

HOUSE BILL No. 2820

By Committee on Judiciary

2-11

9 AN ACT concerning children in need of care; relating to permanency;
10 amending K.S.A. 2007 Supp. 38-2202, 38-2203, 38-2243, 38-2255, 38-
11 2263, 38-2277, 38-2278, 38-2279 and 60-1610 and repealing the exist-
12 ing sections.
13

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

15 Section 1. K.S.A. 2007 Supp. 38-2202 is hereby amended to read as
16 follows: 38-2202. As used in the revised Kansas code for care of children,
17 unless the context otherwise indicates:

18 (a) “Abandon” or “abandonment” means to forsake, desert or, with-
19 out making appropriate provision for substitute care, cease providing care
20 for the child.

21 (b) “Adult correction facility” means any public or private facility,
22 secure or nonsecure, which is used for the lawful custody of accused or
23 convicted adult criminal offenders.

24 (c) “Aggravated circumstances” means the abandonment, torture,
25 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

26 (d) “Child in need of care” means a person less than 18 years of age
27 who:

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

31 (2) is without the care or control necessary for the child’s physical,
32 mental or emotional health;

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

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

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

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

39 (7) except in the case of a violation of K.S.A. 21-4204a, 41-727, sub-
40 section (j) of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321,
41 and amendments thereto, or, except as provided in paragraph (12), does
42 an act which, when committed by a person under 18 years of age, is
43 prohibited by state law, city ordinance or county resolution but which is

- 1 not prohibited when done by an adult;
- 2 (8) while less than 10 years of age, commits any act which if done by
3 an adult would constitute the commission of a felony or misdemeanor as
4 defined by K.S.A. 21-3105, and amendments thereto;
- 5 (9) is willfully and voluntarily absent from the child's home without
6 the consent of the child's parent or other custodian;
- 7 (10) is willfully and voluntarily absent at least a second time from a
8 court ordered or designated placement, or a placement pursuant to court
9 order, if the absence is without the consent of the person with whom the
10 child is placed or, if the child is placed in a facility, without the consent
11 of the person in charge of such facility or such person's designee;
- 12 (11) has been residing in the same residence with a sibling or another
13 person under 18 years of age, who has been physically, mentally or emo-
14 tionally abused or neglected, or sexually abused;
- 15 (12) while less than 10 years of age commits the offense defined in
16 K.S.A. 21-4204a, and amendments thereto; or
- 17 (13) has had a permanent custodian appointed and the permanent
18 custodian is no longer able or willing to serve.
- 19 (e) "Citizen review board" is a group of community volunteers ap-
20 pointed by the court and whose duties are prescribed by K.S.A. 2007
21 Supp. 38-2207 and 38-2208, and amendments thereto.
- 22 (f) "Court-appointed special advocate" means a responsible adult
23 other than an attorney guardian *ad litem* who is appointed by the court
24 to represent the best interests of a child, as provided in K.S.A. 2007 Supp.
25 38-2206, and amendments thereto, in a proceeding pursuant to this code.
- 26 (g) "Custody" whether temporary, protective or legal, means the
27 status created by court order or statute which vests in a custodian,
28 whether an individual or an agency, the right to physical possession of
29 the child and the right to determine placement of the child, subject to
30 restrictions placed by the court.
- 31 (h) "Extended out of home placement" means a child has been in
32 the custody of the secretary and placed with neither parent for 15 of the
33 most recent 22 months beginning 60 days after the date at which a child
34 in the custody of the secretary was removed from the home.
- 35 (i) "Educational institution" means all schools at the elementary and
36 secondary levels.
- 37 (j) "Educator" means any administrator, teacher or other professional
38 or paraprofessional employee of an educational institution who has ex-
39 posure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and
40 amendments thereto.
- 41 (k) "Harm" means physical or psychological injury or damage.
- 42 (l) "Interested party" means the grandparent of the child, a person
43 with whom the child has been living for a significant period of time when

1 the child in need of care petition is filed, and any person made an inter-
2 ested party by the court pursuant to K.S.A. 2007 Supp. 38-2241, and
3 amendments thereto.

4 (m) “Jail” means:

5 (1) An adult jail or lockup; or

6 (2) a facility in the same building or on the same grounds as an adult
7 jail or lockup, unless the facility meets all applicable standards and licen-
8 sure requirements under law and there is: (A) Total separation of the
9 juvenile and adult facility spatial areas such that there could be no hap-
10 hazard or accidental contact between juvenile and adult residents in the
11 respective facilities; (B) total separation in all juvenile and adult program
12 activities within the facilities, including recreation, education, counseling,
13 health care, dining, sleeping and general living activities; and (C) separate
14 juvenile and adult staff, including management, security staff and direct
15 care staff such as recreational, educational and counseling.

16 (n) “Juvenile detention facility” means any secure public or private
17 facility used for the lawful custody of accused or adjudicated juvenile
18 offenders which must not be a jail.

19 (o) “Juvenile intake and assessment worker” means a responsible
20 adult authorized to perform intake and assessment services as part of the
21 intake and assessment system established pursuant to K.S.A. 75-7023, and
22 amendments thereto.

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

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

30 (r) “Multidisciplinary team” means a group of persons, appointed by
31 the court under K.S.A. 2007 Supp. 38-2228, and amendments thereto,
32 which has knowledge of the circumstances of a child in need of care.

