests of any infant or young child to give custody or residency to the mother.

43 (D) There shall be a rebuttable presumption that it is not in the best interest of the child to have
44 custody or residency granted to a parent who:

45 (i) Is residing with an individual who is subject to registration requirements of the Kansas
46 offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any
47 other state, or under military or federal law; or

48 (ii) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609,
49 and amendments thereto.

50 (E) *If a court of competent jurisdiction within this state has entered an order pursuant to*

1 *the revised Kansas code for care of children regarding custody or support of a child or children who*
2 *are involved in a proceeding filed pursuant to this section, and such court has determined pursuant to*
3 *K.S.A. 38-2264(i)(2), and amendments thereto, that the orders in that case shall become the custody*
4 *orders in the divorce case, such court shall file, after consultation with the judge presiding over any*
5 *proceeding filed pursuant to this section, a certified copy of the orders with the civil case number in*
6 *the caption and then close the case under the revised Kansas code for care of children. Such orders*
7 *shall be binding on the parties, unless modified based on a material change in circumstances, even if*
8 *such courts have different venues.*

9 (4) *Types of legal custodial arrangements.* Subject to the provisions of this article, the court may
10 make any order relating to custodial arrangements which is in the best interests of the child. The order
11 shall provide one of the following legal custody arrangements, in the order of preference: (A) *Joint*
12 *legal custody.* The court may order the joint legal custody of a child with both parties. In that event,
13 the parties shall have equal rights to make decisions in the best interests of the child.

14 (B) *Sole legal custody.* The court may order the sole legal custody of a child with one of the
15 parties when the court finds that it is not in the best interests of the child that both of the parties have
16 equal rights to make decisions pertaining to the child. If the court does not order joint legal custody,
17 the court shall include on the record specific findings of fact upon which the order for sole legal
18 custody is based. The award of sole legal custody to one parent shall not deprive the other parent of
19 access to information regarding the child unless the court shall so order, stating the reasons for that
20 determination.

21 (5) *Types of residential arrangements.* After making a determination of the legal custodial
22 arrangements, the court shall determine the residency of the child from the following options, which
23 arrangement the court must find to be in the best interest of the child. The parties shall submit to the
24 court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the
25 court's consideration. Such options are:

26 (A) *Residency.* The court may order a residential arrangement in which the child resides with one
27 or both parents on a basis consistent with the best interests of the child.

28 (B) *Divided residency.* In an exceptional case, the court may order a residential arrangement in
29 which one or more children reside with each parent and have parenting time with the other.

30 (C) *Nonparental residency.* If during the proceedings the court determines that there is
31 probable cause to believe that the child is a child in need of care as defined by subsections (d)(1),
32 (d)(2), (d)(3) or (d)(11) of K.S.A. 2007 Supp. 38-2202, and amendments thereto, or that neither
33 parent is fit to have residency, the court may award temporary residency of the child to a grandparent,
34 aunt, uncle or adult sibling, or, another person or agency if the court finds by written order that: (i) (a)
35 The child is likely to sustain harm if not immediately removed from the home;

36 (b) allowing the child to remain in home is contrary to the welfare of the child; or

37 (c) immediate placement of the child is in the best interest of the child; and

38 (ii) reasonable efforts have been made to maintain the family unit and prevent the unnecessary
39 removal of the child from the child's home or that an emergency exists which threatens the safety to the
40 child. In making such a residency order, the court shall give preference, to the extent that the court
41 finds it is in the best interests of the child, first to awarding such residency to a relative of the child by
42 blood, marriage or adoption and second to awarding such residency to another person with whom the
43 child has close emotional ties. The court may make temporary orders for care, support, education and
44 visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of
45 temporary orders provided for in K.S.A. 2007 Supp. 38-2243 and 38-2244, and amendments thereto,
46 and shall remain in effect until there is a final determination under the revised Kansas code for care of
47 children. An award of temporary residency under this paragraph shall not terminate parental rights nor
48 give the court the authority to consent to the adoption of the child. When the court enters orders
49 awarding temporary residency of the child to an agency or a person other than the parent, the court
50 shall refer a transcript of the proceedings to the county or district attorney. The county or district

1 attorney shall file a petition as provided in K.S.A. 2007 Supp. 38-2234, and amendments thereto, and
2 may request termination of parental rights pursuant to K.S.A. 2007 Supp. 38-2266, and amendments
3 thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final
4 determination is made that the child is not a child in need of care, the county or district attorney shall
5 notify the court in writing and the court, after a hearing, shall enter appropriate custody orders
6 pursuant to this section. If the same judge presides over both proceedings, the notice is not required.
7 Any ~~disposition order~~ pursuant to the revised Kansas code for care of children shall be binding and
8 shall supersede take precedence over any order under this section.

