

SENATE BILL No. 88

By Committee on Judiciary

1-23

9 AN ACT concerning children; relating to permanency; priority of certain
10 orders; amending K.S.A. 38-1116, 60-3103 and 60-3107 and K.S.A.
11 2008 Supp. 38-1121, 38-2201, 38-2202, 38-2203, 38-2208, 38-2212,
12 38-2242, 38-2243, 38-2251, 38-2255, 38-2258, 38-2264, 38-2272, 38-
13 2279, 38-2304, 38-2305, 38-2344, 38-2357, 38-2364, 38-2365, 38-2373
14 and 60-1610 and repealing the existing sections.
15

16 *Be it enacted by the Legislature of the State of Kansas:*

17 New Section 1. Any custody or parenting time order, or order relat-
18 ing to the best interests of a child, issued pursuant to the revised Kansas
19 code for care of children or the revised Kansas juvenile justice code, shall
20 take precedence over any order under article 21 of chapter 59 of the
21 Kansas Statutes Annotated, and amendments thereto (adoption and re-
22 linquishment act), or article 30 of chapter 59 of the Kansas Statutes An-
23 notated, and amendments thereto (guardians and conservators), until ju-
24 risdiction under the revised Kansas code for care of children or the
25 revised Kansas juvenile justice code is terminated.

26 Sec. 2. K.S.A. 38-1116 is hereby amended to read as follows: 38-
27 1116. (a) The district court has jurisdiction of an action brought under
28 the Kansas parentage act. The action may be joined with an action for
29 divorce, annulment, separate maintenance, support or adoption.

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

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

39 (d) *Any custody or parenting time order, or order relating to the best*
40 *interests of a child, issued pursuant to the revised Kansas code for care*
41 *of children or the revised Kansas juvenile justice code, shall take prece-*
42 *dence over any order under article 11 of chapter 38 of the Kansas Statutes*
43 *Annotated, and amendments thereto (determination of parentage), until*

1 *jurisdiction under the revised Kansas code for care of children or the*
2 *revised Kansas juvenile justice code is terminated.*

3 *(e) If a court of competent jurisdiction within this state has entered*
4 *an order pursuant to the revised Kansas code for care of children regard-*
5 *ing custody or support of a child or children who are involved in a pro-*
6 *ceeding filed pursuant to this section, and such court has determined*
7 *pursuant to subsection (i)(2) of K.S.A. 38-2264, and amendments thereto,*
8 *that the orders in that case shall become the custody orders in the par-*
9 *entage case, such court shall file, after consultation with the judge presid-*
10 *ing over any proceeding filed pursuant to this section, a certified copy of*
11 *the orders with the civil case number in the caption and then close the*
12 *case under the revised Kansas code for care of children. Such orders shall*
13 *be binding on the parties, unless modified based on a material change in*
14 *circumstances, even if such courts have different venues.*

15 Sec. 3. K.S.A. 2008 Supp. 38-1121 is hereby amended to read as
16 follows: 38-1121. (a) The judgment or order of the court determining the
17 existence or nonexistence of the parent and child relationship is deter-
18 minative for all purposes, but if any person necessary to determine the
19 existence of a father and child relationship for all purposes has not been
20 joined as a party, a determination of the paternity of the child shall have
21 only the force and effect of a finding of fact necessary to determine a
22 duty of support.

23 (b) If the judgment or order of the court is at variance with the child's
24 birth certificate, the court shall order that a new birth certificate be is-
25 sued, but only if any man named as the father on the birth certificate is
26 a party to the action.

27 (c) Upon adjudging that a party is the parent of a minor child, the
28 court shall make provision for support and education of the child includ-
29 ing the necessary medical expenses incident to the birth of the child. The
30 court may order the support and education expenses to be paid by either
31 or both parents for the minor child. When the child reaches 18 years of
32 age, the support shall terminate unless: (1) The parent or parents agree,
33 by written agreement approved by the court, to pay support beyond that
34 time; (2) the child reaches 18 years of age before completing the child's
35 high school education in which case the support shall not automatically
36 terminate, unless otherwise ordered by the court, until June 30 of the
37 school year during which the child became 18 years of age if the child is
38 still attending high school; or (3) the child is still a bona fide high school
39 student after June 30 of the school year during which the child became
40 18 years of age, in which case the court, on motion, may order support
41 to continue through the school year during which the child becomes 19
42 years of age so long as the child is a bona fide high school student and
43 the parents jointly participated or knowingly acquiesced in the decision

1 which delayed the child's completion of high school. The court, in ex-
2 tending support pursuant to subsection (c)(3), may impose such condi-
3 tions as are appropriate and shall set the child support utilizing the guide-
4 line table category for 16-year through 18-year old children. Provision for
5 payment of support and educational expenses of a child after reaching 18
6 years of age if still attending high school shall apply to any child subject
7 to the jurisdiction of the court, including those whose support was or-
8 dered prior to July 1, 1992. If an agreement approved by the court prior
9 to July 1, 1988, provides for termination of support before the date pro-
10 vided by subsection (c)(2), the court may review and modify such agree-
11 ment, and any order based on such agreement, to extend the date for
12 termination of support to the date provided by subsection (c)(2). If an
13 agreement approved by the court prior to July 1, 1992, provides for ter-
14 mination of support before the date provided by subsection (c)(3), the
15 court may review and modify such agreement, and any order based on
16 such agreement, to extend the date for termination of support to the date
17 provided by subsection (c)(3). For purposes of this section, "bona fide
18 high school student" means a student who is enrolled in full accordance
19 with the policy of the accredited high school in which the student is
20 pursuing a high school diploma or a graduate equivalency diploma
21 (GED). The judgment may require the party to provide a bond with
22 sureties to secure payment. The court may at any time during the minority
23 of the child modify or change the order of support, including any order
24 issued in a title IV-D case, within three years of the date of the original
25 order or a modification order, as required by the best interest of the child.
26 If more than three years has passed since the date of the original order
27 or modification order, a requirement that such order is in the best interest
28 of the child need not be shown. The court may make a modification of
29 support retroactive to a date at least one month after the date that the
30 motion to modify was filed with the court. Any increase in support or-
31 dered effective prior to the date the court's judgment is filed shall not
32 become a lien on real property pursuant to K.S.A. 60-2202, and amend-
33 ments thereto.

34 (d) If both parents are parties to the action, the court shall enter such
35 orders regarding custody, residency and parenting time as the court con-
36 siders to be in the best interest of the child.

37 If the parties have an agreed parenting plan it shall be presumed the
38 agreed parenting plan is in the best interest of the child. This presumption
39 may be overcome and the court may make a different order if the court
40 makes specific findings of fact stating why the agreed parenting plan is
41 not in the best interest of the child. If the parties are not in agreement
42 on a parenting plan, each party shall submit a proposed parenting plan
43 to the court for consideration at such time before the final hearing as may

1 be directed by the court.

2 *(e) If during the proceedings the court determines that there is prob-*
3 *able cause to believe that the child is a child in need of care, as defined*
4 *by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2008 Supp. 38-*
5 *2202, and amendments thereto, or that neither parent is fit to have resi-*
6 *dency, the court may award temporary residency of the child to a grand-*
7 *parent, aunt, uncle or adult sibling, or another person or agency if the*
8 *court finds by written order that: (1)(A) The child is likely to sustain harm*
9 *if not immediately removed from the home; (B) allowing the child to re-*
10 *main in home is contrary to the welfare of the child; or (C) immediate*
11 *placement of the child is in the best interest of the child; and (2) reasonable*
12 *efforts have been made to maintain the family unit and prevent the un-*
13 *necessary removal of the child from the child's home or that an emergency*
14 *exists which threatens the safety of the child. In making such a residency*
15 *order, the court shall give preference, to the extent that the court finds it*
16 *is in the best interests of the child, first to awarding such residency to a*
17 *relative of the child by blood, marriage or adoption and second to award-*
18 *ing such residency to another person with whom the child has close emo-*
19 *tional ties. The court may make temporary orders for care, support, ed-*
20 *ucation and visitation that it considers appropriate. Temporary residency*
21 *orders are to be entered in lieu of temporary orders provided for in K.S.A.*
22 *2008 Supp. 38-2243 and 38-2244, and amendments thereto, and shall*
23 *remain in effect until there is a final determination under the revised*
24 *Kansas code for care of children. An award of temporary residency under*
25 *this paragraph shall not terminate parental rights nor give the court the*
26 *authority to consent to the adoption of the child. When the court enters*
27 *orders awarding temporary residency of the child to an agency or a person*
28 *other than the parent, the court shall refer a transcript of the proceedings*
29 *to the county or district attorney. The county or district attorney shall*
30 *file a petition as provided in K.S.A. 2008 Supp. 38-2234, and amendments*
31 *thereto, and may request termination of parental rights pursuant to K.S.A.*
32 *2008 Supp. 38- 2266, and amendments thereto. The costs of the proceed-*
33 *ings shall be paid from the general fund of the county. When a final*
34 *determination is made that the child is not a child in need of care, the*
35 *county or district attorney shall notify the court in writing and the court,*
36 *after a hearing, shall enter appropriate custody orders pursuant to this*
37 *section. If the same judge presides over both proceedings, the notice is*
38 *not required. Any order pursuant to the revised Kansas code for care of*
39 *children shall take precedence over any order under this section.*

40 ~~(e)~~ *(f) In entering an original order for support of a child under this*
41 *section, the court may award an additional judgment to reimburse the*
42 *expenses of support and education of the child from the date of birth to*
43 *the date the order is entered. If the determination of paternity is based*

1 upon a presumption arising under K.S.A. 38-1114 and amendments
 2 thereto, the court shall award an additional judgment to reimburse all or
 3 part of the expenses of support and education of the child from at least
 4 the date the presumption first arose to the date the order is entered,
 5 except that no additional judgment need be awarded for amounts accrued
 6 under a previous order for the child's support.

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

- 10 (1) The needs of the child.
- 11 (2) The standards of living and circumstances of the parents.
- 12 (3) The relative financial means of the parents.
- 13 (4) The earning ability of the parents.
- 14 (5) The need and capacity of the child for education.
- 15 (6) The age of the child.
- 16 (7) The financial resources and the earning ability of the child.
- 17 (8) The responsibility of the parents for the support of others.
- 18 (9) The value of services contributed by both parents.

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

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

24 Sec. 4. K.S.A. 2008 Supp. 38-2201 is hereby amended to read as
 25 follows: 38-2201. K.S.A. 2008 Supp. 38-2201 through 38-2283, and
 26 amendments thereto, shall be known as and may be cited as the revised
 27 Kansas code for care of children.

28 (a) Proceedings pursuant to this code shall be civil in nature and all
 29 proceedings, orders, judgments and decrees shall be deemed to be pur-
 30 suant to the parental power of the state. *Any orders pursuant to this code*
 31 *shall take precedence over any order under article 11 of chapter 38 of the*
 32 *Kansas Statutes Annotated, and amendments thereto (determination of*
 33 *parentage), article 21 of chapter 59 of the Kansas Statutes Annotated, and*
 34 *amendments thereto (adoption and relinquishment act), article 30 of*
 35 *chapter 59 of the Kansas Statutes Annotated, and amendments thereto*
 36 *(guardians and conservators), article 16 of chapter 60 of the Kansas Stat-*
 37 *utes Annotated, and amendments thereto (divorce), article 31 of chapter*
 38 *60 of the Kansas Statutes Annotated, and amendments thereto (protection*
 39 *from abuse act), and article 31a of chapter 60 of the Kansas Statutes*
 40 *Annotated, and amendments thereto (protection from stalking act), until*
 41 *jurisdiction under this code is terminated.*

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

- 1 (1) Consider the safety and welfare of a child to be paramount in all
2 proceedings under the code;
- 3 (2) provide that each child who comes within the provisions of the
4 code shall receive the care, custody, guidance control and discipline that
5 will best serve the child's welfare and the interests of the state, preferably
6 in the child's home and recognizing that the child's relationship with such
7 child's family is important to the child's well being;
- 8 (3) make the ongoing physical, mental and emotional needs of the
9 child decisive considerations in proceedings under this code;
- 10 (4) acknowledge that the time perception of a child differs from that
11 of an adult and to dispose of all proceedings under this code without
12 unnecessary delay;
- 13 (5) encourage the reporting of suspected child abuse and neglect;
- 14 (6) investigate reports of suspected child abuse and neglect thor-
15 oughly and promptly;
- 16 (7) provide for the protection of children who have been subject to
17 physical, mental or emotional abuse or neglect or sexual abuse;
- 18 (8) provide preventative and rehabilitative services, when appropri-
19 ate, to abused and neglected children and their families so, if possible,
20 the families can remain together without further threat to the children;
- 21 (9) provide stability in the life of a child who must be removed from
22 the home of a parent; and
- 23 (10) place children in permanent family settings, in absence of com-
24 pelling reasons to the contrary.
- 25 (c) Nothing in this code shall be construed to permit discrimination
26 on the basis of disability.
- 27 (1) The disability of a parent shall not constitute a basis for a deter-
28 mination that a child is a child in need of care, for the removal of custody
29 of a child from the parent, or for the termination of parental rights without
30 a specific showing that there is a causal relation between the disability
31 and harm to the child.
- 32 (2) In cases involving a parent with a disability, determinations made
33 under this code shall consider the availability and use of accommodations
34 for the disability, including adaptive equipment and support services.
- 35 Sec. 5. K.S.A. 2008 Supp. 38-2202 is hereby amended to read as
36 follows: 38-2202. As used in the revised Kansas code for care of children,
37 unless the context otherwise indicates:
- 38 (a) "Abandon" or "abandonment" means to forsake, desert or, with-
39 out making appropriate provision for substitute care, cease providing care
40 for the child.
- 41 (b) "Adult correction facility" means any public or private facility,
42 secure or nonsecure, which is used for the lawful custody of accused or
43 convicted adult criminal offenders.

