

SENATE BILL No. 631

By Committee on Federal and State Affairs

2-21

AN ACT concerning children in need of care; enacting the child abuse and neglect central registry act; amending K.S.A. 38-1513, 38-1514, 38-1521, 38-1523a, 38-1525, 38-1526, 38-1542, 38-1543, 38-1544, 38-1557, 38-1558, 38-1563 and 38-1567 and K.S.A. 2001 Supp. 38-1502, 38-1522 and 38-1583 and repealing the existing sections.

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

New Section 1. Sections 1 through 8 and amendments thereto shall be known and may be cited as the child abuse and neglect central registry act. Proceedings pursuant to this act shall be civil in nature.

New Sec. 2. As used in this act:

(a) "Alleged perpetrator" means the person identified in the petition as the person suspected of perpetrating an act of abuse or neglect.

(b) "Substantiated abuse or neglect" means that a petition alleging abuse or neglect has been confirmed by a court order pursuant to this act by clear and convincing evidence.

(c) "Substantiated perpetrator" means a person who has been determined by a judgment of the court pursuant to this act by clear and convincing evidence to have committed a substantiated act of abuse or neglect.

(d) "Validated" means a judgment by a district court of this state that a substantiated perpetrator poses a danger to children and should not be permitted to operate, reside in, be employed by, or volunteer in a home or facility for the care of children licensed under provisions of article 5 of chapter 65 of the Kansas statutes annotated, notwithstanding any other provision of law to the contrary.

(e) "Investigation" means the gathering and assessing of information to determine if a child has been abused or neglected.

(f) "Act" means the child abuse and neglect central registry act.

(g) "Child abuse and neglect central registry" means a list maintained by the department of social and rehabilitation services of persons validated as substantiated perpetrators of child abuse, neglect or sexual abuse by court order pursuant to this act.

(h) All other terms shall have the meanings as defined in K.S.A. 38-1502, and amendments thereto.

1 New Sec. 3. (a) The district or county attorney may file in the district
2 court of the county of the residence or presence of the alleged perpetrator
3 a verified petition for an order stating that such perpetrator meets the
4 definition of a substantiated perpetrator and that such perpetrator's name
5 be entered in the child abuse and neglect central registry.

6 (b) The petition alleging the alleged perpetrator meets the definition
7 of a substantiated perpetrator shall state:

8 (1) The belief that the alleged perpetrator has committed a significant
9 act or acts of abuse, sexual abuse or neglect; and stating sufficient facts
10 to support such allegation;

11 (2) the name, age, residence and present address of the alleged
12 perpetrator;

13 (3) the names and addresses of witnesses by whom the truth of the
14 petition may be proved;

15 (4) to the extent known, whether or not the alleged perpetrator is
16 able to pay for medical services, or if not known, any information the
17 prosecutor might have about the alleged perpetrator's financial circum-
18 stances or indigency;

19 (5) to the extent known, the name and address of any person who
20 has custody of the alleged victim, and any known pending criminal charge
21 or charges or of any arrest warrant or warrants outstanding or, if there
22 are none, that fact or if not known, any information the prosecutor might
23 have about any current criminal justice system involvement with the al-
24 leged perpetrator; and

25 (6) a request that the court make a determination that the alleged
26 perpetrator is a substantiated perpetrator and that such perpetrator's
27 name be entered into the child abuse and neglect central registry.

28 New Sec. 4. Upon the filing of the petition provided for in section
29 3, and amendments thereto, the district court shall issue the following:

30 (a) An order fixing the time and place of the hearing on the petition.
31 The time designated in the order shall in no event be later than 60 days
32 after the date of the filing of the petition.

33 (b) An order that the alleged perpetrator appear at the time and place
34 of the hearing. If the alleged victim or any witness is a child less than 13
35 years of age, the court may order that the testimony of the child or witness
36 be taken pursuant to K.S.A. 38-1558, and amendments thereto.

37 (c) An order appointing an attorney to represent the alleged victim
38 at all stages of the proceedings. The court shall give preference, in the
39 appointment of the attorney, to any attorney who has represented the
40 alleged victim in other matters if the court has knowledge of the prior
41 relationship. The alleged victim shall have the right to choose and to
42 engage an attorney and, in such an event, the attorney appointed herein
43 shall be relieved of all duties by the court.

1 (d) An order appointing an attorney to represent the alleged perpe-
2 trator at all stages of the proceeding if the court finds the alleged per-
3 petrator is indigent. Costs shall be paid by the county where the case is
4 being heard.

5 (e) A notice in the manner provided for in section 6, and amendments
6 thereto.

7 (f) An order for investigation. Such order shall be served on the al-
8 leged perpetrator at the same time or after notice is given. It shall be
9 served in the manner provided for in section 5, and amendments thereto.
10 It shall order the alleged perpetrator to submit to a mental evaluation
11 performed by a private psychiatrist, physician or other qualified mental
12 health professional, as defined in K.S.A. 59-2946, and amendments
13 thereto, designated by the court in the order. An institution within the
14 department of social and rehabilitation services shall receive and evaluate
15 any alleged perpetrator ordered evaluated therein. At the time designated
16 by the court in the order, the examiner shall submit to the court a report,
17 in writing, of the evaluation which report also shall be made available to
18 counsel for the parties. Such report shall state that the examiner has made
19 an independent evaluation and examination of the alleged perpetrator
20 and shall state the results of the mental health examination. There shall
21 be an investigation of pertinent facts and events related to the alleged
22 abuse. Such investigative findings shall be submitted to the court in the
23 form of a report. Copies of both reports shall be given to the alleged
24 perpetrator at least 72 hours prior to the hearing.

25 New Sec. 5. (a) The notice provided by section 4, and amendments
26 thereto, shall be given to the alleged perpetrator named in the petition,
27 the attorney of the alleged perpetrator, if any, and to such other persons
28 as the court shall direct. If the alleged perpetrator has a spouse, natural
29 guardian, custodian, guardian or conservator notice shall also be given to
30 them.

31 (1) The notice shall state:

32 (A) That a petition has been filed, alleging that the alleged perpe-
33 trator is a substantiated perpetrator;

34 (B) the time and place of the hearing;

35 (C) the name of the attorney, if any, appointed to represent the al-
36 leged perpetrator and the time and place where the alleged perpetrator
37 shall consult with such attorney; and

38 (D) that the alleged perpetrator has a right to demand a hearing be-
39 fore a jury.

40 (2) The court may order any of the following to serve the notice:

41 (A) The physician, psychiatrist or qualified mental health professional
42 currently administering to the alleged perpetrator provided such profes-
43 sional consents;

1 (B) any law enforcement officer; or

2 (C) the attorney of the alleged perpetrator.

3 (b) The notice shall be served personally on the alleged perpetrator
4 and the attorney of the alleged perpetrator, if any, not less than 20 days
5 prior to the date of the hearing and immediate return thereof shall be
6 made. If the alleged perpetrator may not be personally served within the
7 state, the court may direct notice be given to the alleged perpetrator in
8 such manner and for such a period of time as the court shall deem rea-
9 sonable. Notice required to be given to any other person shall be given
10 in such manner and for such a period of time as the court shall deem
11 reasonable. If the alleged perpetrator is a patient in any psychiatric hos-
12 pital notice by mail shall be given to the head of the hospital.

13 New Sec. 6. (a) Trial upon the petition shall be held at the time and
14 place specified in the court's order issued pursuant to section 5, and
15 amendments thereto. The hearing shall be held to the court only, unless
16 the alleged perpetrator at least four days prior to the time set for the
17 hearing, demands, in writing, a jury trial.

18 (b) The jury, if one is demanded, shall consist of six persons. The jury
19 panel shall be selected as provided by law. Notwithstanding the provision
20 within K.S.A. 43-166, and amendments thereto, otherwise, a panel of
21 prospective jurors may be assembled by the clerk upon less than 30 days'
22 notice in this circumstance. From such panel 12 qualified jurors, who
23 have been passed for cause, shall be empaneled. Prior service as a juror
24 in any court shall not exempt, for that reason alone, any person from jury
25 service hereunder. From the panel so obtained, the alleged perpetrator
26 or the alleged perpetrator's attorney shall strike one name; then the pros-
27 ecutor shall strike one name; and so on alternatively until each has
28 stricken three names so as to reach the jury of six persons. During this
29 process, if either party neglects or refuses to aid in striking the names,
30 the court shall strike a name on behalf of such party.

31 (c) The alleged perpetrator shall be present at the hearing unless the
32 attorney for the alleged perpetrator requests that the alleged perpetrator's
33 presence be waived. If the alleged victim or any witness is a child less
34 than 13 years of age, the court may order that the testimony of the child
35 or witness be taken pursuant to K.S.A. 38-1558, and amendments thereto.
36 The alleged perpetrator shall be afforded an opportunity to appear at the
37 hearing, to testify and to present and cross-examine witnesses. All persons
38 not necessary for the conduct of the proceedings may be excluded. The
39 hearings shall be conducted in as informal a manner as may be consistent
40 with orderly procedure and in a physical setting not likely to have a harm-
41 ful effect on the welfare of the alleged victim. The court shall receive all
42 relevant and material evidence which may be offered, including the tes-
43 timony or written findings and recommendations of the examiner who

1 evaluated the proposed patient pursuant to the court's order issued under
2 section 5, and amendments thereto. Such evidence shall not be privileged
3 for the purpose of this hearing.

4 (d) The rules governing evidentiary and procedural matters at hear-
5 ings under this section shall be applied in a manner so as to facilitate
6 informal, efficient presentation of all relevant, probative evidence and
7 resolution of issues with due regard to the interests of all parties.