9 (6) *Priority.* Any custody or parenting time order, or order relating to the best interests of a
10 child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile
11 justice code, shall be binding and shall take precedence over any order under article 16 of chapter 60
12 of the Kansas Statutes Annotated, and amendments thereto, until jurisdiction under the revised
13 Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

14 ~~(6)~~ (7) Child health insurance coverage. The court may order that each parent execute any and all
15 documents, including any releases, necessary so that both parents may obtain information from and to
16 communicate with any health insurance provider regarding the health insurance coverage provided by
17 such health insurance provider to the child. The provisions of this paragraph shall apply irrespective
18 of which parent owns, subscribes or pays for such health insurance coverage.

19 (b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal
20 property of the parties, including any retirement and pension plans, whether owned by either spouse
21 prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the
22 spouses' joint efforts, by: (A) A division of the property in kind; (B) awarding the property or part of
23 the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering
24 a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale.
25 Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the
26 date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court
27 may consider evidence regarding changes in value of various assets before and after the valuation date
28 in making the division of property. In dividing defined-contribution types of retirement and pension
29 plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution
30 to that nonparticipant. In making the division of property the court shall consider the age of the parties;
31 the duration of the marriage; the property owned by the parties; their present and future earning
32 capacities; the time, source and manner of acquisition of property; family ties and obligations; the
33 allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property
34 division upon the respective economic circumstances of the parties; and such other factors as the court
35 considers necessary to make a just and reasonable division of property. The decree shall provide for
36 any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned by the
37 parties, or in the case of group life insurance policies, under which either of the parties is a covered
38 person; (B) any trust instrument under which one party is the grantor or holds a power of appointment
39 over part or all of the trust assets, that may be exercised in favor of either party; or (C) any transfer on
40 death or payable on death account under which one or both of the parties are owners or beneficiaries.
41 Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary
42 designation by the filing of such change with the insurer or issuer in accordance with the terms of
43 such policy.

44 (2) *Maintenance.* The decree may award to either party an allowance for future support
45 denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the
46 circumstances. The decree may make the future payments modifiable or terminable under
47 circumstances prescribed in the decree. The court may make a modification of maintenance retroactive
48 to a date at least one month after the date that the motion to modify was filed with the court. In any
49 event, the court may not award maintenance for a period of time in excess of 121 months. If the
50 original court decree reserves the power of the court to hear subsequent motions for reinstatement

1 of maintenance and such a motion is filed prior to the expiration of the stated period of for
2 maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the
3 maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may
4 reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or
5 terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period
6 of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of
7 maintenance prior to the expiration of subsequent periods of time for maintenance payments to be
8 made, but no single period of reinstatement ordered by the court may exceed 121 months.
9 Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any
10 other basis. At any time, on a hearing with reasonable notice to the party affected, the court may
11 modify the amounts or other conditions for the payment of any portion of the maintenance originally
12 awarded that has not already become due, but no modification shall be made without the consent of
13 the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for
14 the unpaid maintenance beyond what was prescribed in the original decree. Except for good cause
15 shown, every order requiring payment of maintenance under this section shall require that the
16 maintenance be paid through the central unit for collection and disbursement of support payments
17 designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the
18 parties to make direct maintenance payments to the obligee and not pay through the central unit shall
19 constitute good cause. If child support and maintenance payments are both made to an obligee by the
20 same obligor, and if the court has made a determination concerning the manner of payment of child
21 support, then maintenance payments shall be paid in the same manner.

22 (3) *Separation agreement.* If the parties have entered into a separation agreement which the court
23 finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation
24 agreement may include provisions relating to a parenting plan. The provisions of the agreement on all
25 matters settled by it shall be confirmed in the decree except that any provisions relating to the legal
26 custody, residency, visitation parenting time, support or education of the minor children shall be
27 subject to the control of the court in accordance with all other provisions of this article. Matters settled
28 by an agreement incorporated in the decree, other than matters pertaining to the legal custody,
29 residency, visitation, parenting time, support or education of the minor children, shall not be subject to
30 subsequent modification by the court except: (A) As prescribed by the agreement or (B) as
31 subsequently consented to by the parties.

32 (4) *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity
33 require. The court may order that the amount be paid directly to the attorney, who may enforce the
34 order in the attorney's name in the same case.

35 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall
36 order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to
37 restore the spouse's maiden or former name at or after the time the decree of divorce becomes final.
38 The judicial council shall develop a form which is simple, concise and direct for use with this
39 paragraph.

40 (2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state,
41 with any other person before a judgment of divorce becomes final shall be voidable until the decree of
42 divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce
43 and which is incorporated into the decree or signed by the parties and filed in the case shall be effective
44 to shorten the period of time during which the remarriage is voidable.

45 **Section 18. K.S.A. 60-3103. Jurisdiction.** (a) Any district court shall have jurisdiction over all
46 proceedings under the protection from abuse act. The right of a person to obtain relief under the
47 protection from abuse act shall not be affected by the person's leaving the residence or household to
48 avoid further abuse. Any petition under this act seeking orders regarding a custody determination, as
49 defined in K.S.A. 38-1337, and amendments thereto, shall state that information required by K.S.A.
50 38-1356, and amendments thereto, and the basis under which child-custody jurisdiction is sought to

1 be invoked.