- 1 (c) “Aggravated circumstances” means the abandonment, torture,
2 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.
- 3 (d) “Child in need of care” means a person less than 18 years of age
4 at the time of filing of the petition or issuance of an ex parte protective
5 custody order pursuant to K.S.A. 2008 Supp. 38-2242, and amendments
6 thereto, who:
- 7 (1) Is without adequate parental care, control or subsistence and the
8 condition is not due solely to the lack of financial means of the child’s
9 parents or other custodian;
- 10 (2) is without the care or control necessary for the child’s physical,
11 mental or emotional health;
- 12 (3) has been physically, mentally or emotionally abused or neglected
13 or sexually abused;
- 14 (4) has been placed for care or adoption in violation of law;
- 15 (5) has been abandoned or does not have a known living parent;
- 16 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
17 and amendments thereto;
- 18 (7) except in the case of a violation of K.S.A. 21-4204a, 41-727, sub-
19 section (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321,
20 and amendments thereto, or, except as provided in paragraph (12), does
21 an act which, when committed by a person under 18 years of age, is
22 prohibited by state law, city ordinance or county resolution but which is
23 not prohibited when done by an adult;
- 24 (8) while less than 10 years of age, commits any act which if done by
25 an adult would constitute the commission of a felony or misdemeanor as
26 defined by K.S.A. 21-3105, and amendments thereto;
- 27 (9) is willfully and voluntarily absent from the child’s home without
28 the consent of the child’s parent or other custodian;
- 29 (10) is willfully and voluntarily absent at least a second time from a
30 court ordered or designated placement, or a placement pursuant to court
31 order, if the absence is without the consent of the person with whom the
32 child is placed or, if the child is placed in a facility, without the consent
33 of the person in charge of such facility or such person’s designee;
- 34 (11) has been residing in the same residence with a sibling or another
35 person under 18 years of age, who has been physically, mentally or emo-
36 tionally abused or neglected, or sexually abused;
- 37 (12) while less than 10 years of age commits the offense defined in
38 K.S.A. 21-4204a, and amendments thereto; or
- 39 (13) has had a permanent custodian appointed and the permanent
40 custodian is no longer able or willing to serve.
- 41 (e) “Citizen review board” is a group of community volunteers ap-
42 pointed by the court and whose duties are prescribed by K.S.A. 2008
43 Supp. 38-2207 and 38-2208, and amendments thereto.

- 1 (f) “Court-appointed special advocate” means a responsible adult
2 other than an attorney guardian ad litem who is appointed by the court
3 to represent the best interests of a child, as provided in K.S.A. 2008 Supp.
4 38-2206, and amendments thereto, in a proceeding pursuant to this code.
- 5 (g) “Custody” whether temporary, protective or legal, means the
6 status created by court order or statute which vests in a custodian,
7 whether an individual or an agency, the right to physical possession of
8 the child and the right to determine placement of the child, subject to
9 restrictions placed by the court.
- 10 (h) “Extended out of home placement” means a child has been in
11 the custody of the secretary and placed with neither parent for 15 of the
12 most recent 22 months beginning 60 days after the date at which a child
13 in the custody of the secretary was removed from the home.
- 14 (i) “Educational institution” means all schools at the elementary and
15 secondary levels.
- 16 (j) “Educator” means any administrator, teacher or other professional
17 or paraprofessional employee of an educational institution who has ex-
18 posure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and
19 amendments thereto.
- 20 (k) “Harm” means physical or psychological injury or damage.
- 21 (l) “Interested party” means the grandparent of the child, a person
22 with whom the child has been living for a significant period of time when
23 the child in need of care petition is filed, and any person made an inter-
24 ested party by the court pursuant to K.S.A. 2008 Supp. 38-2241, and
25 amendments thereto or Indian tribe seeking to intervene that is not a
26 party.
- 27 (m) “Jail” means:
- 28 (1) An adult jail or lockup; or
- 29 (2) a facility in the same building or on the same grounds as an adult
30 jail or lockup, unless the facility meets all applicable standards and licen-
31 sure requirements under law and there is: (A) Total separation of the
32 juvenile and adult facility spatial areas such that there could be no hap-
33 hazard or accidental contact between juvenile and adult residents in the
34 respective facilities; (B) total separation in all juvenile and adult program
35 activities within the facilities, including recreation, education, counseling,
36 health care, dining, sleeping and general living activities; and (C) separate
37 juvenile and adult staff, including management, security staff and direct
38 care staff such as recreational, educational and counseling.
- 39 (n) “Juvenile detention facility” means any secure public or private
40 facility used for the lawful custody of accused or adjudicated juvenile
41 offenders which must not be a jail.
- 42 (o) “Juvenile intake and assessment worker” means a responsible
43 adult authorized to perform intake and assessment services as part of the

1 intake and assessment system established pursuant to K.S.A. 75-7023, and
2 amendments thereto.

3 (p) “Kinship care” means the placement of a child in the home of
4 the child’s relative or in the home of another adult with whom the child
5 or the child’s parent already has a close emotional attachment.

6 (q) “Law enforcement officer” means any person who by virtue of
7 office or public employment is vested by law with a duty to maintain
8 public order or to make arrests for crimes, whether that duty extends to
9 all crimes or is limited to specific crimes.

10 (r) “Multidisciplinary team” means a group of persons, appointed by
11 the court under K.S.A. 2008 Supp. 38-2228, and amendments thereto,
12 which has knowledge of the circumstances of a child in need of care.

13 (s) “Neglect” means acts or omissions by a parent, guardian or person
14 responsible for the care of a child resulting in harm to a child, or pre-
15 senting a likelihood of harm, and the acts or omissions are not due solely
16 to the lack of financial means of the child’s parents or other custodian.
17 Neglect may include, but shall not be limited to:

18 (1) Failure to provide the child with food, clothing or shelter neces-
19 sary to sustain the life or health of the child;

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

24 (3) failure to use resources available to treat a diagnosed medical
25 condition if such treatment will make a child substantially more com-
26 comfortable, reduce pain and suffering, or correct or substantially diminish a
27 crippling condition from worsening. A parent legitimately practicing re-
28 ligious beliefs who does not provide specified medical treatment for a
29 child because of religious beliefs shall not for that reason be considered
30 a negligent parent; however, this exception shall not preclude a court from
31 entering an order pursuant to subsection (a)(2) of K.S.A. 2008 Supp. 38-
32 2217, and amendments thereto.

33 (t) “Parent” when used in relation to a child or children, includes a
34 guardian and every person who is by law liable to maintain, care for or
35 support the child.

36 (u) “Party” means the state, the petitioner, the child, any parent of
37 the child and an Indian child’s tribe intervening pursuant to the Indian
38 child welfare act.

39 (v) “Permanency goal” means the outcome of the permanency plan-
40 ning process which may be reintegration, adoption, appointment of a
41 permanent custodian or another planned permanent living arrangement.

42 (w) “Permanent custodian” means a judicially approved permanent
43 guardian of a child pursuant to K.S.A. 2008 Supp. 38-2272, and amend-

1 ments thereto.

2 (x) “Physical, mental or emotional abuse” means the infliction of
3 physical, mental or emotional harm or the causing of a deterioration of a
4 child and may include, but shall not be limited to, maltreatment or ex-
5 ploiting a child to the extent that the child’s health or emotional well-
6 being is endangered.

7 (y) “Placement” means the designation by the individual or agency
8 having custody of where and with whom the child will live.

9 (z) “Relative” means a person related by blood, marriage or adoption
10 but, when referring to a relative of a child’s parent, does not include the
11 child’s other parent.

12 (aa) “Secretary” means the secretary of social and rehabilitation serv-
13 ices or the secretary’s designee.

14 (bb) “Secure facility” means a facility which is operated or structured
15 so as to ensure that all entrances and exits from the facility are under the
16 exclusive control of the staff of the facility, whether or not the person
17 being detained has freedom of movement within the perimeters of the
18 facility, or which relies on locked rooms and buildings, fences or physical
19 restraint in order to control behavior of its residents. No secure facility
20 shall be in a city or county jail.

21 (cc) “Sexual abuse” means any contact or interaction with a child in
22 which the child is being used for the sexual stimulation of the perpetrator,
23 the child or another person. Sexual abuse shall include allowing, permit-
24 ting or encouraging a child to engage in prostitution or to be photo-
25 graphed, filmed or depicted in pornographic material.

26 (dd) “Shelter facility” means any public or private facility or home
27 other than a juvenile detention facility that may be used in accordance
28 with this code for the purpose of providing either temporary placement
29 for children in need of care prior to the issuance of a dispositional order
30 or longer term care under a dispositional order.

31 (ee) “Youth residential facility” means any home, foster home or
32 structure which provides 24-hour-a-day care for children and which is
33 licensed pursuant to article 5 of chapter 65 of the Kansas Statutes An-
34 notated, and amendments thereto.

35 (ff) “Civil custody case” includes any case filed under article 11 of
36 chapter 38 of the Kansas Statutes Annotated, and amendments thereto
37 (determination of parentage), article 21 of chapter 59 of the Kansas Stat-
38 utes Annotated, and amendments thereto (adoption and relinquishment
39 act), article 30 of chapter 59 of the Kansas Statutes Annotated, and
40 amendments thereto (guardians and conservators), or article 16 of chapter
41 60 of the Kansas Statutes Annotated, and amendments thereto (divorce).

42 Sec. 6. K.S.A. 2008 Supp. 38-2203 is hereby amended to read as
43 follows: 38-2203. (a) Proceedings concerning any child who may be a child

1 in need of care shall be governed by this code, except in those instances
2 when the court knows or has reason to know that an Indian child is in-
3 volved in the proceeding, in which case, the Indian child welfare act of
4 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may
5 apply to: The filing to initiate a child in need of care proceeding (K.S.A.
6 2008 Supp. 38-2234, and amendments thereto); ex parte custody orders
7 (K.S.A. 2008 Supp. 38-2242, and amendments thereto); temporary cus-
8 tody hearing (K.S.A. 2008 Supp. 38-2243, and amendments thereto); ad-
9 judication (K.S.A. 2008 Supp. 38-2247, and amendments thereto); burden
10 of proof (K.S.A. 2008 Supp. 38-2250, and amendments thereto); dispo-
11 sition (K.S.A. 2008 Supp. 38-2255, and amendments thereto); perma-
12 nency hearings (K.S.A. 2008 Supp. 38-2264, and amendments thereto);
13 termination of parental rights (K.S.A. 2008 Supp. 38-2267, 38-2268 and
14 38-2269, and amendments thereto); establishment of permanent custo-
15 dianship (K.S.A. 2008 Supp. 38-2268 and 38-2272, and amendments
16 thereto); the placement of a child in any foster, pre-adoptive and adoptive
17 home and the placement of a child in a guardianship arrangement under
18 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments
19 thereto.

20 (b) Subject to the uniform child custody jurisdiction and enforcement
21 act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the dis-
22 trict court shall have original jurisdiction of proceedings pursuant to this
23 code.

24 (c) The court acquires jurisdiction over a child by the filing of a pe-
25 tition pursuant to this code or upon issuance of an ex parte order pursuant
26 to K.S.A. 2008 Supp. 38-2242, and amendments thereto. When the court
27 acquires jurisdiction over a child in need of care, jurisdiction may con-
28 tinue until the child has: (1) Attained the age of 21 years; (2) been
29 adopted; or (3) been discharged by the court. Any child 18 years of age
30 or over may request, in writing to the court, that the jurisdiction of the
31 court cease. The court shall give notice of the request to all parties and
32 interested parties and 30 days after receipt of the request, jurisdiction
33 will cease.

34 (d) When it is no longer appropriate for the court to exercise juris-
35 diction over a child, the court, upon its own motion or the motion of a
36 party or interested party at a hearing or upon agreement of all parties or
37 interested parties, shall enter an order discharging the child. Except upon
38 request of the child pursuant to subsection (c), the court shall not enter
39 an order discharging a child until June 1 of the school year during which
40 the child becomes 18 years of age if the child is in an out-of-home place-
41 ment, is still attending high school and has not completed the child's high
42 school education.

43 (e) When a petition is filed under this code, a person who is alleged

1 to be under 18 years of age shall be presumed to be under that age for
2 the purposes of this code, unless the contrary is proved.

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

11 Sec. 7. K.S.A. 2008 Supp. 38-2208 is hereby amended to read as
12 follows: 38-2208. (a) The citizen review board shall have the duty, au-
13 thority and power to:

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

20 (2) determine the progress which has been made to acquire a per-
21 manent home for the child in need of care;

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

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

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

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

31 (d) The judge shall consider the citizen review board recommenda-
32 tions in making an authorized dispositional order pursuant to K.S.A. 2008
33 Supp. 38-2255, and amendments thereto, and may incorporate the citizen
34 review board's recommendations into an order in lieu of a hearing.

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

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

40 Sec. 8. K.S.A. 2008 Supp. 38-2212 is hereby amended to read as
41 follows: 38-2212. (a) *Principle of appropriate access.* Information con-
42 tained in confidential agency records concerning a child alleged or ad-
43 judicated to be in need of care may be disclosed as provided in this

1 section. Disclosure shall in all cases be guided by the principle of provid-
2 ing access ~~only~~ to persons or entities with a need for information that is
3 directly related to achieving the purposes of this code.