8 (e) The county or district attorney shall prepare all necessary papers,
9 appear at the hearing and present such evidence as the county or district
10 attorney determines to be of aid to the court in determining whether or
11 not the proposed alleged perpetrator is a substantiated perpetrator sub-
12 ject to having such perpetrator's name entered into the child abuse and
13 neglect central registry.

14 New Sec. 7. (a) Upon completion of the trial, if the court or jury
15 finds by clear and convincing evidence that the alleged perpetrator is
16 validated as a substantiated perpetrator, the name of such validated per-
17 petrator shall not be entered into the child abuse and neglect central
18 registry until after the person has exhausted or failed to file an appeal to
19 the state appellate courts in the manner provided in article 21 of chapter
20 60 of the Kansas Statutes Annotated.

21 (b) If the court or jury finds from the evidence that the alleged per-
22 petrator has not been shown to be a substantiated perpetrator under this
23 act, the court shall terminate the proceedings. The department of social
24 and rehabilitation services shall not further pursue the case.

25 (c) A copy of the judgment of each case filed under this act shall be
26 provided to the secretary of social and rehabilitation services, or such
27 secretary's designee.

28 New Sec. 8. (a) Any validated perpetrator of abuse or neglect on the
29 registry pursuant to this act or a person on the registry prior to July 1,
30 2002, may apply in writing to the district court of the county of residence
31 of the substantiated perpetrator to have the perpetrator's name expunged
32 from the central registry when three years have passed since the most
33 recent judgment was entered against the validated perpetrator.

34 (b) A hearing shall be convened by the court, at which time the ap-
35 plicant may present evidence supporting expungement of the applicant's
36 name from the central registry. Evidence in support of or in opposition
37 to the application may be presented by the prosecutor in the original
38 action.

39 (c) The following factors shall be considered by the court in making
40 the court's ruling:

- 41 (1) The nature and severity of the confirmed act of abuse or neglect;
- 42 (2) the number of confirmations of abuse or neglect involving the
43 applicant;

1 (3) if the applicant was a child at the time of the validation for which
2 expungement is requested, the age of the applicant at the time of the
3 confirmed abuse or neglect;

4 (4) circumstances that no longer exist which contributed to the find-
5 ing of abuse or neglect by the applicant; and

6 (5) actions taken by the applicant to prevent the reoccurrence of acts
7 or abuse or neglect.

8 (d) The hearing shall be set within 30 days from the date the appli-
9 cation for expungement is received by the district court. A written notice
10 shall be sent to the applicant, the prosecutor in the original action, the
11 child the applicant abused or neglected, the person or agency who rep-
12 resented the petitioner in the original action and the secretary of social
13 and rehabilitation services, or such secretary's designee, at least 10 days
14 prior to the hearing. The notice shall state the day, hour and place of the
15 hearing. Continuances may be granted only for good cause. Any party
16 given notice of the proceeding shall have the right to be heard and present
17 evidence at the hearing.

18 (e) An order granting or denying the petition for expungement shall
19 be sent to the applicant, the secretary of social and rehabilitation services,
20 the prosecutor in the original action and the child the applicant abused
21 or neglected, and shall be rendered by the court within 60 days from the
22 date of the hearing. The order shall be in writing and shall set forth the
23 reasons for the decision.

24 (f) Records may be expunged from the central registry by the district
25 court when 18 years have passed since the most recent confirmed
26 incident.

27 New Sec. 9. Annually, on or before the first day of the regular session
28 of the legislature, the secretary of the department of social and rehabili-
29 tation services shall prepare and submit a report to the legislature con-
30 cerning family preservation services. Such report shall include statistics
31 concerning the number of referrals for family preservation services; the
32 outcome of all such referrals; the number and age of such children refer-
33 red; the number of families; the number of family members; the num-
34 ber of successful family preservations defined as a child remaining with
35 a parent or parents for a period of 12 months after completion of the
36 program; and the number of failures including a brief description of why
37 the child or children were removed from the home.

38 Sec. 10. K.S.A. 2001 Supp. 38-1502 is hereby amended to read as
39 follows: 38-1502. As used in this code, unless the context otherwise
40 indicates:

41 (a) "Child in need of care" means a person less than 18 years of age
42 who:

43 (1) Is without adequate parental care, control or subsistence and the

1 condition is not due solely to the lack of financial means of the child's
2 parents or other custodian;

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

5 (3) has been ~~physically, mentally or emotionally abused or neglected~~
6 ~~or sexually~~ abused;

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

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

9 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
10 and amendments thereto;

11 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)
12 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
13 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
14 4204a and amendments thereto, does an act which, when committed by
15 a person under 18 years of age, is prohibited by state law, city ordinance
16 or county resolution but which is not prohibited when done by an adult;

17 (8) while less than 10 years of age, commits any act which if done by
18 an adult would constitute the commission of a felony or misdemeanor as
19 defined by K.S.A. 21-3105 and amendments thereto;

20 (9) is willfully and voluntarily absent from the child's home without
21 the consent of the child's parent or other custodian;

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

27 (11) has been residing in the same residence with a sibling or another
28 person under 18 years of age, who has been ~~physically, mentally or emo-~~
29 ~~tionally~~ abused or neglected, or sexually abused; or

30 (12) while less than 10 years of age commits the offense defined in
31 K.S.A. 21-4204a and amendments thereto.

32 (b) ~~“Physical, mental or emotional abuse” means the infliction of~~
33 ~~physical, mental or emotional injury or the causing of a deterioration of~~
34 ~~a child and may include, but shall not be limited to, maltreatment or~~
35 ~~exploiting a child to the extent that the child's health or emotional well-~~
36 ~~being is endangered. “Abuse” or “abused” includes the following acts or~~
37 ~~omissions by a person:~~

38 (1) *Mental or emotional injury to a child that results in an observable*
39 *and material impairment in the child's growth, development or psycho-*
40 *logical functioning as observed by a physician or psychiatrist;*

41 (2) *causing or permitting the child to be in a situation in which the*
42 *child sustains a mental or emotional injury that results in an observable*
43 *and material impairment in the child's growth, development or psycho-*

1 *logical functioning as observed by a physician or psychiatrist;*
2 *(3) physical injury that results in substantial harm to the child, or the*
3 *genuine threat of substantial harm from physical injury to the child, in-*
4 *cluding an injury that is a variance with the history or explanation given*
5 *and excluding an accident or reasonable discipline by a parent or guard-*
6 *ian that does not expose the child to a substantial risk of harm;*

7 *(4) failure to make a reasonable effort to prevent an action by another*
8 *person that results in physical injury that results in substantial harm to*
9 *the child;*

10 *(5) sexual abuse.*

11 (c) “Sexual abuse” means any act committed with a child which is
12 described in article 35, chapter 21 of the Kansas Statutes Annotated and
13 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
14 thereto, regardless of the age of the child.

15 (d) “Parent,” when used in relation to a child or children, includes a
16 guardian, conservator and every person who is by law liable to maintain,
17 care for or support the child.

18 (e) “Interested party” means the state, the petitioner, the child, any
19 parent, any grandparent and any person found to be an interested party
20 pursuant to K.S.A. 38-1541 and amendments thereto.

21 (f) “Law enforcement officer” means any person who by virtue of
22 office or public employment is vested by law with a duty to maintain
23 public order or to make arrests for crimes, whether that duty extends to
24 all crimes or is limited to specific crimes.

25 (g) “Youth residential facility” means any home, foster home or struc-
26 ture which provides 24-hour-a-day care for children and which is licensed
27 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

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

33 (i) “Juvenile detention facility” means any secure public or private
34 facility used for the lawful custody of accused or adjudicated juvenile
35 offenders which must not be a jail.

36 (j) “Adult correction facility” means any public or private facility, se-
37 cure or nonsecure, which is used for the lawful custody of accused or
38 convicted adult criminal offenders.

39 (k) “Secure facility” means a facility which is operated or structured
40 so as to ensure that all entrances and exits from the facility are under the
41 exclusive control of the staff of the facility, whether or not the person
42 being detained has freedom of movement within the perimeters of the
43 facility, or which relies on locked rooms and buildings, fences or physical

1 restraint in order to control behavior of its residents. No secure facility
2 shall be in a city or county jail.

3 (l) "Ward of the court" means a child over whom the court has ac-
4 quired jurisdiction by the filing of a petition pursuant to this code and
5 who continues subject to that jurisdiction until the petition is dismissed
6 or the child is discharged as provided in K.S.A. 38-1503 and amendments
7 thereto.

8 (m) "Custody," whether temporary, protective or legal, means the
9 status created by court order or statute which vests in a custodian,
10 whether an individual or an agency, the right to physical possession of
11 the child and the right to determine placement of the child, subject to
12 restrictions placed by the court.

13 (n) "Placement" means the designation by the individual or agency
14 having custody of where and with whom the child will live.

15 (o) "Secretary" means the secretary of social and rehabilitation
16 services.

17 (p) "Relative" means a person related by blood, marriage or adoption
18 but, when referring to a relative of a child's parent, does not include the
19 child's other parent.

20 (q) "Court-appointed special advocate" means a responsible adult
21 other than an attorney guardian *ad litem* who is appointed by the court
22 to represent the best interests of a child, as provided in K.S.A. 38-1505a
23 and amendments thereto, in a proceeding pursuant to this code.

