Approved: 3-25-98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 23, 1998, in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Shultz (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Chris Biggs, Geary County Attorney
Frank Henderson, Executive Director, Crime Victim's Compensation Board
Jim Clark, County and District Attorneys Association
Kyle Smith, KBI
Representative Ballou
Barbara Tombs, Kansas Sentencing Commission
Shannon Manzanares, SRS

Others attending: See attached list

The Chair called the meeting to order and opened the hearing on **HB 2789.**

HB 2789: Amendments to crime victims compensation act

Frank Henderson, Executive Director, Crime Victims's Compensation Board, testified in support of **HB 2789**. The conferee explained the need for the bill. The conferee stated that this bill will: increase the allowance for wage loss, provide more funding for funeral expenses, extend the filing period, provide for compensation for mental health counseling, expand the definition of "allowance expense." The conferee stated that the Crime Victims Compensation fund showed a significant unspent balance at the end of fiscal year '97. The conferee related possible reasons for that surplus. The conferee referred to written material showing revenue and expenditures of the last three fiscal years. The conferee also referred to written material showing crime victims compensation claims for the last five fiscal years. (Attachment 1)

The Committee member discussed issues concerning the criteria for payment of monies to crime victims and future funding expectations.

There being no other conferees for **HB 2789**, the Chair closed the hearing.

A motion was made by Representative Mays, second by Representative Swenson to recommend the bill favorably. The motion and second was withdrawn.

A motion was made by Representative Mays, second by Representative Swenson to amend **HB 2789** on page 1, line 21 deleting the word, "serve" and replacing it with "seized." The motion to amend carries.

A motion was made by Representative Mays, second by Representative Swenson to recommend **HB 2789** favorably as amended. The motion carries.

HB 2819 Grants of immunity by the county or district attorney or the attorney general; transactional immunity; use and derivative use immunity

Jim Clark, County and District Attorneys Association, testified in support of **HB 2819** and introduced Chris Biggs, Geary County Attorney.

Mr. Biggs testified in support of **HB 2819**. The conferee stated that this bill amends three statutes and will codify the present constitutional law concerning immunity and would allow prosecutors to grant "use immunity." The conferee discussed the United States Supreme Court decision, Kastigar v. United States.

The conferee stated that the last time the statutes in Kansas were amended was in 1972. This bill would separate the types of immunity. The conferee provided an example of a case where there are co-defendants and the use of one of the defendant's testimony in the case of the other defendant could risk that the Supreme Court would rule that complete immunity was granted to the testifying defendant. The conferee referred to a letter written by Steve Opat attached to his written testimony. The conferee noted that this bill does need some technical changes and cited those changes as typing errors, and on page 2, line 1 insertion of the word "use and derivative use immunity.") Same change should also appear on page 2, line 42, and page 3, line 41. The other two statutes to be amended are the Grand Jury Statute and the Inquisition Statute. They are amended to provide that in both of those kinds of proceedings these two kinds of immunities exist and the prosecutor can grant one type or the other. The conferee stated that language on page 3, lines 10 through 15 was retained from the old statute referring to refusal to testify due to self incrimination unless testimony may be a bases for violation of federal law.(Attachment 2)

The conferee noted several places in the bill where "a" needs to be inserted before the word "result." In response to questions from Committee members, the conferee discussed wording in the bill that could remove the judge's discretion. The conferee stated that immunity language needs to be consistent whether it is the judge who has the authority or not.

The conferee and Committee members discussed an additional technical correction, concerning the use of the Grand Jury Statute. The conferee stated that the language in all three statutes needs to be consistent.

There being no other conferees, the Chair closed the hearing on **HB 2819**.

A motion was made by Representative Carmody to make some technical amendments, page 2, line 1 insert the word "use" after derivative. and to insert "a" in four places as well as a period on page 3, line 26.Second by Representative Dahl. The motion carries.

A motion was made by Representative Mays, second by Representative Swenson to recommend **HB 2819** favorably as amended.

Representative Garner expressed concerns regarding the issue contained in this bill.

Representative Garner made a substitute motion, second by Representative Shriver to refer **HB 2819** to the Judicial Council.

The Chair and committee members discussed the procedural questions concerning the motion.

Representative Garner made the suggestion that this bill should be considered by the Judicial Council.

Representative Garner withdrew the substitute motion, Representative Shriver withdrew the second.

Representative Mays, withdrew his motion, Representative Swenson withdrew his second.

HB 2854 — Authentication of governmental records as a condition to their admission into evidence

The Chair opened discussion on **HB 2854** and referred to a balloon containing suggested language to clarify the bill offered by David Brant, Kansas Securities Commissioner.
(Attachment 3)

A motion was made by Representative Mays, second by Representative Adkins to amend **HB 2854** by adopting the balloon offered by the Securities Commissioner and technical corrections offered by the Revisor to cleanup the language. The motion to amend carries.

Representative Mays explained the purpose of the bill.

Representative Mays made a motion to recommend the bill favorably as amended. Second was by Representative Adkins. The motion carries.

HB 2855: Tax liens against personal property; exceptions; collections

The Chair opened discussion on **HB 2855**. Representative Presta expressed concerns with the bill regarding lien preference that could result in potential problems in non-bankruptcy cases .

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 23, 1998.

A motion was made by Representative Adkins, second by Representative Gilmore to recommend **HB 2855** favorably for passage.

A substitute motion was made by Representative Presta, second by Representative Dahl to table **HB 2855**. The motion carries.

HB 2710: **Child in need of care code; notice to foster parents, preadoptive parents and relatives providing care; reintegration; permanent guardianship; extended out of home placement**

The Chair opened discussion on **HB 2710** and stated that the SRS requested this bill to be in compliance with recent amendments, and to reconcile Kansas' Family Preservation Statutes with the "best interest of the child needs."

Representative Presta explained that this bill was heard in the Family Law Subcommittee and referred to a letter from Teresa Markowitz, Commissioner, Children and Family Services, SRS. (Attachment 4) Also included are charts dated February 4, and February 17, 1998(distributed on the 17th) summarizing the provisions of the federal law and actions needed by Kansas to be in compliance of the federal law.(Attachment 5) (Attachment 6)

Representative Presta discussed the six items listed in Commissioner's Markowitz's letter and stated that item five is not mandated by federal law.

The Committee members discussed the items contained in the letter. The revisor briefed the Committee on the amendments contained in the proposed subcommittee report. The revisor stated that one was requested by the Office of Judicial Administration. The other statement on the balloon concerns a question raised by the Kansas County and District Attorneys Association.
(Attachment 7)

The staff distributed material requested by SRS proposing changes to the bill as stated in the February 17 chart. (Attachment 8) Written testimony from Keith Landis, Christian Science Committee on Publication for Kansas.(Attachment 9)

The Committee members discussed the purpose of this bill and the federal act necessitating this proposed legislation. The Committee members discussed the issue that the rules and regulations concerning this bill will not be propagated until after the federal deadline date. A Committee member expressed concerns regarding no state oversight or intervention in situations short of adoption and other major changes in this bill.

In response to a question from a Committee member, Shannon Manzanares, SRS, stated that the impact of not meeting the federal requirement would be a loss of $28 million for FY 1998.

The Committee members discussed the SRS amendments and Representative Garner expressed concerns with the SRS amendments because he had not had an opportunity to review them. The Chair stated that after discussion with the Vice Chair and the Ranking Minority Leader, the SRS proposed amendments will be considered at another time.

Representative Presta made a motion to move **HB 2710** favorably for passage, second by Representative Gilmore.

Discussion on the bill and the motion followed.

Substitute motion was made by Representative Shriver, second by Representative Mayans to table **HB 2710**. The motion to table carries with a vote of 12 to 7.

HB 2367 **Hard 15 sentences for persons selling or manufacturing certain controlled substances**

The Chair opened discussion on **HB 2367** and stated that the concerns of Representative Haley penalty differences for possession crack cocaine and power cocaine have been addressed in the balloon before the Committee. The Chair discussed the changes in the balloon as recommended by KBI and the revisor. (Attachment 10)

The changes contained in the balloon were discussed.

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 23, 1998.

Representative Dahl made a motion, second by Representative Mayans to adopt the balloon.

The Committee members discussed issues concerning the balloon language on page 2, line 20 and how projections on this bill affect prison bedspace.

Barbara Tombs, Executive Director, Kansas Sentencing Commission, related some projections on the impact this bill might have on prison bedspace depending on many variables.

Representative Gilmore noted that Representative Ballou wished to address the Committee. Representative Ballou commented that the projections provided by Miss Tombs pertained to all drug convictions.

Representative Garner addressed concerns about impact on prison space and the need to change the current system.

A substitute motion was made by Representative Garner , second by Representative Howell to table **HB 2367**. The motion to table carries with a vote of 9 to 8.

The Chair updated the Committee members on **HB 2717**. The Chair stated that he requested that the bill be re-referred to one of the exempt committees. There is a hearing set for that bill on Wednesday, but if it is re-referred that hearing will be cancelled and that bill will have a hearing at a later date.

Representative Swenson made a motion to reconsider the Committee's action on **HB 2367,** Representative Mayans second the motion. The motion carries to reconsider with a vote of 10 to 7.

The Chair stated that the Committee is back on Representative's Dahl motion to adopt the balloon and Representative Mayan's second.

The motion by Representative Dahl, second by Representative Mayans to adopt the balloon carries.

A motion was made by Representative Mayans, second by Representative Howell to report **HB 2367** favorably as amended. The motion carries with a vote of 12 to 6.

The Chair stated that the Committee will meet upon first recess of the House tomorrow.

The Chair adjourned the meeting at 4:55 p.m.

The next meeting is scheduled for February 24, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 2/23/98

NAME	REPRESENTING
Chris Biggs	KCDAA
[illegible]	KCDAA
Josie Stramberg	JoCo
[illegible]	SRS
Teresa Malowitz	SRS
Roberta Sue McKenna	SRS
Shannon Monzaraz	SRS
Curtis E. Hartenberger	KFFK
[illegible]	KFFK
Frank Harden	Atty Gen
Michelle Miller	Johnson County
[illegible]	OJA
Jon Hughes	McGill & Assoc
David Lord	Kansas Securities Commission
Roger Walter	Kansas Securities Commissioner
PHIL STEVENSON	INTERN FOR REP. GARNER

#1

State of Kansas
Office of the Attorney General
CRIME VICTIMS COMPENSATION BOARD
700 S.W. JACKSON, SUITE 400, TOPEKA 66603-3756
PHONE: (785) 296-2359 FAX: (785) 296-0652

CARLA J. STOVALL
ATTORNEY GENERAL

GLENDA L. CAFER, CHAIR
PAULA S. SALAZAR
CARLOS COOPER

Statement of Frank S. Henderson, Jr.
Executive Director, Crime Victims Compensation Board
Before House Judiciary Committee
Re: House Bill 2789

February 23, 1998

Chairman Carmody and Members of the Committee:

I am Frank Henderson, Jr, Executive Director of the Crime Victims Compensation Board, a division of the office of the Attorney General. The Crime Victims Compensation Board was established by the 1978 Legislature, as a payor of last resort, to assist victims of violent crime with out of pocket losses. The Board has granted awards in excess of twenty-one million dollars, and has operated without the commitment of the state general fund since 1986.

I sincerely thank you for the opportunity to address the committee today and express my support of House Bill 2789. This bill was requested by Attorney General Stovall to enhance certain payments, which may be made under the Crime Victims Compensation Act, to victims of violent crime.