4 (b) *Free exchange of information.* Pursuant to K.S.A. 2008 Supp. 38-
5 2210, and amendments thereto, the secretary, ~~agents of the secretary~~ and
6 juvenile intake and assessment agencies shall participate in the free
7 exchange of information concerning a child who is alleged or adjudicated
8 to be in need of care.

9 (c) *Necessary access.* The following persons or entities shall have ac-
10 cess to information from agency records. Access shall be limited to in-
11 formation reasonably necessary to carry out their lawful responsibilities,
12 to maintain their personal safety and the personal safety of individuals in
13 their care, or to educate, diagnose, treat, care for or protect a child alleged
14 to be in need of care. Information authorized to be disclosed pursuant to
15 this subsection shall not contain information which identifies a reporter
16 of a child who is alleged or adjudicated to be a child in need of care.

17 (1) A child named in the report or records, a guardian *ad litem* ap-
18 pointed for the child and the child's attorney.

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

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

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

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

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

33 (7) The state child death review board established under K.S.A. 22a-
34 243, and amendments thereto.

35 (8) An attorney for a private party who files a petition pursuant to
36 subsection (b) of K.S.A. 2008 Supp. 38-2233, and amendments thereto.

37 (9) A foster parent, prospective foster parent, permanent custodian,
38 prospective permanent custodian, adoptive parent or prospective adop-
39 tive parent. In order to assist such person's in making an informed de-
40 cision regarding acceptance of a particular child, to help the family antic-
41 ipate problems which may occur during the child's placement, and to
42 help the family meet the needs of the child in a constructive manner, the
43 secretary shall seek and shall provide the following information to such

- 1 person's as the information becomes available to the secretary:
- 2 (A) Strengths, needs and general behavior of the child;
- 3 (B) circumstances which necessitated placement;
- 4 (C) information about the child's family and the child's relationship
5 to the family which may affect the placement;
- 6 (D) important life experiences and relationships which may affect the
7 child's feelings, behavior, attitudes or adjustment;
- 8 (E) medical history of the child, including third-party coverage which
9 may be available to the child; and
- 10 (F) education history, to include present grade placement, special
11 strengths and weaknesses.
- 12 (10) The state protection and advocacy agency as provided by sub-
13 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
14 74-5515, and amendments thereto.
- 15 (11) Any educational institution to the extent necessary to enable the
16 educational institution to provide the safest possible environment for its
17 pupils and employees.
- 18 (12) Any educator to the extent necessary to enable the educator to
19 protect the personal safety of the educator and the educator's pupils.
- 20 (13) Any other federal, state or local government executive branch
21 entity or any agent of such entity, having a need for such information in
22 order to carry out such entity's responsibilities under the law to protect
23 children from abuse and neglect.
- 24 (d) *Specified access.* The following persons or entities shall have ac-
25 cess to information contained in agency records as specified. Information
26 authorized to be disclosed pursuant to this subsection shall not contain
27 information which identifies a reporter of a child who is alleged or ad-
28 judicated to be a child in need of care.
- 29 (1) Information from confidential agency records of the department
30 of social and rehabilitation services, a law enforcement agency or any
31 juvenile intake and assessment worker of a child alleged or adjudicated
32 to be in need of care shall be available to members of the standing house
33 or senate committee on judiciary, house committee on corrections and
34 juvenile justice, house committee on appropriations, senate committee
35 on ways and means, legislative post audit committee and any joint com-
36 mittee with authority to consider children's and families' issues, when
37 carrying out such member's or committee's official functions in accord-
38 ance with K.S.A. 75-4319, and amendments thereto, in a closed or ex-
39 ecutive meeting. Except in limited conditions established by $\frac{2}{3}$ of the
40 members of such committee, records and reports received by the com-
41 mittee shall not be further disclosed. Unauthorized disclosure may sub-
42 ject such member to discipline or censure from the house of represen-
43 tatives or senate. The secretary of social and rehabilitation services shall

1 not summarize the outcome of department actions regarding a child al-
2 leged to be a child in need of care in information available to members
3 of such committees.

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

7 (3) ~~Public disclosure of~~ Information from confidential reports or re-
8 cords of a child alleged or adjudicated to be a child in need of care ~~shall~~
9 ~~be limited to~~ *may be disclosed to the public when:*

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

13 ~~(B) Confidential information may be released to the public only with~~
14 ~~the express written permission of~~ The individuals involved or their rep-
15 resentatives *have given express written consent; or*

16 (B) *the investigation of the abuse or neglect of the child or the filing*
17 *of a petition alleging a child to be in need of care has become public*
18 *knowledge, provided, however, that the agency shall limit disclosure to*
19 *confirmation of procedural details relating to the handling of the case by*
20 *professionals.*

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

28 (f) (1) Notwithstanding any other provision of law to the contrary,
29 except as provided in paragraph ~~(2)~~ (4), in the event that child abuse or
30 neglect results in a child fatality or near fatality, reports or records of a
31 child *alleged or adjudicated to be* in need of care received by the ~~de-~~
32 ~~partment of social and rehabilitation services~~ *secretary*, a law enforcement
33 agency or any juvenile intake and assessment worker shall become a pub-
34 lic record and subject to disclosure pursuant to K.S.A. 45-215, and
35 amendments thereto.

36 (2) Within seven days of receipt of a request in accordance with the
37 procedures adopted under K.S.A. 45-220, and amendments thereto, the
38 secretary shall notify any affected individual that an open records request
39 has been made concerning such records. The secretary or any affected
40 individual may file a motion requesting the court to prevent disclosure of
41 such record or report, or any select portion thereof. If the affected in-
42 dividual does not file such motion within seven days of notification, and
43 the secretary has not filed a motion, the secretary shall release the reports

1 or records. ~~In reviewing~~ *If such motion is filed*, the court shall consider
2 the effect such disclosure may have upon an ongoing criminal investiga-
3 tion, a pending prosecution, or the privacy of the child, if living, or the
4 child's siblings, parents or guardians. ~~Nothing herein is intended to re-~~
5 ~~quire that an otherwise privileged communication lose its privileged char-~~
6 ~~acter. If the court grants such motion,~~ The court shall make written find-
7 ings on the record justifying the closing of the records *and shall provide*
8 *a copy of the journal entry to the affected parties and the individual*
9 *requesting disclosure pursuant to the Kansas open records act, K.S.A. 45-*
10 *215 et seq., and amendments thereto.*

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

17 ~~(2)~~ (4) Nothing in this subsection shall allow the disclosure of reports,
18 records or documents concerning the child and such child's biological
19 parents which were created prior to such child's adoption. *Nothing herein*
20 *is intended to require that an otherwise privileged communication lose its*
21 *privileged character.*

22 Sec. 9. K.S.A. 2008 Supp. 38-2242 is hereby amended to read as
23 follows: 38-2242. (a) The court, upon verified application, may issue *ex*
24 *parte* an order directing that a child be held in protective custody and, if
25 the child has not been taken into custody, an order directing that the
26 child be taken into custody. The application shall state for each child:

- 27 (1) The applicant's belief that the child is a child in need of care;
28 (2) that the child is likely to sustain harm if not immediately removed
29 from the home;
30 (3) that allowing the child to remain in the home is contrary to the
31 welfare of the child; and
32 (4) the facts relied upon to support the application, including efforts
33 known to the applicant to maintain the family unit and prevent the un-
34 necessary removal of the child from the child's home, or the specific facts
35 supporting that an emergency exists which threatens the safety of the
36 child.

37 (b) (1) The order of protective custody may be issued only after the
38 court has determined there is probable cause to believe the allegations
39 in the application are true. The order shall remain in effect until the
40 temporary custody hearing provided for in K.S.A. 2008 Supp. 38-2243,
41 and amendments thereto, unless earlier rescinded by the court.

42 (2) No child shall be held in protective custody for more than 72
43 hours, excluding Saturdays, Sundays and legal holidays, unless within the

1 72-hour period a determination is made as to the necessity for temporary
2 custody in a temporary custody hearing. The time spent in custody pur-
3 suant to K.S.A. 2008 Supp. 38-2232, and amendments thereto, shall be
4 included in calculating the 72-hour period. Nothing in this subsection
5 shall be construed to mean that the child must remain in protective cus-
6 tody for 72 hours. If a child is in the protective custody of the secretary,
7 the secretary shall allow at least one supervised visit between the child
8 and the parent or parents within such time period as the child is in pro-
9 tective custody. The court may prohibit such supervised visit if the court
10 determines it is not in the best interest of the child.

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

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

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

19 (C) a youth residential facility;

20 (D) a shelter facility; or

21 (E) the secretary.

22 (2) If the secretary presents the court with a plan to provide services
23 to a child or family which the court finds will assure the safety of the
24 child, the court may only place the child in the protective custody of the
25 secretary until the court finds the services are in place. The court shall
26 have the authority to require any person or entity agreeing to participate
27 in the plan to perform as set out in the plan. When the child is placed in
28 the protective custody of the secretary, the secretary shall have the dis-
29 cretionary authority to place the child with a parent or to make other
30 suitable placement for the child. When the child is presently alleged, but
31 not yet adjudicated, to be a child in need of care solely pursuant to sub-
32 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments
33 thereto, the child may be placed in a juvenile detention facility or other
34 secure facility pursuant to an order of protective custody for a period of
35 not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

36 (d) The order of protective custody shall be served pursuant to sub-
37 section (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on
38 the child's parents and any other person having legal custody of the child.
39 The order shall prohibit the removal of the child from the court's juris-
40 diction without the court's permission.

41 (e) If the court issues an order of protective custody, the court may
42 also enter an order restraining any alleged perpetrator of physical, sexual,
43 mental or emotional abuse of the child from residing in the child's home;

1 visiting, contacting, harassing or intimidating the child, other family mem-
2 ber or witness; or attempting to visit, contact, harass or intimidate the
3 child, other family member or witness. Such restraining order shall be
4 served by personal service pursuant to subsection (a) of K.S.A. 2008 Supp.
5 38-2237, and amendments thereto, on any alleged perpetrator to whom
6 the order is directed.

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

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

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

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

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

22 Sec. 10. K.S.A. 2008 Supp. 38-2243 is hereby amended to read as
23 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
24 order directing who shall have temporary custody and may modify the
25 order during the pendency of the proceedings as will best serve the child's
26 welfare.

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

30 (c) Whenever it is determined that a temporary custody hearing is
31 required, the court shall immediately set the time and place for the hear-
32 ing. Notice of a temporary custody hearing shall be given to all parties
33 and interested parties.

34 (d) Notice of the temporary custody hearing shall be given at least
35 24 hours prior to the hearing. The court may continue the hearing to
36 afford the 24 hours prior notice or, with the consent of the party or
37 interested party, proceed with the hearing at the designated time. If an
38 order of temporary custody is entered and the parent or other person
39 having custody of the child has not been notified of the hearing, did not
40 appear or waive appearance and requests a rehearing, the court shall
41 rehear the matter without unnecessary delay.

42 (e) Oral notice may be used for giving notice of a temporary custody
43 hearing where there is insufficient time to give written notice. Oral notice

1 is completed upon filing a certificate of oral notice.

2 (f) The court may enter an order of temporary custody after deter-
3 mining there is probable cause to believe that the: (1) Child is dangerous
4 to self or to others; (2) child is not likely to be available within the juris-
5 diction of the court for future proceedings; or (3) health or welfare of the
6 child may be endangered without further care.

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

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

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

15 (C) a youth residential facility;

16 (D) a shelter facility; or

17 (E) the secretary.

18 (2) If the secretary presents the court with a plan to provide services
19 to a child or family which the court finds will assure the safety of the
20 child, the court may only place the child in the temporary custody of the
21 secretary until the court finds the services are in place. The court shall
22 have the authority to require any person or entity agreeing to participate
23 in the plan to perform as set out in the plan. When the child is placed in
24 the temporary custody of the secretary, the secretary shall have the dis-
25 cretionary authority to place the child with a parent or to make other
26 suitable placement for the child. When the child is presently alleged, but
27 not yet adjudicated to be a child in need of care solely pursuant to sub-
28 section (d)(9) or (d)(10) of K.S.A. 2008 Supp. 38-2202, and amendments
29 thereto, the child may be placed in a juvenile detention facility or other
30 secure facility, but the total amount of time that the child may be held in
31 such facility under this section and K.S.A. 2008 Supp. 38-2242, and
32 amendments thereto, shall not exceed 24 hours, excluding Saturdays,
33 Sundays and legal holidays. The order of temporary custody shall remain
34 in effect until modified or rescinded by the court or an adjudication order
35 is entered but not exceeding 60 days, unless good cause is shown and
36 stated on the record.