2 *(b) Any custody or parenting time order, or order relating to the best interests of a child, issued*
3 *pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code,*
4 *shall be binding and shall take precedence over any order under article 31 of chapter 60 of the*
5 *Kansas Statutes Annotated, and amendments thereto, until jurisdiction under the revised Kansas code*
6 *for care of children or the revised Kansas juvenile justice code is terminated.*

7 **Section 19. K.S.A. 60-3107. Orders for relief of abuse, procedure; modifications; inconsistent**
8 **orders; violation of orders, criminal violations and penalties.** (a) The court may approve any
9 consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any
10 of the following orders:

11 (1) Restraining the defendant from abusing, molesting or interfering with the privacy or rights of
12 the plaintiff or of any minor children of the parties. Such order shall contain a statement that if such
13 order is violated, such violation may constitute assault as provided in K.S.A. 21-3408, and
14 amendments thereto, battery as provided in K.S.A. 21-3412, and amendments thereto, domestic
15 battery as provided in K.S.A. 2005 Supp. 21-3412a, and amendments thereto and violation of a
16 protective order as provided in K.S.A. 2005 Supp. 21-3843, and amendments thereto.

17 (2) Granting possession of the residence or household to the plaintiff to the exclusion of the
18 defendant, and further restraining the defendant from entering or remaining upon or in such residence
19 or household, subject to the limitation of subsection (d). Such order shall contain a statement that if
20 such order is violated, such violation shall constitute criminal trespass as provided in subsection (c) of
21 K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A.
22 2005 Supp. 21-3843, and amendments thereto. The court may grant an order, which shall expire 60
23 days following the date of issuance, restraining the defendant from cancelling utility service to the
24 residence or household.

25 (3) Requiring defendant to provide suitable, alternate housing for the plaintiff and any minor
26 children of the parties.

27 (4) Awarding temporary custody and residency and establishing temporary parenting time with
28 regard to minor children.

29 (5) Ordering a law enforcement officer to evict the defendant from the residence or household.

30 (6) Ordering support payments by a party for the support of a party's minor child, if the party is
31 the father or mother of the child, or the plaintiff, if the plaintiff is married to the defendant. Such
32 support orders shall remain in effect until modified or dismissed by the court or until expiration and
33 shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court
34 may extend the effect of such order for 12 months.

35 (7) Awarding costs and attorney fees to either party.

36 (8) Making provision for the possession of personal property of the parties and ordering a law
37 enforcement officer to assist in securing possession of that property, if necessary.

38 (9) Requiring any person against whom an order is issued to seek counseling to aid in the cessation
39 of abuse.

40 (10) Ordering or restraining any other acts deemed necessary to promote the safety of the plaintiff
41 or of any minor children of the parties.

42 *(b) Non-parental custody. If during the proceedings the court determines that there is probable*
43 *cause to believe that the child is a child in need of care as defined by subsections (d)(1), (d)(2), (d)(3)*
44 *or (d)(11) of K.S.A. 2007 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have*
45 *residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or*
46 *adult sibling, or, another person or agency if the court finds by written order that: (1)(A) The child is*
47 *likely to sustain harm if not immediately removed from the home;*

48 *(B) allowing the child to remain in home is contrary to the welfare of the child; or*

49 *(C) immediate placement of the child is in the best interest of the child; and*

50 *(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary*

1 *removal of the child from the child's home or that an emergency exists which threatens the safety to the*
2 *child. In making such a residency order, the court shall give preference, to the extent that the court*
3 *finds it is in the best interests of the child, first to awarding such residency to a relative of the child by*
4 *blood, marriage or adoption and second to awarding such residency to another person with whom the*
5 *child has close emotional ties. The court may make temporary orders for care, support, education and*
6 *visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of*
7 *temporary orders provided for in K.S.A. 2007 Supp. 38-2243 and 38-2244, and amendments thereto,*
8 *and shall remain in effect until there is a final determination under the revised Kansas code for care of*
9 *children. An award of temporary residency under this paragraph shall not terminate parental rights*
10 *nor give the court the authority to consent to the adoption of the child. When the court enters orders*
11 *awarding temporary residency of the child to an agency or a person other than the parent, the court*
12 *shall refer a transcript of the proceedings to the county or district attorney. The county or district*
13 *attorney shall file a petition as provided in K.S.A. 2007 Supp. 38-2234, and amendments thereto, and*
14 *may request termination of parental rights pursuant to K.S.A. 2007 Supp. 38-2266, and amendments*
15 *thereto. The costs of the proceedings shall be paid from the general fund of the county.*

16 **(b) (c)** No protection from abuse order shall be entered against the plaintiff unless:

17 (1) The defendant properly files a written cross or counter petition seeking such a protection
18 order;

19 (2) the plaintiff had reasonable notice of the written cross or counter petition by personal service
20 as provided in subsection (d) of K.S.A. 60-3104, and amendments thereto; and

21 (3) the issuing court made specific findings of abuse against both the plaintiff and the defendant
22 and determined that both parties acted primarily as aggressors and neither party acted primarily in self-
23 defense.