House Bill 2789 increases the maximum allowance for wage loss and dependent economic support from $200 to $400 weekly. This allowance, which has not been increased since the establishment of the Board, is less than minimum wage. It is extremely difficult for an individual to make ends meet on 30 to 50 percent less while the expenses remain the same. This will significantly decrease the financial loss to victims and their family members.

The maximum allowance for funeral, cremation, and burial related expenses is increased from $2,000 to $5,000. The Federated Funeral Directors of America report the average adult funeral sale in Kansas in 1996 was $4,300. This does not include additional costs of the cemetery lot, burial vault, opening and closing of the grave, nor a headstone or grave marker, which are estimated to be an additional $1,500. An increase in this allowance will enable the Board to more adequately relieve the family of a deceased victim of that financial liability.

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Attachment 1

K.S.A. 74-7305 is also amended to extend the filing period from one year to two years after reporting the criminal incident to law enforcement officials. I do not expect a significant impact from this extension. A five percent increase in applications over a two year period has been typical with other states that have increased the filing time. However, the two year time frame will be beneficial to those that "fall through the cracks" and miss the deadline. One such case was of a child who had been sexually abused by a neighbor. The parents promptly reported the incident to law enforcement officials. When the investigation was completed the case was forwarded to the prosecuting attorney. The family was given an application for compensation benefits for mental health counseling for their daughter. Unfortunately, more than one year had lapsed, and she was not eligible for benefits.

House Bill 2789 also provides compensation for mental health counseling for victims or claimants who are required to testify in a Sexually Violent Predator civil commitment proceeding. Frequently, in these cases, victims are asked to provide testimony to a crime that occurred five, ten or perhaps fifteen years earlier. Obviously, these situations can be extremely stressful as painful memories are forced to resurface. If a victim did not apply for compensation within one year of the incident, he or she would be ineligible. This will allow that victim to be compensated for mental health counseling that may be needed at that time.

The definition of "allowance expense" in K.S.A. 74-7301 (a) is expanded to include reasonable charges "for the replacement of items of clothing or bedding which were seized for evidence". You will note that the language in the bill actually states "served for evidence", which is a typographical error. It should read "seized for evidence". This provision would most often be used in cases of sexual assault.

For the first time in recent years, the Crime Victims Compensation fund showed a significant unspent balance at the end of fiscal year '97. This is a result of apparent reductions in the violent crime rates, and reflection of fewer claims received. In addition, there are fewer claims that have reached the maximum dollar amount payable for a single claim of $25,000. The fiscal impact of these proposed changes is estimated at $500,000 in fiscal year 1999. Balances in the fund are expected to be adequate to pay the increased costs for the foreseeable future.

These savings present an excellent opportunity to enhance the award provisions of the Crime Victims Compensation Board Act without having to ask for additional funding. I do ask for your support of House Bill 2789 to be able to better assist the innocent victims of violent crime in the state of Kansas. Thank you for your consideration.

CRIME VICTIMS COMPENSATION BOARD
Revenue and Expenditures

REVENUE			
	FY 1997	FY 1996	FY 1995
Fines/Penalties	$ 1,993,571.00	$2,027,951.00	$1,699,103.00
Inmate Contributions	106,335.00	72,209.00	59,153.00
Restitution	53,991.00	75,045.00	71,135.00
Subrogation	45,280.00	43,088.00	19,812.00
Refunds	8,559.00	11,080.00	24,669.00
Memorials	1,035.00	360.00	0.00
Department of Correction Fees			
Parole Supervision Fees	73,838.00	59,718.00	19,554.00
Administration Fees	114,163.00	54,631.00	31,446.00
Dept. of Justice VOCA Grant	$ 617,000.00	$ 616,000.00	$ 618,000.00
REVENUE AVAILABLE	**$ 3,013,772.00**	**$2,960,082.00**	**$2,542,872.00**

EXPENDITURES			
	FY 1997	FY 1996	FY 1995
SALARIES & WAGES	$188,040	$178,722	$167,490
CONTRACTURAL SERVICES	41,083.00	33,573.00	39,319.00
COMMODITIES	4,916.00	4,433.00	4,219.00
CAPITAL OUTLAY	659.00	15,311.00	333.00
STATE OPERATIONS	234,698.00	232,048.00	211,361.00
CLAIMS	1,787,278.00	2,701,591.00	2,541,031.00
TOTAL EXPENDITURES	**$2,021,975.00**	**$2,933,639.00**	**$3,776,094.00**
Total FTE Positions	**5**	**5**	**5**

CRIME VICTIMS COMPENSATION CLAIMS

	FY 1997	FY 1996	FY 1995	FY 1994	FY 1993
NEW CLAIMS RECEIVED	938	962	1055	1161	1177
CLAIMS RESOLVED	1008	1072	1142	1142	1163
CLAIMS PENDING AT YEAR END	253	323	433	520	501
TOTAL AMOUNT AWARDED ON ORIGINAL CLAIMS	$1,313,715	$2,185,708	$2,004,754	$2,069,754	$1,632,795
AVERAGE AMOUNT PER ORIGINAL CLAIM RESOLVED	$1,303	$2,039	$1,755	$1,812	$1,404
SUPPLEMENTAL CLAIMS APPROVED	585	583	759	917	843
TOTAL AMOUNT AWARDED PER SUPPLEMENTAL CLAIM RESOLVED	$536,588	$549,017	$533,234	$633,059	$633,321
AVERAGE AMOUNT PER SUPPLEMENTAL CLAIM RESOLVED	$917	$942	$703	$690	$751
TOTAL AMOUNT AWARDED ON CLAIMS	**$1,850,303**	**$2,734,725**	**$2,537,988**	**$2,702,813**	**$2,266,116**

Testimony In Support of HB 2819

Chris Biggs/ Geary County Attorney
KCDAA Legislative Committee Chair

The Kansas immunity statutes are badly in need of refinement. This bill should be uncontroversial, and simply codifies the present constitutional law concerning immunity and would allow prosecutors to grant "use immunity", also known as "***Kastigar*** immunity". Our present statutory structure is simply behind the times, and confusing. This bill is based upon the United States Supreme Court decision, ***Kastigar v. United States***, 406 U.S. 441, 92 S.Ct. 1653, 32 L. Ed. 2d (1972). K.S.A. 22-3415, as presently written, was amended in March of 1972. The ***Kastigar*** opinion was released on May 22, 1972. Our legislature has not revisited the issue since the opinion.

The present statute allows a prosecutor to grant immunity, but contains confusing language which indicates that the immunity would be transactional, or complete immunity, which means that the person could not be prosecuted for the crime for which he is granted immunity and called to give testimony.

The Fifth Amendment to the United States Constitution only requires that a witness not be called to testify against **himself.** Prosecutors should have the right to call a co-defendant to the stand and force testimony in the trial of the other co-defendant by a grant of "use immunity". Under this immunity, the prosecution cannot use the testimony against the witness but could use the statement against another. This is a valuable tool for federal prosecutors and is available in other states. Kansas has no such provision. When Kansas prosecutors attempt to grant such immunity they do so without any authority, statutory or otherwise. They run up against the argument that complete or transactional immunity has been granted, and therefore the witness cannot be prosecuted at all simply because he provided information against a co-defendant.

Under the proposed bill, two other statutes, K.S.A. 22-3008, concerning grand jury testimony, and K.S.A. 22-3102, concerning inquisition testimony, are likewise amended for consistency. There is no reason, logical or otherwise, to require that an uncooperative witness at an inquisition or grand jury be provided complete transactional immunity during investigatory stages. Our law simply has not codified the ***Kastigar*** rule.

The proposed bill also provides a procedure to enforce the protections of the statute when use immunity is granted, and places a high burden on the prosecution to prove that any evidence used against a defendant did not come from his immunized testimony.

The KCDAA strongly supports this bill. Thank you for the opportunity to present testimony.

Chris Biggs
Geary County Attorney

House Judiciary
2-23-98
Attachment 2

Harper, Hornbaker, Altenhofen & Opat
Chartered Lawyers

Howard W. Harper (1912 - 1988)
Lee Hornbaker
Steven Hornbaker*
Charles W. Harper II
Craig J. Altenhofen*
Steven L. Opat
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Established 1940

* Certified Civil Trial Advocate,
National Board of Trial Advocacy

** Admitted to practice in
Kansas and Missouri

February 20, 1998

Chris Biggs
Geary County Attorney
801 N. Washington, Suite A
Junction City, KS 66441

Dear Mr. Biggs:

Thank you for sharing House Bill No. 2819 with me. As a former prosecutor, (for twelve of my twenty-two years of law practice) I am of the opinion that the current statutes dealing with the issue of immunity have long required reforms. I speak from practical experience, having dealt with numerous, serious offenses, ranging from drug prosecutions to those for rape and murder. Immunity was granted by my office only on a handful of occasions, because of the ambiguous nature of our statute, and the confusion created by the case law addressing immunity issues.

Had the legislation proposed in House Bill No. 2819 been in effect during the investigation and prosecution of one of more notorious homicide cases during my tenure, certain problems arising from the granting of supposed "Kastigar" immunity to one of the potential (and ultimate) co-defendants would not have occurred, and the conviction of both parties responsible for the homicide would have been greatly enhanced. As it was, the issues were such that only one conviction for a reduced degree of homicide was secured.

House Bill 2819 removes the confusion about the nature and quality of immunity in this State, clearly sets out when and under circumstances it can be granted, and what the consequences of its use are for both the State and the "witness". It is far superior to what is on the books now.

Respectfully,

Steven L. Opat

Steve Opat

SO:rr

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KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

February 17, 1998

Hon. Tim Carmody, Chairman
House Judiciary Committee
State Capitol, Room 115-S
Topeka, KS 66612

COPY

Re: House Bill No. 2854

Dear Mr. Chairman:

Enclosed for your review are the proposed revisions to House Bill No. 2854 which were described by Roger Walter in his testimony yesterday.

The original draft of the bill mistakenly struck language which was needed for internal coherence. Additionally, when considering the redraft, we found other problems. The question of when records should be certified under seal needed to be considered. Other parts of the statute were confusing in light of the new amendments.

The intent of the bill as amended is to conform Kansas law to the Federal Rules of Evidence, and other states which follow the federal model, such as Colorado and Oklahoma.

Please call Roger Walter or me at 296-3307 if you have any questions. Thank you for your consideration.

Very truly yours,

David Brant

DAVID BRANT
Securities Commissioner

DB/dse

Enclosure

cc: Hon. Doug Mays
✓Jill Wolters, Office of the Revisor

House Judiciary
2-23-98
Attachment 3

Investor Hotline 1-800-232-9580
http://www.cjnetworks.com/~ksecom

618 S. KANSAS AVENUE
TOPEKA, KANSAS 66603-3804

Office (913) 296-3307
Facsimile (913) 296-6872

Session of 1998

HOUSE BILL No. 2854

By Committee on Judiciary

2-10

AN ACT concerning civil procedure; relating to the rules of evidence; concerning the authentication of copies of records; amending K.S.A. 60-465 and repealing the existing section.

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

Section 1. K.S.A. 60-465 is hereby amended to read as follows: 60-465. A writing purporting to be a copy of an official record or of an entry therein, meets the requirements of authentication if ~~(1)~~ the judge finds that the writing purports to be published by authority of the nation, state or subdivision thereof, in which the record is kept~~; or (2)~~ evidence has been introduced sufficient to warrant a finding that the writing is a correct copy of the record or entry~~; or (3)~~ the office in which the record is kept is within ~~this state *the United States or territory or insular possession subject to the dominion of the United States*~~ and the writing is attested as a correct copy of the record or entry by a person purporting to be an officer, or a deputy of an officer, having the legal custody of the record; ~~or (4) if the office is not within the state, the writing is attested as required in clause (3) of this section and is accompanied by a certificate that such officer has the custody of the record. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the office. If the office in which the record is kept is in a foreign state or country, the certificate may be made~~ by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of that office.