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

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

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

- 1 (3) failure to use resources available to treat a diagnosed medical
2 condition if such treatment will make a child substantially more com-
3 fortable, reduce pain and suffering, or correct or substantially diminish a
4 crippling condition from worsening. A parent legitimately practicing re-
5 ligious beliefs who does not provide specified medical treatment for a
6 child because of religious beliefs shall not for that reason be considered
7 a negligent parent; however, this exception shall not preclude a court from
8 entering an order pursuant to subsection (a)(2) of K.S.A. 2007 Supp. 38-
9 2217, and amendments thereto.
- 10 (t) "Parent" when used in relation to a child or children, includes a
11 guardian and every person who is by law liable to maintain, care for or
12 support the child.
- 13 (u) "Party" means the state, the petitioner, the child and any parent
14 of the child.
- 15 (v) "Permanency goal" means the outcome of the permanency plan-
16 ning process which may be reintegration, adoption, appointment of a
17 permanent custodian or another planned permanent living arrangement.
- 18 (w) "Permanent custodian" means a judicially approved permanent
19 guardian of a child pursuant to K.S.A. 2007 Supp. 38-2272, and amend-
20 ments thereto.
- 21 (x) "Physical, mental or emotional abuse" means the infliction of
22 physical, mental or emotional harm or the causing of a deterioration of a
23 child and may include, but shall not be limited to, maltreatment or ex-
24 ploiting a child to the extent that the child's health or emotional well-
25 being is endangered.
- 26 (y) "Placement" means the designation by the individual or agency
27 having custody of where and with whom the child will live.
- 28 (z) "Relative" means a person related by blood, marriage or adoption
29 but, when referring to a relative of a child's parent, does not include the
30 child's other parent.
- 31 (aa) "Secretary" means the secretary of social and rehabilitation serv-
32 ices or the secretary's designee.
- 33 (bb) "Secure facility" means a facility which is operated or structured
34 so as to ensure that all entrances and exits from the facility are under the
35 exclusive control of the staff of the facility, whether or not the person
36 being detained has freedom of movement within the perimeters of the
37 facility, or which relies on locked rooms and buildings, fences or physical
38 restraint in order to control behavior of its residents. No secure facility
39 shall be in a city or county jail.
- 40 (cc) "Sexual abuse" means any contact or interaction with a child in
41 which the child is being used for the sexual stimulation of the perpetrator,
42 the child or another person. Sexual abuse shall include allowing, permit-
43 ting or encouraging a child to engage in prostitution or to be photo-

1 graphed, filmed or depicted in pornographic material.

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

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

11 (ff) “*Domestic case*” includes any case filed under article 11 of chapter
12 38 of the Kansas Statutes Annotated, and amendments thereto, or article
13 16 of chapter 60 of the Kansas Statutes Annotated, and amendments
14 thereto.

15 Sec. 2. K.S.A. 2007 Supp. 38-2203 is hereby amended to read as
16 follows: 38-2203. (a) Proceedings concerning any child who may be a child
17 in need of care shall be governed by this code, except in those instances
18 when *the court knows or has reason to know that an Indian child is*
19 *involved in the proceeding, in which case* the Indian child welfare act of
20 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may
21 apply to: The filing to initiate a child in need of care proceeding (K.S.A.
22 2007 Supp. 38-2234, and amendments thereto); ex parte custody orders
23 (K.S.A. 2007 Supp. 38-2242, and amendments thereto); temporary cus-
24 tody hearing (K.S.A. 2007 Supp. 38-2243, and amendments thereto); ad-
25 judication (K.S.A. 2007 Supp. 38-2247, and amendments thereto); burden
26 of proof (K.S.A. 2007 Supp. 38-2250, and amendments thereto); dispo-
27 sition (K.S.A. 2007 Supp. 38-2255, and amendments thereto); perma-
28 nency hearings (K.S.A. 2007 Supp. 38-2264, and amendments thereto);
29 termination of parental rights (K.S.A. 2007 Supp. 38-2267, 38-2268 and
30 38-2269, and amendments thereto); establishment of permanent custo-
31 dianship (K.S.A. 2007 Supp. 38-2268 and 38-2272, and amendments
32 thereto); the placement of a child in any foster, pre-adoptive and adoptive
33 home and the placement of a child in a guardianship arrangement under
34 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments
35 thereto.

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

40 (c) The court acquires jurisdiction over a child by the filing of a pe-
41 tition pursuant to this code or upon issuance of an *ex parte* order pursuant
42 to K.S.A. 2007 Supp. 38-2242, and amendments thereto. When the court
43 acquires jurisdiction over a child in need of care, jurisdiction may con-

1 tinue until the child has: (1) Attained the age of 21 years; (2) been
2 adopted; or (3) been discharged by the court. Any child 18 years of age
3 or over may request, in writing to the court, that the jurisdiction of the
4 court cease. The court shall give notice of the request to all parties and
5 interested parties and 30 days after receipt of the request, jurisdiction
6 will cease.

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

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

19 (f) *A court's order affecting a child's custody, residency, parenting*
20 *time, visitation or child support that are issued in a proceeding pursuant*
21 *to this code, shall take precedence over other orders addressing the same*
22 *subjects when those other orders are issued by the same court or by a*
23 *court in another judicial district in Kansas in proceedings under article*
24 *11 of chapter 38 of the Kansas Statutes Annotated, and amendments*
25 *thereto (determination of parentage); article 16 of chapter 60 of the Kan-*
26 *sas Statutes Annotated, and amendments thereto (divorce and mainte-*
27 *nance); article 31 of chapter 60 of the Kansas Statutes Annotated, and*
28 *amendments thereto (protection from abuse act); and article 31a of chap-*
29 *ter 60 of the Kansas Statutes Annotated, and amendments thereto (pro-*
30 *tection from stalking act).*

31 Sec. 3. K.S.A. 2007 Supp. 38-2243 is hereby amended to read as
32 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
33 order directing who shall have temporary custody and may modify the
34 order during the pendency of the proceedings as will best serve the child's
35 welfare.

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

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

43 (d) Notice of the temporary custody hearing shall be given at least

1 24 hours prior to the hearing. The court may continue the hearing to
2 afford the 24 hours prior notice or, with the consent of the party or
3 interested party, proceed with the hearing at the designated time. If an
4 order of temporary custody is entered and the parent or other person
5 having custody of the child has not been notified of the hearing, did not
6 appear or waive appearance and requests a rehearing, the court shall
7 rehear the matter without unnecessary delay.