37 (h) If the court issues an order of temporary custody, the court may
38 also enter an order restraining any alleged perpetrator of physical, sexual,
39 mental or emotional abuse of the child from residing in the child's home;
40 visiting, contacting, harassing or intimidating the child; or attempting to
41 visit, contact, harass or intimidate the child, other family members or
42 witnesses. Such restraining order shall be served by personal service pur-
43 suant to subsection (a) of K.S.A. 2008 Supp. 38-2237, and amendments

- 1 thereto, on any alleged perpetrator to whom the order is directed.
- 2 (i) (1) The court shall not enter ~~an~~ *the initial* order removing a child
- 3 from the custody of a parent pursuant to this section unless the court first
- 4 finds probable cause that: (A)(i) the child is likely to sustain harm if not
- 5 immediately removed from the home;
- 6 (ii) allowing the child to remain in home is contrary to the welfare of
- 7 the child; or
- 8 (iii) immediate placement of the child is in the best interest of the
- 9 child; and
- 10 (B) reasonable efforts have been made to maintain the family unit
- 11 and prevent the unnecessary removal of the child from the child's home
- 12 or that an emergency exists which threatens the safety to the child.
- 13 (2) Such findings shall be included in any order entered by the court.
- 14 If the child is placed in the custody of the secretary, upon making the
- 15 order the court shall provide the secretary with a written copy.
- 16 (j) If the court enters an order of temporary custody that provides
- 17 for placement of the child with a person other than the parent, the court
- 18 shall make a child support determination pursuant to K.S.A. 2008 Supp.
- 19 38-2277, and amendments thereto.
- 20 Sec. 11. K.S.A. 2008 Supp. 38-2251 is hereby amended to read as
- 21 follows: 38-2251. (a) If the court finds that the child is not a child in need
- 22 of care, the court shall enter an order dismissing the proceedings.
- 23 (b) If the court finds that the child is a child in need of care, the court
- 24 shall enter an order adjudicating the child to be a child in need of care
- 25 and may proceed to enter other orders as authorized by this code.
- 26 (c) ~~A finding that a child subject to this code is a child in need of care~~
- 27 ~~shall be entered without undue delay. If the child has been removed from~~
- 28 ~~the child's home, an order of adjudication shall be entered as soon as~~
- 29 ~~practicable but not more than 60 days from the date of removal unless~~
- 30 ~~an order of informal supervision or an order of continuance for good cause~~
- 31 ~~has been entered. A final adjudication or dismissal shall be entered within~~
- 32 ~~60 days from the date of the filing of the petition, unless good cause for~~
- 33 ~~a continuance is shown on the record.~~
- 34 Sec. 12. K.S.A. 2008 Supp. 38-2255 is hereby amended to read as
- 35 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-
- 36 position, the court shall give consideration to:
- 37 (1) The child's physical, mental and emotional condition;
- 38 (2) the child's need for assistance;
- 39 (3) the manner in which the parent participated in the abuse, neglect
- 40 or abandonment of the child;
- 41 (4) any relevant information from the intake and assessment process;
- 42 and
- 43 (5) the evidence received at the dispositional hearing.

- 1 (b) ~~Placement~~ *Custody with a parent.* The court may place the child
2 in the custody of either of the child's parents subject to terms and con-
3 ditions which the court prescribes to assure the proper care and protec-
4 tion of the child, including, but not limited to:
- 5 (1) Supervision of the child and the parent by a court services officer;
 - 6 (2) participation by the child and the parent in available programs
7 operated by an appropriate individual or agency; and
 - 8 (3) any special treatment or care which the child needs for the child's
9 physical, mental or emotional health and safety.
- 10 (c) *Removal of a child from custody of a parent.* The court shall not
11 enter an order removing a child from the custody of a parent pursuant
12 to this section unless the court first finds probable cause that: (1)(A) The
13 child is likely to sustain harm if not immediately removed from the home;
14 (B) allowing the child to remain in home is contrary to the welfare
15 of the child; or
16 (C) immediate placement of the child is in the best interest of the
17 child; and
- 18 (2) reasonable efforts have been made to maintain the family unit
19 and prevent the unnecessary removal of the child from the child's home
20 or that an emergency exists which threatens the safety to the child.
- 21 (d) *Custody and placement of a child removed from the custody of a*
22 *parent.* If the court has made the findings required by subsection (c), the
23 court shall enter an order awarding custody to a relative of the child or
24 to a person with whom the child has close emotional ties, to any other
25 suitable person, to a shelter facility, to a youth residential facility or to
26 the secretary. Custody awarded under this subsection shall continue until
27 further order of the court.
- 28 (1) When custody is awarded to the secretary, the secretary shall con-
29 sider any placement recommendation by the court and notify the court
30 of the placement or proposed placement of the child within 10 days of
31 the order awarding custody. ~~(A)~~ After providing the parties or interested
32 parties notice and opportunity to be heard, the court may determine
33 whether the secretary's placement or proposed placement is contrary to
34 the welfare or in the best interests of the child. In making that determi-
35 nation the court shall consider the health and safety needs of the child
36 and the resources available to meet the needs of children in the custody
37 of the secretary. If the court determines that the placement or proposed
38 placement is contrary to the welfare or not in the best interests of the
39 child, the court shall notify the secretary, who shall then make an alter-
40 native placement.
 - 41 ~~(B) The secretary may propose and the court may order the child to~~
42 ~~be placed in the custody of a parent or parents if the secretary has pro-~~
43 ~~vided and the court has approved an appropriate safety action plan which~~

1 ~~includes services to be provided. The court may order the parent or par-~~
2 ~~ents and the child to perform tasks as set out in the safety action plan.~~

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

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

15 (4) The court may enter an order restraining any alleged perpetrator
16 of physical, mental or emotional abuse or sexual abuse of the child from
17 residing in the child's home; visiting, contacting, harassing or intimidating
18 the child, other family member or witness; or attempting to visit, contact,
19 harass or intimidate the child, other family member or witness. Such
20 restraining order shall be served by personal service pursuant to subsec-
21 tion (a) of K.S.A. 2008 Supp. 38-2237, and amendments thereto, on any
22 alleged perpetrator to whom the order is directed.

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

26 (e) *Further determinations regarding a child removed from the home.*
27 If custody has been awarded under subsection (d) to a person other than
28 a parent, a permanency plan shall be provided or prepared pursuant to
29 K.S.A. 2008 Supp. 38-2264, and amendments thereto. If a permanency
30 plan is provided at the dispositional hearing, the court may determine
31 whether reintegration is a viable alternative or, if reintegration is not a
32 viable alternative, whether the child should be placed for adoption or a
33 permanent custodian appointed. In determining whether reintegration is
34 a viable alternative, the court shall consider:

35 (1) Whether a parent has been found by a court to have committed
36 one of the following crimes or to have violated the law of another state
37 prohibiting such crimes or to have aided and abetted, attempted, con-
38 spired or solicited the commission of one of these crimes: Murder in the
39 first degree, K.S.A. 21-3401, and amendments thereto, murder in the
40 second degree, K.S.A. 21-3402, and amendments thereto, capital murder,
41 K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A.
42 21-3403, and amendments thereto, or a felony battery that resulted in
43 bodily injury;

- 1 (2) whether a parent has subjected the child or another child to ag-
2 gravated circumstances;
- 3 (3) whether a parent has previously been found to be an unfit parent
4 in proceedings under this code or in comparable proceedings under the
5 laws of another state or the federal government;
- 6 (4) whether the child has been in extended out of home placement;
- 7 (5) whether the parents have failed to work diligently toward
8 reintegration;
- 9 (6) whether the secretary has provided the family with services nec-
10 essary for the safe return of the child to the home; and
- 11 (7) whether it is reasonable to expect reintegration to occur within a
12 time frame consistent with the child's developmental needs.
- 13 (f) *Proceedings if reintegration is not a viable alternative.* If the court
14 determines that reintegration is not a viable alternative, proceedings to
15 terminate parental rights and permit placement of the child for adoption
16 or appointment of a permanent custodian shall be initiated unless the
17 court finds that compelling reasons have been documented in the case
18 plan why adoption or appointment of a permanent custodian would not
19 be in the best interests of the child. If compelling reasons have not been
20 documented, the county or district attorney shall file a motion within 30
21 days to terminate parental rights or a motion to appoint a permanent
22 custodian within 30 days and the court shall hold a hearing on the motion
23 within 90 days of its filing. No hearing is required when the parents
24 voluntarily relinquish parental rights or consent to the appointment of a
25 permanent custodian.
- 26 (g) *Additional Orders.* In addition to or in lieu of any other order
27 authorized by this section:
- 28 (1) The court may order the child and the parents of any child who
29 has been adjudicated a child in need of care to attend counseling sessions
30 as the court directs. The expense of the counseling may be assessed as
31 an expense in the case. No mental health provider shall charge a greater
32 fee for court-ordered counseling than the provider would have charged
33 to the person receiving counseling if the person had requested counseling
34 on the person's own initiative.
- 35 (2) If the court has reason to believe that a child is before the court
36 due, in whole or in part, to the use or misuse of alcohol or a violation of
37 the uniform controlled substances act by the child, a parent of the child,
38 or another person responsible for the care of the child, the court may
39 order the child, parent of the child or other person responsible for the
40 care of the child to submit to and complete an alcohol and drug evaluation
41 by a qualified person or agency and comply with any recommendations.
42 If the evaluation is performed by a community-based alcohol and drug
43 safety program certified pursuant to K.S.A. 8-1008, and amendments

1 thereto, the child, parent of the child or other person responsible for the
2 care of the child shall pay a fee not to exceed the fee established by that
3 statute. If the court finds that the child and those legally liable for the
4 child's support are indigent, the fee may be waived. In no event shall the
5 fee be assessed against the secretary.

6 (3) If child support has been requested and the parent or parents
7 have a duty to support the child, the court may order one or both parents
8 to pay child support and, when custody is awarded to the secretary, the
9 court shall order one or both parents to pay child support. The court shall
10 determine, for each parent separately, whether the parent is already sub-
11 ject to an order to pay support for the child. If the parent is not presently
12 ordered to pay support for any child who is subject to the jurisdiction of
13 the court and the court has personal jurisdiction over the parent, the court
14 shall order the parent to pay child support in an amount determined
15 under K.S.A. 2008 Supp. 38-2277, and amendments thereto. Except for
16 good cause shown, the court shall issue an immediate income withholding
17 order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for
18 each parent ordered to pay support under this subsection, regardless of
19 whether a payor has been identified for the parent. A parent ordered to
20 pay child support under this subsection shall be notified, at the hearing
21 or otherwise, that the child support order may be registered pursuant to
22 K.S.A. 2008 Supp. 38-2279, and amendments thereto. The parent shall
23 also be informed that, after registration, the income withholding order
24 may be served on the parent's employer without further notice to the
25 parent and the child support order may be enforced by any method al-
26 lowed by law. Failure to provide this notice shall not affect the validity of
27 the child support order.

28 Sec. 13. K.S.A. 2008 Supp. 38-2258 is hereby amended to read as
29 follows: 38-2258. (a) Except as provided in K.S.A. 2008 Supp. 38-
30 2255(d)(2) and 38-2259, and amendments thereto, if a child has been in
31 the same foster home or shelter facility for six months or longer, or has
32 been placed by the secretary in the home of a parent or relative, the
33 secretary shall give written notice of any plan to move the child to a
34 different placement unless the move is to the selected preadoptive family
35 for the purpose of facilitating adoption. The notice shall be given to: (1)
36 The court having jurisdiction over the child; (2) *the petitioner*; (3) *the*
37 *attorney for the parents, if any*; (4) each parent whose address is available;
38 ~~(3)~~ (5) the foster parent or custodian from whose home or shelter facility
39 it is proposed to remove the child; ~~(4)~~ (6) the child, if 12 or more years
40 of age; ~~and (5)~~ (7) the child's guardian ad litem; (8) *the child's court*
41 *appointed special advocate*; and (9) *any other interested parties*.

42 (b) The notice shall state the placement to which the secretary plans
43 to transfer the child and the reason for the proposed action. The notice

1 shall be mailed by first class mail 30 days in advance of the planned
2 transfer, except that the secretary shall not be required to wait 30 days
3 to transfer the child if all persons enumerated in subsection (a) (2)
4 through (5) consent in writing to the transfer.

5 (c) Within 10 days after receipt of the notice, any person receiving
6 notice as provided above may request, either orally or in writing, that the
7 court conduct a hearing to determine whether or not the change in place-
8 ment is in the best interests of the child concerned. When the request
9 has been received, the court shall schedule a hearing and immediately
10 notify the secretary of the request and the time and date the matter will
11 be heard. The court shall give notice of the hearing to persons enumer-
12 ated in subsection (a) (2) through (5). The secretary shall not change the
13 placement of the child, except for the purpose of adoption, unless the
14 change is approved by the court.

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

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

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

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

27 (e) The secretary shall present to the court in writing the efforts to
28 maintain the family unit and prevent the unnecessary removal of the child
29 from the child's home. In making the findings, the court may rely on
30 documentation submitted by the secretary or may set the date for a hear-
31 ing on the matter. If the secretary requests such finding, the court, not
32 more than 45 days from the date of the request, shall provide the secretary
33 with a written copy of the findings by the court for the purpose of doc-
34 umenting these orders.

35 Sec. 14. K.S.A. 2008 Supp. 38-2264 is hereby amended to read as
36 follows: 38-2264. (a) A permanency hearing is a proceeding conducted
37 by the court or by a citizen review board for the purpose of determining
38 progress toward accomplishment of a permanency plan as established by
39 K.S.A. 2008 Supp. 38-2263, and amendments thereto.