24 (r) "Multidisciplinary team" means a group of persons, appointed by
25 the court or by the state department of social and rehabilitation services
26 under K.S.A. 38-1523a and amendments thereto, which has knowledge
27 of the circumstances of a child in need of care. A multidisciplinary team
28 may serve as a community services team.

29 (s) "Jail" means:

30 (1) An adult jail or lockup; or

31 (2) a facility in the same building or on the same grounds as an adult
32 jail or lockup, unless the facility meets all applicable standards and licen-
33 sure requirements under law and there is (A) total separation of the ju-
34 venile and adult facility spatial areas such that there could be no haphaz-
35 ard or accidental contact between juvenile and adult residents in the
36 respective facilities; (B) total separation in all juvenile and adult program
37 activities within the facilities, including recreation, education, counseling,
38 health care, dining, sleeping, and general living activities; and (C) separate
39 juvenile and adult staff, including management, security staff and direct
40 care staff such as recreational, educational and counseling.

41 (t) "Kinship care" means the placement of a child in the home of the
42 child's relative or in the home of another adult with whom the child or
43 the child's parent already has a close emotional attachment.

1 (u) “Juvenile intake and assessment worker” means a responsible
2 adult authorized to perform intake and assessment services as part of the
3 intake and assessment system established pursuant to K.S.A. 75-7023, and
4 amendments thereto.

5 (v) “Abandon” means to forsake, desert or cease providing care for
6 the child without making appropriate provisions for substitute care.

7 (w) “Permanent guardianship” means a judicially created relationship
8 between child and caretaker which is intended to be permanent and self-
9 sustaining without ongoing state oversight or intervention by the secre-
10 tary. The permanent guardian stands in loco parentis and exercises all the
11 rights and responsibilities of a parent. A permanent guardian may be
12 appointed after termination of parental rights or without termination of
13 parental rights, if the parent consents and agrees to the appointment of
14 a permanent guardian. Upon appointment of a permanent guardian, the
15 child shall be discharged from the custody of the secretary.

16 (x) “Aggravated circumstances” means the abandonment, torture,
17 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

18 (y) “Permanency hearing” means a notice and opportunity to be
19 heard is provided to interested parties, foster parents, preadoptive parents
20 or relatives providing care for the child. The court, after consideration of
21 the evidence, shall determine whether progress toward the case plan goal
22 is adequate or reintegration is a viable alternative, or if the case should
23 be referred to the county or district attorney for filing of a petition to
24 terminate parental rights or to appoint a permanent guardian.

25 (z) “Extended out of home placement” means a child has been in the
26 custody of the secretary and placed with neither parent for 15 of the most
27 recent 22 months beginning 60 days after the date at which a child in the
28 custody of the secretary was removed from the home.

29 (aa) “Educational institution” means all schools at the elementary and
30 secondary levels.

31 (bb) “Educator” means any administrator, teacher or other profes-
32 sional or paraprofessional employee of an educational institution who has
33 exposure to a pupil specified in subsection (a) of K.S.A. 2001 Supp. 72-
34 89b03 and amendments thereto.

35 (cc) “Neglect” means acts or omissions by a parent, guardian or per-
36 son responsible for the care of a child resulting in harm to a child or
37 presenting a ~~likelihood of~~ *substantial risk of substantial* harm and the acts
38 or omissions are not due solely to the lack of financial means of the child’s
39 parents or other custodian. Neglect may include but shall not be limited
40 to:

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

43 (2) failure to provide adequate supervision of a child or to remove a

1 child from a situation which requires judgment or actions beyond the
2 child's level of maturity, physical condition or mental abilities and that
3 results in bodily injury or a ~~likelihood of~~ *substantial risk of substantial*
4 harm to the child; or

5 (3) failure to use resources available to treat a diagnosed medical
6 condition if such treatment will make a child substantially more com-
7 fortable, reduce pain and suffering, correct or substantially diminish a
8 crippling condition from worsening. A parent legitimately practicing re-
9 ligious beliefs who does not provide specified medical treatment for a
10 child because of religious beliefs shall not for that reason be considered
11 a negligent parent; however, this exception shall not preclude a court from
12 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
13 amendments thereto.

14 (dd) "Community services team" means a group of persons, ap-
15 pointed by the court or by the state department of social and rehabilita-
16 tion services for the purpose of assessing the needs of a child who is
17 alleged to be a child in need of care.

18 (ee) "Accident" means an unforeseen event that causes or threatens
19 physical injury despite prudent efforts to avoid the risk of injury.

20 (ff) "Genuine threat" means a verbal or behavioral expression of in-
21 tent that appears true or believable.

22 (gg) "...Reasonable discipline...that does not expose the child to a sub-
23 stantial risk of harm..." means correction of a child's behavior that does
24 not result in or risk substantial harm from physical injury. Spanking on
25 a child's buttocks shall be considered reasonable discipline.

26 (hh) "...Reasonable effort to prevent..." means actions that an ordi-
27 nary and prudent person would take to stop an event from occurring.

28 (ii) "Substantial harm" means real and significant physical injury or
29 damage to a child including, but is not limited to, bruises, cuts, welts, skull
30 or other bone fractures, brain damage, subdural hemotoma, internal in-
31 juries, burns, scalds, wounds, poisoning, human bites, concussions and
32 dislocations and sprains.

33 (jj) "Substantial risk" means real and significant probability.

34 Sec. 11. K.S.A. 38-1513 is hereby amended to read as follows: 38-
35 1513. (a) *Physical or mental care and treatment.* (1) When a child less
36 than 18 years of age is alleged to have been physically, mentally or emo-
37 tionally abused or neglected ~~or sexually abused~~, no consent shall be re-
38 quired to medically examine the child to determine whether the child has
39 been maltreated.

40 (2) When the health or condition of a child who is a ward of the court
41 requires it, the court may consent to the performing and furnishing of
42 hospital, medical, surgical or dental treatment or procedures, including
43 the release and inspection of medical or dental records. A child, or parent

1 of any child, who is opposed to certain medical procedures authorized by
2 this subsection may request an opportunity for a hearing thereon before
3 the court. Subsequent to the hearing, the court may limit the performance
4 of matters provided for in this subsection or may authorize the perform-
5 ance of those matters subject to terms and conditions the court considers
6 proper.

7 (3) Prior to disposition the person having custody of the child may
8 give consent to the following:

9 (A) Dental treatment for the child by a licensed dentist;

10 (B) diagnostic examinations of the child, including but not limited to
11 the withdrawal of blood or other body fluids, x-rays and other laboratory
12 examinations;

13 (C) releases and inspections of the child's medical history records;

14 (D) immunizations for the child;

15 (E) administration of lawfully prescribed drugs to the child; and

16 (F) examinations of the child including, but not limited to, the with-
17 drawal of blood or other body fluids or tissues, for the purpose of deter-
18 mining the child's parentage.

19 (4) When the court has granted legal custody of a child in a disposi-
20 tional hearing to any agency, association or individual, the custodian or
21 an agent designated by the custodian shall have authority to consent to
22 the performance and furnishing of hospital, medical, surgical or dental
23 treatment or procedures or mental care or treatment other than inpatient
24 treatment at a state psychiatric hospital, including the release and in-
25 spection of medical or hospital records, subject to terms and conditions
26 the court considers proper.

27 (5) If a child is in the custody of the secretary, the secretary may
28 consent to the mental care and treatment of the child, without court
29 approval, so long as such care and treatment do not include inpatient
30 treatment at a state psychiatric hospital.

31 (6) Any health care provider who in good faith renders hospital, med-
32 ical, surgical, mental or dental care or treatment to any child after a con-
33 sent has been obtained as authorized by this section shall not be liable in
34 any civil or criminal action for failure to obtain consent of a parent.

35 (7) Nothing in this section shall be construed to mean that any person
36 shall be relieved of legal responsibility to provide care and support for a
37 child.

38 (b) *Mental care and treatment requiring court action.* If it is brought
39 to the court's attention, while the court is exercising jurisdiction over the
40 person of a child under this code, that the child may be a mentally ill
41 person as defined in K.S.A. ~~2000~~ 2001 Supp. 59-2946 and amendments
42 thereto, the court may:

43 (1) Direct or authorize the county or district attorney or the person

1 supplying the information to file the petition provided for in K.S.A. ~~2000~~
2 ~~2001~~ Supp. 59-2957 and amendments thereto and proceed to hear and
3 determine the issues raised by the application as provided in the care and
4 treatment act for mentally ill persons; or

5 (2) authorize that the child seek voluntary admission to a treatment
6 facility as provided in K.S.A. ~~2000~~ ~~2001~~ Supp. 59-2949 and amendments
7 thereto.

8 The application to determine whether the child is a mentally ill person
9 may be filed in the same proceedings as the petition alleging the child to
10 be a child in need of care, or may be brought in separate proceedings. In
11 either event the court may enter an order staying any further proceedings
12 under this code until all proceedings have been concluded under the care
13 and treatment act for mentally ill persons.

14 Sec. 12. K.S.A. 38-1514 is hereby amended to read as follows: 38-
15 1514. (a) *Of child.* (1) *Psychological or emotional.* During proceedings
16 under this code, the court, on its own motion or the motion of the guard-
17 ian *ad litem* for the child, may order an evaluation and written report of
18 the psychological or emotional development or needs of a child who is
19 the subject of the proceedings. The court may refer the child to a state
20 institution for the evaluation if the secretary advises the court that the
21 facility is a suitable place to care for, treat or evaluate the child and that
22 space is available. The expenses of transportation to and from the state
23 facility may be paid as a part of the expenses of temporary care and
24 custody. The child may be referred to a mental health center or qualified
25 professional for evaluation and the expenses of the evaluation may be
26 considered as expenses of the proceedings and assessed as provided in
27 this code. If the court orders an evaluation as provided in this section, a
28 parent of the child shall have the right to obtain an independent evalua-
29 tion at the expense of the parent.