24 **(e) (d)** Any order entered under the protection from abuse act shall not be subject to modification
25 on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-
26 1601 et seq., or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously issued in an action
27 filed pursuant to K.S.A. 60-1601 et seq., or K.S.A. 38-1101 et seq., and amendments thereto, shall be
28 subject to modification under the protection from abuse act only as to those matters subject to
29 modification by the terms of K.S.A. 60-1610 et seq., and amendments thereto, and on sworn testimony
30 to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor
31 children shall constitute good cause. If an action is filed pursuant to K.S.A. 60-1610 et seq., or K.S.A.
32 38-1101 et seq., and amendments thereto, during the pendency of a proceeding filed under the
33 protection from abuse act or while an order issued under the protection from abuse act is in effect, the
34 court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 60-
35 1610 and amendments thereto, that are inconsistent with orders entered under the protection from
36 abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms,
37 reference the protection from abuse order and parts thereof being modified and a copy thereof shall be
38 filed in both actions. The court shall consider whether the actions should be consolidated in accordance
39 with K.S.A. 60-242 and amendments thereto.

40 **(d) (e)** If the parties to an action under the protection from abuse act are not married to each other
41 and one party owns the residence or household, the court shall not have the authority to grant
42 possession of the residence or household under subsection (a)(2) to the exclusion of the party who
43 owns it.

44 **(e) (f)** Subject to the provisions of subsections (b), (c) and (d), a protective order or approved
45 consent agreement shall remain in effect until modified or dismissed by the court and shall be for a
46 fixed period of time not to exceed one year, except that, on motion of the plaintiff, such period may
47 be extended for one additional year.

48 **(f) (g)** The court may amend its order or agreement at any time upon motion filed by either party.

49 **(g) (h)** No order or agreement under the protection from abuse act shall in any manner affect title
50 to any real property.

1 ~~(h)~~ (i) If a person enters or remains on premises or property violating an order issued pursuant to
2 subsection (a)(2), such violation shall constitute criminal trespass as provided in subsection (c) of
3 K.S.A. 21-3721, and amendments thereto, and violation of a protective order as provided in K.S.A.
4 2005 Supp. 21-3843, and amendments thereto. If a person abuses, molests or interferes with the
5 privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation
6 may constitute assault as provided in K.S.A. 21-3408, and amendments thereto, battery as provided in
7 K.S.A. 21-3412, and amendments thereto, domestic battery as provided in K.S.A. 2005 Supp. 21-
8 3412a, and amendments thereto, and violation of a protective order as provided in K.S.A. 2005 Supp.
9 21-3843, and amendments thereto.

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Proposed Legislation for 2009
Revised Kansas Juvenile Justice Code

1 AN ACT concerning juvenile offenders; amending K.S.A. 2008 Supp. 38-2304 and K.S.A. 38-2305,
2 38-2344, 38-2357, 38-2364, 38-2365, 38-2373 and repealing the existing sections.

3
4 **Section 1. K.S.A. 2008 Supp. 38-2304. Jurisdiction; presumption of age of juvenile; placement**
5 **with department of social and rehabilitation services or juvenile justice authority; costs. (a)**

6 Except as provided in K.S.A. 2007 Supp. 38-2347, and amendments thereto, proceedings concerning
7 a juvenile shall be governed by the provisions of this code.

8 (b) The district court shall have original jurisdiction to receive and determine proceedings under
9 this code.

10 (c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to this
11 code, unless the contrary is proved.

12 (d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except as
13 otherwise provided in subsection (e), jurisdiction shall continue until one of the following occurs:

14 (1) The complaint is dismissed;

15 (2) the juvenile is adjudicated not guilty at trial;

16 (3) the juvenile, after being adjudicated guilty and sentenced:

17 (i) Successfully completes the term of probation or order of assignment to community
18 corrections;

19 (ii) is discharged by the commissioner pursuant to K.S.A. 2007 Supp. 38-2376, and amendments
20 thereto;

21 (iii) reaches the juvenile's 21st birthday and no exceptions apply that extend jurisdiction beyond
22 age 21;

23 (4) the court terminates jurisdiction; or

24 (5) the offender is convicted of a new felony while the offender is incarcerated in a juvenile
25 correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2007 Supp. 38-2373, and
26 amendments thereto, for an offense, which if committed by an adult would constitute the commission
27 of a felony.