Sec. 2. K.S.A. 60-465 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

and

. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required if (1)

this state

(2)

in which the record is kept is within the United States or territory or insular possession subject to the dominion of the United States and the writing is attested to as required in clause (1) and authenticated by seal of the office having custody or, if that office has no seal, a public officer having a seal and having official duties in the district or political subdivision in which the records are kept certifies under seal that such officer has custody; or (3) if the office in which the record is kept is in a foreign state or country, the writing is attested as required in clause (1) of this section and is accompanied by a certificate that such officer has the custody of the record

#4

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

COMMISSION OF CHILDREN AND FAMILY SERVICES
915 SW HARRISON, DSOB-5TH FLOOR SOUTH
TOPEKA, KS 66612-1588
PHONE: (785) 368-8201
FAX: (785) 368-8159

February 4, 1998

Representative Terry Presta
Statehouse, Room 171-W
Topeka, KS 66612

Dear Representative Presta:

Thank you for the opportunity to review with you, in advance of the hearing set for next week, the importance of H.B. 2710. The Adoption and Safe Families Act, P.L. 105-89 is landmark legislation for children who have been abused or neglected. Among many other things, this Act put to rest any confusion about preservation or re-unification of families when child safety is in question. H.B. 2710 implements those provisions of the Adoption and Safe Families Act that are not already in place in Kansas.

Both the federal law and H. B. 2710 are very important to the children in Kansas who have come into state custody and are in foster care. These children, who have suffered experiences which no child should ever have had to face, deserve the best from the adults who are responsible for their futures--their families, social services, prosecutors, judges, advocates, and legislators. Making timely decisions, based on a child's sense of time, is critical to the child's well being. Historically it sometimes take years for termination precedings to be concluded to free a child for adoption.

The federal legislation includes a number of provisions for states to improve their child welfare services and offers some incentives. Attached to this letter is a brief overview of the federal Act and a chart summarizing the provisions of the federal law and actions needed by Kansas to fully implement. H.B. 2710 contains the Kansas legislative actions needed. These are summarized below.

1. Clarifies that child safety is paramount and that efforts to maintain or re-integrate a child with the family is not required when the court has found:
   - a child has been subjected to torture, chronic abuse or sexual abuse;
   - a child has been abandoned;
   - a parent has assaulted this child or another child;
   - a parent have killed a child;
   - a parent's rights to a sibling have been involuntarily terminated.

2. When the court has found that any of the above is true or that a child has been in foster care for an extended time (defined as 15 out of the last 22 months), and there are no compelling reasons to the contrary, the court shall find that re-integration is not a viable option.

3. Upon such finding the state or guardian ad litem shall, within 30 days, file a motion to terminate parental rights.

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4. Provides that foster parents, pre-adoptive parents and relatives providing care for the child be given notices of hearings and granted the right to be heard.

5. Amends K.S. A. 59-2132 to require a law enforcement background check for adoptive parents. This is currently a requirement for foster parents but not adoptive parents.

6. Establishes " permanent guardianship" as a relationship between child and caretaker which is intended to be permanent and self-sustaining. This is not a provision of the Adoption and Safe Families Act, but we believe it is an important permanency provision for a small number of children for whom adoption is not the best plan.

If you have questions please call me. Shannon Manzanares, will also be available to respond to questions. My telephone number is (785) 368-6448. Shannon can be reached at (785) 368-8190.

Sincerely,

Teresa Markowtiz
Commissioner
Children and Family Services

TAM:SHM:gmc

Attachments: 2

House Judiciary 2-23-98 Attachment 5

ADOPTION AND SAFE FAMILIES ACT OF 1997

Summary	Action Needed
Title I: Reasonable Efforts and Child Safety Provisions	
Child Health and Safety Paramount: In making decisions the child's health and safety must be paramount.	Implement actions below
Reasonable Efforts to Preserve and Reunify Families: When the court finds that reunification is not reasonable, based on specified facts such as: aggravated circumstances defined in state law including abandonment, torture, chronic abuse and sexual abuse; parent has killed another child or has assaulted this child or another of their children; or parent's rights to a sibling has been involuntarily terminated, The court must conduct a permanency hearing within 30 days of the finding that reunification is not reasonable and the state must make reasonable efforts for adoption or guardianship.	Amend K.S.A. 38-1563, 1565
Reunification and adoption efforts may be concurrent.	Train foster care and adoption contractors
Documentation of Efforts to Adopt: When permanency plan is adoption the state must document steps taken to: find an adoptive home or relative home; make a permanent placement; and finalize the adoption/guardianship. Additionally the state must document child specific recruitment plans.	Specify in the IV-B state plan and policy how the state will document steps taken. Modify the Case Planning Document. The adoption contractor is currently required to develop a child specific recruitment plan if an adoptive home is not identified within 90 days of the referral..
Termination of Parental Rights: States are required to file a petition or join a petition to terminate parental rights when: a child has been in foster care for 15 of most recent 22 months; court has determined abandonment; court has determined that a parent assaulted the child or killed or assaulted another of their children.	Amend the Kansas Code for Care of Children to provide court must make finding of fact that the child was abused or neglected and petition for termination of parental rights must be filed within 30 days. Training for prosecutors on the act.
Concurrently state is to identify, recruit, process and approve a qualified adoptive family unless: the child is cared for by a relative;	Adoption contract covers the identification, recruitment of qualified families and is in place.
the state has documented to the court compelling reasons a petition is not in the best interest of the child;	Through policy establish guidelines for compelling reasons a petition is not in the best interest of a specific child.
the state has failed to provide services deemed necessary for reunification when reasonable efforts to reunify are required.	

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ADOPTION AND SAFE FAMILIES ACT OF 1997

Summary	Action Needed
Termination of parental Rights: - Continued For children who enter foster care after the date of enactment (November 1997) states are required to comply with the 15 of 22 months rule within three months of the end of the states first regular legislative session. (For Kansas July, 1998)	Ensure that information system can identify children related to the 15/22 rule. Develop policy related to Administrative Reviews. Train foster care contractors. Develop procedures for requesting motion by county/district attorney.
For children in foster care at the time of enactment states must comply in three phases: 1/3 of the children with in 6 months of the close of the legislative session (Oct. 1998); 1/3 within 12 months (April, 1999); and full compliance by Oct, 1999.	Training for county/district attorneys and courts on the requirements.
Criminal Record Checks: State must do CRC prior to approval for foster and adoptive families for children eligible for IV-E foster care and adoption support. Foster or adoptive parent cannot be approved if there is a felony conviction for: child abuse/neglect; spousal abuse; crimes against children, including child pornography; or crimes of violence, rape, sexual assault or homicide. Also, parent cannot be approved if in the last 5 years there has been a felony conviction for physical assault, battery or a drug related offence. The Governor or legislature can opt out of this requirement.	Amend statutes to add adoptive families to the statues requiring the K.B.I. to do criminal background checks child care providers. Or, opt out of the requirement.
Quality Standard of Care: By Jan. 1999 states must implement standards to ensure foster children receive quality services.	No Action required Foster Care outcomes are in place Foster parents are required to have MAPP training and annual training.

ADOPTION AND SAFE FAMILIES ACT OF 1997

Summary	Action Needed
Title II Adoption Promotion Provisions	
Adoption Incentive Payments: States are eligible for incentive payments when: the number of children placed in FY 1998 exceed the average number for FY's 1995-1997; in FY 1999 and subsequently, when adoptions are higher than in any previous FY after 1996.	Determine baseline data
Incentive payment is $4,000 for each child above the base number plus an additional $2,000 for foster children with special needs.	Develop policy about sharing the incentive payments with the adoption contractor.
To be eligible for incentive payments in FY 2001 and 2002 states must provide heath insurance for any special needs child receiving adoption assistance.	Kansas would be required to provide a medical card for children in Kansas from states which are not ICMA reciprocal.
Technical Assistance to Promote Adoption: HHS will provide T.A. to states for: guidelines for expediting TPR; concurrent planning; specialized units to more toward adoption; tools for determining risk of harm if child is returned home; fast tracking children under 1; and legal risk adoption.	No action required
Eligibility for Adoption Assistance in Cases of Dissolved Adoptions: Federal adoption assistance follows a child to a new adoptive placement.	Revise the eligibly and payment manual to reflect this change. Include in state plan
Health Care for Adopted Children with Special Needs: States must provide medical care for adoption assistance children.	No action required. Provision currently in place
Interjurisdictional Adoption: States could lose IV-E eligibility if the Secretary finds a state has denied or delayed placement when an approved family was eligible in another jurisdiction.	Adoption contractor is required to conduct a national search when no Kansas resource is immediately available. Out comes in place to ensure no delays.

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ADOPTION AND SAFE FAMILIES ACT OF 1997

Summary	Action Needed
Title III: System Accountability and Reform Provisions	
Permanency Hearings: Must have permanency hearing within 12 months form date of entry into foster care. Entry into foster care is defined as: date of first judicial finding of child abuse/neglect, or 60 days after a child's removal from the home.	Amend Kansas Code for Care of Children to provide hearing must be "permanency" hearing. Amend Kansas Code for Care of Children to require court finding of fact regarding CA\N.
The purpose of the permanency hearing is to determine permanent plan for the child and includes time table for: 1. returning home; 2. placement for adoption/state filing of TPR; 3. referral for legal guardianship; or 4. other permanent plan based on compelling reason 1,2, or 3 are not options.	Training for contractors, court and prosecutors. Amend Kansas Code for Care of Children.
Participation in Case Reviews/Hearings: Foster parents, pre adoptive parents and relatives providing care of a child must be given notice of hearing and have a right to be heard. Receiving notice does not equal being a party to the action.	Amend Kansas Code for Care of Children Develop policy and procedure to provide up to date information to the court for proper notices.
Performance Measures for State Child Welfare Programs: HHS with assistance from states and advocates must develop outcome measures for states and report to Congress by May, 1999.	Outcome measures are in place. Volunteer to participate with HHS in establishing outcome measures.
Measures are to be developed from AFCARS, in as much as possible and measure: length of stay in foster care; number of foster care placements; number of adoptions.	No action required. Outcome measures are currently in place Determine if FACTS\SACWIS can provide the data
Additionally HHS, with assistance from states and advocates must study and make recommendations to Congress for performance based incentive funding for IV-B and IV-E. Feasibility study due by May 1999.	No action required
Child Welfare Demonstrations: HHS may approve 10 demonstration programs for FY 1998-2002. Demonstrations must consider and address: barriers resulting in delays in adoption; identify and address parental substance abuse problems that endanger children and result in foster care placement;	Plan to submit a project. Preliminary work begun.