30 (2) *Medical.* During proceedings under this code, the court may or-
31 der an examination and report of the medical condition and needs of a
32 child who is the subject of the proceedings. The court may also order a
33 report from any physician who has been attending the child stating the
34 diagnosis, condition and treatment afforded the child.

35 (3) *Educational.* The court may order the chief administrative officer
36 of the school which the child attends or attended to provide to the court
37 information that is readily available which the school officials believe
38 would properly indicate the educational needs of the child. The order
39 may direct that the school conduct an educational needs assessment of
40 the child and send a report of the assessment to the court. The educa-
41 tional needs assessment may include a meeting involving any of the fol-
42 lowing: The child's parents, the child's teachers, the school psychologist,
43 a school special services representative, a representative of the secretary,

1 the child's C.A.S.A., the child's foster parents or legal guardian, a court
2 services officer, and other persons that the chief administrative officer of
3 the school or the officer's designee considers appropriate.

4 (b) *Of parent or custodian.* (1) *Physical, psychological or emotional.*
5 During proceedings under this code, the court may order an examination,
6 evaluation and report of the physical, mental or emotional status or needs
7 of a parent or any other relative being considered as one to whom the
8 court may grant custody. Written reports and other materials relating to
9 the examination and evaluation may be considered by the court but, if
10 requested by any interested party in attendance, the court shall require
11 the person preparing the report or other material to appear and testify.

12 (2) *Parenting skills.* At any dispositional hearing, the court may re-
13 ceive and consider written reports from any physician or qualified person
14 concerning the parenting skills or ability to provide for the physical, men-
15 tal or emotional needs and future development of a child by a parent or
16 other relative being considered for custody. If requested by any interested
17 party in attendance at the dispositional hearing, the court shall require
18 the person preparing the report to appear and testify.

19 (3) *If the court orders an evaluation under this subsection, the court*
20 *may order that expenses of the evaluation shall be paid by the department*
21 *of social and rehabilitation services if the court finds that the parent or*
22 *other relative being considered for custody is indigent.*

23 (c) *Confidentiality of reports.* (1) *Reports of court ordered examina-*
24 *tion or evaluation.* No confidential relationship of physician and patient,
25 psychologist and client or social worker and client shall arise from an
26 examination or evaluation ordered by the court.

27 (2) *Report from private physician, psychologist or therapist.* When
28 any interested party to proceedings under this code wishes the court to
29 have the benefit of information or opinion from a physician, psychologist,
30 registered marriage and family therapist or social worker with whom there
31 is a confidential relationship, the interested party may waive the confi-
32 dential relationship but restrict the information to be furnished or testi-
33 mony to be given to those matters material to the issues before the court.
34 If requested, the court may make an *in camera* examination of the pro-
35 posed witness or the file of the proposed witness and excise any matters
36 that are not material to the issues before the court.

37 Sec. 13. K.S.A. 38-1521 is hereby amended to read as follows: 38-
38 1521. It is the policy of this state to provide for the protection of children
39 who have been subject to ~~physical, mental or emotional~~ abuse or neglect
40 ~~or sexual abuse~~ by encouraging the reporting of suspected child abuse
41 and neglect, insuring the thorough and prompt investigation of these re-
42 ports and providing preventive and rehabilitative services when appro-
43 priate to abused or neglected children and their families so that, if pos-

1 sible, the families can remain together without further threat to the
2 children.

3 The secretary, within the limit of appropriations therefor, shall conduct
4 a continuing publicity and educational program for local staff of the de-
5 partment of social and rehabilitation services, persons required to report
6 under this code and other appropriate persons. The program shall include
7 courses which encourage the reporting of cases of children suspected of
8 having been injured as a result of ~~physical, mental or emotional~~ abuse or
9 neglect ~~or sexual abuse~~. In addition, the courses shall include an analysis
10 of the powers and duties granted under this code, the methods of diag-
11 nosing injuries inflicted as a result of abuse, the procedures followed by
12 the department of social and rehabilitation services in carrying out its
13 duties under this code and the role of the courts in this area of the law.

14 Sec. 14. K.S.A. 2001 Supp. 38-1522 is hereby amended to read as
15 follows: 38-1522. (a) When any of the following persons has reason to
16 suspect that a child has been injured as a result of ~~physical, mental or~~
17 ~~emotional~~ abuse or neglect ~~or sexual abuse~~, the person shall report the
18 matter promptly as provided in subsection (c) or (e): Persons licensed to
19 practice the healing arts or dentistry; persons licensed to practice optom-
20 etry; persons engaged in postgraduate training programs approved by the
21 state board of healing arts; licensed psychologists; licensed masters level
22 psychologists; licensed clinical psychotherapists; licensed professional or
23 practical nurses examining, attending or treating a child under the age of
24 18; teachers, school administrators or other employees of a school which
25 the child is attending; chief administrative officers of medical care facil-
26 ities; licensed marriage and family therapists; licensed clinical marriage
27 and family therapists; licensed professional counselors; licensed clinical
28 professional counselors; registered alcohol and drug abuse counselors;
29 persons licensed by the secretary of health and environment to provide
30 child care services or the employees of persons so licensed at the place
31 where the child care services are being provided to the child; licensed
32 social workers; firefighters; emergency medical services personnel; me-
33 diators appointed under K.S.A. 23-602 and amendments thereto; juvenile
34 intake and assessment workers; and law enforcement officers. The report
35 may be made orally and shall be followed by a written report if requested.
36 When the suspicion is the result of medical examination or treatment of
37 a child by a member of the staff of a medical care facility or similar
38 institution, that staff member shall immediately notify the superinten-
39 dent, manager or other person in charge of the institution who shall make
40 a written report forthwith. Every written report shall contain, if known,
41 the names and addresses of the child and the child's parents or other
42 persons responsible for the child's care, the child's age, the nature and
43 extent of the child's injury (including any evidence of previous injuries)

1 and any other information that the maker of the report believes might be
2 helpful in establishing the cause of the injuries and the identity of the
3 persons responsible for the injuries.

4 (b) Any other person who has reason to suspect that a child has been
5 injured as a result of ~~physical, mental or emotional~~ abuse or neglect ~~or~~
6 ~~sexual abuse~~ may report the matter as provided in subsection (c) or (e).

7 (c) Except as provided by subsection (e), reports made pursuant to
8 this section shall be made to the state department of social and rehabil-
9 itation services. When the department is not open for business, the re-
10 ports shall be made to the appropriate law enforcement agency. On the
11 next day that the state department of social and rehabilitation services is
12 open for business, the law enforcement agency shall report to the de-
13 partment any report received and any investigation initiated pursuant to
14 subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports
15 may be made orally or, on request of the department, in writing.

16 (d) Any person who is required by this section to report an injury to
17 a child and who knows of the death of a child shall notify immediately
18 the coroner as provided by K.S.A. 22a-242, and amendments thereto.

19 (e) Reports of child abuse or neglect occurring in an institution op-
20 erated by the secretary of social and rehabilitation services or the com-
21 missioner of juvenile justice shall be made to the attorney general. All
22 other reports of child abuse or neglect by persons employed by or of
23 children of persons employed by the state department of social and re-
24 habilitation services or the juvenile justice authority shall be made to the
25 appropriate law enforcement agency.

26 (f) Willful and knowing failure to make a report required by this sec-
27 tion is a class B misdemeanor.

28 (g) Preventing or interfering with, with the intent to prevent, the
29 making of a report required by this section is a class B misdemeanor.

30 Sec. 15. K.S.A. 38-1523a is hereby amended to read as follows: 38-
31 1523a. (a) Upon recommendation of the state department of social and
32 rehabilitation services or the county or district attorney, the court may
33 appoint a multidisciplinary team to assist in gathering information re-
34 garding a child alleged to be a child in need of care by reason of ~~physical,~~
35 ~~mental or emotional~~ abuse or neglect ~~or sexual abuse~~. The team may be
36 a standing multidisciplinary team or may be appointed for a specific child.

37 (b) Any person appointed as a member of a multidisciplinary team
38 may decline to serve and shall incur no civil liability as the result of de-
39 clining to serve.

40 (c) This section shall be part of and supplemental to the Kansas code
41 for care of children.

42 (d) The multidisciplinary team may request disclosure of information
43 in regard to a child alleged to be a child in need of care, or a child who

1 has been adjudged to be a child in need of care, by making a written
 2 verified application to the district court. Upon a finding by the court there
 3 is probable cause to believe the information sought may assist in deter-
 4 mining if a child is a child in need of care as defined in K.S.A. 38-1502
 5 and amendments thereto, or in assisting a child who has been adjudicated
 6 a child in need of care, then the court may issue a subpoena, subpoena
 7 duces tecum or enter an order for the production of the requested doc-
 8 uments, reports or information and directing the document, reports or
 9 information to be delivered to the applicant at a specified time, date and
 10 place. The time and date of delivery shall not be sooner than five days
 11 after the service of the subpoena or order, excluding Saturdays, Sundays
 12 or holidays. The court issuing the subpoena or order shall keep all appli-
 13 cations filed pursuant to this subsection and a copy of the subpoena or
 14 order in a special file maintained for such purpose or in the official court
 15 file for the child. Upon receiving service of a subpoena, subpoena duces
 16 tecum or an order for production pursuant to this subsection, the party
 17 served shall give oral or written notice of service to any person known to
 18 have a right to assert a privilege or assert a right of confidentiality in regard
 19 to the documents, reports or information sought at least three days before
 20 the specified date of delivery.