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

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

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

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

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

24 (C) a youth residential facility;

25 (D) a shelter facility; or

26 (E) the secretary.

27 (2) If the secretary presents the court with a plan to provide services
28 to a child or family which the court finds will assure the safety of the
29 child, the court may only place the child in the temporary custody of the
30 secretary until the court finds the services are in place. The court shall
31 have the authority to require any person or entity agreeing to participate
32 in the plan to perform as set out in the plan. When the child is placed in
33 the temporary custody of the secretary, the secretary shall have the dis-
34 cretionary authority to place the child with a parent or to make other
35 suitable placement for the child. When the child is presently alleged, but
36 not yet adjudicated to be a child in need of care solely pursuant to sub-
37 section (d)(9) or (d)(10) of K.S.A. 2007 Supp. 38-2202, and amendments
38 thereto, the child may be placed in a juvenile detention facility or other
39 secure facility, but the total amount of time that the child may be held in
40 such facility under this section and K.S.A. 2007 Supp. 38-2242, and
41 amendments thereto, shall not exceed 24 hours, excluding Saturdays,
42 Sundays and legal holidays. The order of temporary custody shall remain
43 in effect until modified or rescinded by the court or a disposition order

1 is entered but not exceeding 60 days, unless good cause is shown and
2 stated on the record.

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

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

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

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

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

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

25 (j) If the court enters an order of temporary custody that provides
26 for placement of the child with a person other than the parent, the court
27 shall make a child support determination pursuant to K.S.A. 2007 Supp.
28 ~~38-2277~~ 38-2278, and amendments thereto.

29 Sec. 4. K.S.A. 2007 Supp. 38-2255 is hereby amended to read as
30 follows: 38-2255. (a) *Considerations*. Prior to entering an order of dis-
31 position, the court shall give consideration to:

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

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

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

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

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

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

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

1 (2) participation by the child and the parent in available programs
2 operated by an appropriate individual or agency; and
3 (3) any special treatment or care which the child needs for the child's
4 physical, mental or emotional health and safety.
5 (c) *Removal of a child from custody of a parent.* The court shall not
6 enter an order removing a child from the custody of a parent pursuant
7 to this section unless the court first finds probable cause that: (1)(A) The
8 child is likely to sustain harm if not immediately removed from the home;
9 (B) allowing the child to remain in home is contrary to the welfare
10 of the child; or
11 (C) immediate placement of the child is in the best interest of the
12 child; and
13 (2) reasonable efforts have been made to maintain the family unit
14 and prevent the unnecessary removal of the child from the child's home
15 or that an emergency exists which threatens the safety to the child.
16 (d) *Custody of a child removed from the custody of a parent.* If the
17 court has made the findings required by subsection (c), the court shall
18 enter an order awarding custody to a relative of the child or to a person
19 with whom the child has close emotional ties, to any other suitable person,
20 to a shelter facility, to a youth residential facility or to the secretary. Cus-
21 tody awarded under this subsection shall continue until further order of
22 the court.
23 (1) When custody is awarded to the secretary, the secretary shall con-
24 sider any placement recommendation by the court and notify the court
25 of the placement or proposed placement of the child within 10 days of
26 the order awarding custody.
27 (A) After providing the parties or interested parties notice and op-
28 portunity to be heard, the court may determine whether the secretary's
29 placement or proposed placement is contrary to the welfare or in the best
30 interests of the child. In making that determination the court shall con-
31 sider the health and safety needs of the child and the resources available
32 to meet the needs of children in the custody of the secretary. If the court
33 determines that the placement or proposed placement is contrary to the
34 welfare or not in the best interests of the child, the court shall notify the
35 secretary, who shall then make an alternative placement.
36 (B) The secretary may propose and the court may order the child to
37 be placed in the custody of a parent or parents if the secretary has pro-
38 vided and the court has approved an appropriate safety action plan which
39 includes services to be provided. The court may order the parent or par-
40 ents and the child to perform tasks as set out in the safety action plan.
41 (2) The custodian designated under this subsection shall notify the
42 court in writing at least 10 days prior to any planned placement with a
43 parent. The written notice shall state the basis for the custodian's belief

1 that placement with a parent is no longer contrary to the welfare or best
2 interest of the child. Upon reviewing the notice, the court may allow the
3 custodian to proceed with the planned placement or may set the date for
4 a hearing to determine if the child shall be allowed to return home. If
5 the court sets a hearing on the matter, the custodian shall not return the
6 child home without written consent of the court.

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

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

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

21 (e) *Further determinations regarding a child removed from the home.*
22 If custody has been awarded under subsection (d) to a person other than
23 a parent, a permanency plan shall be provided or prepared pursuant to
24 K.S.A. 2007 Supp. 38-2264, and amendments thereto. If a permanency
25 plan is provided at the dispositional hearing, the court may determine
26 whether reintegration is a viable alternative or, if reintegration is not a
27 viable alternative, whether the child should be placed for adoption or a
28 permanent custodian appointed. In determining whether reintegration is
29 a viable alternative, the court shall consider:

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

39 (2) whether a parent has subjected the child or another child to ag-
40 gravated circumstances;

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

1 (4) whether the child has been in extended out of home placement;
2 (5) whether the parents have failed to work diligently toward
3 reintegration;

4 (6) whether the secretary has provided the family with services nec-
5 essary for the safe return of the child to the home; and