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ADOPTION AND SAFE FAMILIES ACT OF 1997

Summary	Action Needed
Title IV: Additional Provisions	
Reauthorization and Expansion of Family Preservation Program:..IV-B, part 2, FP and FS and Court Improvements Projects is re-authorized. Part 2 is expanded and must include: community based family support services; family preservation; time-limited reunification services (no more than 15 months); adoption promotion support services (pre and post adoption services, activities designed to expedite the adoption process)	Update state plan to include the additional services and add an assurance that safety of the child is paramount. Develop policy and procedure
State plan must assure that the safety of the child is the paramount concern.	Add documentation of the assurances to case planning document.
Kinship Care Report: HHS to convene an advisory panel on the extent to which foster care children are placed with relatives. HHS is to report to the panel by 6-98, panel reviews and submits comments by 10-98. HHS to submit final report to Committees on Ways and Means and Finance by 6-99.	No action required. Foster Care and Adoption contractors currently utilize Kinship Care
Federal Parent Locator Service: Child welfare agencies are authorized to use FPLS to locate absent parents.	Current practice in many areas. Ensure that CSE is aware of the federal authorization.
Coordination of Substance Abuse and CPS: HHS is to report to the committees on Ways and Means and Finance on the out comes of substance abuse by November 1998.	No action required. Enhance effort to coordinate and exchange information with ADAS.
Eligibility for Independent Living Services: Revised to include children no longer eligible for IV-E because of assets) to $5000.	Develop policy changes. Coordinate with IM/EPS to ensure policy change does not render the child ineligible for a medical card.
Standby Guardianship: States should (not mandatory) have laws/procedures permitting chronically ill or near death parents to designate a standby guardian to take effect upon parents death/incapacity.	Can do under Kansas current laws. Training concerning the option is needed.
Purchase of American Made Equipment: To the extent possible equipment and products purchased under ASFA should be American made.	Inform purchasing
Preservation of Reasonable Parenting: Nothing in this legislation is intended to disrupt or intrude on the family	No action required

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ADOPTION AND SAFE FAMILIES ACT OF 1997

Summary	Action Needed
Use of AFCARS Data:..To the extent possible information required by this act would be supplied through AFCARS. *Temporary Reduction of Contingency Fund:* $40 million will be taken from the $2 billion TANF contingency fund. **Title V: Effective Date** Provision are effective on the date of enactment except for: provisions dealing with termination of parental rights, and legislation required by states to comply with state plan requirements (the first quarter following the end of the next state legislative session).	Determine availability of data in FACTS\SACWIS

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[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

House Judiciary 2-23 Attachment 6

Summary [PL 105-89]	Kansas Action Needed (HB-2710)
Title I: Reasonable Efforts and Child Safety Provisions 1. *Child Health and Safety Paramount*: In making decisions the child's health and safety must be paramount. 2. *Reasonable Efforts to Preserve and Reunify Families:* When the court finds that reunification is not reasonable, based on specified facts such as: aggravated circumstances defined in state law including abandonment, torture, chronic abuse and sexual abuse; parent has killed another child or has assaulted this child or another of their children; or parent's rights to a sibling has been involuntarily terminated, The court must conduct a permanency hearing within 30 days of the finding that reunification is not reasonable and the state must make reasonable efforts for adoption or guardianship	Implement actions below **Amend K.S.A. 38- 1502 by adding: (Page 4, Line 12)** ***(v) "abandon" means to forsake, desert or cease providing care for the child without making appropriate provisions for substitute care.*** ***(w) "permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent.*** ***(x) "aggravated circumstances" means the abandonment; torture; chronic abuse; sexual abuse or chronic, life threatening neglect of a child.*** ***(y) "permanency hearing" means a notice and opportunity to be heard is provided ~~the~~ to interested parties, ~~interested,~~ and the foster, preadoptive or relative providing care for the child. The court, after consideration of the evidence, determines whether progress toward the case plan goal is adequate, ~~or~~ reintegration is a viable ~~option~~ alternative, or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or appointment of permanent guardian.*** ***(z) "extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.*** **Amend K.S.A. 38-1561 by adding: (Page 5,) New addition to bill and statute change.** Time for disposition. The order of disposition may be entered at the time of the adjudication, but shall be entered within 30 days following adjudication, unless delayed for good cause. ***In no case shall a permanency hearing be held later than 30 days following a determination reintegration is not a viable alternative.*** **Amend K.S.A. 38-1562 (c) by adding: (Page 5, Line 10)** (c) Prior to entering an order of disposition, the court shall give consideration to the child's physical, mental and emotional condition; the child's need for assistance; the manner in which the parent participated in the abuse, neglect or abandonment of the child; any relevant information from the intake and assessment process; and the evidence received at the dispositional hearing. ***In determining when reunification is a viable alternative, the court shall specifically consider whether the parent has been found by a court to have committed murder or voluntary manslaughter of a child; aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter of a child; or committed a felony assault that results in serious bodily injury to the child or another child or has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x); or parental rights of the parent to another child have been terminated involuntarily. If reintegration is not a viable option, the court shall consider whether a compelling reason has been documented in the case plan to find neither adoption nor permanent guardianship are in the best interests of the child, the child is in a stable placement with a relative, or services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned. If reintegration is not a viable ~~option~~ alternative and either adoption or permanent guardianship might be in the child's best interests, the ~~state or guardian ad litem~~ county or district attorney shall file a motion to terminate parental rights or for permanent guardianship within 30 days.***

Summary PL 105-89	Kansas Action Needed (HB-2710)
2. *Reasonable Efforts to Preserve and Reunify Families:* **Continued**	**Amend K.S.A. 38-1563 (h) by adding: (Page 7, Line 10)** (h) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to prevent or eliminate the need for removal of the child or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child ***or reintegration is not a viable ~~option~~ alternative. Reintegration is not a viable ~~option~~ alternative when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2 aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter of a child; or (3) committed a felony assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x); or the parental rights of the parent to another child have been terminated involuntarily.*** Such findings shall be included in any order entered by the court. **Amend K.S.A. 38-1565(a) by adding: (Page 8, Line 22)** (a) If a child is placed outside the child's home and no plan is made a part of the record of the dispositional hearing, a written plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other placement of the child. ***Reintegration is not a viable alternative when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2) aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter of a child; or (3) committed a felony assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x) or the parental rights of the parent to another child have been terminated involuntarily.*** If the goal is reintegration into the family, the plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 30 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer. **Amend K.S.A. 38-1565 (c) by adding: (Page 9, Line 32)** (c) Whenever a hearing is required under subsection (b), the court shall notify all interested parties and ~~hold a hearing to determine whether proceedings shall be commenced pursuant to this code to terminate the parental rights of either or both parents. If, after hearing, the court determines that the child's needs are not adequately being met, the court shall order commencement of proceedings pursuant to this code to terminate the parental rights of either or both parents unless the court finds good cause why the plan should be modified or a new plan adopted. If the court finds good cause why the plan should be modified or a new plan adopted~~ ***the foster parents, preadoptive parents or relative providing care for the child and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing the interested parties, foster parents, preadoptive parents or relative providing care for the child an opportunity to be heard, the court shall determine whether the child's needs are being adequately met and whether reintegration continues to be a viable ~~option~~ alternative. If the court finds reintegration is no longer a viable ~~option~~, alternative the court shall consider whether the child is in a stable placement with a relative, services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned or compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship are in the child's best interest. If reintegration is not a viable ~~option~~ alternative and either adoption or permanent guardianship might be in the child's best interests, the ~~state or guardian ad litem~~ county or district attorney shall file a motion to terminate parental rights or for permanent guardianship within 30 days. When the court finds reintegration continues to be a viable ~~option~~ alternative,*** the court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court.

Summary PL 105-89	Kansas Action Needed (HB-2710)
2. Reasonable Efforts to Preserve and Reunify Families: - **Continued**	**Amend K.S.A. 38-1581 (a) by adding: (Page 10, Line 13)** Request for termination ***or appointment of permanent guardian.*** (a) Either in the petition filed under this code or in a motion made in proceedings under this code, any interested party may request that ~~the parental rights of~~ either or both parents ***be found unfit and their parental rights*** be terminated ***or a permanent guardianship be appointed.*** (b) Whenever a pleading is filed requesting termination of parental rights, the pleading shall contain a statement of specific facts which are relied upon to support the request, including dates, times and locations to the extent known. ***(c) The ~~state or guardian ad litem~~ county or district attorney shall file pleadings alleging a parent is unfit and requesting termination of parental rights ~~when: (1)~~ within 30 days ~~when~~ after the court has determined reintegration is not a viable ~~option~~ alternative and ~~has not found a compelling reason why~~ adoption or permanent guardianship ~~are not~~ may be in the child's best interest, ~~(2) on and after July 1, 1998 a child has been in extended out of home placement as defined in K.S.A. 38-1502(y); or (3) for children in the secretary's custody prior to July 1, 1998 within 30 days of receiving a request from the secretary. Nothing in this subsection shall be interpreted to prohibit others from filing a motion to terminate parental rights.~~*** **Amend K.S.A. 38-1583 (g) by adding: (Page 12, Line 26)** ***(g) If, after finding the parent unfit, the court determines a compelling reason why it is not in the best interests of the child to terminate parental rights, the court may award permanent guardianship to an individual providing care for the child, a relative or other person with whom the child has close emotional ties. Prior to awarding permanent guardianship the court shall receive and consider an assessment as described in K.S.A. 59-2132 of any potential permanent guardian.***
Reunification and adoption efforts may be concurrent.	Train foster care and adoption contractors
3. *Documentation of Efforts to Adopt:* When permanency plan is adoption the state must document steps taken to: find an adoptive home or relative home; make a permanent placement; and finalize the adoption/guardianship. Additionally the state must document child specific recruitment plans.	Specify in the IV-B state plan and policy how the state will document steps taken. Modify the Case Planning Document. The adoption contractor is currently required to develop a child specific recruitment plan if an adoptive home is not identified within 90 days of the referral..
4. *Termination of Parental Rights:* States are required to file a petition or join a petition to terminate parental rights when: a child has been in foster care for 15 of most recent 22 months; court has determined abandonment; court has determined that a parent assaulted the child or killed or assaulted another of their children.	**Amend K.S.A. 38-1565(a) by adding: (Page 8, Line 22)** (a) If a child is placed outside the child's home and no plan is made a part of the record of the dispositional hearing, a written plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other placement of the child. ***Reintegration is not a viable alternative when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2) aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter of a child; or (3) committed a felony assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x) or the parental rights of the parent to another child have been terminated involuntarily.*** If the goal is reintegration into the family, the plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 30 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer.

[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

Summary PL 105-89	Kansas Action Needed (HB-2710)
4. Termination of parental Rights: **- Continued**	**Amend K.S.A. 38-1565 (c) by adding: (Page 9, Line 32)** (c) Whenever a hearing is required under subsection (b), the court shall notify all interested parties and ~~hold a hearing to determine whether proceedings shall be commenced pursuant to this code to terminate the parental rights of either or both parents. If, after hearing, the court determines that the child's needs are not adequately being met, the court shall order commencement of proceedings pursuant to this code to terminate the parental rights of either or both parents unless the court finds good cause why the plan should be modified or a new plan adopted. If the court finds good cause why the plan should be modified or a new plan adopted~~ ***the foster parents, preadoptive parents or relative providing care for the child and hold a hearing. Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard. After providing interested parties, the foster parents, preadoptive parents or relative providing care for the child an opportunity to be heard, the court shall determine whether the child's needs are being adequately met and whether reintegration continues to be a viable ~~option~~ alternative. If the court finds reintegration is no longer a viable ~~option~~ alternative, the court shall consider whether the child is in a stable placement with a relative, services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned or compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship are in the child's best interest. If reintegration is not a viable ~~option~~ alternative and either adoption or permanent guardianship might be in the child's best interests, the ~~state or guardian ad litem~~ county or district attorney shall file a motion to terminate parental rights or for permanent guardianship within 30 days. When the court finds reintegration continues to be a viable ~~option~~ alternative,*** the court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court.
Concurrently state is to identify, recruit, process and approve a qualified adoptive family unless: the child is being cared for by a relative;	Training for prosecutors on the act. Adoption contract covers the identification, recruitment of qualified families and is in place.
the state has documented to the court compelling reasons a petition is not in the best interest of the child;	Through policy establish guidelines for compelling reasons a petition is not in the best interest of a specific child.
the state has failed to provide services deemed necessary for reunification when reasonable efforts to reunify are required.	Case Planning documents currently provide documentation of services offered\provided.
For children who enter foster care after the date of enactment (November 1997) states are required to comply with the 15 of 22 months rule within three months of the end of the states first regular legislative session. (For Kansas July, 1998)	Ensure that information system can identify children related to the 15/22 rule. Develop policy related to Administrative Reviews. Train foster care contractors. Develop procedures for requesting motion by county/district attorney.
For children in foster care at the time of enactment states must comply in three phases: 1/3 of the children with in 6 months of the close of the legislative session (Oct. 1998); 1/3 within 12 months (April, 1999); and full compliance by Oct, 1999.	Training for county/district attorneys and courts on the requirements.