21 (e) The written verified application shall be in substantially the fol-
 22 lowing form:

23 Name of Court
 24 In the Interest of _____ Case No.
 25 Name(s)
 26 Date of birth: _____
 27 Each a child under 18 years of age.

28 WRITTEN APPLICATION FOR DISCLOSURE OF INFORMATION

29 County of _____
 30 ss
 31 State of Kansas

32 The undersigned applicant being first duly sworn alleges and states as follows:

- 33 1. The applicant is _____.
- 34 2. There is an investigation being made into the report of alleged neglect or abuse in
 35 regard to the above-named child or children.
 36 A petition has been filed alleging the above-named child is a child in need of care
 37 or the child has been adjudicated to be a child in need of care.
- 38 3. The following documents, reports and/or information are requested. (List specifi-
 39 cally.)
- 40 4. The reasons for the request are:
 41 Further applicant saith not.

42 _____
 43 Applicant

1 Subscribed and sworn to before me
 2 this _____ day of _____, 20_____.

3 _____
 4 Notary Public

5 My commission expires:
 6 _____

7 (f) Any parent, child, guardian ad litem, party subpoenaed or subject
 8 to an order of production or person who claims a privilege or right of
 9 confidentiality may request in writing that the court issuing the subpoena
 10 or order for production withdraw the subpoena, subpoena duces tecum
 11 or order for production issued pursuant to subsection (d). The request
 12 shall automatically stay the operation of the subpoena, subpoena duces
 13 tecum or order for production and the documents, reports or information
 14 requested shall not be delivered until the issuing court has held a hearing
 15 to determine if the documents, reports or information are subject to the
 16 claimed privilege or right of confidentiality, and whether it is in the best
 17 interests of the child for the subpoena or order to produce to be honored.
 18 The request to withdraw shall be filed with the district court issuing the
 19 subpoena or order at least 24 hours prior to the specified time and date
 20 of delivery, excluding Saturdays, Sundays or holidays, and a copy of the
 21 written request must be given to the person subpoenaed or subject to
 22 the order for production at least 24 hours prior to the specified time and
 23 date of delivery.

24 Sec. 16. K.S.A. 38-1525 is hereby amended to read as follows: 38-
 25 1525. (a) No employer shall terminate the employment of, prevent or
 26 impair the practice or occupation of or impose any other sanction on any
 27 employee because the employee made an oral or written report to, or
 28 cooperated with an investigation by, a law enforcement agency or the
 29 department of social and rehabilitation services relating to injury inflicted
 30 upon a child which was suspected by the employee of having resulted
 31 from the ~~physical, mental or emotional~~ abuse or neglect ~~or sexual abuse~~
 32 of the child.

33 (b) Violation of this section is a class B misdemeanor.

34 Sec. 17. K.S.A. 38-1526 is hereby amended to read as follows: 38-
 35 1526. Anyone participating without malice in the making of an oral or
 36 written report to a law enforcement agency or the department of social
 37 and rehabilitation services relating to injury inflicted upon a child under
 38 18 years of age as a result of ~~physical, mental or emotional~~ abuse or
 39 neglect ~~or sexual abuse~~ or in any follow-up activity to or investigation of
 40 the report shall have immunity from any civil liability that might otherwise
 41 be incurred or imposed. Any such participant shall have the same im-
 42 munity with respect to participation in any judicial proceedings resulting
 43 from the report.

1 Sec. 18. K.S.A. 38-1542 is hereby amended to read as follows: 38-
2 1542. (a) The court upon verified application may issue *ex parte* an order
3 directing that a child be held in protective custody and, if the child has
4 not been taken into custody, an order directing that the child be taken
5 into custody. The application shall state for each child:

6 (1) The applicant's belief that the child is a child in need of care and
7 that allowing the child to remain in the home is contrary to the welfare
8 of the child or placement is in the best interest of the child and that the
9 child is likely to sustain harm if not immediately afforded protective cus-
10 tody; and

11 (2) the facts which are relied upon to support the application, in-
12 cluding efforts known to the applicant, to maintain the family unit and
13 prevent the unnecessary removal of the child from the child's home, or
14 the specific facts supporting that an emergency exists which threatens the
15 safety of the child.

16 (b) (1) The order of protective custody may be issued only after the
17 court has determined there is probable cause to believe the allegations
18 in the application are true. The order shall remain in effect until the
19 temporary custody hearing provided for in K.S.A. 38-1543, and amend-
20 ments thereto, unless earlier rescinded by the court.

21 (2) No child shall be held in protective custody for more than 72
22 hours, excluding Saturdays, Sundays and legal holidays, unless within the
23 72-hour period a determination is made as to the necessity for temporary
24 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
25 shall be construed to mean that the child must remain in protective cus-
26 tody for 72 hours.

27 (c) Whenever the court determines the necessity for an order of pro-
28 tective custody, the court may place the child in the protective custody
29 of: (1) A parent or other person having custody of the child and may enter
30 a restraining order pursuant to subsection (e); (2) a person, other than
31 the parent or other person having custody, who shall not be required to
32 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
33 tated; (3) a youth residential facility; or (4) the secretary if the child is
34 alleged to be a child in need of care the court may award custody to the
35 secretary. However, if the secretary presents the court with a plan to
36 provide services to a child or family which the court finds will assure the
37 safety of the child, the court may only place the child in the protective
38 custody of the secretary until the court finds the services are in place.
39 The court shall have the authority to require any person or entity agreeing
40 to participate in the plan to perform as set out in the plan. When the
41 child is placed in the protective custody of the secretary, the secretary
42 shall have the discretionary authority to place the child with a parent or
43 to make other suitable placement for the child. When circumstances re-

1 quire, a child in protective custody may be placed in a juvenile detention
2 facility or other secure facility pursuant to an order of protective custody
3 for not to exceed 24 hours, excluding Saturdays, Sundays and legal holi-
4 days.

5 (d) The order of protective custody shall be served on the child's
6 parents and any other person having legal custody of the child. The order
7 shall prohibit all parties from removing the child from the court's juris-
8 diction without the court's permission.

9 (e) If the court issues an order of protective custody, the court may
10 also enter an order restraining any alleged perpetrator of ~~physical, sexual,~~
11 ~~mental or emotional~~ abuse of the child from residing in the child's home;
12 visiting, contacting, harassing or intimidating the child, other family mem-
13 ber or witness; or attempting to visit, contact, harass or intimidate the
14 child, other family member or witness. Such restraining order shall be
15 served on any alleged perpetrator to whom the order is directed.

16 (f) The court shall not enter an order removing a child from the
17 custody of a parent pursuant to this section unless the court first finds
18 from evidence presented by the petitioner that ~~reasonable efforts have~~
19 ~~been made to maintain the family unit and prevent the unnecessary re-~~
20 ~~moval of the child from the child's home or that an emergency exists~~
21 ~~which threatens the safety of the child and that remaining in the home is~~
22 ~~contrary to the welfare of the child or that immediate placement is in the~~
23 ~~best interest of the child.~~ *family preservation services have been utilized*
24 *in an attempt to keep the child from being removed from the home. If a*
25 *parent or parents refuse, in writing, to participate in family preservation,*
26 *such child or children may be removed from the home. Family preser-*
27 *vation services need not be utilized if there is evidence of physical aban-*
28 *donment, physical abuse, sexual abuse or when a parent has been con-*
29 *victed of murder in the first degree, K.S.A. 21-3401 and amendments*
30 *thereto, murder in the second degree, K.S.A. 21-3402 and amendments*
31 *thereto, capital murder, K.S.A. 21-3439 and amendments thereto, vol-*
32 *untary manslaughter K.S.A. 21-3403 and amendments thereto, or violated*
33 *a law of another state which prohibits such murder or manslaughter of*
34 *the child's sibling. Such findings shall be included in any order entered*
35 *by the court. If the child is placed in the custody of the secretary, the*
36 *court shall provide the secretary with a written copy of any orders entered*
37 *for the purpose of documenting these orders upon making the order.*

38 Sec. 19. K.S.A. 38-1543 is hereby amended to read as follows: 38-
39 1543. (a) Upon notice and hearing, the court may issue an order directing
40 who shall have temporary custody and may modify the order during the
41 pendency of the proceedings as will best serve the child's welfare.

42 (b) A hearing pursuant to this section shall be held within 72 hours,
43 excluding Saturdays, Sundays and legal holidays, following a child having

1 been taken into protective custody.

2 (c) Whenever it is determined that a temporary custody hearing is
3 required, the court shall immediately set the time and place for the hear-
4 ing. Notice of a temporary custody hearing shall be in substantially the
5 following form:

6 (Name of Court)

7 (Caption of Case)

8 NOTICE OF TEMPORARY CUSTODY HEARING

9 TO:

10 (Names) (Relationship) (Addresses)

11 _____
12 _____
13 _____

14 On _____, _____, (year), at _____ o'clock _____ m.
15 (day) (date)

16 the court will conduct a hearing at _____ to determine if the above
17 named child or children should be in the temporary custody of some person or agency other
18 than the parent or other person having legal custody prior to the hearing on the petition
19 filed in the above captioned case. The court may order one or both parents to pay child
20 support.

21 _____, an attorney, has been appointed as guardian *ad litem* for the child or
22 children. Each parent or other legal custodian has the right to appear and be heard person-
23 ally, either with or without an attorney. An attorney will be appointed for a parent who can
24 show that the parent is not financially able to hire one.