28 (e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall
29 continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd
30 birthday if either or both of the following conditions apply:

31 (1) The juvenile offender is sentenced pursuant to K.S.A. 2007 Supp. 38-2369, and amendments
32 thereto, and the term of the sentence including successful completion of aftercare extends beyond the
33 juvenile offender's 21st birthday; or

34 (2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile prosecution
35 and continues to successfully serve the sentence imposed pursuant to the revised Kansas juvenile
36 justice code.

37 (f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile
38 offender's continuing responsibility to pay restitution ordered.

39 (g) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the
40 custody of the secretary of social and rehabilitation services under the Kansas code for care of
41 children, the sentencing court may order the continued placement of the juvenile offender as a child
42 in need of care unless the offender was adjudicated for a felony or a second or subsequent
43 misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the
44 continued placement cannot be ordered unless the court finds there are compelling circumstances
45 which, in the best interest of the juvenile offender, require that the placement should be continued. In
46 considering whether compelling circumstances exist, the court shall consider the reports and
47 recommendations of the foster placement, the contract provider, the secretary of social and

1 rehabilitation services, the presentence investigation and all other relevant factors. If the foster
2 placement refuses to continue the juvenile in the foster placement the court shall not order continued
3 placement as a child in need of care.

4 (2) If a placement with the secretary of social and rehabilitation services is continued after
5 sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

6 (3) If the juvenile offender is placed in the custody of the juvenile justice authority, the secretary
7 of social and rehabilitation services shall not be responsible for furnishing services ordered in the
8 child in need of care proceeding during the time of the placement pursuant to the revised Kansas
9 juvenile justice code. Nothing in this subsection shall preclude the juvenile offender from accessing
10 other services provided by the department of social and rehabilitation services or any other state
11 agency if the juvenile offender is otherwise eligible for the services.

12 (h) A court's order affecting a child's custody, residency, parenting time and visitation that is
13 issued in a proceeding pursuant to this code, shall take precedence over such orders in a proceeding
14 under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto (parentage
15 act), a proceeding under article 16 of chapter 60 of the Kansas Statutes Annotated, and amendments
16 thereto (divorce), a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and
17 amendments thereto (protection from abuse act), a proceeding under article 21 of chapter 59 of the
18 Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), a proceeding
19 under article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians
20 and conservators), or a comparable case in another jurisdiction, except as provided by Kansas
21 Statutes Annotated, 38-1336 et seq., and amendments thereto.

22 **Section 2. K.S.A. 38-2305. Venue.** (a) Venue for proceedings in any case involving a juvenile shall
23 be in any county where any act of the alleged offense was committed.

24 (b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county
25 of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the
26 county where the adjudication occurred. When the sentencing hearing is to be held in a county other
27 than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court
28 and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing
29 court a facsimile of the complaint, the adjudication journal entry or judge's minutes, if available, and
30 any recommendations in regard to sentencing. Such documents shall be sent for purposes of
31 notification and shall not constitute original court documents. The adjudicating court shall also send
32 to the sentencing court a complete copy of the official and social files in the case by mail within five
33 working days of the adjudication.

34 (c) If the juvenile offender is adjudicated in a county other than the county of the juvenile
35 offender's residence, the sentencing hearing may be held in the county in which the adjudication was
36 made or, if there are not any ongoing proceedings under the Kansas code for care of children, in the
37 county of the residence of the custodial parent, parents, guardian or conservator if the adjudicating
38 judge, upon motion ~~by any person authorized to appeal~~, finds that it is in the interest of justice. If
39 there are ongoing proceedings under the revised Kansas code for care of children, then the
40 sentencing hearing shall be held in the county in which the proceedings under the revised Kansas
41 code for care of children are being held.

42 **Section 3. K.S.A. 38-2344. First appearance; plea.** (a) When the juvenile appears without an
43 attorney in response to a complaint, the court shall inform the juvenile of the following:

- 44 (1) The nature of the charges in the complaint;
- 45 (2) the right to hire an attorney of the juvenile's own choice;
- 46 (3) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile
47 or parent; and
- 48 (4) that the court may require the juvenile or parent to pay the expense of a court appointed
49 attorney.

1 Upon request the court shall give the juvenile or parent an opportunity to hire an attorney. If no
2 request is made or the juvenile or parent is financially unable to hire an attorney, the court shall
3 forthwith appoint an attorney for the juvenile. The court shall afford the juvenile an opportunity to
4 confer with the attorney before requiring the juvenile to plead to the allegations of the complaint.

5 (b) When the juvenile appears with an attorney in response to a complaint, the court shall require
6 the juvenile to plead guilty, *nolo contendere* or not guilty to the allegations stated in the complaint,
7 unless there is an application for and approval of an immediate intervention program. Prior to making
8 this requirement, the court shall inform the juvenile of the following:

- 9 (1) The nature of the charges in the complaint;
10 (2) the right of the juvenile to be presumed innocent of each charge;
11 (3) the right to *a jury* trial without unnecessary delay;
12 (4) ~~and the right~~ to confront and cross-examine witnesses appearing in support of the allegations of
13 the complaint;
14 ~~(4) (5)~~ the right to subpoena witnesses;
15 ~~(5) (6)~~ the right of the juvenile to testify or to decline to testify; and
16 ~~(6) (7)~~ the sentencing alternatives the court may select as the result of the juvenile being
17 adjudicated a juvenile offender.