[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

Summary PL 105-89	Kansas Action Needed (HB-2710)
5. *Criminal Record Checks:* State must do CRC prior to approval for foster and adoptive families for children eligible for IV-E foster care and adoption support. Foster or adoptive parent cannot be approved if there is a felony conviction for: child abuse/neglect; spousal abuse; crimes against children, including child pornography; or crimes of violence, rape, sexual assault or homicide. Also, parent cannot be approved if in the last 5 years there has been a felony conviction for physical assault, battery or a drug related offence. The Governor or legislature can opt out of this requirement.	**K.S.A. 59-2132 (e) by adding: (Page 13, Line 10)** (e) In making the assessment, the social worker, child-placing agency or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services ***and, when appropriate, similar registries in other states or nations; shall determine whether petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of Chapter 21 of the Kansas Statutes Annotated or, within the last five years been convicted of a felony violation of the controlled substance act and when appropriate, any similar conviction in another jurisdiction,*** and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by the social worker, child-placing agency or department of social and rehabilitation services shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.
6. *Quality Standard of Care:* By Jan. 1999 states must implement standards to ensure foster children receive quality services.	No Action required Foster Care outcomes are in place Foster parents are required to have MAPP training and annual training.
Title II Adoption Promotion Provisions	
7. *Adoption Incentive Payments:* States are eligible for incentive payments when: the number of children placed in FY 1998 exceed the average number for FY's 1995-1997; in FY 1999 and subsequently, when adoptions are higher than in any previous FY after 1996.	Determine baseline data
Incentive payment is $4,000 for each child above the base number plus an additional $2,000 for foster children with special needs.	Develop policy about sharing the incentive payments with the adoption contractor.
To be eligible for incentive payments in FY 2001 and 2002 states must provide heath insurance for any special needs child receiving adoption assistance.	Kansas would be required to provide a medical card for children in Kansas from states which are not Interstate Compact on Adoption and Medical Assistance (ICAMA) reciprocal.
8. *Technical Assistance to Promote Adoption:* HHS will provide T.A. to states for: guidelines for expediting TPR; concurrent planning; specialized units to more toward adoption; tools for determining risk of harm if child is returned home; fast tracking children under 1; and legal risk adoption.	No action required

[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

6-9

Summary PL 105-89	Kansas Action Needed (HB-2710)
9. *Eligibility for Adoption Assistance in Cases of Dissolved Adoptions:* Federal adoption assistance follows a child to a new adoptive placement.	Revise the eligibly and payment manual to reflect this change. Include in state plan
10. *Health Care for Adopted Children with Special Needs:* States must provide medical care for adoption assistance children.	No action required. Provision currently in place
. *Interjurisdictional Adoption:* States could lose IV-E eligibility if the Secretary finds a state has denied or delayed placement when an approved family was eligible in another jurisdiction.	Adoption contractor is required to conduct a national search when no Kansas resource is immediately available. Outcomes in place to ensure no delays.
Title III: System Accountability and Reform Provisions	
12. *Permanency Hearings*: Must have permanency hearing within 12 months form date of entry into foster care. Entry into foster care is defined as: date of first judicial finding of child abuse/neglect, or 60 days after a child's removal from the home. The purpose of the permanency hearing is to determine permanent plan for the child and includes time table for: 1. returning home; 2. placement for adoption/state filing of TPR; 3. referral for legal guardianship; or 4. other permanent plan based on compelling reason 1,2, or 3 are not options.	**Amend K.S.A. 38- 1502 by adding: (Page 4, Line 21)** ***(y) "permanency hearing" means a notice and opportunity to be heard is provided ~~the~~ to interested parties, ~~interested,~~ and the foster, preadoptive or relative providing care for the child. The court, after consideration of the evidence, determines whether progress toward the case plan goal is adequate ~~or~~ reintegration is a viable ~~option~~ alternative or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or appointment of permanent guardian.*** Training for contractors, court and prosecutors. Kansas Statute currently requires a hearing at 12 months that meets this requirement.

[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

Summary PL 105-89	Kansas Action Needed (HB-2710)
13. *Participation in Case Reviews/Hearings:* Foster parents, pre adoptive parents and relatives providing care of a child must be given notice of hearing and have a right to be heard. Receiving notice does not equal being a party to the action.	**Amend K.S.A. 38-1562 (b) by adding: (Page 4, Line 41)** (b) Before entering an order placing the child in the custody of a person other than the child's parent, the court shall require notice of the time and place of the hearing to be given to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known , ***and to the foster parent, preadoptive parent, or relative providing care.*** Such notice shall be given by restricted mail not less than 10 business days before the hearing and shall state that the person receiving the notice shall have an opportunity to be heard at the hearing. The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto. ***Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard.*** **Amend K.S.A. 38-1582 (b) (1) by adding: (Page 10, Line 33)** (b) (1) The court shall give notice of the hearing: (A) As provided in K.S.A. 38-1533 and 38-1534 and amendments thereto; and (B) to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known, ***and to the foster parent, preadoptive parent, or relative providing care,*** which notice shall be given by restricted mail not less than 10 business days before the hearing. ***Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard.***
14. *Performance Measures for State Child Welfare Programs:* HHS with assistance from states and advocates must develop outcome measures for states and report to Congress by May, 1999. Measures are to be developed from AFCARS, in as much as possible and measure: length of stay in foster care; number of foster care placements; number of adoptions. Additionally HHS, with assistance from states and advocates must study and make recommendations to Congress for performance based incentive funding for IV-B and IV-E. Feasibility study due by May 1999.	Develop policy and procedure to provide up to date information to the court for proper notices. Outcome measures are in place. Volunteer to participate with HHS in establishing outcome measures. No action required. Outcome measures are currently in place Determine if FACTS\SACWIS can provide the data No action required

[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

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Summary PL 105-89	Kansas Action Needed (HB-2710)
15. *Child Welfare Demonstrations:* HHS may approve 10 demonstration programs for FY 1998-2002. Demonstrations must consider and address: barriers resulting in delays in adoption; identify and address parental substance abuse problems that endanger children and result in foster care placement; address kinship care.	Plan to submit a project. Preliminary work begun.
Title IV: Additional Provisions	
16. *Reauthorization and Expansion of Family Preservation Program:*..IV-B, part 2, FP and FS and Court Improvements Projects is re-authorized. Part 2 is expanded and must include: community based family support services; family preservation; time-limited reunification services (no more than 15 months); adoption promotion support services (pre and post adoption services, activities designed to expedite the adoption process)	Update state plan to include the additional services and add an assurance that safety of the child is paramount. Develop policy and procedure
State plan must assure that the safety of the child is the paramount concern.	Add documentation of the assurances to case planning document.
17. *Kinship Care Report:* HHS to convene an advisory panel on the extent to which foster care children are placed with relatives. HHS is to report to the panel by 6-98, panel reviews and submits comments by 10-98. HHS to submit final report to Committees on Ways and Means and Finance by 6-99.	No action required. Foster Care and Adoption contractors currently utilize Kinship Care
18. *Federal Parent Locator Service:* Child welfare agencies are authorized to use FPLS to locate absent parents.	Current practice in many areas. Ensure that CSE is aware of the federal authorization.
19. *Coordination of Substance Abuse and CPS:* HHS is to report to the committees on Ways and Means and Finance on the out comes of substance abuse by November 1998.	No action required. Enhance effort to coordinate and exchange information with ADAS.
). *Eligibility for Independent Living Services:* Revised to include children no longer eligible for IV-E because of assets up to $5000.	Develop policy changes. Coordinate with IM/EPS\AMS to ensure policy change does not render the child ineligible for a medical card.

[PL 105-89] ADOPTION AND SAFE FAMILIES ACT AND KANSAS HB-2710

Summary PL 105-89	Kansas Action Needed (HB-2710)
21. *Standby Guardianship:* States should (not mandatory) have laws/procedures permitting chronically ill or near death parents to designate a standby guardian to take effect upon parents death/incapacity.	Can do under Kansas current laws. Training concerning the option is needed.
22. *Purchase of American Made Equipment:* To the extent possible equipment and products purchased under ASFA should be American made.	Inform purchasing
23. *Preservation of Reasonable Parenting:* Nothing in this legislation is intended to disrupt or intrude on the family unnecessarily or prohibit reasonable methods of parental discipline or prescribe a particular method of parenting.	No action required
24. *Use of AFCARS Data:*..To the extent possible information required by this act would be supplied through AFCARS.	Determine availability of data in FACTS\SACWIS
25. *Temporary Reduction of Contingency Fund:* $40 million will be taken from the $2 billion TANF contingency fund.	
Title V: Effective Date Provision are effective on the date of enactment except for: provisions dealing with termination of parental rights, and legislation required by states to comply with state plan requirements (the first quarter following the end of the next state legislative session).	

Proposed Subcommittee Report

House Judiciary
2-23-98
Attachment 7

Session of 1998

HOUSE BILL No. 2710

By Committee on Judiciary

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AN ACT concerning children; relating to children in need of care; amending K.S.A. 38-1581 and 59-2132 and K.S.A. 1997 Supp. 38-1502, 38-1562, 38-1563, 38-1565, 38-1582 and 38-1583 and repealing the existing sections; also repealing K.S.A. 1997 Supp. 38-1502b.

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

Section 1. K.S.A. 1997 Supp. 38-1502 is hereby amended to read as follows: 38-1502. As used in this code, unless the context otherwise indicates:

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

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

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

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

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

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

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

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

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

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

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court

order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

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

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

(b) "Physical, mental or emotional abuse or neglect" means the infliction of physical, mental or emotional injury or the causing of a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program

activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

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

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

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

(w) "Permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent.

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

(y) "Permanency hearing" means a notice and opportunity to be heard is provided the interested parties, foster parents, preadoptive parents or relatives providing care for the child. The court, after consideration of the evidence, shall determine whether progress toward the case plan goal is adequate or reintegration is a viable alternative.

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

Sec. 2. K.S.A. 1997 Supp. 38-1562 is hereby amended to read as follows: 38-1562. (a) At any time after a child has been adjudicated to be a child in need of care and prior to disposition, the judge shall permit any interested parties, and any persons required to be notified pursuant to subsection (b), to be heard as to proposals for appropriate disposition of the case.

(b) Before entering an order placing the child in the custody of a person other than the child's parent, the court shall require notice of the time and place of the hearing to be given to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known, *and to the foster parent, preadoptive parent or relative providing care.* Such notice shall be given by restricted mail not less than 10 business days before the hearing and shall

Receiving notice does not mean such person is a party to the action. (OJA suggestion.) (Further, OJA would like clarification on who is to give notice. OJA preference could be the prosecutor or other person filing the petition.)

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state that the person receiving the notice shall have an opportunity to be heard at the hearing. The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto.