25 Date _____, (year) Clerk of the District Court
26 by _____
27 (Seal)

28 REPORT OF SERVICE

29 I certify that I have delivered a true copy of the above notice to the persons above named
30 in the manner and at the times indicated below:

31 Name	32 Location of Service (other than above)	33 Manner of Service	34 Date	35 Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

36 Date Returned _____, _____(year)

37 _____
38 (Signature)

39 _____
40 (Title)

41 (d) Notice of the temporary custody hearing shall be given at least
42 24 hours prior to the hearing. The court may continue the hearing to
43 afford the 24 hours prior notice or, with the consent of the party, proceed

1 with the hearing at the designated time. If an order of temporary custody
 2 is entered and the parent or other person having custody of the child has
 3 not been notified of the hearing, did not appear or waive appearance and
 4 requests a rehearing, the court shall rehear the matter without unnec-
 5 essary delay.

6 (e) Oral notice may be used for giving notice of a temporary custody
 7 hearing where there is insufficient time to give written notice. Oral notice
 8 is completed upon filing a certificate of oral notice in substantially the
 9 following form:

10 (Name of Court)
 11 (Caption of Case)

12 CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

13 I gave oral notice that the court will conduct a hearing at _____ o'clock _____m.
 14 on _____, _____(year), to the persons listed, in the manner and at the times
 15 indicated below:

16 Name	Relationship	Date	Time	Method of Communication (in person or telephone)
17 _____	_____	_____	_____	_____
18 _____	_____	_____	_____	_____
19 _____	_____	_____	_____	_____
20 _____	_____	_____	_____	_____

21 I advised each of the above persons that:

- 22 (1) The hearing is to determine if the above child or children should be in the temporary
- 23 custody of a person or agency other than a parent;
- 24 (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or
- 25 children named above;
- 26 (3) each parent or legal custodian has the right to appear and be heard personally either
- 27 with or without an attorney;
- 28 (4) an attorney will be appointed for a parent who can show that the parent is not
- 29 financially able to hire an attorney; and
- 30 (5) the court may order one or both parents to pay child support.

31 _____
 32 (Signature)

33 _____
 34 (Name Printed)

35 _____
 36 (Title)

37 (f) The court may enter an order of temporary custody after deter-
 38 mining that: (1) The child is dangerous to self or to others; (2) the child
 39 is not likely to be available within the jurisdiction of the court for future
 40 proceedings; or (3) the health or welfare of the child may be endangered
 41 without further care.

42 (g) Whenever the court determines the necessity for an order of tem-
 43 porary custody the court may place the child in the temporary custody

1 of: (1) A parent or other person having custody of the child and may enter
2 a restraining order pursuant to subsection (h); (2) a person, other than
3 the parent or other person having custody, who shall not be required to
4 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
5 tated; (3) a youth residential facility; or (4) the secretary if the child is
6 alleged to be a child in need of care, the court may award custody to the
7 secretary. However, if the secretary presents the court with a plan to
8 provide services to a child or family which the court finds will assure the
9 safety of the child, the court may only place the child in the temporary
10 custody of the secretary until the court finds the services are in place.
11 The court shall have the authority to require any person or entity agreeing
12 to participate in the plan to perform as set out in the plan. When the
13 child is placed in the temporary custody of the secretary, the secretary
14 shall have the discretionary authority to place the child with a parent or
15 to make other suitable placement for the child. When circumstances re-
16 quire, a child may be placed in a juvenile detention facility or other secure
17 facility, but the total amount of time that the child may be held in such
18 facility under this section and K.S.A. 38-1542 and amendments thereto
19 shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-
20 days. The order of temporary custody shall remain in effect until modified
21 or rescinded by the court or a disposition order is entered but not ex-
22 ceeding 60 days, unless good cause is shown and stated on the record.

23 (h) If the court issues an order of temporary custody, the court may
24 enter an order restraining any alleged perpetrator of ~~physical, sexual,~~
25 ~~mental or emotional~~ abuse of the child from residing in the child's home;
26 visiting, contacting, harassing or intimidating the child; or attempting to
27 visit, contact, harass or intimidate the child.

28 (i) The court shall not enter an order removing a child from the cus-
29 tody of a parent pursuant to this section unless the court first finds from
30 evidence presented by the petitioner that ~~reasonable efforts have been~~
31 ~~made to maintain the family unit and prevent the unnecessary removal~~
32 ~~of the child from the child's home or that an emergency exists which~~
33 ~~threatens the safety of the child and that remaining in the home is con-~~
34 ~~trary to the welfare of the child or that placement is in the best interest~~
35 ~~of the child. Such findings shall be included in any order entered by the~~
36 ~~court.~~ *family preservation services have been utilized in an attempt to*
37 *keep the child from being removed from the home. If a parent or parents*
38 *refuse, in writing, to participate in family preservation, such child or*
39 *children may be removed from the home. Family preservation services*
40 *need not be utilized if there is evidence of physical abandonment, physical*
41 *abuse, sexual abuse or when a parent has been convicted of murder in*
42 *the first degree, K.S.A. 21-3401 and amendments thereto, murder in the*
43 *second degree, K.S.A. 21-3402 and amendments thereto, capital murder,*

1 K.S.A. 21-3439 and amendments thereto, voluntary manslaughter, K.S.A.
2 21-3403 and amendments thereto, or violated a law of another state which
3 prohibits such murder or manslaughter of the child's sibling. If the child
4 is placed in the custody of the secretary, the court shall provide the sec-
5 retary with a written copy of any orders entered for the purpose of doc-
6 umenting these orders upon making the order.

7 Sec. 20. K.S.A. 38-1544 is hereby amended to read as follows: 38-
8 1544. (a) At any time after filing a petition, but prior to an adjudication,
9 the court may enter an order for continuance and informal supervision
10 without an adjudication if no interested party objects. Upon granting the
11 continuance, the court shall include in the order any conditions with
12 which the interested parties are expected to comply and provide the par-
13 ties with a copy of the order. The conditions may include appropriate
14 dispositional alternatives authorized by K.S.A. 38-1563 and amendments
15 thereto.

16 (b) An order for informal supervision may remain in force for a period
17 of up to six months and may be extended, upon hearing, for an additional
18 six-month period for a total of one year.

19 (c) The court after notice and hearing may revoke or modify the order
20 with respect to a party upon a showing that the party, being subject to
21 the order for informal supervision, has substantially failed to comply with
22 the terms of the order, or that modification would be in the best interests
23 of the child. Upon revocation, proceedings shall resume pursuant to this
24 code.

25 (d) Parties to the order for informal supervision who successfully
26 complete the terms and period of supervision shall not again be pro-
27 ceeded against in any court based solely upon the allegations in the orig-
28 inal petition and the proceedings shall be dismissed.

29 (e) If the court issues an order for informal supervision pursuant to
30 this section, the court may enter an order restraining any alleged perpe-
31 trator of ~~physical, sexual, mental or emotional~~ abuse of the child from
32 residing in the child's home, visiting, contacting, harassing or intimidating
33 the child, other family member or witness; or attempting to visit, contact,
34 harass or intimidate the child, other family member or witness.

35 Sec. 21. K.S.A. 38-1557 is hereby amended to read as follows: 38-
36 1557. In any proceeding pursuant to the Kansas code for care of children
37 in which a child less than 13 years of age is alleged to have been ~~physically,~~
38 ~~mentally or emotionally~~ abused or neglected ~~or sexually abused~~, a re-
39 cording of an oral statement of the child, or of any witness less than 13
40 years of age, made before the proceeding began, is admissible in evidence
41 if:

42 (a) The court determines that the time, content and circumstances
43 of the statement provide sufficient indicia of reliability;

- 1 (b) no attorney for any party is present when the statement is made;
- 2 (c) the recording is both visual and aural and is recorded on film or
- 3 videotape or by other electronic means;
- 4 (d) the recording equipment is capable of making an accurate re-
- 5 cording, the operator of the equipment is competent and the recording
- 6 is accurate and has not been altered;
- 7 (e) the statement is not made in response to questioning calculated
- 8 to lead the child to make a particular statement or is clearly shown to be
- 9 the child's statement and not made solely as a result of a leading or sug-
- 10 gestive question;
- 11 (f) every voice on the recording is identified;
- 12 (g) the person conducting the interview of the child in the recording
- 13 is present at the proceeding and is available to testify or be cross-examined
- 14 by any party; and
- 15 (h) each party to the proceeding is afforded an opportunity to view
- 16 the recording before it is offered into evidence, and a copy of a written
- 17 transcript is provided to the parties.

18 Sec. 22. K.S.A. 38-1558 is hereby amended to read as follows: 38-

19 1558. (a) On motion of any party to a proceeding pursuant to the Kansas

20 code for care of children in which a child less than 13 years of age is

21 alleged to have been ~~physically, mentally or emotionally~~ abused or ne-

22 glected ~~or sexually abused~~, the court may order that the testimony of the

23 child, or of any witness less than 13 years of age, be taken:

24 (1) In a room other than the courtroom and be televised by closed-

25 circuit equipment in the courtroom to be viewed by the court, the finder

26 of fact and the parties to the proceeding; or

27 (2) outside the courtroom and be recorded for showing in the court-

28 room before the court, the finder of fact and the parties to the proceeding

29 if: (A) The recording is both visual and aural and is recorded on film or

30 videotape or by other electronic means; (B) the recording equipment is

31 capable of making an accurate recording, the operator of the equipment

32 is competent and the recording is accurate and has not been altered; (C)

33 every voice on the recording is identified; and (D) each party to the

34 proceeding is afforded an opportunity to view the recording before it is

35 shown in the courtroom, and a copy of a written transcript is provided to

36 the parties.