18 (c) If the juvenile pleads guilty to the allegations contained in a complaint or pleads *nolo*
19 *contendere*, the court shall determine, before accepting the plea and entering a sentence: (1) That there
20 has been a voluntary waiver of the rights enumerated in subsections (b)(2), (3), (4) and (5); and (2) that
21 there is a factual basis for the plea.

22 (d) If the juvenile pleads not guilty, the court shall schedule a time and date for trial ~~to the court~~.

23 (e) First appearance may be conducted by two-way electronic audio-video communication between
24 the juvenile and the judge in lieu of personal presence of the juvenile or the juvenile's attorney in the
25 courtroom from any location within Kansas in the discretion of the court. The juvenile may be
26 accompanied by the juvenile's attorney during such proceedings or the juvenile's attorney may be
27 personally present in court as long as a means of confidential communication between the juvenile and
28 the juvenile's attorney is available.

29 **Section 4. K.S.A. 38-2357. Jury trials in certain cases. In all cases involving offenses committed by**
30 **a juvenile which, if done by an adult, would make the person liable to be arrested and prosecuted for**
31 **the commission of a felony, the judge may upon motion, order that the juvenile be afforded a trial by**
32 **jury. Upon the juvenile being adjudged to be a juvenile offender, the court shall proceed with**
33 **sentencing. Method of Trial. A juvenile is entitled to a trial by one of the following means: (a) The**
34 **trial of a felony or misdemeanor case shall be to the court unless the juvenile requests a jury trial in**
35 **writing within 30 days from the date of the juvenile's entry of a plea of not guilty. The time**
36 **requirement provided in this subsection regarding when a jury trial shall be requested may be waived**
37 **in the discretion of the court upon a finding that imposing such time requirement would cause undue**
38 **hardship or prejudice to the juvenile.**

39 **(1) A jury in a felony case shall consist of twelve members. However the parties may agree in**
40 **writing, at any time before the verdict, with the approval of the court, that the jury shall consist of any**
41 **number less than twelve.**

42 **(2) A jury in a misdemeanor case shall consist of six members.**

43 **(3) When the trial is to a jury, questions of law shall be decided by the court and issues of fact shall**
44 **be determined by the jury.**

45 **(4) The verdict shall be written, signed by the presiding juror and read by the clerk to the jury, and**
46 **an inquiry shall be made whether it is the jury's verdict. If any juror disagrees, the jury must be sent**
47 **out again; but if no disagreement is expressed, and neither party requires the jury to be polled, the**
48 **verdict is complete and the jury discharged from the case. If the verdict is defective in form only, it**
49 **may be corrected by the court, with the assent of the jury, before it is discharged.**

1 (5) Except as otherwise provided by law, the rules and procedures applicable to jury trials in felony
2 cases shall apply to jury trials in misdemeanor cases.

3 (6) Trials in the municipal court of a city shall be to the court.

4 (7) The trial of cigarette or tobacco infraction or traffic infraction cases shall be to the court.

5 **Section 5. K.S.A. 38-2364. Extended jurisdiction juvenile prosecution; violating conditions of**
6 **stayed juvenile sentence; hearing.** (a) If an extended jurisdiction juvenile prosecution results in a
7 guilty plea or finding of guilt, the court shall:

8 (1) Impose one or more juvenile sentences under K.S.A. 2007 Supp. 38-2361, and amendments
9 thereto; and

10 (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that
11 the juvenile offender not violate the provisions of the juvenile sentence and not commit a new
12 offense.

13 (b) When it appears that a person sentenced as an extended jurisdiction juvenile has violated ~~the~~
14 one or more conditions of the juvenile sentence or is alleged to have committed a new offense, the
15 court, without notice, may revoke the stay and ~~probation juvenile sentence~~ and direct that the juvenile
16 offender be immediately taken into custody and delivered to the secretary of corrections pursuant to
17 K.S.A. 21-4621, and amendments thereto. The court shall notify the juvenile offender and such
18 juvenile offender's attorney of record, in writing by personal service, as provided in K.S.A. 60-303,
19 and amendments thereto, or certified mail, return receipt requested, of the reasons alleged to exist for
20 revocation of the stay of execution of the adult sentence. If the juvenile offender challenges the
21 reasons, the court shall hold a hearing on the issue at which the juvenile offender is entitled to be
22 heard and represented by counsel. After the hearing, if the court finds by substantial a preponderance
23 of the evidence that the juvenile committed a new offense or that violated one or more conditions of
24 the juvenile's sentence ~~have been violated~~, the court ~~shall~~ may revoke the juvenile sentence and order
25 the imposition of the adult sentence previously ordered pursuant to subsection (a)(2). Upon such
26 finding, the juvenile's extended jurisdiction status is terminated, and juvenile court jurisdiction is
27 terminated. The ongoing jurisdiction for any adult sanction, other than the commitment to the
28 department of corrections, is with the adult court. The juvenile offender shall be credited for time
29 served in a juvenile correctional or detention facility on the juvenile sentence as service on any
30 authorized adult sanction.