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

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

43 (2) placed for adoption;

- 1 (3) placed with a permanent custodian; or
2 (4) if the secretary has documented compelling reasons why it would
3 not be in the child's best interests for a placement in one of the place-
4 ments pursuant to paragraphs (1), (2) or (3) placed in another planned
5 permanent arrangement.
- 6 (c) The court shall enter a finding as to whether the person or entity
7 having custody of the child has made reasonable efforts to accomplish the
8 permanency plan in place at the time of the hearing.
- 9 (d) A permanency hearing shall be held within 12 months of the date
10 the court authorized the child's removal from the home and not less
11 frequently than every 12 months thereafter.
- 12 (e) If the court determines at any time other than during a perma-
13 nency hearing that reintegration may not be a viable alternative for the
14 child, a permanency hearing shall be held no later than 30 days following
15 that determination.
- 16 (f) When the court finds that reintegration continues to be a viable
17 alternative, the court shall determine whether and, if applicable, when
18 the child will be returned to the parent. The court may rescind any of its
19 prior dispositional orders and enter any dispositional order authorized by
20 this code or may order that a new plan for the reintegration be prepared
21 and submitted to the court. If reintegration cannot be accomplished as
22 approved by the court, the court shall be informed and shall schedule a
23 hearing pursuant to this section. No such hearing is required when the
24 parents voluntarily relinquish parental rights or consent to appointment
25 of a permanent custodian.
- 26 (g) If the court finds reintegration is no longer a viable alternative,
27 the court shall consider whether: (1) The child is in a stable placement
28 with a relative; (2) services set out in the case plan necessary for the safe
29 return of the child have been made available to the parent with whom
30 reintegration is planned; or (3) compelling reasons are documented in
31 the case plan to support a finding that neither adoption nor appointment
32 of a permanent custodian are in the child's best interest. If reintegration
33 is not a viable alternative and either adoption or appointment of a per-
34 manent custodian might be in the best interests of the child, the county
35 or district attorney or the county or district attorney's designee shall file
36 a motion to terminate parental rights or a motion to appoint a permanent
37 custodian within 30 days and the court shall set a hearing on such motion
38 within 90 days of the filing of such motion.
- 39 (h) If the court enters an order terminating parental rights to a child,
40 or an agency has accepted a relinquishment pursuant to K.S.A. 59-2124,
41 and amendments thereto, the requirements for permanency hearings
42 shall continue until an adoption or appointment of a permanent custodian
43 has been accomplished. If the court determines that reasonable efforts

1 or progress have not been made toward finding an adoptive placement
2 or appointment of a permanent custodian or placement with a fit and
3 willing relative, the court may rescind its prior orders and make others
4 regarding custody and adoption that are appropriate under the circum-
5 stances. Reports of a proposed adoptive placement need not contain the
6 identity of the proposed adoptive parents.

7 *(i) If permanency with one parent has been achieved without the ter-*
8 *mination of the other parent's rights, the court may, prior to dismissing*
9 *the case, enter child custody orders including residency, parenting time*
10 *and child support, that the court determines to be in the best interests of*
11 *the child. The court shall complete a parenting plan pursuant to K.S.A.*
12 *60-1625, and amendments thereto. Child support orders shall be consis-*
13 *tent with the requirements of K.S.A. 2008 Supp. 38-2277, and amend-*
14 *ments thereto.*

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

19 *(2) If a civil custody case has been filed or is pending, a certified copy*
20 *of the custody, residency, parenting time and child support orders shall*
21 *be filed in the civil custody case. The court in the child in need of care*
22 *case may, after consultation with the court in the civil custody case, in-*
23 *clude in the order a declaration that the custody order in the child in*
24 *need of care case shall become the custody order in the civil custody case.*

25 *(3) A district court, on its own motion or upon the motion of any*
26 *party, may order the consolidation of the child in need of care case with*
27 *any open civil custody case involving the child and both of the child's*
28 *parents. Orders entered in consolidated child in need of care and civil*
29 *custody cases take precedence over any previous orders affecting both*
30 *parents and the child that were entered in the civil custody case regarding*
31 *the same or related issues. Following entry of a custody order in a con-*
32 *solidated case, the court shall dismiss the child in need of care case and,*
33 *if necessary, return the civil custody case to the original court having*
34 *jurisdiction over it.*

35 *(4) If no civil custody case has been filed, the court may direct the*
36 *parties to file a civil custody case and to file the custody and child support*
37 *orders from the child in need of care case in that case. Costs of the civil*
38 *custody case may be assessed to the parties.*

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

43 *(j) When permanency has been achieved to the satisfaction of the*

1 *court, the court shall enter an order closing the case.*

2 Sec. 15. K.S.A. 2008 Supp. 38-2272 is hereby amended to read as
3 follows: 38-2272. (a) A permanent custodian may be appointed:

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

6 (2) after a finding of unfitness pursuant to K.S.A. 2008 Supp. 38-
7 2269, and amendments thereto; or

8 (3) after termination of parental rights pursuant to K.S.A. 2008 Supp.
9 38-2270, and amendments thereto.

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

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

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

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

18 (d) When the court retains jurisdiction after appointment of a per-
19 manent custodian, the court, in its order, may impose limitations or con-
20 ditions upon the rights and responsibilities of the permanent custodian
21 including, but not limited to, the right to:

22 (1) Determine contact with the biological parent;

23 (2) consent to marriage;

24 (3) consent to psychosurgery, removal of a bodily organ or amputa-
25 tion of a limb;

26 (4) consent to sterilization;

27 (5) consent to behavioral and medical experiments;

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

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

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

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

38 (f) Parental consent to appointment of a permanent custodian shall
39 be ~~on the record or executed by the parent of the child and~~ *in writing*
40 *and shall be* acknowledged before a judge of a court of record. ~~It or before~~
41 *an officer authorized by law to take acknowledgments. If the consent is*
42 *acknowledged before a judge of a court of record, it shall be the duty of*
43 *the court before which the consent is acknowledged to advise the con-*

1 sending parent of the consequences of the consent, including the
2 following:

3 (1) Do you understand that your parental rights are not being ter-
4 minated and you can be ordered to pay child support and medical support
5 for your child

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

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

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

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

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

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

34 (2) If a parent has consented to appointment of a permanent custo-
35 dian based upon a belief that the child's other parent would so consent
36 or would be found unfit, and this does not occur, the consent shall be
37 null and void.

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

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

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

43 (3) The right to consent to adoption of the child. All other parental

1 rights transfer to the permanent custodian.

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

4 (j) Prior to appointing a permanent custodian, the court shall receive
5 and consider an assessment of any potential permanent custodian as pro-
6 vided in K.S.A. 59-2132, and amendments thereto. In making an order
7 appointing a permanent custodian the court shall give preference, to the
8 extent that the court finds it in the child's best interests, to first appointing
9 a permanent custodian who is a relative of the child or second a person
10 with whom the child has close emotional ties.

11 (k) If permanent custodians are divorced, such custodian's marriage
12 is annulled or the court orders separate maintenance, the court in that
13 case has jurisdiction to make custody determinations between the per-
14 manent custodians.

15 Sec. 16. K.S.A. 2008 Supp. 38-2279 is hereby amended to read as
16 follows: 38-2279. (a) A person entitled to receive child support under an
17 order issued pursuant to the code may file with the clerk of the district
18 court in the county in which the judgment was rendered the original child
19 support order and the original income withholding order, if any. If the
20 original child support or income withholding order is unavailable for any
21 reason, a certified or authenticated copy of the order may be substituted.
22 The clerk of the district court shall number the child support order as a
23 case filed under chapter 60 of the Kansas Statutes Annotated, and amend-
24 ments thereto, and enter the numbering of the case on the appearance
25 docket of the case. Registration of a child support order under this section
26 shall be without cost or docket fee.

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

31 (c) The filing of the child support order shall constitute registration
32 under this section. Upon registration of the child support order, all mat-
33 ters related to that order, including, but not limited to, modification of
34 the order, shall proceed under the new case number. Registration of a
35 child support order under this section does not confer jurisdiction in the
36 registration case for custody or visitation issues.

37 (d) The person registering a child support order shall serve a copy of
38 the registered child support order and income withholding order, if any,
39 upon the party or interested parties by first-class mail. The person reg-
40 istering the child support order shall file, in the official file for each child
41 affected, either a copy of the registered order showing the new case num-
42 ber or a statement that includes the caption, new case number and date
43 of registration of the child support order.

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

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

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

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

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

16 (4) if any installment of support due under the registered order be-
17 comes a dormant judgment, it may be revived pursuant to K.S.A. 60-
18 2404, and amendments thereto; and

19 (5) the court shall have continuing jurisdiction over the child support
20 action and the parties thereto and subject matter and, except as otherwise
21 provided in subsection (g), may modify any prior support order when *the*
22 *child in need of care case has been closed and* a material change in cir-
23 cumstances is shown irrespective of the present domicile of the child or
24 parents. The court may make a modification of child support retroactive
25 to a date at least one month after ~~the date that the motion to modify was~~
26 ~~filed with the court~~ *the closure of the child in need of care case.*

27 (g) ~~If a motion to modify the child support order is filed within three~~
28 ~~months after the date of registration pursuant to this section~~ *when the*
29 *child in need of care case is closed*, if no motion to modify the order has
30 previously been heard and if the moving party shows that the support
31 order was based upon one or more of the presumptions provided in K.S.A.
32 2008 Supp. 38-2277, and amendments thereto, or upon a stipulation pur-
33 suant to subsection (c) of K.S.A. 2008 Supp. 38-2277, and amendments
34 thereto, the court shall apply the Kansas child support guidelines adopted
35 pursuant to K.S.A. 20-165, and amendments thereto, without requiring
36 a showing that a material change of circumstances has occurred, without
37 regard to any previous presumption or stipulation used to determine the
38 amount of the child support order and irrespective of the present domicile
39 of the child or parents. ~~Nothing in this subsection shall prevent or limit~~
40 ~~enforcement of the support order during the three months after the date~~
41 ~~of registration.~~

42 Sec. 17. K.S.A. 2008 Supp. 38-2304 is hereby amended to read as
43 follows: 38-2304. (a) Except as provided in K.S.A. 2008 Supp. 38-2347,

- 1 and amendments thereto, proceedings concerning a juvenile shall be gov-
2 erned by the provisions of this code.
- 3 (b) The district court shall have original jurisdiction to receive and
4 determine proceedings under this code.
- 5 (c) When a complaint is filed under this code, the juvenile shall be
6 presumed to be subject to this code, unless the contrary is proved.
- 7 (d) Once jurisdiction is acquired by the district court over an alleged
8 juvenile offender, except as otherwise provided in subsection (e), juris-
9 diction shall continue until one of the following occurs:
- 10 (1) The complaint is dismissed;
- 11 (2) the juvenile is adjudicated not guilty at trial;
- 12 (3) the juvenile, after being adjudicated guilty and sentenced:
- 13 (i) Successfully completes the term of probation or order of assign-
14 ment to community corrections;
- 15 (ii) is discharged by the commissioner pursuant to K.S.A. 2008 Supp.
16 38-2376, and amendments thereto;
- 17 (iii) reaches the juvenile's 21st birthday and no exceptions apply that
18 extend jurisdiction beyond age 21;
- 19 (4) the court terminates jurisdiction; or
- 20 (5) the offender is convicted of a new felony while the offender is
21 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671
22 prior to its repeal or K.S.A. 2008 Supp. 38-2373, and amendments
23 thereto, for an offense, which if committed by an adult would constitute
24 the commission of a felony.
- 25 (e) Once jurisdiction is acquired by the district court over an alleged
26 juvenile offender, it shall continue beyond the juvenile offender's 21st
27 birthday but no later than the juvenile offender's 23rd birthday if either
28 or both of the following conditions apply:
- 29 (1) The juvenile offender is sentenced pursuant to K.S.A. 2008 Supp.
30 38-2369, and amendments thereto, and the term of the sentence includ-
31 ing successful completion of aftercare extends beyond the juvenile of-
32 fender's 21st birthday; or
- 33 (2) the juvenile offender is sentenced pursuant to an extended juris-
34 diction juvenile prosecution and continues to successfully serve the sen-
35 tence imposed pursuant to the revised Kansas juvenile justice code.
- 36 (f) Termination of jurisdiction pursuant to this section shall have no
37 effect on the juvenile offender's continuing responsibility to pay restitu-
38 tion ordered.
- 39 (g) (1) If a juvenile offender, at the time of sentencing, is in an out
40 of home placement in the custody of the secretary of social and rehabil-
41 itation services under the Kansas code for care of children, the sentencing
42 court may order the continued placement of the juvenile offender as a
43 child in need of care unless the offender was adjudicated for a felony or

1 a second or subsequent misdemeanor. If the adjudication was for a felony
2 or a second or subsequent misdemeanor, the continued placement cannot
3 be ordered unless the court finds there are compelling circumstances
4 which, in the best interest of the juvenile offender, require that the place-
5 ment should be continued. In considering whether compelling circum-
6 stances exist, the court shall consider the reports and recommendations
7 of the foster placement, the contract provider, the secretary of social and
8 rehabilitation services, the presentence investigation and all other rele-
9 vant factors. If the foster placement refuses to continue the juvenile in
10 the foster placement the court shall not order continued placement as a
11 child in need of care.

12 (2) If a placement with the secretary of social and rehabilitation serv-
13 ices is continued after sentencing, the secretary shall not be responsible
14 for any costs of sanctions imposed under this code.

15 (3) If the juvenile offender is placed in the custody of the juvenile
16 justice authority, the secretary of social and rehabilitation services shall
17 not be responsible for furnishing services ordered in the child in need of
18 care proceeding during the time of the placement pursuant to the revised
19 Kansas juvenile justice code. Nothing in this subsection shall preclude
20 the juvenile offender from accessing other services provided by the de-
21 partment of social and rehabilitation services or any other state agency if
22 the juvenile offender is otherwise eligible for the services.