37 (b) At the taking of testimony under this section:

38 (1) Only an attorney for each party, the guardian *ad litem* for the

39 child or other person whose presence would contribute to the welfare

40 and well-being of the child and persons necessary to operate the recording

41 or closed-circuit equipment may be present in the room with the child

42 during the child's testimony;

43 (2) only the attorneys for the parties may question the child; and

1 (3) the persons operating the recording or closed-circuit equipment
2 shall be confined to an adjacent room or behind a screen or mirror that
3 permits them to see and hear the child during the child's testimony, but
4 does not permit the child to see or hear them.

5 (c) If the testimony of a child is taken as provided by this section, the
6 child shall not be compelled to testify in court during the proceeding.

7 (d) (1) Any objection by any party to the proceeding to a recording
8 under subsection (a)(2) is inadmissible must be made by written motion
9 filed with the court at least seven days before the commencement of the
10 adjudicatory hearing. An objection under this subsection shall specify the
11 portion of the recording which is objectionable and the reasons for the
12 objection. Failure to file an objection within the time provided by this
13 subsection shall constitute waiver of the right to object to the admissibility
14 of the recording unless the court, in its discretion, determines otherwise.

15 (2) The provisions of this subsection (d) shall not apply to any objec-
16 tion to admissibility for the reason that the recording has been materially
17 altered.

18 Sec. 23. K.S.A. 38-1563 is hereby amended to read as follows: 38-
19 1563. (a) After consideration of any evidence offered relating to disposi-
20 tion, the court may retain jurisdiction and place the child in the custody
21 of the child's parent subject to terms and conditions which the court
22 prescribes to assure the proper care and protection of the child, including
23 supervision of the child and the parent by a court services officer, or may
24 order the child and the parent to participate in programs operated by the
25 secretary or another appropriate individual or agency. The terms and
26 conditions may require any special treatment or care which the child
27 needs for the child's physical, mental or emotional health.

28 (b) The duration of any period of supervision or other terms or con-
29 ditions shall be for an initial period of no more than 12 months. The
30 court, at the expiration of that period, upon a hearing and for good cause
31 shown, may make successive extensions of the supervision or other terms
32 or conditions for up to 12 months at a time.

33 (c) The court may order the child and the parents of any child who
34 has been adjudged a child in need of care to attend counseling sessions
35 as the court directs. The expense of the counseling may be assessed as
36 an expense in the case. No mental health center shall charge a greater
37 fee for court-ordered counseling than the center would have charged to
38 the person receiving counseling if the person had requested counseling
39 on the person's own initiative.

40 (d) If the court finds that placing the child in the custody of a parent
41 will not assure protection from ~~physical, mental or emotional~~ abuse or
42 neglect ~~or sexual abuse~~ or is contrary to the welfare of the child or that
43 placement would be in the best interests of the child, the court shall enter

1 an order awarding custody of the child, until the further order of the
2 court, to one of the following:

- 3 (1) A relative of the child or a person with whom the child has close
4 emotional ties;
- 5 (2) any other suitable person;
- 6 (3) a shelter facility; or
- 7 (4) the secretary.

8 If the child is adjudged to be a child in need of care, the court shall
9 not place the child in the custody of the secretary if the court has received
10 from the secretary, written documentation of the services and/or com-
11 munity services plan offered or delivered to prevent the need for such
12 custody unless the court finds that the services documented by the sec-
13 retary are insufficient to protect the safety of the child and that being in
14 the custody of the parent with such services in place is contrary to the
15 welfare or that placement is in the best interests of the child. The court
16 shall have the authority to require any person or entity agreeing to par-
17 ticipate in the plan to perform as set out in the plan. The secretary shall
18 present to the court in writing the specific actions taken to maintain the
19 family unit and prevent the unnecessary removal of the child from the
20 child's home.

21 In making such a custody order, the court shall give preference, to the
22 extent that the court finds it is in the best interests of the child, first to
23 granting custody to a relative of the child and second to granting custody
24 of the child to a person with whom the child has close emotional ties. If
25 the court has awarded legal custody based on the finding specified by this
26 subsection, the legal custodian shall not return the child to the home of
27 that parent without the written consent of the court.

28 (e) When the custody of the child is awarded to the secretary:

29 (1) The court may recommend to the secretary where the child
30 should be placed.

31 (2) The secretary shall notify the court in writing of any placement
32 of the child or, within 10 days of the order awarding the custody of the
33 child to the secretary, any proposed placement of the child, whichever
34 occurs first.

35 (3) The court may determine if such placement is contrary to the
36 welfare or in the best interests of the child, and if the court determines
37 that such placement is not in the best interests of the child, the court
38 shall notify the secretary who shall then make an alternative placement
39 subject to the procedures established in this paragraph. In determining
40 if such placement is in the best interests of the child, the court, after
41 providing the parties with an opportunity to be heard, shall consider the
42 health and safety needs of the child and the resources available to meet
43 the needs of children in the custody of the secretary.

1 (4) When the secretary provides the court with a plan to provide
2 services to a child or family which the court finds is in place and which
3 will assure the safety of the child, the court shall approve the return of
4 the child to the child's home. The court shall have the authority to require
5 any person or entity agreeing to participate in the plan to perform as set
6 out in the plan.

7 (f) If custody of a child is awarded under this section to a person
8 other than the child's parent, the court may grant any individual reason-
9 able rights to visit the child upon motion of the individual and a finding
10 that the visitation rights would be in the best interests of the child.

11 (g) If the court issues an order of custody pursuant to this section,
12 the court may enter an order restraining any alleged perpetrator of ~~phys-~~
13 ~~ical, sexual, mental or emotional~~ abuse of the child from residing in the
14 child's home; visiting, contacting, harassing or intimidating the child,
15 other family member or witness; or attempting to visit, contact, harass or
16 intimidate the child, other family member or witness.

17 (h) The court shall not enter an order removing a child from the
18 custody of a parent pursuant to this section unless the court first finds
19 from evidence presented by the petitioner that ~~reasonable efforts have~~
20 ~~been made to maintain the family unit and prevent the unnecessary re-~~
21 ~~moval of the child from the child's home or that reasonable efforts are~~
22 ~~not necessary because reintegration is not a viable alternative, or that an~~
23 ~~emergency exists which threatens the safety of the child and that allowing~~
24 ~~the child to remain in the home is contrary to the welfare of the child or~~
25 ~~that placement would be in the best interest of the child.~~ *family preser-*
26 *vation services have been utilized in an attempt to keep the child from*
27 *being removed from the home. If a parent or parents refuse, in writing,*
28 *to participate in family preservation, such child or children may be re-*
29 *moved from the home. Family preservation services need not be utilized*
30 *if there is evidence of physical abandonment, physical abuse, sexual abuse*
31 *or when a parent has been convicted of murder in the first degree, K.S.A.*
32 *21-3401 and amendment thereto, murder in the second degree, K.S.A. 21-*
33 *3402 and amendments thereto, capital murder, K.S.A. 21-3439 and*
34 *amendments thereto, voluntary manslaughter, K.S.A. 21-3403 and*
35 *amendments thereto, or violated a law of another state which prohibits*
36 *such murder or manslaughter of the child's sibling. If the child is placed*
37 *in the custody of the secretary, the court shall provide the secretary with*
38 *a copy of any orders entered for the purpose of documenting these orders*
39 *within 10 days of making the order. Reintegration may not be a viable*
40 *alternative when the: (1) Parent has been found by a court to have com-*
41 *mitted murder in the first degree, K.S.A. 21-3401, and amendments*
42 *thereto, murder in the second degree, K.S.A. 21-3402, and amendments*
43 *thereto, capital murder, K.S.A. 21-3439, and amendments thereto, vol-*

1 voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or vio-
2 lated a law of another state which prohibits such murder or manslaughter
3 of a child; (2) parent aided or abetted, attempted, conspired or solicited
4 to commit such murder or voluntary manslaughter of a child as provided
5 in subsection (h)(1); (3) parent committed a felony battery that resulted
6 in bodily injury to the child or another child; (4) parent has subjected the
7 child or another child to aggravated circumstances as defined in K.S.A.
8 38-1502, and amendments thereto; (5) parental rights of the parent to
9 another child have been terminated involuntarily or (6) the child has been
10 in extended out of home placement as defined in K.S.A. 38-1502, and
11 amendments thereto. Such findings shall be included in any order entered
12 by the court.

13 (i) In addition to or in lieu of any other order authorized by this
14 section, if a child is adjudged to be a child in need of care by reason of a
15 violation of the uniform controlled substances act (K.S.A. 65-4101 *et seq.*,
16 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
17 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
18 order the child to submit to and complete an alcohol and drug evaluation
19 by a community-based alcohol and drug safety action program certified
20 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
21 to exceed the fee established by that statute for such evaluation. If the
22 court finds that the child and those legally liable for the child's support
23 are indigent, the fee may be waived. In no event shall the fee be assessed
24 against the secretary or the department of social and rehabilitation serv-
25 ices.