(c) Prior to entering an order of disposition, the court shall give consideration to the child's physical, mental and emotional condition; the child's need for assistance; the manner in which the parent participated in the abuse, neglect or abandonment of the child; any relevant information from the intake and assessment process; and the evidence received at the dispositional hearing. *The court shall specifically consider whether the parent has been found by a court to have: (1) Committed murder pursuant to K.S.A. 21-3401, 21-3402 or 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; (2) aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter; (3) committed a felony assault that resulted in serious bodily injury to the child or another child; (4) subjected the child or another child to aggravated circumstances as defined in subsection (x) of K.S.A. 38-1502, and amendments thereto; or (5) parental rights of the parent to another child have been terminated involuntarily. If reintegration is not a viable alternative, the court shall consider whether a compelling reason has been documented in the case plan to find neither adoption nor permanent guardianship are in the best interests of the child. If reintegration is not a viable alternative and either adoption or permanent guardianship might be in the child's best interests, the state or guardian ad litem shall file a motion to terminate parental rights within 30 days.*

Sec. 3. K.S.A. 1997 Supp. 38-1563 is hereby amended to read as follows: 38-1563. (a) After consideration of any evidence offered relating to disposition, the court may retain jurisdiction and place the child in the custody of the child's parent subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including supervision of the child and the parent by a court services officer, or may order the child and the parent to participate in programs operated by the secretary or another appropriate individual or agency. The terms and conditions may require any special treatment or care which the child needs for the child's physical, mental or emotional health.

(b) The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than 18 months. The court, at the expiration of that period, upon a hearing and for good cause shown, may make successive extensions of the supervision or other terms or conditions for up to 12 months at a time.

(c) The court may order the child and the parents of any child who

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(Kansas County and District Attorneys Association question the rush the 30 day time frame would place on prosecutors offices. They would also like clarification on who is the state, ie. secretary of SRS, attorney general or prosecutors. They believe any one can file a Children in Need of Care petition and it should not be restricted. They believe the mandating of the filing of a motion raises ethical questions and liability concerns. These concerns also relate to page 9 and 10.)

has been adjudged a child in need of care to attend counseling sessions as the court directs. The expense of the counseling may be assessed as an expense in the case. No mental health center shall charge a greater fee for court-ordered counseling than the center would have charged to the person receiving counseling if the person had requested counseling on the person's own initiative.

(d) If the court finds that placing the child in the custody of a parent will not assure protection from physical, mental or emotional abuse or neglect or sexual abuse or will not be in the best interests of the child, the court shall enter an order awarding custody of the child, until the further order of the court, to one of the following:

(1) A relative of the child or a person with whom the child has close emotional ties;

(2) any other suitable person;

(3) a shelter facility; or

(4) the secretary.

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

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

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

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

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

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

(g) If the court issues an order of custody pursuant to this section, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child.

(h) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to prevent or eliminate the need for removal of the child; *reintegration is not a viable alternative;* or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child. *Reintegration is not a viable alternative when the: (1) Parent has been found by a court to have committed murder pursuant to K.S.A. 21-3401, 21-3402 or 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; (2) parent aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter; (3) parent committed a felony assault that resulted in serious bodily injury to the child or another child; (4) parent has subjected the child or another child to aggravated circumstances as defined in subsection (x) of K.S.A. 38-1502, and amendments thereto; or (5) parental rights of the parent to another child have been terminated involuntarily.* Such findings shall be included in any order entered by the court.

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

(j) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an

order to pay support for the child. If the parent is not presently ordered to pay support for any child who is a ward of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-1595 and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 *et seq.* and amendments thereto for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-1597 and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Sec. 4. K.S.A. 1997 Supp. 38-1565 is hereby amended to read as follows: 38-1565. (a) If a child is placed outside the child's home and no plan is made a part of the record of the dispositional hearing, a written plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other placement of the child. *Reintegration is not a viable alternative when the: (1) Parent has been found by a court to have committed murder pursuant to K.S.A. 21-3401, 21-3402 or 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; (2) parent aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter; (3) parent committed a felony assault that resulted in serious bodily injury to the child or another child; (4) parent has subjected the child or another child to aggravated circumstances as defined in subsection (x) of K.S.A. 38-1502, and amendments thereto; or (5) parental rights of the parent to another child have been terminated involuntarily.* If the goal is reintegration into the family, the plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 30 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer.

(b) A court services officer or, if the child is in the secretary's custody, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the plan submitted

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pursuant to subsection (a). If the child is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the child's adjustment, progress and condition. The department of social and rehabilitation services shall notify the foster parent or parents of the foster parent's or parent's duty to submit such report, on a form provided by the department of social and rehabilitation services, at least two weeks prior to the date when the report is due, and the name of the judge and the address of the court to which the report is to be submitted. Such report shall be confidential and shall only be reviewed by the court and the child's guardian ad litem. The court shall review the progress being made toward the goals of the plan and the foster parent report and, if the court determines that progress is inadequate or that the plan is no longer viable, the court shall hold a hearing pursuant to subsection (c). If the secretary has custody of the child, such hearing shall be held no more than 12 months after the child is placed outside the child's home and at least every 12 months thereafter. If the goal of the plan submitted pursuant to subsection (a) is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate, the court shall hold a hearing pursuant to subsection (c). Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(c) Whenever a hearing is required under subsection (b), the court shall notify all interested parties and ~~hold a hearing to determine whether proceedings shall be commenced pursuant to this code to terminate the parental rights of either or both parents. If, after hearing, the court determines that the child's needs are not adequately being met, the court shall order commencement of proceedings pursuant to this code to terminate the parental rights of either or both parents unless the court finds good cause why the plan should be modified or a new plan adopted. If the court finds good cause why the plan should be modified or a new plan adopted~~ *the foster parents, preadoptive parents or relatives providing care for the child and hold a hearing. After providing the foster parents, preadoptive parents or relatives providing care for the child an opportunity to be heard, the court shall determine whether the child's needs are being adequately met and whether reintegration continues to be a viable alternative. If the court finds reintegration is no longer a viable alternative, the court shall consider whether compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship are in the child's best interest. If reintegration is not a viable alternative and either adoption or permanent guardianship might be in the child's best interests, the state or guardian ad litem shall file a motion to terminate parental rights within 30 days. When the court*

finds reintegration continues to be a viable alternative, the court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court.

Sec. 5. K.S.A. 38-1581 is hereby amended to read as follows: 38-1581. (a) Either in the petition filed under this code or in a motion made in proceedings under this code, any interested party may request that the parental rights of either or both parents be terminated.

(b) Whenever a pleading is filed requesting termination of parental rights, the pleading shall contain a statement of specific facts which are relied upon to support the request, including dates, times and locations to the extent known.

(c) The state or guardian ad litem shall file pleadings alleging a parent is unfit and requesting termination of parental rights when: (1) Within 30 days when the court has determined reintegration is not a viable alternative and has not found a compelling reason why adoption or permanent guardianship are not in the child's best interest; (2) on and after July 1, 1998, a child has been in extended out of home placement as defined in subsection (y) of K.S.A. 38-1502, and amendments thereto; or (3) for children in the secretary's custody prior to July 1, 1998, within 30 days of receiving a request from the secretary. Nothing in this subsection shall be interpreted to prohibit others from filing a motion to terminate parental rights.

Sec. 6. K.S.A. 1997 Supp. 38-1582 is hereby amended to read as follows: 38-1582. (a) Upon receiving a petition or motion requesting termination of parental rights the court shall set the time and place for the hearing on the request.

(b) (1) The court shall give notice of the hearing: (A) As provided in K.S.A. 38-1533 and 38-1534 and amendments thereto; ~~and~~ (B) to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known;*; and (C) to the foster parents, preadoptive parents or relatives providing care;* which notice shall be given by restricted mail not less than 10 business days before the hearing.

(2) The provisions of subsection (b)(1)(B) shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto.

(3) Prior to the commencement of the hearing the court shall determine that due diligence has been used in determining the identity of the interested parties and in accomplishing service of process.

(c) In any case in which a parent of a child cannot be located by the exercise of due diligence, service shall be made upon the child's nearest

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blood relative who can be located and upon the person with whom the child resides. Service by publication shall be ordered upon the parent.

(d) Prior to a hearing on a petition or a motion requesting termination of parental rights, the court shall appoint an attorney to represent any parent who fails to appear and may award a reasonable fee to the attorney for services. The fee may be assessed as an expense in the proceedings.

Sec. 7. K.S.A. 1997 Supp. 38-1583 is hereby amended to read as follows: 38-1583. (a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.

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

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

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

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

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

(5) conviction of a felony and imprisonment;

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

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

(8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child.

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

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

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

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into the parental home; and

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

In making the above determination, the court may disregard incidental

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visitations, contacts, communications or contributions.

(d) The rights of the parents may be terminated as provided in this section if the court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

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

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

(g) If, after finding the parent unfit, the court determines a compelling reason why it is not in the best interests of the child to terminate parental rights, the court may award permanent guardianship to an individual providing care for the child, a relative or other person with whom the child has a close emotional attachment.

Sec. 8. K.S.A. 59-2132 is hereby amended to read as follows: 59-2132. (a) Except as provided in subsection (h), in independent and agency adoptions, the court shall require the petitioner to obtain an assessment by a court approved social worker licensed to practice social work in Kansas or by a licensed child-placing agency of the advisability of the adoption.

(b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if necessary, confirmation or clarification of the information filed under K.S.A. 59-2130, and amendments thereto.

(c) If there is no licensed social worker or licensed child-placing agency available to make the assessment and report to the court, the court may use the department of social and rehabilitation services for that pur-

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pose.

(d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated and amendments thereto.

(e) In making the assessment, the social worker, child-placing agency or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services, *shall determine whether petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or, within the last five years been convicted of a felony violation of the uniform controlled substances act,* and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by the social worker, child-placing agency or department of social and rehabilitation services shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.

(f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a licensed social worker, a licensed child-placing agency or a comparable entity in that state and filed with the court not less than 10 days before the hearing on the petition.

(g) The assessment and report required by this section must have been completed not more than one year prior to the filing of the petition for adoption.

(h) The assessment and report required by this section may be waived by the court upon review of a petition requesting such waiver by such child's grandparent or grandparents or upon the court's own motion.

Sec. 9. K.S.A. 38-1581 and 59-2132 and K.S.A. 1997 Supp. 38-1502, 38-1502b, 38-1562, 38-1563, 38-1565, 38-1582 and 38-1583 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

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Chapter 38.--MINORS
Article 15.--KANSAS CODE FOR CARE OF CHILDREN

Statute # 38-1502 **Definitions**
As used in this code, unless the context otherwise indicates:

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

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

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

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

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

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

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

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

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

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

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

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused; or
(12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a, and amendments thereto.

(b) "Physical, mental or emotional abuse or
neglect" means the infliction of physical, mental or emotional injury or the causing of a

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deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and amendments thereto.

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

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

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

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

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

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

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

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

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

(l) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing

of a petition pursuant to this code and who continues subject to that jurisdiction until the petition is dismissed or the child is discharged as provided in K.S.A. 38-1503 and amendments thereto.

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

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

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

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

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

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

(s) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

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

(u) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 1996 Supp. 75-7023.

(v) "abandon" means to forsake, desert or cease providing care for the child without making

appropriate provisions for substitute care.

(w) "permanent guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining without ongoing state oversight or intervention. The permanent guardian stands in loco parentis and exercises all the rights and responsibilities of a parent.

(x) "aggravated circumstances" means the abandonment; torture; chronic abuse; sexual abuse or chronic, life threatening neglect of a child.

(y) "permanency hearing" means a notice and opportunity to be heard is provided ~~the~~ to interested parties, ~~interested,~~ and the foster, preadoptive or relative providing care for the child. The court, after consideration of the evidence, determines whether progress toward the case plan goal is adequate, ~~or~~ reintegration is a viable ~~option~~ alternative, or if the case should be referred to the county or district attorney for filing of a petition to terminate parental rights or appointment of permanent guardian.