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

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

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

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

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

1 (3) If child support has been requested and the parent or parents
2 have a duty to support the child, the court may order one or both parents
3 to pay child support and, when custody is awarded to the secretary, the
4 court shall order one or both parents to pay child support. The court shall
5 determine, for each parent separately, whether the parent is already sub-
6 ject to an order to pay support for the child. If the parent is not presently
7 ordered to pay support for any child who is subject to the jurisdiction of
8 the court and the court has personal jurisdiction over the parent, the court
9 shall order the parent to pay child support in an amount determined
10 under K.S.A. 2007 Supp. ~~38-2277~~ 38-2278, and amendments thereto.
11 Except for good cause shown, the court shall issue an immediate income
12 withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments
13 thereto, for each parent ordered to pay support under this subsection,
14 regardless of whether a payor has been identified for the parent. A parent
15 ordered to pay child support under this subsection shall be notified, at
16 the hearing or otherwise, that the child support order may be registered
17 pursuant to K.S.A. 2007 Supp. 38-2279, and amendments thereto. The
18 parent shall also be informed that, after registration, the income with-
19 holding order may be served on the parent's employer without further
20 notice to the parent and the child support order may be enforced by any
21 method allowed by law. Failure to provide this notice shall not affect the
22 validity of the child support order.

23 Sec. 5. K.S.A. 2007 Supp. 38-2263 is hereby amended to read as
24 follows: 38-2263. (a) The goal of permanency planning is to assure, in so
25 far as is possible, that children have permanency and stability in their
26 living situations and that the continuity of family relationships and con-
27 nections is preserved. In planning for permanency, the safety and well
28 being of children shall be paramount.

29 (b) Whenever a child is subject to the jurisdiction of the court pur-
30 suant to the code, an initial permanency plan shall be developed for the
31 child and submitted to the court within 30 days of the initial order of the
32 court. If the child is in the custody of the secretary, or the secretary is
33 providing services to the child, the secretary shall prepare the plan. Oth-
34 erwise, the plan shall be prepared by the person who has custody or, if
35 directed by the court, by a court services officer.

36 (c) A permanency plan is a written document prepared, where pos-
37 sible, in consultation with the child's parents and which:

38 (1) Describes the permanency goal which, if achieved, will most likely
39 give the child a permanent and safe living arrangement;

40 (2) describes the child's level of physical health, mental and emotional
41 health, and educational functioning;

42 (3) provides an assessment of the needs of the child and family;

43 (4) describes the services to be provided the child, the child's parents

- 1 and the child's foster parents, if appropriate;
- 2 (5) includes a description of the tasks and responsibilities designed
3 to achieve the plan and to whom assigned; and
- 4 (6) includes measurable objectives and time schedules for achieving
5 the plan.
- 6 (d) In addition to the requirements of subsection (c), if the child is
7 in an out of home placement, the permanency plan shall include:
- 8 (1) A plan for reintegration of the child's parent or parents or if re-
9 integration is determined not to be a viable alternative, a statement for
10 the basis of that conclusion and a plan for another permanent living
11 arrangement;
- 12 (2) a description of the available placement alternatives;
- 13 (3) a justification for the placement selected, including a description
14 of the safety and appropriateness of the placement; and
- 15 (4) a description of the programs and services which will help the
16 child prepare to live independently as an adult.
- 17 (e) If there is a lack of agreement among persons necessary for the
18 success of the permanency plan, the person or entity having custody of
19 the child shall notify the court which shall set a hearing on the plan.
- 20 (f) A permanency plan may be amended at any time upon agreement
21 of the plan participants. If a permanency plan requires amendment which
22 changes the permanency goal, the person or entity having custody of the
23 child shall notify the court which shall set a permanency hearing pursuant
24 to K.S.A. 2007 Supp. 38-2264 and 38-2265, and amendments thereto.
- 25 (g) *Once permanency of a child with one parent of the child has been
26 achieved to the satisfaction of the court, the court shall enter an order
27 dismissing the case. Prior to entering such order of dismissal, the court
28 shall make inquiry of the parties for a determination of whether a pre-
29 existing custody order has been entered and filed under a domestic case
30 by a court of competent jurisdiction within the state of Kansas. If such
31 custody order has been entered or is pending, the court considering the
32 dismissal, following consultation with the court where the domestic case
33 is filed, may issue an order declaring the permanency order to be the
34 controlling order regarding parental custody of the child. If such order is
35 issued, a certified copy of the permanency order shall be filed in the do-
36 mestic case and shall be controlling over any domestic case order to the
37 contrary. Such permanency order shall be binding on the parties, regard-
38 less of the venue of the respective courts. If no case has been filed under
39 a domestic case, the court shall direct the parties to file a domestic case
40 and that the permanency order be filed in such case. Costs of such case
41 may be assessed to the parties.*
- 42 Sec. 6. K.S.A. 2007 Supp. 38-2277 is hereby amended to read as
43 follows: 38-2277. ~~(a) In determining the amount of a child support order~~