23 (h) *A court's order affecting a child's custody, residency, parenting*
24 *time and visitation that is issued in a proceeding pursuant to this code,*
25 *shall take precedence over such orders in a proceeding under article 11*
26 *of chapter 38 of the Kansas Statutes Annotated, and amendments thereto*
27 *(parentage act), a proceeding under article 16 of chapter 60 of the Kansas*
28 *Statutes Annotated, and amendments thereto (divorce), a proceeding un-*
29 *der article 31 of chapter 60 of the Kansas Statutes Annotated, and amend-*
30 *ments thereto (protection from abuse act), a proceeding under article 21*
31 *of chapter 59 of the Kansas Statutes Annotated, and amendments thereto*
32 *(adoption and relinquishment act), a proceeding under article 30 of chap-*
33 *ter 59 of the Kansas Statutes Annotated, and amendments thereto (guard-*
34 *ians and conservators), or a comparable case in another jurisdiction, ex-*
35 *cept as provided by K.S.A. 38-1336 et seq., and amendments thereto*
36 *(uniform child custody jurisdiction and enforcement act).*

37 Sec. 18. K.S.A. 2008 Supp. 38-2305 is hereby amended to read as
38 follows: 38-2305. (a) Venue for proceedings in any case involving a ju-
39 venile shall be in any county where any act of the alleged offense was
40 committed.

41 (b) Except as provided in subsection (c), venue for sentencing pro-
42 ceedings shall be in the county of the juvenile offender's residence or, if
43 the juvenile offender is not a resident of this state, in the county where

1 the adjudication occurred. When the sentencing hearing is to be held in
2 a county other than where the adjudication occurred, upon adjudication,
3 the judge shall contact the sentencing court and advise the judge of the
4 transfer. The adjudicating court shall send immediately to the sentencing
5 court a facsimile of the complaint, the adjudication journal entry or
6 judge's minutes, if available, and any recommendations in regard to sen-
7 tencing. Such documents shall be sent for purposes of notification and
8 shall not constitute original court documents. The adjudicating court shall
9 also send to the sentencing court a complete copy of the official and social
10 files in the case by mail within five working days of the adjudication.

11 (c) If the juvenile offender is adjudicated in a county other than the
12 county of the juvenile offender's residence, the sentencing hearing may
13 be held in the county in which the adjudication was made *or, if there are*
14 *not any ongoing proceedings under the Kansas code for care of children,*
15 *in the county of the residence of the custodial parent, parents, guardian*
16 *or conservator* if the adjudicating judge, upon motion ~~by any person au-~~
17 ~~thorized to appeal,~~ finds that it is in the interest of justice. *If there are*
18 *ongoing proceedings under the revised Kansas code for care of children,*
19 *then the sentencing hearing shall be held in the county in which the pro-*
20 *ceedings under the revised Kansas code for care of children are being*
21 *held.*

22 Sec. 19. K.S.A. 2008 Supp. 38-2344 is hereby amended to read as
23 follows: 38-2344. (a) When the juvenile appears without an attorney in
24 response to a complaint, the court shall inform the juvenile of the
25 following:

- 26 (1) The nature of the charges in the complaint;
- 27 (2) the right to hire an attorney of the juvenile's own choice;
- 28 (3) the duty of the court to appoint an attorney for the juvenile if no
29 attorney is hired by the juvenile or parent; and
- 30 (4) that the court may require the juvenile or parent to pay the ex-
31 pense of a court appointed attorney.

32 Upon request the court shall give the juvenile or parent an opportunity
33 to hire an attorney. If no request is made or the juvenile or parent is
34 financially unable to hire an attorney, the court shall forthwith appoint
35 an attorney for the juvenile. The court shall afford the juvenile an op-
36 portunity to confer with the attorney before requiring the juvenile to
37 plead to the allegations of the complaint.

38 (b) When the juvenile appears with an attorney in response to a com-
39 plaint, the court shall require the juvenile to plead guilty, *nolo contendere*
40 or not guilty to the allegations stated in the complaint, unless there is an
41 application for and approval of an immediate intervention program. Prior
42 to making this requirement, the court shall inform the juvenile of the
43 following:

- 1 (1) The nature of the charges in the complaint;
 2 (2) the right of the juvenile to be presumed innocent of each charge;
 3 (3) the right to a *jury* trial without unnecessary delay ~~and~~;
 4 (4) *the right* to confront and cross-examine witnesses appearing in
 5 support of the allegations of the complaint;
 6 ~~(4)~~ (5) the right to subpoena witnesses;
 7 ~~(5)~~ (6) the right of the juvenile to testify or to decline to testify; and
 8 ~~(6)~~ (7) the sentencing alternatives the court may select as the result
 9 of the juvenile being adjudicated a juvenile offender.
- 10 (c) If the juvenile pleads guilty to the allegations contained in a com-
 11 plaint or pleads *nolo contendere*, the court shall determine, before ac-
 12 cepting the plea and entering a sentence: (1) That there has been a vol-
 13 untary waiver of the rights enumerated in subsections (b)(2), (3), (4) ~~and~~,
 14 (5) *and* (6); and (2) that there is a factual basis for the plea.
- 15 (d) If the juvenile pleads not guilty, the court shall schedule a time
 16 and date for trial to the court.
- 17 (e) First appearance may be conducted by two-way electronic audio-
 18 video communication between the juvenile and the judge in lieu of per-
 19 sonal presence of the juvenile or the juvenile's attorney in the courtroom
 20 from any location within Kansas in the discretion of the court. The ju-
 21 venile may be accompanied by the juvenile's attorney during such pro-
 22 ceedings or the juvenile's attorney may be personally present in court as
 23 long as a means of confidential communication between the juvenile and
 24 the juvenile's attorney is available.
- 25 Sec. 20. K.S.A. 2008 Supp. 38-2357 is hereby amended to read as
 26 follows: 38-2357. ~~In all cases involving offenses committed by a juvenile~~
 27 ~~which, if done by an adult, would make the person liable to be arrested~~
 28 ~~and prosecuted for the commission of a felony, the judge may upon mo-~~
 29 ~~tion, order that the juvenile be afforded a trial by jury. Upon the juvenile~~
 30 ~~being adjudged to be a juvenile offender, the court shall proceed with~~
 31 ~~sentencing. A juvenile is entitled to a trial by one of the following means:~~
 32 (a) *The trial of a felony or misdemeanor case shall be to the court unless*
 33 *the juvenile requests a jury trial in writing within 30 days from the date*
 34 *of the juvenile's entry of a plea of not guilty. The time requirement pro-*
 35 *vided in this subsection regarding when a jury trial shall be requested*
 36 *may be waived in the discretion of the court upon a finding that imposing*
 37 *such time requirement would cause undue hardship or prejudice to the*
 38 *juvenile.*
- 39 (1) *A jury in a felony case shall consist of 12 members. However the*
 40 *parties may agree in writing, at any time before the verdict, with the*
 41 *approval of the court, that the jury shall consist of any number less than*
 42 *12.*
- 43 (2) *A jury in a misdemeanor case shall consist of six members.*

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

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

10 (5) *Except as otherwise provided by law, the rules and procedures*
 11 *applicable to jury trials in felony cases shall apply to jury trials in mis-*
 12 *demeanor cases.*

13 (b) *Trials in the municipal court of a city shall be to the court.*

14 (c) *The trial of cigarette or tobacco infraction or traffic infraction*
 15 *cases shall be to the court.*

16 Sec. 21. K.S.A. 2008 Supp. 38-2364 is hereby amended to read as
 17 follows: 38-2364. (a) If an extended jurisdiction juvenile prosecution re-
 18 sults in a guilty plea or finding of guilt, the court shall:

19 (1) Impose one or more juvenile sentences under K.S.A. 2008 Supp.
 20 38-2361, and amendments thereto; and

21 (2) impose an adult criminal sentence, the execution of which shall
 22 be stayed on the condition that the juvenile offender not violate the pro-
 23 visions of the juvenile sentence and not commit a new offense.

24 (b) When it appears that a person sentenced as an extended jurisdic-
 25 tion juvenile has violated ~~the one or more~~ conditions of the juvenile sen-
 26 tence or is alleged to have committed a new offense, the court, without
 27 notice, may revoke the stay and ~~probation juvenile sentence~~ and direct
 28 that the juvenile offender be immediately taken into custody and deliver-
 29 ed to the secretary of corrections pursuant to K.S.A. 21-4621, and
 30 amendments thereto. The court shall notify the juvenile offender and
 31 such juvenile offender's attorney of record, in writing by personal service,
 32 as provided in K.S.A. 60-303, and amendments thereto, or certified mail,
 33 return receipt requested, of the reasons alleged to exist for revocation of
 34 the stay of execution of the adult sentence. If the juvenile offender chal-
 35 lenges the reasons, the court shall hold a hearing on the issue at which
 36 the juvenile offender is entitled to be heard and represented by counsel.
 37 After the hearing, if the court finds by ~~substantial~~ *a preponderance of the*
 38 *evidence that the juvenile committed a new offense or violated one or*
 39 *more conditions of the juvenile's sentence ~~have been violated~~,* the court
 40 ~~shall~~ *may* revoke the juvenile sentence and order the imposition of the
 41 adult sentence previously ordered pursuant to subsection (a)(2). Upon
 42 such finding, the juvenile's extended jurisdiction status is terminated, and
 43 juvenile court jurisdiction is terminated. The ongoing jurisdiction for any

1 adult sanction, other than the commitment to the department of correc-
2 tions, is with the adult court. The juvenile offender shall be credited for
3 time served in a juvenile correctional or detention facility on the juvenile
4 sentence as service on any authorized adult sanction.

5 (c) Upon becoming 18 years of age, any juvenile who has been sen-
6 tenced pursuant to subsection (a) and is serving the juvenile sentence,
7 may move for a court hearing to review the sentence. If the sentence is
8 continued, the court shall set a date of further review in no later than 36
9 months.

10 Sec. 22. K.S.A. 2008 Supp. 38-2365 is hereby amended to read as
11 follows: 38-2365. (a) When a juvenile offender has been placed in the
12 custody of the commissioner, the commissioner shall have a reasonable
13 time to make a placement. If the juvenile offender has not been placed,
14 any party who believes that the amount of time elapsed without place-
15 ment has exceeded a reasonable time may file a motion for review with
16 the court. In determining what is a reasonable amount of time, matters
17 considered by the court shall include, but not be limited to, the nature
18 of the underlying offense, efforts made for placement of the juvenile
19 offender and the availability of a suitable placement. The commissioner
20 shall notify the court ~~and the juvenile offender's~~, *the juvenile's attorney*
21 *of record and the juvenile's parent*, in writing, of the initial placement and
22 any subsequent change of placement as soon as the placement has been
23 accomplished. The notice to the juvenile offender's parent shall be sent
24 to such parent's last known address or addresses. The court shall have no
25 power to direct a specific placement by the commissioner, but may make
26 recommendations to the commissioner. The commissioner may place the
27 juvenile offender in an institution operated by the commissioner, a youth
28 residential facility or any other appropriate placement. If the court has
29 recommended an out-of-home placement, the commissioner may not re-
30 turn the juvenile offender to the home from which removed without first
31 notifying the court of the plan.

32 (b) If a juvenile is in the custody of the commissioner, the commis-
33 sioner shall prepare and present a permanency plan at sentencing or
34 within 30 days thereafter. If a permanency plan is already in place under
35 a child in need of care proceeding, the court may adopt the plan under
36 the present proceeding. The written permanency plan shall provide for
37 reintegration of the juvenile into such juvenile's family or, if reintegration
38 is not a viable alternative, for other permanent placement of the juvenile.
39 Reintegration may not be a viable alternative when: (1) The parent has
40 been found by a court to have committed murder in the first degree,
41 K.S.A. 21-3401, and amendments thereto, murder in the second degree,
42 K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-
43 3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403,

1 and amendments thereto, of a child or violated a law of another state
2 which prohibits such murder or manslaughter of a child;

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

5 (3) the parent committed a felony battery that resulted in bodily in-
6 jury to the juvenile who is the subject of this proceeding or another child;

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

10 (5) the parental rights of the parent to another child have been ter-
11 minated involuntarily; or

12 (6) the juvenile has been in extended out-of-home placement as de-
13 fined in K.S.A. 2008 Supp. 38-2202, and amendments thereto.

14 (c) If the juvenile is placed in the custody of the commissioner, the
15 plan shall be prepared and submitted by the commissioner. If the juvenile
16 is placed in the custody of a facility or person other than the commis-
17 sioner, the plan shall be prepared and submitted by a court services of-
18 ficer. If the permanency goal is reintegration into the family, the per-
19 manency plan shall include measurable objectives and time schedules for
20 reintegration.

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

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

1 continued out-of-home placement is necessary for the juvenile's safety.

2 (f) Whenever a hearing is required under subsection (e), the court
3 shall notify all interested parties of the hearing date, the commissioner,
4 foster parent and preadoptive parent or relatives providing care for the
5 juvenile and hold a hearing. Individuals receiving notice pursuant to this
6 subsection shall not be made a party to the action solely on the basis of
7 this notice and opportunity to be heard. After providing the persons re-
8 ceiving notice an opportunity to be heard, the court shall determine
9 whether the juvenile's needs are being adequately met; whether services
10 set out in the permanency plan necessary for the safe return of the ju-
11 venile have been made available to the parent with whom reintegration
12 is planned; and whether reasonable efforts and progress have been made
13 to achieve the goals of the permanency plan.

14 (g) If the court finds reintegration continues to be a viable alternative,
15 the court shall determine whether and, if applicable, when the juvenile
16 will be returned to the parent. The court may rescind any of its prior
17 dispositional orders and enter any dispositional order authorized by this
18 code or may order that a new plan for the reintegration be prepared and
19 submitted to the court. If reintegration cannot be accomplished as ap-
20 proved by the court, the court shall be informed and shall schedule a
21 hearing pursuant to subsection (h). No such hearing is required when the
22 parent voluntarily relinquishes parental rights or agree to appointment of
23 a permanent guardian.