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

Statute # 38-1561 (New statute change needed in bill)

Time for disposition. The order of disposition may be entered at the time of the adjudication, but shall be entered within 30 days following adjudication, unless delayed for good cause. *In no case shall a permanency hearing be held later than 30 days following a determination reintegration is not a viable alternative.*

Statute # 38-1562

Dispositional hearing.
(a) At any time after a child has been adjudicated to be a child in need of care and prior to disposition, the judge shall permit any interested parties, and any persons required to be notified pursuant to subsection (b), to be heard as to proposals for appropriate disposition of the case.

(b) Before entering an order placing the child in the custody of a person other than the child's parent, the court shall require notice of the time and place of the hearing to be given to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known, *and to the foster parent, preadoptive parent, or relative providing care.* Such notice shall be given by restricted mail not less than 10 business days before the hearing and shall state that the person receiving the notice shall have an opportunity to be heard at the hearing. The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto. *Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard.*

(c) Prior to entering an order of disposition, the court shall give consideration to the child's physical, mental and emotional condition; the child's need for assistance; the manner in which the parent participated in the abuse, neglect or abandonment of the child; any relevant information from the intake and assessment process; and the evidence received at the dispositional hearing. ***In determining when reunification is a viable alternative, the court shall specifically consider whether the parent has been found by a court to have committed murder or voluntary manslaughter of a child; aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter of a child; or committed a felony assault that results in serious bodily injury to the child or another child or has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x); or parental rights of the parent to another child have been terminated involuntarily. If reintegration is not a viable alternative, the court shall consider whether a compelling reason has been documented in the case plan to find neither adoption nor permanent guardianship are in the best interests of the child, the child is in a stable placement with a relative, or services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned. If reintegration is not a viable ~~option~~ alternative and either adoption or permanent guardianship might be in the child's best interests, the ~~state or guardian ad litem~~ county or district attorney shall file a motion to terminate parental rights or for permanent guardianship within 30 days.***

Statute # 38-1563

Authorized dispositions.
(a) After consideration of any evidence offered relating to disposition, the court may retain jurisdiction and place the child in the custody of the child's parent subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including supervision of the child and the parent by a court services officer, or may order the child and the parent to participate in programs operated by the secretary or another appropriate individual or agency. The terms and conditions may require any special treatment or care which the child needs for the child's physical, mental or emotional health.

(b) The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than 18 months. The court, at the expiration of that period, upon a hearing and for good cause shown, may make successive extensions of the supervision or other terms or conditions for up to 12 months at a time.

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

(d) If the court finds that placing the child in the custody of a parent will not assure protection from physical, mental or emotional abuse or neglect or sexual abuse or will not be in the best interests of the child, the court shall enter an order awarding custody of the child, until the further

order of the court, to one of the following:

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

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

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

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

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

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

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

(g) If the court issues an order of custody pursuant to this section, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child.

(h) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to prevent or eliminate the need for removal of the child or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child ***or reintegration is not a viable ~~option~~ alternative. Reintegration is not a viable ~~option~~ alternative when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2) aided or abetted, attempted, conspired or solicited to commit such a murder or such voluntary manslaughter of a child; or (3) committed a felony***

assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x); or the parental rights of the parent to another child have been terminated involuntarily. Such findings shall be included in any order entered by the court.

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

(j) In addition to any other order authorized by this section, if child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is a ward of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under K.S.A. 38-1595 and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq. and amendments thereto for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-1597 and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

Statute # 38-1565

Plan for reintegration of child into family or other alternative placement; reports by foster parents; inadequacy of plan, commencement of proceedings pursuant to this code, hearing; new or modified plan.

(a) If a child is placed outside the child's home and no plan is made a part of the record of the dispositional hearing, a written plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other placement of the child. ***Reintegration is not a viable alternative when the parent (1) has been found by a court to have committed murder or voluntary manslaughter of a child; (2) aided or abetted,***

attempted, conspired or solicited to commit such a murder or such voluntary manslaughter <u>of a child</u>; or (3) committed a felony assault that resulted in serious bodily injury to the child or another child; or (4) has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x) or the parental rights of the parent to another child have been terminated involuntarily.

If the goal is reintegration into the family, the plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 30 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer.

(b) A court services officer or, if the child is in the secretary's custody, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the plan submitted pursuant to subsection (a). If the child is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the child's adjustment, progress and condition. The department of social and rehabilitation services shall notify the foster parent or parents of the foster parent's or parent's duty to submit such report, on a form provided by the department of social and rehabilitation services, at least two weeks prior to the date when the report is due, and the name of the judge and the address of the court to which the report is to be submitted. Such report shall be confidential and shall only be reviewed by the court and the child's guardian ad litem. The court shall review the progress being made toward the goals of the plan and the foster parent report and, if the court determines that progress is inadequate or that the plan is no longer viable, the court shall hold a hearing, within 30 days, pursuant to subsection (c). If the secretary has custody of the child, such hearing shall be held no more than 12 months after the child is placed outside the child's home and at least every 12 months thereafter. ***<u>For children in the custody of the Secretary prior to July 1, 1998, within 30 days of receiving a request from the Secretary a permanency hearing shall be held</u>***. If the goal of the plan submitted pursuant to subsection (a) is reintegration into the family and the court determines after 12 months from the time such plan is first submitted that progress is inadequate, the court shall hold a hearing pursuant to subsection (c). Nothing in this subsection shall be interpreted to prohibit termination of parental rights prior to the expiration of 12 months.

(c) Whenever a hearing is required under subsection (b), the court shall notify all interested parties and ~~hold a hearing to determine whether proceedings shall be commenced pursuant to this code to terminate the parental rights of either or both parents. If, after hearing, the court determines that the child's needs are not adequately being met, the court shall order commencement of proceedings pursuant to this code to terminate the parental rights of either or both parents unless the court finds good cause why the plan should be modified or a new plan adopted. If the court finds good cause why the plan should be modified or a new plan adopted~~ ***the foster parents, preadoptive parents or relative providing care for the child and hold a hearing. <u>Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and opportunity to be heard.</u> After providing the <u>interested parties</u>, foster parents, preadoptive parents or relative providing care for the child an opportunity to be***

heard, the court shall determine whether the child's needs are being adequately met and whether reintegration continues to be a viable ~~option~~ alternative. If the court finds reintegration is no longer a viable ~~option~~ alternative, the court shall consider whether the child is in a stable placement with a relative, services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned or compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship are in the child's best interest. If reintegration is not a viable ~~option~~ alternative and either adoption or permanent guardianship might be in the child's best interests, the ~~state or guardian ad litem~~ county or district attorney shall file a motion to terminate parental rights or for permanent guardianship within 30 days. When the court finds reintegration continues to be a viable ~~option~~, alternative the court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court.

Statute # 38-1581

Request for termination ***or appointment of permanent guardian.***
(a) Either in the petition filed under this code or in a motion made in proceedings under this code, any interested party may request that ~~the parental rights of~~ either or both parents ***be found unfit and their parental rights*** be terminated ***or a permanent guardianship be appointed***. (b) Whenever a pleading is filed requesting termination of parental rights, the pleading shall contain a statement of specific facts which are relied upon to support the request, including dates, times and locations to the extent known.

(c) The ~~state or guardian ad litem~~ county or district attorney shall file pleadings alleging a parent is unfit and requesting termination of parental rights ~~when: (1)~~ within 30 days ~~when~~ after the court has determined reintegration is not a viable ~~option~~ alternative and has not found a compelling reason why adoption or permanent guardianship ~~are not~~ may be in the child's best interest, ~~; (2) on and after July 1, 1998 a child has been in extended out of home placement as defined in K.S.A. 38-1502(y) and amendments thereto and the court has not found compelling reasons why adoption or permanent guardianship are not in the childs best interest; or (3) for children in the secretary's custody prior to July 1, 1998 within 30 days of receiving a request from the secretary. Nothing in this subsection shall be interpreted to prohibit others from filing a motion to terminate parental rights.~~

Statute # 38-1582

Procedure upon receipt of request.
(a) Upon receiving a petition or motion requesting termination of parental rights the court shall set the time and place for the hearing on the request.

(b) (1) The court shall give notice of the hearing: (A) As provided in K.S.A. 38-1533 and 38-1534 and amendments thereto; and (B) to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known, ***and to the foster parent,***

preadoptive parent, or relative providing care, which notice shall be given by restricted mail not less than 10 business days before the hearing. ***Individuals receiving notice pursuant to this subsection shall not be made a party to the action solely on the basis of this notice and an opportunity to be heard.***

(2) The provisions of subsection (b)(1)(B) shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 38-1536 and amendments thereto.

(3) Prior to the commencement of the hearing the court shall determine that due diligence has been used in determining the identity of the interested parties and in accomplishing service of process.

(c) In any case in which a parent of a child cannot be located by the exercise of due diligence, service shall be made upon the child's nearest blood relative who can be located and upon the person with whom the child resides. Service by publication shall be ordered upon the parent.

(d) Prior to a hearing on a petition or a motion requesting termination of parental rights, the court shall appoint an attorney to represent any parent who fails to appear and may award a reasonable fee to the attorney for services. The fee may be assessed as an expense in the proceedings.

Statute # 38-1583

Considerations in termination of parental rights.

(a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. (b) In making a determination hereunder the court shall consider, but is not limited to, the following, if applicable:

(1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child; (2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature; (3) excessive use of intoxicating liquors or narcotic or dangerous drugs; (4) physical, mental or emotional neglect of the child; (5) conviction of a felony and imprisonment; (6) unexplained injury or death of another child or stepchild of the parent; (7) reasonable efforts by appropriate public or private child caring agencies have been unable to rehabilitate the family; and (8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child.

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

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

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

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into the parental home; and

(4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay. In making the above determination, the court may disregard incidental visitations, contacts, communications or contributions.

(d) The rights of the parents may be terminated as provided in this section if the court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

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

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

(g) If, after finding the parent unfit, the court determines a compelling reason why it is not in the best interests of the child to terminate parental rights, the court may award permanent guardianship to an individual providing care for the child, a relative or other person with whom the child has close emotional ties. Prior to awarding permanent guardianship the court shall receive and consider an assessment as described in K.S.A. 59-2132 of any potential permanent guardian.

Statute # 59-2132

Same; assessment, investigation and report; waiver.

(a) Except as provided in subsection (h), in independent and agency adoptions, the court shall require the petitioner to obtain an assessment by a court approved social worker licensed to practice social work in Kansas or by a licensed child-placing agency of the advisability of the

adoption.

(b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if necessary, confirmation or clarification of the information filed under K.S.A. 59-2130, and amendments thereto.

(c) If there is no licensed social worker or licensed child-placing agency available to make the assessment and report to the court, the court may use the department of social and rehabilitation services for that purpose.

(d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated and amendments thereto.

(e) In making the assessment, the social worker, child-placing agency or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services ***and, when appropriate, similar registries in other states or nations***; ***shall determine whether petitioner has been convicted of a felony for any act described in articles 34, 35 or 36 of Chapter 21 of the Kansas Statutes Annotated or, within the last five years been convicted of a felony violation of the controlled substance act and when appropriate, any similar conviction in another jurisdiction,*** and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by the social worker, child-placing agency or department of social and rehabilitation services shall include the results of the investigation of the petitioner, the petitioner's home and the ability of the petitioner to care for the child.

(f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a licensed social worker, a licensed child-placing agency or a comparable entity in that state and filed with the court not less than 10 days before the hearing on the petition.