1 ~~under the code, the court shall apply the Kansas child support guidelines~~
2 ~~adopted pursuant to K.S.A. 20-165, and amendments thereto.~~
3 ~~— (b) — If the appropriate amount of support under the Kansas child sup-~~
4 ~~port guidelines cannot be determined because any necessary fact is not~~
5 ~~proven by evidence or by stipulation of the appropriate parent, the court~~
6 ~~shall apply one or more of the following presumptions:~~
7 ~~— (1) — Both parents have only gross earned income equal to 40 hours~~
8 ~~per week at the federal minimum wage then in effect;~~
9 ~~— (2) — neither parent's income is subject to adjustment for any reason;~~
10 ~~— (3) — the number of children is as alleged in the petition;~~
11 ~~— (4) — the age of each child is as alleged in the petition or, if unknown,~~
12 ~~is between seven and 15 years;~~
13 ~~— (5) — no adjustment for child care, health or dental insurance or income~~
14 ~~tax exemption is appropriate; or~~
15 ~~— (6) — neither parent is entitled to any other credit or adjustment.~~
16 ~~— (c) — If the county or district attorney determines that: (1) A parent will~~
17 ~~contest the amount of support resulting from application of the guide-~~
18 ~~lines, (2) the parent is or may be entitled to an adjustment pursuant to~~
19 ~~the guidelines, and (3) it is in the child's best interests to resolve the~~
20 ~~support issue promptly and with minimal hostility, the county or district~~
21 ~~attorney may enter into a stipulation with the parent as to the amount of~~
22 ~~child support for that parent. The amount of support may be based upon~~
23 ~~one or more of the presumptions in subsection (b). Except for good cause~~
24 ~~or as otherwise provided in K.S.A. 2007 Supp. 38-2270, and amendments~~
25 ~~thereto, a stipulation under this subsection shall be binding upon the~~
26 ~~court and all parties or interested parties. The criteria for application of~~
27 ~~this subsection shall be incorporated into the journal entry or judgment~~
28 ~~form. (a) When the court finds the state has achieved a child's permanency~~
29 ~~goal of reintegration with one parent without termination of the other~~
30 ~~parent's parental rights, the court, on its own motion or upon the motion~~
31 ~~of any party, may order the consolidation of the child in need of care case~~
32 ~~with any open domestic case involving the child and both of the child's~~
33 ~~parents. The court may enter such orders regarding the child's custody,~~
34 ~~residency, parenting time and child support that the court determines to~~
35 ~~be in the best interests of the child.~~
36 ~~(b) Custody orders shall address each parent's role, responsibilities~~
37 ~~and limitations in participating in important decisions affecting their~~
38 ~~child's life, including, but not limited to, decisions involving medical serv-~~
39 ~~ices and procedures, day care, education, religious affiliations and social~~
40 ~~experiences.~~
41 ~~(c) Residency orders shall include, but not be limited to, each parent's~~
42 ~~obligation to provide food, clothing, shelter, recreational opportunities~~
43 ~~and transportation.~~

1 (d) Parenting time orders shall include, but not be limited to, the
2 noncustodial parent's opportunities to spend time with the child and pro-
3 vide the child with love, emotional support, educational support, guid-
4 ance, advice and discipline.

5 (e) Child support orders shall be consistent with the requirements of
6 K.S.A. 2007 Supp. 38-2276, and amendments thereto.

7 (f) Orders entered in consolidated child in need of care and domestic
8 cases supersede any previous orders affecting both parents and the child
9 that were entered in the domestic case regarding the same or related
10 issues.

11 Sec. 7. K.S.A. 2007 Supp. 38-2278 is hereby amended to read as
12 follows: 38-2278. (a) In determining the amount of a child support order
13 under the code, the court shall apply the Kansas child support guidelines
14 adopted pursuant to K.S.A. 20-165, and amendments thereto.

15 (b) If the appropriate amount of support under the Kansas child sup-
16 port guidelines cannot be determined because any necessary fact is not
17 proven by evidence or by stipulation of the appropriate parent, the court
18 shall apply one or more of the following presumptions:

19 (1) Both parents have only gross earned income equal to 40 hours per
20 week at the federal minimum wage then in effect;

21 (2) neither parent's income is subject to adjustment for any reason;

22 (3) the number of children is as alleged in the petition;

23 (4) the age of each child is as alleged in the petition or, if unknown,
24 is between seven and 15 years;

25 (5) no adjustment for child care, health or dental insurance or income
26 tax exemption is appropriate; or

27 (6) neither parent is entitled to any other credit or adjustment.

28 (c) If the county or district attorney determines that: (1) A parent will
29 contest the amount of support resulting from application of the guidelines;
30 (2) the parent is or may be entitled to an adjustment pursuant to the
31 guidelines; and (3) it is in the child's best interests to resolve the support
32 issue promptly and with minimal hostility, the county or district attorney
33 may enter into a stipulation with the parent as to the amount of child
34 support for that parent. The amount of support may be based upon one
35 or more of the presumptions in subsection (b). Except for good cause or
36 as otherwise provided in K.S.A. 2007 Supp. 38-2279, and amendments
37 thereto, a stipulation under this subsection shall be binding upon the court
38 and all parties or interested parties. The criteria for application of this
39 subsection shall be incorporated into the journal entry or judgment form.

40 (d) When child support is ordered pursuant to the code, a separate
41 journal entry or judgment form shall be made for each parent ordered to
42 pay child support. The journal entry or judgment form shall be entitled:

1 “In the matter of _____ and _____”
 2 (obligee’s name) (obligor’s name)

3 and shall contain no reference to the privileged official file or social file
 4 in the case except the facts necessary to establish personal jurisdiction
 5 over the parent, the name and date of birth of each child, and findings
 6 of fact and conclusions of law directly related to the child support obli-
 7 gation. If the court issues an income withholding order for the parent, it
 8 shall be captioned in the same manner.

9 Sec. 8. K.S.A. 2007 Supp. 38-2279 is hereby amended to read as
 10 follows: 38-2279. (a) A person entitled to receive child support under an
 11 order issued pursuant to the code may file with the clerk of the district
 12 court in the county in which the judgment was rendered the original child
 13 support order and the original income withholding order, if any. If the
 14 original child support or income withholding order is unavailable for any
 15 reason, a certified or authenticated copy of the order may be substituted.
 16 The clerk of the district court shall number the child support order as a
 17 case filed under chapter 60 of the Kansas Statutes Annotated, and amend-
 18 ments thereto, and enter the numbering of the case on the appearance
 19 docket of the case. Registration of a child support order under this section
 20 shall be without cost or docket fee.

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

25 (c) The filing of the child support order shall constitute registration
 26 under this section. Upon registration of the child support order, all mat-
 27 ters related to that order, including, but not limited to, modification of
 28 the order, shall proceed under the new case number. Registration of a
 29 child support order under this section does not confer jurisdiction in the
 30 registration case for custody or visitation issues.