26 (j) In addition to any other order authorized by this section, if child
27 support has been requested and the parent or parents have a duty to
28 support the child, the court may order one or both parents to pay child
29 support and, when custody is awarded to the secretary, the court shall
30 order one or both parents to pay child support. The court shall determine,
31 for each parent separately, whether the parent is already subject to an
32 order to pay support for the child. If the parent is not presently ordered
33 to pay support for any child who is a ward of the court and the court has
34 personal jurisdiction over the parent, the court shall order the parent to
35 pay child support in an amount determined under K.S.A. 38-1595, and
36 amendments thereto. Except for good cause shown, the court shall issue
37 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
38 *seq.*, and amendments thereto, for each parent ordered to pay support
39 under this subsection, regardless of whether a payor has been identified
40 for the parent. A parent ordered to pay child support under this subsec-
41 tion shall be notified, at the hearing or otherwise, that the child support
42 order may be registered pursuant to K.S.A. 38-1597, and amendments
43 thereto. The parent shall also be informed that, after registration, the

1 income withholding order may be served on the parent's employer with-
2 out further notice to the parent and the child support order may be en-
3 forced by any method allowed by law. Failure to provide this notice shall
4 not affect the validity of the child support order.

5 Sec. 24. K.S.A. 38-1567 is hereby amended to read as follows: 38-
6 1567. (a) (1) When an emergency exists requiring immediate action to
7 assure the safety and protection of the child, or (2) the secretary is notified
8 that the foster parents or shelter facility refuse to allow the child to re-
9 main, the secretary may transfer the child to another foster home or
10 shelter facility without prior court approval, but the secretary shall notify
11 the court of the action at the earliest practical time. When the child is
12 removed from the home of a parent after having been placed in the home
13 or facility for a period of six months or longer, the secretary shall present
14 to the court in writing the specific nature of the emergency and request
15 a finding by the court whether remaining in the home was contrary to
16 the welfare or not in the best interests of the child. In making the finding,
17 the court may rely on documentation submitted by the secretary or may
18 set the date for a hearing on the matter. If the secretary requests such a
19 finding, the court shall provide the secretary with a written copy of the
20 finding by the court not more than 45 days from the date of the request.

21 (b) *In order to assist in ensuring accountability in department deci-*
22 *sions to remove a child or children from the home of a foster parent or*
23 *foster parents for purposes of an emergency change of placement, the*
24 *secretary of social and rehabilitation services shall present to such foster*
25 *parents a written explanation which shall include, but is not limited to,*
26 *each of the following:*

27 (1) *The specific reason for emergency removal of the child or children;*
28 (2) *the legal basis for emergency removal of the child or children,*
29 *including statutory citations which support such basis;*

30 (3) *the name, phone number and address of an employee or employees*
31 *of the department of social and rehabilitation services who are available*
32 *to provide further information concerning removal of the child or chil-*
33 *dren; and*

34 (4) *the explanation prescribed by this subsection shall be written in*
35 *a nontechnical style, understandable by laymen, and shall be presented*
36 *by the department to the foster parent or parents of the child or children*
37 *removed for emergency placement at the time of such removal.*

38 (c) *The court upon a verified application for review by a foster parent*
39 *of the child removed pursuant to subsection (a) (1), shall set a date for*
40 *hearing on the issue of whether an emergency existed requiring immediate*
41 *action to assure the safety and protection of the removed child. The ap-*
42 *plication shall state for each child:*

43 (1) *The applicant's belief that no emergency existed requiring imme-*

1 *diate action to assure the safety and protection of the removed child; and*
2 *(2) the facts which are relied upon to support the application, includ-*
3 *ing efforts known to the applicant, to maintain the family and prevent*
4 *unnecessary removal of the child from the child's home, or specific facts*
5 *supporting the applicant's belief that no emergency existed which required*
6 *immediate action to assure the safety and protection of the removed child.*

7 *(d) If the court fails to find clear and convincing evidence that an*
8 *emergency existed requiring immediate action to assure the safety and*
9 *protection of the removed child, supporting the department of social and*
10 *rehabilitation services' decision to remove the child, the court shall place*
11 *the child back into the custody of the foster parent or parents from whom*
12 *the child was removed unless the court finds that this placement is not in*
13 *the best interest of the child.*

14 *(e) If an application for review is filed pursuant to subsection (b), no*
15 *child removed pursuant to subsection (a) (1) shall remain in the emer-*
16 *gency placement for more than 72 hours after the petition was filed, ex-*
17 *cluding Saturdays, Sundays and legal holidays, unless within the 72-hour*
18 *period a determination that an emergency existed requiring immediate*
19 *action to assure the safety and protection of the removed child.*

20 Sec. 25. K.S.A. 2001 Supp. 38-1583 is hereby amended to read as
21 follows: 38-1583. (a) When the child has been adjudicated to be a child
22 in need of care, the court may terminate parental rights when the court
23 finds by clear and convincing evidence that the parent is unfit by reason
24 of conduct or condition which renders the parent unable to care properly
25 for a child and the conduct or condition is unlikely to change in the
26 foreseeable future.

27 (b) In making a determination hereunder the court shall consider,
28 but is not limited to, the following, if applicable:

29 (1) Emotional illness, mental illness, mental deficiency or physical
30 disability of the parent, of such duration or nature as to render the parent
31 unlikely to care for the ongoing physical, mental and emotional needs of
32 the child;

33 (2) conduct toward a child of a physically, emotionally or sexually
34 cruel *nature* or abusive nature;

35 (3) excessive use of intoxicating liquors or narcotic or dangerous
36 drugs;

37 (4) physical, mental or emotional neglect of the child;

38 (5) conviction of a felony and imprisonment;

39 (6) unexplained injury or death of another child or stepchild of the
40 parent;

41 (7) reasonable efforts by appropriate public or private child caring
42 agencies have been unable to rehabilitate the family; and

43 (8) lack of effort on the part of the parent to adjust the parent's cir-

1 cumstances, conduct or conditions to meet the needs of the child.

2 (c) In addition to the foregoing, when a child is not in the physical
3 custody of a parent, the court, in proceedings concerning the termination
4 of parental rights, shall also consider, but is not limited to the following:

5 (1) Failure to assure care of the child in the parental home when able
6 to do so;

7 (2) failure to maintain regular visitation, contact or communication
8 with the child or with the custodian of the child;

9 (3) failure to carry out a reasonable plan approved by the court di-
10 rected toward the integration of the child into the parental home; and

11 (4) failure to pay a reasonable portion of the cost of substitute physical
12 care and maintenance based on ability to pay.

13 In making the above determination, the court may disregard incidental
14 visitations, contacts, communications or contributions.

15 (d) The rights of the parents may be terminated as provided in this
16 section if the court finds that the parents have abandoned the child, the
17 custody of the child was surrendered pursuant to K.S.A. 2001 *Supp.* 38-
18 15,100, and amendments thereto, or the child was left under such cir-
19 cumstances that the identity of the parents is unknown and cannot be
20 ascertained, despite diligent searching, and the parents have not come
21 forward to claim the child within three months after the child is found.

22 (e) The existence of any one of the above standing alone may, but
23 does not necessarily, establish grounds for termination of parental rights.
24 The determination shall be based on an evaluation of all factors which
25 are applicable. In considering any of the above factors for terminating the
26 rights of a parent, the court shall give primary consideration to the phys-
27 ical, mental or emotional condition and needs of the child. If presented
28 to the court and subject to the provisions of K.S.A. 60-419, and amend-
29 ments thereto, the court shall consider as evidence testimony from a
30 person licensed to practice medicine and surgery, a licensed psychologist
31 or a licensed social worker expressing an opinion relating to the physical,
32 mental or emotional condition and needs of the child. The court shall
33 consider any such testimony only if the licensed professional providing
34 such testimony is subject to cross-examination.

35 (f) A termination of parental rights under the Kansas code for care
36 of children shall not terminate the right of the child to inherit from or
37 through the parent. Upon such termination, all the rights of birth parents
38 to such child, including their right to inherit from or through such child,
39 shall cease.

40 (g) If, after finding the parent unfit, the court determines a compel-
41 ling reason why it is contrary to the welfare or not in the best interests
42 of the child to terminate parental rights or upon agreement of the parents,
43 the court may award permanent guardianship to an individual providing

1 care for the child, a relative or other person with whom the child has a
2 close emotional attachment. Prior to awarding permanent guardianship,
3 the court shall receive and consider an assessment as provided in K.S.A.
4 59-2132 and amendments thereto of any potential permanent guardian.
5 Upon appointment of a permanent guardian, the court shall discharge
6 the child from the custody of the secretary.

7 (h) If a parent is convicted of an offense as provided in subsection
8 (7) of K.S.A. 38-1585 and amendments thereto or is adjudicated a juvenile
9 offender because of an act which if committed by an adult would be an
10 offense as provided in subsection (7) of K.S.A. 38-1585 and amendments
11 thereto, and if the victim was the other parent of a child, the court may
12 disregard such convicted or adjudicated parent's opinions or wishes in
13 regard to the placement of such child.

14 (i) If the secretary has documented to the court a compelling reason
15 why custody for adoption, custody for permanent guardianship, nor cus-
16 tody for placement with a fit and willing relative are currently a viable
17 option, the court may order custody to remain with the secretary for
18 continued permanency planning and another planned permanent living
19 arrangement.

20 Sec. 26. K.S.A. 38-1513, 38-1514, 38-1521, 38-1523a, 38-1525, 38-
21 1526, 38-1542, 38-1543, 38-1544, 38-1557, 38-1558, 38-1563 and 38-1567
22 and K.S.A. 2001 Supp. 38-1502, 38-1522 and 38-1583 are hereby re-
23 pealed.

24 Sec. 27. This act shall take effect and be in force from and after its
25 publication in the statute book.

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