24 (h) When the court finds any of the following conditions exist, the
25 county or district attorney or the county or district attorney's designee
26 shall file a petition alleging the juvenile to be a child in need of care and
27 requesting termination of parental rights pursuant to the Kansas code for
28 care of children: (1) The court determines that reintegration is not a viable
29 alternative and either adoption or permanent guardianship might be in
30 the best interests of the juvenile;

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

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

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

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

42 (2) services set out in the case plan necessary for the safe return of
43 the juvenile have not been made available to the parent with whom re-

1 integration is planned; or

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

10 Sec. 23. K.S.A. 2008 Supp. 38-2373 is hereby amended to read as
11 follows: 38-2373. (a) *Actions by the court.* (1) When a juvenile offender
12 has been committed to a juvenile correctional facility, the clerk of the
13 court shall forthwith notify the commissioner of the commitment and
14 provide the commissioner with a certified copy of the complaint, the
15 journal entry of the adjudication and sentencing. The court shall provide
16 those items from the social file which could relate to a rehabilitative pro-
17 gram. If the court wishes to recommend placement of the juvenile of-
18 fender in a specific juvenile correctional facility, the recommendation
19 shall be included in the sentence. After the court has received notice of
20 the juvenile correctional facility designated as provided in subsection (b),
21 it shall be the duty of the court or the sheriff of the county to deliver the
22 juvenile offender to the facility at the time designated by the
23 commissioner.

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

30 (b) *Actions by the commissioner.* (1) Within three days after receiving
31 notice of commitment as provided in subsection (a), the commissioner
32 shall notify the committing court of the facility to which the juvenile
33 offender should be conveyed, and when to effect the immediate transfer
34 of ~~study~~ custody and control to the juvenile justice authority. The date of
35 admission shall be no more than five days after the notice to the com-
36 mitting court. Until received at the designated facility, the continuing
37 detention, custody, and control of and transport for a juvenile offender
38 sentenced to a direct commitment to a juvenile correctional facility shall
39 be the responsibility of the committing county.

40 (2) Except as provided by K.S.A. 2008 Supp. 38-2332, and amend-
41 ments thereto, the commissioner may make any temporary out-of-home
42 placement the commissioner deems appropriate pending placement of
43 the juvenile offender in a juvenile correctional facility, and the commis-

1 sioner shall notify the court, local law enforcement agency and school
2 district in which the juvenile will be residing if the juvenile is still required
3 to attend a secondary school of that placement.

4 (c) *Transfers.* During the time a juvenile offender remains committed
5 to a juvenile correctional facility, the commissioner may transfer the ju-
6 venile offender from one juvenile correctional facility to another.

7 Sec. 24. K.S.A. 2008 Supp. 60-1610 is hereby amended to read as
8 follows: 60-1610. A decree in an action under this article may include
9 orders on the following matters:

10 (a) *Minor children.* (1) *Child support and education.* The court shall
11 make provisions for the support and education of the minor children. The
12 court may modify or change any prior order, including any order issued
13 in a title IV-D case, within three years of the date of the original order
14 or a modification order, when a material change in circumstances is
15 shown, irrespective of the present domicile of the child or the parents. If
16 more than three years has passed since the date of the original order or
17 modification order, a material change in circumstance need not be shown.
18 The court may make a modification of child support retroactive to a date
19 at least one month after the date that the motion to modify was filed with
20 the court. Any increase in support ordered effective prior to the date the
21 court's judgment is filed shall not become a lien on real property pursuant
22 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
23 custodial arrangement ordered by the court, the court may order the child
24 support and education expenses to be paid by either or both parents for
25 any child less than 18 years of age, at which age the support shall ter-
26minate unless: (A) The parent or parents agree, by written agreement
27 approved by the court, to pay support beyond the time the child reaches
28 18 years of age; (B) the child reaches 18 years of age before completing
29 the child's high school education in which case the support shall not ter-
30minate automatically, unless otherwise ordered by the court, until June
31 30 of the school year during which the child became 18 years of age if
32 the child is still attending high school; or (C) the child is still a bona fide
33 high school student after June 30 of the school year during which the
34 child became 18 years of age, in which case the court, on motion, may
35 order support to continue through the school year during which the child
36 becomes 19 years of age so long as the child is a bona fide high school
37 student and the parents jointly participated or knowingly acquiesced in
38 the decision which delayed the child's completion of high school. The
39 court, in extending support pursuant to subsection (a)(1)(C), may impose
40 such conditions as are appropriate and shall set the child support utilizing
41 the guideline table category for 12-year through 18-year old children.
42 Provision for payment of support and educational expenses of a child after
43 reaching 18 years of age if still attending high school shall apply to any

1 child subject to the jurisdiction of the court, including those whose sup-
2 port was ordered prior to July 1, 1992. If an agreement approved by the
3 court prior to July 1, 1992, provides for termination of support before the
4 date provided by subsection (a)(1)(C), the court may review and modify
5 such agreement, and any order based on such agreement, to extend the
6 date for termination of support to the date provided by subsection
7 (a)(1)(C). For purposes of this section, “bona fide high school student”
8 means a student who is enrolled in full accordance with the policy of the
9 accredited high school in which the student is pursuing a high school
10 diploma or a graduate equivalency diploma (GED). In determining the
11 amount to be paid for child support, the court shall consider all relevant
12 factors, without regard to marital misconduct, including the financial re-
13 sources and needs of both parents, the financial resources and needs of
14 the child and the physical and emotional condition of the child. Until a
15 child reaches 18 years of age, the court may set apart any portion of
16 property of either the husband or wife, or both, that seems necessary and
17 proper for the support of the child. Except for good cause shown, every
18 order requiring payment of child support under this section shall require
19 that the support be paid through the central unit for collection and dis-
20 bursement of support payments designated pursuant to K.S.A. 23-4,118,
21 and amendments thereto. A written agreement between the parties to
22 make direct child support payments to the obligee and not pay through
23 the central unit shall constitute good cause, unless the court finds the
24 agreement is not in the best interest of the child or children. The obligor
25 shall file such written agreement with the court. The obligor shall main-
26 tain written evidence of the payment of the support obligation and, at
27 least annually, shall provide such evidence to the court and the obligee.
28 If the divorce decree of the parties provides for an abatement of child
29 support during any period provided in such decree, the child support
30 such nonresidential parent owes for such period shall abate during such
31 period of time, except that if the residential parent shows that the criteria
32 for the abatement has not been satisfied there shall not be an abatement
33 of such child support.

34 (2) *Child custody and residency. (A) Changes in custody.* Subject to
35 the provisions of the uniform child custody jurisdiction and enforcement
36 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
37 court may change or modify any prior order of custody, residency, visi-
38 tation and parenting time, when a material change of circumstances is
39 shown, but no ex parte order shall have the effect of changing residency
40 of a minor child from the parent who has had the sole de facto residency
41 of the child to the other parent unless there is sworn testimony to support
42 a showing of extraordinary circumstances. If an interlocutory order is
43 issued ex parte, the court shall hear a motion to vacate or modify the

1 order within 15 days of the date that a party requests a hearing whether
2 to vacate or modify the order.

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

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

9 (A) If the parties have entered into a parenting plan, it shall be pre-
10 sumed that the agreement is in the best interests of the child. This pre-
11 sumption may be overcome and the court may make a different order if
12 the court makes specific findings of fact stating why the agreed parenting
13 plan is not in the best interests of the child.

14 (B) In determining the issue of child custody, residency and parent-
15 ing time, the court shall consider all relevant factors, including but not
16 limited to:

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

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

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

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

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

26 (vi) the willingness and ability of each parent to respect and appre-
27 ciate the bond between the child and the other parent and to allow for a
28 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
31 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-
32 ments thereto, or any similar act in any other state, or under military or
33 federal law;

34 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
35 21-3609, and amendments thereto;

36 (x) whether a parent is residing with an individual who is subject to
37 registration requirements of the Kansas offender registration act, K.S.A.
38 22-4901, et seq., and amendments thereto, or any similar act in any other
39 state, or under military or federal law; and

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

42 (C) Neither parent shall be considered to have a vested interest in
43 the custody or residency of any child as against the other parent, regard-

1 less of the age of the child, and there shall be no presumption that it is
2 in the best interests of any infant or young child to give custody or resi-
3 dency to the mother.

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

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

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

12 (E) *If a court of competent jurisdiction within this state has entered*
13 *an order pursuant to the revised Kansas code for care of children regard-*
14 *ing custody or support of a child or children who are involved in a pro-*
15 *ceeding filed pursuant to this section, and such court has determined*
16 *pursuant to subsection (i)(2) of K.S.A. 38-226, and amendments thereto,*
17 *that the orders in that case shall become the custody orders in the divorce*
18 *case, such court shall file, after consultation with the judge presiding over*
19 *any proceeding filed pursuant to this section, a certified copy of the orders*
20 *with the civil case number in the caption and then close the case under*
21 *the revised Kansas code for care of children. Such orders shall be binding*
22 *on the parties, unless modified based on a material change in circum-*
23 *stances, even if such courts have different venues.*

24 (4) *Types of legal custodial arrangements.* Subject to the provisions
25 of this article, the court may make any order relating to custodial arrange-
26 ments which is in the best interests of the child. The order shall provide
27 one of the following legal custody arrangements, in the order of
28 preference:

29 (A) *Joint legal custody.* The court may order the joint legal custody
30 of a child with both parties. In that event, the parties shall have equal
31 rights to make decisions in the best interests of the child.

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

41 (5) *Types of residential arrangements.* After making a determination
42 of the legal custodial arrangements, the court shall determine the resi-
43 dency of the child from the following options, which arrangement the

1 court must find to be in the best interest of the child. The parties shall
2 submit to the court either an agreed parenting plan or, in the case of
3 dispute, proposed parenting plans for the court's consideration. Such op-
4 tions are:

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

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

11 (C) *Nonparental residency*. If during the proceedings the court de-
12 termines that there is probable cause to believe that the child is a child
13 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
14 of K.S.A. 2008 Supp. 38-2202, and amendments thereto, or that neither
15 parent is fit to have residency, the court may award temporary residency
16 of the child to a grandparent, aunt, uncle or adult sibling, or, another
17 person or agency if the court finds by written order that: (i) (a) The child
18 is likely to sustain harm if not immediately removed from the home;

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

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

23 (ii) reasonable efforts have been made to maintain the family unit
24 and prevent the unnecessary removal of the child from the child's home
25 or that an emergency exists which threatens the safety to the child. In
26 making such a residency order, the court shall give preference, to the
27 extent that the court finds it is in the best interests of the child, first to
28 awarding such residency to a relative of the child by blood, marriage or
29 adoption and second to awarding such residency to another person with
30 whom the child has close emotional ties. The court may make temporary
31 orders for care, support, education and visitation that it considers appro-
32 priate. Temporary residency orders are to be entered in lieu of temporary
33 orders provided for in K.S.A. 2008 Supp. 38-2243 and 38-2244, and
34 amendments thereto, and shall remain in effect until there is a final de-
35 termination under the revised Kansas code for care of children. An award
36 of temporary residency under this paragraph shall not terminate parental
37 rights nor give the court the authority to consent to the adoption of the
38 child. When the court enters orders awarding temporary residency of the
39 child to an agency or a person other than the parent, the court shall refer
40 a transcript of the proceedings to the county or district attorney. The
41 county or district attorney shall file a petition as provided in K.S.A. 2008
42 Supp. 38-2234, and amendments thereto, and may request termination
43 of parental rights pursuant to K.S.A. 2008 Supp. 38-2266, and amend-

1 ments thereto. The costs of the proceedings shall be paid from the general
2 fund of the county. When a final determination is made that the child is
3 not a child in need of care, the county or district attorney shall notify the
4 court in writing and the court, after a hearing, shall enter appropriate
5 custody orders pursuant to this section. If the same judge presides over
6 both proceedings, the notice is not required. Any disposition pursuant to
7 the revised Kansas code for care of children shall be binding and shall
8 supersede any order under this section.

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

16 (7) *Child health insurance coverage.* The court may order that each
17 parent execute any and all documents, including any releases, necessary
18 so that both parents may obtain information from and to communicate
19 with any health insurance provider regarding the health insurance cov-
20 erage provided by such health insurance provider to the child. The pro-
21 visions of this paragraph shall apply irrespective of which parent owns,
22 subscribes or pays for such health insurance coverage.