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

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

42 (f) A child support order registered pursuant to this section shall have
 43 the same force and effect as an original child support order entered under

1 chapter 60 of the Kansas Statutes Annotated, and amendments thereto,
2 including, but not limited to:

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

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

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

10 (4) if any installment of support due under the registered order be-
11 comes a dormant judgment, it may be revived pursuant to K.S.A. 60-
12 2404, and amendments thereto; and

13 (5) the court shall have continuing jurisdiction over the child support
14 action and the parties thereto and subject matter and, except as otherwise
15 provided in subsection (g), may modify any prior support order when a
16 material change in circumstances is shown irrespective of the present
17 domicile of the child or parents. The court may make a modification of
18 child support retroactive to a date at least one month after the date that
19 the motion to modify was filed with the court.

20 (g) If a motion to modify the child support order is filed within three
21 months after the date of registration pursuant to this section, if no motion
22 to modify the order has previously been heard and if the moving party
23 shows that the support order was based upon one or more of the pre-
24 sumptions provided in K.S.A. 2007 Supp. ~~38-2277~~ 38-2278, and amend-
25 ments thereto, or upon a stipulation pursuant to subsection (c) of K.S.A.
26 2007 Supp. ~~38-2277~~ 38-2278, and amendments thereto, the court shall
27 apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-
28 165, and amendments thereto, without requiring a showing that a material
29 change of circumstances has occurred, without regard to any previous
30 presumption or stipulation used to determine the amount of the child
31 support order and irrespective of the present domicile of the child or
32 parents. Nothing in this subsection shall prevent or limit enforcement of
33 the support order during the three months after the date of registration.

34 Sec. 9. K.S.A. 2007 Supp. 60-1610 is hereby amended to read as
35 follows: 60-1610. A decree in an action under this article may include
36 orders on the following matters:

37 (a) *Minor children.* (1) *Child support and education.* The court shall
38 make provisions for the support and education of the minor children. The
39 court may modify or change any prior order, including any order issued
40 in a title IV-D case, within three years of the date of the original order
41 or a modification order, when a material change in circumstances is
42 shown, irrespective of the present domicile of the child or the parents. If
43 more than three years has passed since the date of the original order or

1 modification order, a material change in circumstance need not be shown.
2 The court may make a modification of child support retroactive to a date
3 at least one month after the date that the motion to modify was filed with
4 the court. Any increase in support ordered effective prior to the date the
5 court's judgment is filed shall not become a lien on real property pursuant
6 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
7 custodial arrangement ordered by the court, the court may order the child
8 support and education expenses to be paid by either or both parents for
9 any child less than 18 years of age, at which age the support shall ter-
10minate unless: (A) The parent or parents agree, by written agreement
11 approved by the court, to pay support beyond the time the child reaches
12 18 years of age; (B) the child reaches 18 years of age before completing
13 the child's high school education in which case the support shall not ter-
14minate automatically, unless otherwise ordered by the court, until June
15 30 of the school year during which the child became 18 years of age if
16 the child is still attending high school; or (C) the child is still a bona fide
17 high school student after June 30 of the school year during which the
18 child became 18 years of age, in which case the court, on motion, may
19 order support to continue through the school year during which the child
20 becomes 19 years of age so long as the child is a bona fide high school
21 student and the parents jointly participated or knowingly acquiesced in
22 the decision which delayed the child's completion of high school. The
23 court, in extending support pursuant to subsection (a)(1)(C), may impose
24 such conditions as are appropriate and shall set the child support utilizing
25 the guideline table category for 16-year through 18-year old children.
26 Provision for payment of support and educational expenses of a child after
27 reaching 18 years of age if still attending high school shall apply to any
28 child subject to the jurisdiction of the court, including those whose sup-
29port was ordered prior to July 1, 1992. If an agreement approved by the
30 court prior to July 1, 1988, provides for termination of support before the
31 date provided by subsection (a)(1)(B), the court may review and modify
32 such agreement, and any order based on such agreement, to extend the
33 date for termination of support to the date provided by subsection
34 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
35 provides for termination of support before the date provided by subsec-
36tion (a)(1)(C), the court may review and modify such agreement, and any
37 order based on such agreement, to extend the date for termination of
38 support to the date provided by subsection (a)(1)(C). For purposes of this
39 section, "bona fide high school student" means a student who is enrolled
40 in full accordance with the policy of the accredited high school in which
41 the student is pursuing a high school diploma or a graduate equivalency
42 diploma (GED). In determining the amount to be paid for child support,
43 the court shall consider all relevant factors, without regard to marital

1 misconduct, including the financial resources and needs of both parents,
2 the financial resources and needs of the child and the physical and emo-
3 tional condition of the child. Until a child reaches 18 years of age, the
4 court may set apart any portion of property of either the husband or wife,
5 or both, that seems necessary and proper for the support of the child.
6 Except for good cause shown, every order requiring payment of child
7 support under this section shall require that the support be paid through
8 the central unit for collection and disbursement of support payments
9 designated pursuant to K.S.A. 23-4,118, and amendments thereto. A writ-
10 ten agreement between the parties to make direct child support payments
11 to the obligee and not pay through the central unit shall constitute good
12 cause, unless the court finds the agreement is not in the best interest of
13 the child or children. The obligor shall file such written agreement with
14 the court. The obligor shall maintain written evidence of the payment of
15 the support obligation and, at least annually, shall provide such evidence
16 to the court and the obligee. If the divorce decree of the parties provides
17 for an abatement of child support during any period provided in such
18 decree, the child support such nonresidential parent owes for such period
19 shall abate during such period of time, except that if the residential parent
20 shows that the criteria for the abatement has not been satisfied there shall
21 not be an abatement of such child support.