31 (c) Upon becoming 18 years of age, any juvenile who has been sentenced pursuant to subsection
32 (a) and is serving the juvenile sentence, may move for a court hearing to review the sentence. If the
33 sentence is continued, the court shall set a date of further review in no later than 36 months.

34 **Section 6. K.S.A. 38-2365. Juvenile offender placed in custody of commissioner; placement;**
35 **permanency plan; progress report to court; hearing; notification; termination of parental rights.**

36 (a) When a juvenile offender has been placed in the custody of the commissioner, the commissioner
37 shall have a reasonable time to make a placement. If the juvenile offender has not been placed, any
38 party who believes that the amount of time elapsed without placement has exceeded a reasonable time
39 may file a motion for review with the court. In determining what is a reasonable amount of time,
40 matters considered by the court shall include, but not be limited to, the nature of the underlying
41 offense, efforts made for placement of the juvenile offender and the availability of a suitable
42 placement. The commissioner shall notify the court, the juvenile's attorney of record and the juvenile
43 ~~offender's~~ parent, in writing, of the initial placement and any subsequent change of placement as soon
44 as the placement has been accomplished. The notice to the juvenile offender's parent shall be sent to
45 such parent's last known address or addresses. The court shall have no power to direct a specific
46 placement by the commissioner, but may make recommendations to the commissioner. The
47 commissioner may place the juvenile offender in an institution operated by the commissioner, a youth
48 residential facility or any other appropriate placement. If the court has recommended an out-of-home
49 placement, the commissioner may not return the juvenile offender to the home from which removed
50 without first notifying the court of the plan.

1 (b) If a juvenile is in the custody of the commissioner, the commissioner shall prepare and present a
2 permanency plan at sentencing or within 30 days thereafter. If a permanency plan is already in place
3 under a child in need of care proceeding, the court may adopt the plan under the present proceeding.
4 The written permanency plan shall provide for reintegration of the juvenile into such juvenile's family
5 or, if reintegration is not a viable alternative, for other permanent placement of the juvenile.

6 Reintegration may not be a viable alternative when: (1) The parent has been found by a court to have
7 committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second
8 degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments
9 thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, of a child or violated a law
10 of another state which prohibits such murder or manslaughter of a child;

11 (2) the parent aided or abetted, attempted, conspired or solicited to commit such murder or
12 voluntary manslaughter of a child;

13 (3) the parent committed a felony battery that resulted in bodily injury to the juvenile who is the
14 subject of this proceeding or another child;

15 (4) the parent has subjected the juvenile who is the subject of this proceeding or another child to
16 aggravated circumstances as defined in K.S.A. 38-1502, and amendments thereto;

17 (5) the parental rights of the parent to another child have been terminated involuntarily; or

18 (6) the juvenile has been in extended out-of-home placement as defined in K.S.A. 2007 Supp. 38-
19 2202, and amendments thereto.

20 (c) If the juvenile is placed in the custody of the commissioner, the plan shall be prepared and
21 submitted by the commissioner. If the juvenile is placed in the custody of a facility or person other
22 than the commissioner, the plan shall be prepared and submitted by a court services officer. If the
23 permanency goal is reintegration into the family, the permanency plan shall include measurable
24 objectives and time schedules for reintegration.

25 (d) During the time a juvenile remains in the custody of the commissioner, the commissioner shall
26 submit to the court, at least every six months, a written report of the progress being made toward the
27 goals of the permanency plan submitted pursuant to subsections (b) and (c) and the specific actions
28 taken to achieve the goals of the permanency plan. If the juvenile is placed in foster care, the court
29 may request the foster parent to submit to the court, at least every six months, a report in regard to the
30 juvenile's adjustment, progress and condition. Such report shall be made a part of the juvenile's court
31 social file. The court shall review the plan submitted by the commissioner and the report, if any,
32 submitted by the foster parent and determine whether reasonable efforts and progress have been made
33 to achieve the goals of the permanency plan. If the court determines that progress is inadequate or
34 that the permanency plan is no longer viable, the court shall hold a hearing pursuant to subsection (e).

35 (e) When the commissioner has custody of the juvenile, a permanency hearing shall be held no
36 more than 12 months after the juvenile is first placed outside such juvenile's home and at least every
37 12 months thereafter. Juvenile offenders who have been in extended out-of-home placement shall be
38 provided a permanency hearing within 30 days of a request from the commissioner. The court may
39 appoint a *guardian ad litem* to represent the juvenile offender at the permanency hearing. At each
40 hearing, the court shall make a written finding whether reasonable efforts have been made to
41 accomplish the permanency goal and whether continued out-of-home placement is necessary for the
42 juvenile's safety.