(g) The assessment and report required by this section must have been completed not more than one year prior to the filing of the petition for adoption.

(h) The assessment and report required by this section may be waived by the court upon review of a petition requesting such waiver by such child's grandparent or grandparents or upon the court's own motion.

#9

Christian Science Committee on Publication For Kansas

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To: House Committee on Judiciary

Re: HB 2710

A study of recent federal changes in CAPTA and ASFA legislation results in the conclusion that the amendments in HB 2710 on page 7, lines 12-24, and page 8, lines 22-33, go beyond requirements mandated by the federal legislation. These amendments would prevent a finding that reintegration is a viable alternative in placement of a child if one of several specified actions has occurred.

It is our understanding from the federal legislation that reintegration still may be a viable alternative in some cases and that the option to make such a decision should remain available.

We request that page 7, line 12, and page 8, line 22, be amended as follows:

"Reintegration ~~is not~~ **may not be** *a viable alternative ~~when~~* **if** *the:"*

This change will give the court the opportunity to order proper placement of a child based on the facts of the case.

Keith R. Landis
Committee on Publication
for Kansas

House Judiciary
2-23-98
Attachment 9

#HB 10

Session of 1997

HOUSE BILL No. 2367

By Representatives Ballou, Beggs, Bradley, Campbell, Cox, Dahl, Dreher, Faber, Farmer, Franklin, Geringer, Glasscock, Hayzlett, Horst, Huff, Humerickhouse, Hutchins, Johnson, Landwehr, Lloyd, P. Long, Mayans, Mays, McCreary, Mollenkamp, Myers, Palmer, J. Peterson, Powers, Shore, Sloan, Stone, Tanner, Toplikar, Vickrey, Vining, Wilk and Wilson

2-14

AN ACT concerning crimes and punishment; relating to the unlawful sale and manufacturing of controlled substances; amending K.S.A. ~~1996~~ Supp. 21-4705, 22-3717, 65-4159, 65-4161 and 65-4163 and repealing the existing sections.

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

New Section 1. (a) For purposes of sentencing pursuant to this act, substances and quantities shall be as follows:

(1) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(2) 500 grams or more of a mixture or substance containing a detectable amount of:

(A) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed;

(B) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(C) ecgonine, its derivatives, their salts, isomers and salts of isomers; or

(D) any compound, mixture or preparation which contains any quantity of any of the substances referred to in subparagraph (A) through (C);

~~(3) five grams or more of a mixture or substance described in clause (ii) which contains cocaine base;~~

(4) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(5) ~~.5 gram~~ or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(6) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- (1- (2-phenylethyl) -4-piperidinyl) propan-

Suggested amendments from KBI and Revisor cleanup 2-23-98

1997

Renumber remaining subsections accordingly.

100 dosage units

House Judiciary 2-23-98 Attachment 10

amide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-pheny propanamide;

(7) 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 100 or more marijuana plants regardless of weight; or

(8) 10 grams or more of methamphetamine, its salts, isomers and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers.

(b) The scale amounts for all controlled substances in this section refer to the total weight of the controlled substance. If any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

New Sec. 2. (a) When it is provided by law that a person shall be sentenced pursuant to this section, such person shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence.

(b) Except as provided in subsection (c) in addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 15 years' imprisonment, and such 15 years' imprisonment shall not be reduced by the application of good time credits.

(c) If the person's crime of conviction and criminal history place such person in grid blocks 1-A, 1-B or 1-C, a person sentenced pursuant to this section shall not be eligible for parole prior to serving the amount of months in such grid blocks sentencing range as established by the sentencing judge.

(d) Upon sentencing a defendant pursuant to this section, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to this section. The provisions of this section shall be applicable to crimes committed on or after July 1, ~~1997~~ 1998.

~~Sec. 3. K.S.A. 1996 Supp. 21-4705 is hereby amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:~~

Except as provided further,

Any reduction in sentence may only be given if the prosecutor certifies to the court that the defendant has provided substantial assistance to the state.

drug

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SENTENCING RANGE - DRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	204 / 194 / 185	196 / 186 / 176	187 / 178 / 169	179 / 170 / 161	170 / 162 / 154	167 / 158 / 150	162 / 154 / 146	161 / 150 / 142	154 / 146 / 138
II	83 / 78 / 74	77 / 73 / 68	72 / 68 / 65	68 / 64 / 60	62 / 59 / 55	59 / 56 / 52	57 / 54 / 51	54 / 51 / 49	51 / 49 / 46
III	51 / 49 / 46	47 / 44 / 41	42 / 40 / 37	36 / 34 / 32	32 / 30 / 28	26 / 24 / 22	23 / 22 / 20	18 / 17 / 16	15 / 14 / 13
IV	42 / 40 / 37	36 / 34 / 32	32 / 30 / 28	26 / 24 / 23	22 / 20 / 18	18 / 17 / 16	16 / 15 / 14	14 / 13 / 12	12 / 11 / 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history ~~place~~ *places* such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not be subject to appeal.

(e) The sentence for a violation of subsection (e) of K.S.A. 65-4159, subsection (g) of K.S.A. 1996 Supp. 65-4161 and subsection (e) of K.S.A. 1996 Supp. 65-4163, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall

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not be subject to the provisions of this section or K.S.A. 21-4708, and amendments thereto.

Sec. 4. K.S.A. 1996 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal ~~and~~, K.S.A. 21-4635 through 21-4638 *and section 2* and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402 and amendments thereto committed on or after July 1, 1996, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(c) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (C) and (D), persons sen-

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tenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 crimes must serve 36 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(C) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually violent or sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721 and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714 and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to K.S.A. 21-4718 and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court-ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender reg-

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tration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.

(D) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(E) In cases where sentences for crimes from more than one severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, *and* 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed

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while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724 and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing during the

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month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony, the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates' proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to ~~insure~~ *ensure* public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall

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remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Within a reasonable time after an inmate is committed to the custody of the secretary of corrections, a member of the Kansas parole board, or a designee of the board, shall hold an initial informational hearing with such inmate and other inmates.

(k) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before it and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the

interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(l) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(m) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it ~~may deem~~ *deems* proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(n) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision ~~make~~ *makes* progress ~~towards~~ *toward* or successfully ~~complete~~ *completes* the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so; and

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community.

(o) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of

parole, the parole board shall order as a condition of parole that the parolee make restitution for the damage or loss caused by the parolee's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the parole board shall not order restitution as a condition of parole or postrelease supervision unless the board finds compelling circumstances which justify such an order.

(p) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(q) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(r) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(s) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

See attachment

Sec. 5. K.S.A. 1996 Supp. 65-4159 is hereby amended to read as follows: 65-4159. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

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(b) *Except as otherwise provided,* any person violating the provisions of this section with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled substance or controlled substance analog, upon conviction, is guilty of:

(1) A drug severity level 2 felony upon conviction for a first offense;

(2) a drug severity level 1 felony upon conviction for a second offense or subsequent offense and the sentence for which shall not be subject to statutory provisions for suspended sentence, community work service, or probation.

(c) The provisions of subsection (d) of K.S.A. 21-3301, and amend-

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Sec. 3. K.S.A 1997 Supp. 21-4705 is here amended to read as follows: 21-4705. (a) For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied in felony cases under the uniform controlled substances act for crimes committed on or after July 1, 1993:

SENTENCING RANGE - DRUG OFFENSES

Category → / Severity Level ↓	A	B	C	D	E	F	G	H	I
	3 Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 Misdemeanors	1 Misdemeanor No Record
I	204 / 194 / 185	196 / 186 / 176	187 / 178 / 169	179 / 170 / 161	170 / 162 / 154	167 / 158 / 150	162 / 154 / 146	161 / 150 / 142	154 / 146 / 138
II	83 / 78 / 74	77 / 73 / 68	72 / 68 / 65	68 / 64 / 60	62 / 59 / 55	59 / 56 / 52	57 / 54 / 51	54 / 51 / 49	51 / 49 / 46
III	51 / 49 / 46	47 / 44 / 41	42 / 40 / 37	36 / 34 / 32	32 / 30 / 28	28 / 26 / 24	23 / 22 / 20	20 / 19 / 17	16 / 15 / 14
IV	42 / 40 / 37	36 / 34 / 32	32 / 30 / 28	26 / 24 / 23	22 / 20 / 19	19 / 18 / 16	16 / 15 / 14	14 / 13 / 12	12 / 11 / 10

LEGEND

Presumptive Probation

Border Box

Presumptive Imprisonment

(b) The provisions of subsection (a) shall apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. The sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the prison sentence, the maximum potential reduction to such sentence as a result of good time and the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history ~~place~~ places such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F, the court may impose an optional nonprison sentence upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F shall not be considered a departure and shall not be subject to appeal.

(e) The sentence for a violation of subsection (e) of K.S.A. 65-4159, subsection (g) of K.S.A. 1997 Supp. 65-4161 and subsection (e) of K.S.A. 1997 Supp. 65-4163, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A 21-4708, and amendments thereto.

Sec. 4. K.S.A. 1997 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal ~~and~~, K.S.A. 21-4635 through 21-4638 and section 2 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402 and amendments thereto committed on or after July 1, 1996, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(c) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 crimes must serve 36 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(C) (i) The sentencing judge shall impose the postrelease

supervision period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually violent or sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721 and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714 and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to K.S.A. 21-4718 and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender registration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.

(D) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(E) In cases where sentences for crimes from more than one severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302~~,~~ and 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724 and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence

expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal

record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to ~~insure~~ ensure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three

years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it ~~may deem~~ deems proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision ~~make~~ makes progress ~~towards~~ toward or successfully ~~complete~~ completes the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 1997 Supp. 22-4529 unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the

amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522 and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

ments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance pursuant to this section.

(d) Notwithstanding any other provision of law, upon conviction of any person for violating subsection (a), such person shall be guilty of a drug severity level 1 felony if such person is 18 or more years of age and the substances involved were manufactured within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(e) Notwithstanding any other provision of law, upon conviction of any person for violating subsection (a) in which the substances involved were equal to or greater than the amounts for such substances as specified in section 1, and amendments thereto, the person shall be sentenced to imprisonment for life pursuant to section 2, and amendments thereto.

Sec. 6. K.S.A. ~~1996~~ 1997 Supp. 65-4161 is hereby amended to read as follows: 65-4161. (a) Except *as otherwise provided or* as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; dispense or compound any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b), (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more

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years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(f) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(g) Notwithstanding any other provision of law, upon conviction of any person for violating subsection (a) in which the substances involved were equal to or greater than the amounts for such substances as specified in section 1, and amendments thereto, the person shall be sentenced to imprisonment for life pursuant to section 2, and amendments thereto.

(h) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

Sec. 7. K.S.A. ~~1996~~ 1997 Supp. 65-4163 is hereby amended to read as follows: 65-4163. (a) Except *as otherwise provided or* as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, deliver or distribute; cultivate; prescribe; administer; deliver; distribute; dispense or compound:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and

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amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto.

Except as provided in subsection (b), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (a) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 and such person is 18 or more years of age, such person shall be guilty of a drug severity level 2 felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(c) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(d) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(e) Notwithstanding any other provision of law, upon conviction of any person for violating subsection (a) in which the substances involved were equal to or greater than the amounts for such substances as specified in section 1, and amendments thereto, the person shall be sentenced to imprisonment for life pursuant to section 2, and amendments thereto.

~~(e)~~ *(f)* The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

Sec. 8. K.S.A. ~~1996~~ Supp. 21-4705, 22-3717, 65-4159, 65-4161 and 65-4163 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

1997

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