22 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
23 the provisions of the uniform child custody jurisdiction and enforcement
24 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
25 court may change or modify any prior order of custody, residency, visi-
26 tation and parenting time, when a material change of circumstances is
27 shown, but no ex parte order shall have the effect of changing residency
28 of a minor child from the parent who has had the sole de facto residency
29 of the child to the other parent unless there is sworn testimony to support
30 a showing of extraordinary circumstances. If an interlocutory order is
31 issued ex parte, the court shall hear a motion to vacate or modify the
32 order within 15 days of the date that a party requests a hearing whether
33 to vacate or modify the order.

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

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

40 (A) If the parties have entered into a parenting plan, it shall be pre-
41 sumed that the agreement is in the best interests of the child. This pre-
42 sumption may be overcome and the court may make a different order if
43 the court makes specific findings of fact stating why the agreed parenting

1 plan is not in the best interests of the child.

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

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

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

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

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

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

14 (vi) the willingness and ability of each parent to respect and appre-
15 ciate the bond between the child and the other parent and to allow for a
16 continuing relationship between the child and the other parent;

17 (vii) evidence of spousal abuse;

18 (viii) whether a parent is subject to the registration requirements of
19 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-
20 ments thereto, or any similar act in any other state, or under military or
21 federal law;

22 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
23 21-3609, and amendments thereto;

24 (x) whether a parent is residing with an individual who is subject to
25 registration requirements of the Kansas offender registration act, K.S.A.
26 22-4901, et seq., and amendments thereto, or any similar act in any other
27 state, or under military or federal law; and

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

30 (C) Neither parent shall be considered to have a vested interest in
31 the custody or residency of any child as against the other parent, regard-
32 less of the age of the child, and there shall be no presumption that it is
33 in the best interests of any infant or young child to give custody or resi-
34 dency to the mother.

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

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

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

43 (E) *If a court of competent jurisdiction within this state has entered*

1 a permanency order pursuant to the revised Kansas code for care of chil-
2 dren regarding custody of a child or children who are involved in a pro-
3 ceeding filed pursuant to this section, and such court has determined that
4 the revised Kansas code for care of children case is to be controlling, such
5 court shall file, after consultation with the judge presiding over any pro-
6 ceeding filed pursuant to this section, a certified copy of the permanency
7 order. Such order shall be binding on the parties even if such courts have
8 different venues. Any subsequent modifications of such custody order may
9 only be modified pursuant to subsection(a)(2) or by initiation of a child
10 in need of care petition pursuant to the revised Kansas code for care of
11 children.

12 (4) *Types of legal custodial arrangements.* Subject to the provisions
13 of this article, the court may make any order relating to custodial arrange-
14 ments which is in the best interests of the child. The order shall provide
15 one of the following legal custody arrangements, in the order of prefer-
16 ence: (A) *Joint legal custody.* The court may order the joint legal custody
17 of a child with both parties. In that event, the parties shall have equal
18 rights to make decisions in the best interests of the child.

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

28 (5) *Types of residential arrangements.* After making a determination
29 of the legal custodial arrangements, the court shall determine the resi-
30 dency of the child from the following options, which arrangement the
31 court must find to be in the best interest of the child. The parties shall
32 submit to the court either an agreed parenting plan or, in the case of
33 dispute, proposed parenting plans for the court's consideration. Such op-
34 tions are:

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

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

41 (C) *Nonparental residency.* If during the proceedings the court de-
42 termines that there is probable cause to believe that the child is a child
43 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)

1 of K.S.A. 2007 Supp. 38-2202, and amendments thereto, or that neither
2 parent is fit to have residency, the court may award temporary residency
3 of the child to a grandparent, aunt, uncle or adult sibling, or, another
4 person or agency if the court finds by written order that: (i) (a) The child
5 is likely to sustain harm if not immediately removed from the home;
6 (b) allowing the child to remain in home is contrary to the welfare of
7 the child; or
8 (c) immediate placement of the child is in the best interest of the
9 child; and
10 (ii) reasonable efforts have been made to maintain the family unit
11 and prevent the unnecessary removal of the child from the child's home
12 or that an emergency exists which threatens the safety to the child. In
13 making such a residency order, the court shall give preference, to the
14 extent that the court finds it is in the best interests of the child, first to
15 awarding such residency to a relative of the child by blood, marriage or
16 adoption and second to awarding such residency to another person with
17 whom the child has close emotional ties. The court may make temporary
18 orders for care, support, education and visitation that it considers approp-
19 priate. Temporary residency orders are to be entered in lieu of temporary
20 orders provided for in K.S.A. 2007 Supp. 38-2243 and 38-2244, and
21 amendments thereto, and shall remain in effect until there is a final de-
22 termination under the revised Kansas code for care of children. An award
23 of temporary residency under this paragraph shall not terminate parental
24 rights nor give the court the authority to consent to the adoption of the
25 child. When the court enters orders awarding temporary residency of the
26 child to an agency or a person other than the parent, the court shall refer
27 a transcript of the proceedings to the county or district attorney. The
28 county or district attorney shall file a petition as provided in K.S.A. 2007
29 Supp. 38-2234, and amendments thereto, and may request termination
30 of parental rights pursuant to K.S.A. 2007 Supp. 38-2266, and amend-
31 ments thereto. The costs of the proceedings shall be paid from the general
32 fund of the county. When a final determination is made that the child is
33 not a child in need of care, the county or district attorney shall notify the
34 court in writing and the court, after a hearing, shall enter appropriate
35 custody orders pursuant to this section. If the same judge presides over
36 both proceedings, the notice is not required. Any ~~disposition order~~
37 pursuant to the revised Kansas code for care of children shall be binding and
38 shall supersede any order under ~~this section~~ *article 11 of chapter 38 of*
39 *the Kansas Statutes Annotated, and amendments thereto (determination*
40 *of parentage); article 30 of chapter 59 of the Kansas Statutes Annotated,*
41 *and amendments thereto (guardians or conservators); article 16 of chapter*
42 *60 of the Kansas Statutes Annotated, and amendments thereto (divorce*
43 *and maintenance); article 31 of chapter 60 of the Kansas Statutes Anno-*