43 (f) Whenever a hearing is required under subsection (e), the court shall notify all interested parties
44 of the hearing date, the commissioner, foster parent and preadoptive parent or relatives providing care
45 for the juvenile and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be
46 made a party to the action solely on the basis of this notice and opportunity to be heard. After
47 providing the persons receiving notice an opportunity to be heard, the court shall determine whether
48 the juvenile's needs are being adequately met; whether services set out in the permanency plan
49 necessary for the safe return of the juvenile have been made available to the parent with whom

1 reintegration is planned; and whether reasonable efforts and progress have been made to achieve the
2 goals of the permanency plan.

3 (g) If the court finds reintegration continues to be a viable alternative, the court shall determine
4 whether and, if applicable, when the juvenile will be returned to the parent. The court may rescind any
5 of its prior dispositional orders and enter any dispositional order authorized by this code or may order
6 that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be
7 accomplished as approved by the court, the court shall be informed and shall schedule a hearing
8 pursuant to subsection (h). No such hearing is required when the parent voluntarily relinquishes
9 parental rights or agrees to appointment of a permanent guardian.

10 (h) When the court finds any of the following conditions exist, the county or district attorney or
11 the county or district attorney's designee shall file a petition alleging the juvenile to be a child in need
12 of care and requesting termination of parental rights pursuant to the Kansas code for care of children:

13 (1) The court determines that reintegration is not a viable alternative and either adoption or
14 permanent guardianship might be in the best interests of the juvenile;

15 (2) the goal of the permanency plan is reintegration into the family and the court determines after
16 12 months from the time such plan is first submitted that progress is inadequate; or

17 (3) the juvenile has been in out-of-home placement for a cumulative total of 15 of the last 22
18 months, excluding trial home visits and juvenile in runaway status.

19 Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to
20 the expiration of 12 months.

21 (i) A petition to terminate parental rights is not required to be filed if one of the following
22 exceptions is documented to exist: (1) The juvenile is in a stable placement with relatives;

23 (2) services set out in the case plan necessary for the safe return of the juvenile have not been
24 made available to the parent with whom reintegration is planned; or

25 (3) there are one or more documented reasons why such filing would not be in the best interests of
26 the juvenile. Documented reasons may include, but are not limited to: The juvenile has close
27 emotional bonds with a parent which should not be broken; the juvenile is 14 years of age or older
28 and, after advice and counsel, refuses to be adopted; insufficient grounds exist for termination of
29 parental rights; the juvenile is an unaccompanied refugee minor; or there are international legal or
30 compelling foreign policy reasons precluding termination of parental rights.

31 **Section 7. K.S.A. 38-2373. Commitment to juvenile correctional facility; transfers.** (a) *Actions by*
32 *the court.* (1) When a juvenile offender has been committed to a juvenile correctional facility, the clerk
33 of the court shall forthwith notify the commissioner of the commitment and provide the commissioner
34 with a certified copy of the complaint, the journal entry of the adjudication and sentencing. The court
35 shall provide those items from the social file which could relate to a rehabilitative program. If the court
36 wishes to recommend placement of the juvenile offender in a specific juvenile correctional facility, the
37 recommendation shall be included in the sentence. After the court has received notice of the juvenile
38 correctional facility designated as provided in subsection (b), it shall be the duty of the court or the
39 sheriff of the county to deliver the juvenile offender to the facility at the time designated by the
40 commissioner.

41 (2) When a juvenile offender is residing in a juvenile correctional facility and is required to go back
42 to court for any reason, the county demanding the juvenile's presence shall be responsible for
43 transportation, detention, custody and control of such offender. In these cases, the county sheriff shall
44 be responsible for all transportation, detention, custody and control of such offender.

45 (b) *Actions by the commissioner.* (1) Within three days after receiving notice of commitment as
46 provided in subsection (a), the commissioner shall notify the committing court of the facility to which
47 the juvenile offender should be conveyed, and when to effect the immediate transfer of ~~study~~ *custody*
48 The date of admission shall be no more than five days after the notice to the committing court. Until
49 received at the designated facility, the continuing detention, custody, and control of and transport for a
50 juvenile offender sentenced to a direct commitment to a juvenile correctional facility shall be the

1 responsibility of the committing county.

2 (2) Except as provided by K.S.A. 2007 Supp. 38-2332, and amendments thereto, the commissioner
3 may make any temporary out-of-home placement the commissioner deems appropriate pending
4 placement of the juvenile offender in a juvenile correctional facility, and the commissioner shall notify
5 the court, local law enforcement agency and school district in which the juvenile will be residing if the
6 juvenile is still required to attend a secondary school of that placement.

7 (c) *Transfers.* During the time a juvenile offender remains committed to a juvenile correctional
8 facility, the commissioner may transfer the juvenile offender from one juvenile correctional facility to
9 another.

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