23 (b) *Financial matters.* (1) *Division of property.* The decree shall di-
24 vide the real and personal property of the parties, including any retire-
25 ment and pension plans, whether owned by either spouse prior to mar-
26 riage, acquired by either spouse in the spouse's own right after marriage
27 or acquired by the spouses' joint efforts, by: (A) A division of the property
28 in kind; (B) awarding the property or part of the property to one of the
29 spouses and requiring the other to pay a just and proper sum; or (C)
30 ordering a sale of the property, under conditions prescribed by the court,
31 and dividing the proceeds of the sale. Upon request, the trial court shall
32 set a valuation date to be used for all assets at trial, which may be the
33 date of separation, filing or trial as the facts and circumstances of the case
34 may dictate. The trial court may consider evidence regarding changes in
35 value of various assets before and after the valuation date in making the
36 division of property. In dividing defined-contribution types of retirement
37 and pension plans, the court shall allocate profits and losses on the non-
38 participant's portion until date of distribution to that nonparticipant. In
39 making the division of property the court shall consider the age of the
40 parties; the duration of the marriage; the property owned by the parties;
41 their present and future earning capacities; the time, source and manner
42 of acquisition of property; family ties and obligations; the allowance of
43 maintenance or lack thereof; dissipation of assets; the tax consequences

1 of the property division upon the respective economic circumstances of
2 the parties; and such other factors as the court considers necessary to
3 make a just and reasonable division of property. The decree shall provide
4 for any changes in beneficiary designation on: (A) Any insurance or an-
5 nuity policy that is owned by the parties, or in the case of group life
6 insurance policies, under which either of the parties is a covered person;
7 (B) any trust instrument under which one party is the grantor or holds a
8 power of appointment over part or all of the trust assets, that may be
9 exercised in favor of either party; or (C) any transfer on death or payable
10 on death account under which one or both of the parties are owners or
11 beneficiaries. Nothing in this section shall relieve the parties of the ob-
12 ligation to effectuate any change in beneficiary designation by the filing
13 of such change with the insurer or issuer in accordance with the terms
14 of such policy.

15 (2) *Maintenance*. The decree may award to either party an allowance
16 for future support denominated as maintenance, in an amount the court
17 finds to be fair, just and equitable under all of the circumstances. The
18 decree may make the future payments modifiable or terminable under
19 circumstances prescribed in the decree. The court may make a modifi-
20 cation of maintenance retroactive to a date at least one month after the
21 date that the motion to modify was filed with the court. In any event, the
22 court may not award maintenance for a period of time in excess of 121
23 months. If the original court decree reserves the power of the court to
24 hear subsequent motions for reinstatement of maintenance and such a
25 motion is filed prior to the expiration of the stated period of time for
26 maintenance payments, the court shall have jurisdiction to hear a motion
27 by the recipient of the maintenance to reinstate the maintenance pay-
28 ments. Upon motion and hearing, the court may reinstate the payments
29 in whole or in part for a period of time, conditioned upon any modifying
30 or terminating circumstances prescribed by the court, but the reinstatement
31 shall be limited to a period of time not exceeding 121 months. The
32 recipient may file subsequent motions for reinstatement of maintenance
33 prior to the expiration of subsequent periods of time for maintenance
34 payments to be made, but no single period of reinstatement ordered by
35 the court may exceed 121 months. Maintenance may be in a lump sum,
36 in periodic payments, on a percentage of earnings or on any other basis.
37 At any time, on a hearing with reasonable notice to the party affected,
38 the court may modify the amounts or other conditions for the payment
39 of any portion of the maintenance originally awarded that has not already
40 become due, but no modification shall be made without the consent of
41 the party liable for the maintenance, if it has the effect of increasing or
42 accelerating the liability for the unpaid maintenance beyond what was
43 prescribed in the original decree. Except for good cause shown, every

1 order requiring payment of maintenance under this section shall require
2 that the maintenance be paid through the central unit for collection and
3 disbursement of support payments designated pursuant to K.S.A. 23-
4 4,118, and amendments thereto. A written agreement between the parties
5 to make direct maintenance payments to the obligee and not pay through
6 the central unit shall constitute good cause. If child support and main-
7 tenance payments are both made to an obligee by the same obligor, and
8 if the court has made a determination concerning the manner of payment
9 of child support, then maintenance payments shall be paid in the same
10 manner.

11 (3) *Separation agreement.* If the parties have entered into a separa-
12 tion agreement which the court finds to be valid, just and equitable, the
13 agreement shall be incorporated in the decree. A separation agreement
14 may include provisions relating to a parenting plan. The provisions of the
15 agreement on all matters settled by it shall be confirmed in the decree
16 except that any provisions relating to the legal custody, residency, visita-
17 tion parenting time, support or education of the minor children shall be
18 subject to the control of the court in accordance with all other provisions
19 of this article. Matters settled by an agreement incorporated in the de-
20 cree, other than matters pertaining to the legal custody, residency, visi-
21 tation, parenting time, support or education of the minor children, shall
22 not be subject to subsequent modification by the court except: (A) As
23 prescribed by the agreement or (B) as subsequently consented to by the
24 parties.

25 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
26 party as justice and equity require. The court may order that the amount
27 be paid directly to the attorney, who may enforce the order in the attor-
28 ney's name in the same case.

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

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

42 Sec. 25. K.S.A. 60-3103 is hereby amended to read as follows: 60-
43 3103. (a) Any district court shall have jurisdiction over all proceedings

1 under the protection from abuse act. The right of a person to obtain relief
2 under the protection from abuse act shall not be affected by the person's
3 leaving the residence or household to avoid further abuse. Any petition
4 under this act seeking orders regarding a custody determination, as de-
5 fined in K.S.A. 38-1337, and amendments thereto, shall state that infor-
6 mation required by K.S.A. 38-1356, and amendments thereto, and the
7 basis under which child-custody jurisdiction is sought to be invoked.

8 *(b) Any custody or parenting time order, or order relating to the best*
9 *interests of a child, issued pursuant to the revised Kansas code for care*
10 *of children or the revised Kansas juvenile justice code, shall be binding*
11 *and shall take precedence over any order under article 31 of chapter 60*
12 *of the Kansas Statutes Annotated, and amendments thereto (protection*
13 *from abuse act), until jurisdiction under the revised Kansas code for care*
14 *of children or the revised Kansas juvenile justice code is terminated.*

15 Sec. 26. K.S.A. 60-3107 is hereby amended to read as follows: 60-
16 3107. (a) The court may approve any consent agreement to bring about
17 a cessation of abuse of the plaintiff or minor children or grant any of the
18 following orders:

19 (1) Restraining the defendant from abusing, molesting or interfering
20 with the privacy or rights of the plaintiff or of any minor children of the
21 parties. Such order shall contain a statement that if such order is violated,
22 such violation may constitute assault as provided in K.S.A. 21-3408, and
23 amendments thereto, battery as provided in K.S.A. 21-3412, and amend-
24 ments thereto, domestic battery as provided in K.S.A. 2005 Supp. 21-
25 3412a, and amendments thereto and violation of a protective order as
26 provided in K.S.A. 2005 Supp. 21-3843, and amendments thereto.

27 (2) Granting possession of the residence or household to the plaintiff
28 to the exclusion of the defendant, and further restraining the defendant
29 from entering or remaining upon or in such residence or household, sub-
30 ject to the limitation of subsection (d). Such order shall contain a state-
31 ment that if such order is violated, such violation shall constitute criminal
32 trespass as provided in subsection (c) of K.S.A. 21-3721, and amendments
33 thereto, and violation of a protective order as provided in K.S.A. 2005
34 Supp. 21-3843, and amendments thereto. The court may grant an order,
35 which shall expire 60 days following the date of issuance, restraining the
36 defendant from cancelling utility service to the residence or household.

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

39 (4) Awarding temporary custody and residency and establishing tem-
40 porary parenting time with regard to minor children.

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

43 (6) Ordering support payments by a party for the support of a party's

1 minor child, if the party is the father or mother of the child, or the plain-
2 tiff, if the plaintiff is married to the defendant. Such support orders shall
3 remain in effect until modified or dismissed by the court or until expi-
4 ration and shall be for a fixed period of time not to exceed one year. On
5 the motion of the plaintiff, the court may extend the effect of such order
6 for 12 months.

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

8 (8) Making provision for the possession of personal property of the
9 parties and ordering a law enforcement officer to assist in securing pos-
10 session of that property, if necessary.

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

13 (10) Ordering or restraining any other acts deemed necessary to pro-
14 mote the safety of the plaintiff or of any minor children of the parties.

15 (b) *If during the proceedings the court determines that there is prob-*
16 *able cause to believe that the child is a child in need of care as defined by*
17 *subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2007 Supp. 38-2202,*
18 *and amendments thereto, or that neither parent is fit to have residency,*
19 *the court may award temporary residency of the child to a grandparent,*
20 *aunt, uncle or adult sibling, or, another person or agency if the court finds*
21 *by written order that: (1)(A) The child is likely to sustain harm if not*
22 *immediately removed from the home; (B) allowing the child to remain in*
23 *home is contrary to the welfare of the child; or (C) immediate placement*
24 *of the child is in the best interest of the child; and (2) reasonable efforts*
25 *have been made to maintain the family unit and prevent the unnecessary*
26 *removal of the child from the child's home or that an emergency exists*
27 *which threatens the safety of the child. In making such a residency order,*
28 *the court shall give preference, to the extent that the court finds it is in*
29 *the best interests of the child, first to awarding such residency to a relative*
30 *of the child by blood, marriage or adoption and second to awarding such*
31 *residency to another person with whom the child has close emotional ties.*
32 *The court may make temporary orders for care, support, education and*
33 *visitation that it considers appropriate. Temporary residency orders are*
34 *to be entered in lieu of temporary orders provided for in K.S.A. 2008*
35 *Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain*
36 *in effect until there is a final determination under the revised Kansas code*
37 *for care of children. An award of temporary residency under this para-*
38 *graph shall not terminate parental rights nor give the court the authority*
39 *to consent to the adoption of the child. When the court enters orders*
40 *awarding temporary residency of the child to an agency or a person other*
41 *than the parent, the court shall refer a transcript of the proceedings to*
42 *the county or district attorney. The county or district attorney shall file*
43 *a petition as provided in K.S.A. 2008 Supp. 38-2234, and amendments*

1 *thereto, and may request termination of parental rights pursuant to K.S.A.*
2 *2008 Supp. 38- 2266, and amendments thereto. The costs of the proceed-*
3 *ings shall be paid from the general fund of the county.*
4 ~~(b)~~ (c) No protection from abuse order shall be entered against the
5 plaintiff unless:
6 (1) The defendant properly files a written cross or counter petition
7 seeking such a protection order;
8 (2) the plaintiff had reasonable notice of the written cross or counter
9 petition by personal service as provided in subsection (d) of K.S.A. 60-
10 3104, and amendments thereto; and
11 (3) the issuing court made specific findings of abuse against both the
12 plaintiff and the defendant and determined that both parties acted pri-
13 marily as aggressors and neither party acted primarily in self-defense.
14 ~~(c)~~ (d) Any order entered under the protection from abuse act shall
15 not be subject to modification on ex parte application or on motion for
16 temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq.,
17 or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously
18 issued in an action filed pursuant to K.S.A. 60-1601 et seq., or K.S.A. 38-
19 1101 et seq., and amendments thereto, shall be subject to modification
20 under the protection from abuse act only as to those matters subject to
21 modification by the terms of K.S.A. 60-1610 et seq., and amendments
22 thereto, and on sworn testimony to support a showing of good cause.
23 Immediate and present danger of abuse to the plaintiff or minor children
24 shall constitute good cause. If an action is filed pursuant to K.S.A. 60-
25 1610 et seq., or K.S.A. 38-1101 et seq., and amendments thereto, during
26 the pendency of a proceeding filed under the protection from abuse act
27 or while an order issued under the protection from abuse act is in effect,
28 the court, on final hearing or on agreement of the parties, may issue final
29 orders authorized by K.S.A. 60-1610 and amendments thereto, that are
30 inconsistent with orders entered under the protection from abuse act.
31 Any inconsistent order entered pursuant to this subsection shall be spe-
32 cific in its terms, reference the protection from abuse order and parts
33 thereof being modified and a copy thereof shall be filed in both actions.
34 The court shall consider whether the actions should be consolidated in
35 accordance with K.S.A. 60-242 and amendments thereto.
36 ~~(d)~~ (e) If the parties to an action under the protection from abuse act
37 are not married to each other and one party owns the residence or house-
38 hold, the court shall not have the authority to grant possession of the
39 residence or household under subsection (a)(2) to the exclusion of the
40 party who owns it.
41 ~~(e)~~ (f) Subject to the provisions of subsections (b), (c) and (d), a pro-
42 tective order or approved consent agreement shall remain in effect until
43 modified or dismissed by the court and shall be for a fixed period of time

1 not to exceed one year, except that, on motion of the plaintiff, such period
2 may be extended for one additional year.

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

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

7 ~~(h)~~ (i) If a person enters or remains on premises or property violating
8 an order issued pursuant to subsection (a)(2), such violation shall consti-
9 tute criminal trespass as provided in subsection (c) of K.S.A. 21-3721, and
10 amendments thereto, and violation of a protective order as provided in
11 K.S.A. 2005 Supp. 21-3843, and amendments thereto. If a person abuses,
12 molests or interferes with the privacy or rights of another violating an
13 order issued pursuant to subsection (a)(1), such violation may constitute
14 assault as provided in K.S.A. 21-3408, and amendments thereto, battery
15 as provided in K.S.A. 21-3412, and amendments thereto, domestic battery
16 as provided in K.S.A. 2005 Supp. 21-3412a, and amendments thereto,
17 and violation of a protective order as provided in K.S.A. 2005 Supp. 21-
18 3843, and amendments thereto.

19 Sec. 27. K.S.A. 38-1116, 60-3103 and 60-3107 and K.S.A. 2008 Supp.
20 38-1121, 38-2201, 38-2202, 38-2203, 38-2208, 38-2212, 38-2242, 38-
21 2243, 38-2251, 38-2255, 38-2258, 38-2264, 38-2272, 38-2279, 38-2304,
22 38-2305, 38-2344, 38-2357, 38-2364, 38-2365, 38-2373 and 60-1610 are
23 hereby repealed.

24 Sec. 28. This act shall take effect and be in force from and after its
25 publication in the statute book.