1 *tated, and amendments thereto protection from abuse act); and article*
2 *31a of chapter 60 of the Kansas Statutes Annotated, and amendments*
3 *thereto (protection from stalking act).*
4 (b) *Financial matters.* (1) *Division of property.* The decree shall di-
5 vide the real and personal property of the parties, including any retire-
6 ment and pension plans, whether owned by either spouse prior to mar-
7 riage, acquired by either spouse in the spouse's own right after marriage
8 or acquired by the spouses' joint efforts, by: (A) A division of the property
9 in kind; (B) awarding the property or part of the property to one of the
10 spouses and requiring the other to pay a just and proper sum; or (C)
11 ordering a sale of the property, under conditions prescribed by the court,
12 and dividing the proceeds of the sale. Upon request, the trial court shall
13 set a valuation date to be used for all assets at trial, which may be the
14 date of separation, filing or trial as the facts and circumstances of the case
15 may dictate. The trial court may consider evidence regarding changes in
16 value of various assets before and after the valuation date in making the
17 division of property. In dividing defined-contribution types of retirement
18 and pension plans, the court shall allocate profits and losses on the non-
19 participant's portion until date of distribution to that nonparticipant. In
20 making the division of property the court shall consider the age of the
21 parties; the duration of the marriage; the property owned by the parties;
22 their present and future earning capacities; the time, source and manner
23 of acquisition of property; family ties and obligations; the allowance of
24 maintenance or lack thereof; dissipation of assets; the tax consequences
25 of the property division upon the respective economic circumstances of
26 the parties; and such other factors as the court considers necessary to
27 make a just and reasonable division of property. The decree shall provide
28 for any changes in beneficiary designation on: (A) Any insurance or an-
29 nuity policy that is owned by the parties, or in the case of group life
30 insurance policies, under which either of the parties is a covered person;
31 (B) any trust instrument under which one party is the grantor or holds a
32 power of appointment over part or all of the trust assets, that may be
33 exercised in favor of either party; or (C) any transfer on death or payable
34 on death account under which one or both of the parties are owners or
35 beneficiaries. Nothing in this section shall relieve the parties of the ob-
36 ligation to effectuate any change in beneficiary designation by the filing
37 of such change with the insurer or issuer in accordance with the terms
38 of such policy.
39 (2) *Maintenance.* The decree may award to either party an allowance
40 for future support denominated as maintenance, in an amount the court
41 finds to be fair, just and equitable under all of the circumstances. The
42 decree may make the future payments modifiable or terminable under
43 circumstances prescribed in the decree. The court may make a modifi-

1 cation of maintenance retroactive to a date at least one month after the
2 date that the motion to modify was filed with the court. In any event, the
3 court may not award maintenance for a period of time in excess of 121
4 months. If the original court decree reserves the power of the court to
5 hear subsequent motions for reinstatement of maintenance and such a
6 motion is filed prior to the expiration of the stated period of time for
7 maintenance payments, the court shall have jurisdiction to hear a motion
8 by the recipient of the maintenance to reinstate the maintenance pay-
9 ments. Upon motion and hearing, the court may reinstate the payments
10 in whole or in part for a period of time, conditioned upon any modifying
11 or terminating circumstances prescribed by the court, but the reinstate-
12 ment shall be limited to a period of time not exceeding 121 months. The
13 recipient may file subsequent motions for reinstatement of maintenance
14 prior to the expiration of subsequent periods of time for maintenance
15 payments to be made, but no single period of reinstatement ordered by
16 the court may exceed 121 months. Maintenance may be in a lump sum,
17 in periodic payments, on a percentage of earnings or on any other basis.
18 At any time, on a hearing with reasonable notice to the party affected,
19 the court may modify the amounts or other conditions for the payment
20 of any portion of the maintenance originally awarded that has not already
21 become due, but no modification shall be made without the consent of
22 the party liable for the maintenance, if it has the effect of increasing or
23 accelerating the liability for the unpaid maintenance beyond what was
24 prescribed in the original decree. Except for good cause shown, every
25 order requiring payment of maintenance under this section shall require
26 that the maintenance be paid through the central unit for collection and
27 disbursement of support payments designated pursuant to K.S.A. 23-
28 4,118, and amendments thereto. A written agreement between the parties
29 to make direct maintenance payments to the obligee and not pay through
30 the central unit shall constitute good cause. If child support and main-
31 tenance payments are both made to an obligee by the same obligor, and
32 if the court has made a determination concerning the manner of payment
33 of child support, then maintenance payments shall be paid in the same
34 manner.

35 (3) *Separation agreement.* If the parties have entered into a separa-
36 tion agreement which the court finds to be valid, just and equitable, the
37 agreement shall be incorporated in the decree. A separation agreement
38 may include provisions relating to a parenting plan. The provisions of the
39 agreement on all matters settled by it shall be confirmed in the decree
40 except that any provisions relating to the legal custody, residency, visita-
41 tion parenting time, support or education of the minor children shall be
42 subject to the control of the court in accordance with all other provisions
43 of this article. Matters settled by an agreement incorporated in the de-

1 decree, other than matters pertaining to the legal custody, residency, visi-
2 tation, parenting time, support or education of the minor children, shall
3 not be subject to subsequent modification by the court except: (A) As
4 prescribed by the agreement or (B) as subsequently consented to by the
5 parties.

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

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

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

23 Sec. 10. K.S.A. 2007 Supp. 38-2202, 38-2203, 38-2243, 38-2255, 38-
24 2263, 38-2277, 38-2278, 38-2279 and 60-1610 are hereby repealed.

25 Sec. 11. This act shall take effect and be in force from and after its
26 publication in the statute book.