

Approved \_\_\_\_\_  
Date

## MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:42 a.m. on April 5, 2000 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Jerry Donaldson, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Janet Allegrucci, SRS  
Bill Kennedy, Riley County District Attorney  
Randy Hearrell, Kansas Judicial Council  
Carol Foreman, Kansas Judicial Council

Others attending: see attached list

### **Sub for SB 633--CINC; defining child in need of protection and youth in need of community services; creating the family services and community intervention fund**

Conferee Allegrucci discussed a modified substitute for **SB 633** that does not bifurcate the CINC code and one which includes the necessary statute changes for compliance with the Adoption and Safe Families Act of 1997 (ASFA). She discussed those changes and emphasized certain things the bill does not do. (attachment 1) Lengthy discussion followed.

Conferee Kennedy expressed "extreme" concern regarding the current use of **SB 633** and the proposed amendments to the bill, discussing in detail, the latter. He further discussed what he has observed to be "due process issues" in the current statute and offered suggestions for statutory changes which would provide for a short term voluntary respite program for "out-of-control" adolescents which would keep them from coming into SRS custody. (attachment 2) Lengthy discussion followed. The Chair expressed his concern as well as the Committee's concern regarding this bill and other SRS issues but agreed the bill needed to be passed out of Committee and be looked at in more depth at a later time. Senator Goodwin moved to pass the bill out favorably as amended, Senator Vratil seconded. Carried.

### **HB 2082--Crimes, criminal procedure, punishments, time limitations for prosecution**

Conferee Hearrell explained that **HB 2082** was "not going anywhere" and so it was the Kansas Judicial Council's recommendation to "gut" the bill and use it to address an administrative procedure problem. He introduced Conferee Foreman who discussed the events which initiated the need for modifying the language of K.S.A. 75-37, 121(d). She stated that the proposed change would more clearly reflect the intent of the statute. (attachment 3) Following brief discussion, Senator Bond moved to amend **HB 2082** as submitted with the language presented for Committee, including a punctuation change suggested in the balloon amendment, and pass the bill out favorably as amended, effective upon publication in the register, Senator Goodwin seconded. Carried

### **SB 632--Authority of supreme court**

#### **SB 341--D.U.I.; criminal and administrative procedures and penalties**

Senator Oleen reviewed her Subcommittee's work on **SB 632**, a bill which would make municipal courts and judges subject to general administrative authority of the Kansas Supreme Court. She stated that the Subcommittee recommends this topic be the subject of an interim committee study. She further reviewed the Subcommittee's work on **SB 341** and discussed several items of concern. (attachment 4) Following discussion, Senator Oleen moved to delete the provision containing a \$50 subpoena fee to be charged for each law enforcement officer at an administrative hearing would be capped at \$100 and to pass the bill out favorably as amended, Senator Bond seconded. Carried.

The meeting adjourned at 11:35 a.m. No further meetings are scheduled at present.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: April 5, 2000

NAME	REPRESENTING
Dodie Wulfsberg Johnson	Ks Action for Children
TK Shively	Ks Legal Services
Carol Foreman	DOA Judicial Council
Jeff Botby	KSA / KPOA
MAUREEN MAHONEY	KAW VALLEY CENTER
Valerie Peterson	Riley Co. Atty's Office
William E Kennedy III	Riley County Attorney
Joyce Allegrucci	SRS
Sue McKenna	SRS
Dyanon Pat Lodge	SRS
Bruce Lutz	Children's Alliance
Dick Bauman	KDOT
Edy Howell	KANSAS Judicial Council
Bill Burke	Issues Mgmt. Group
CHARLES H. FREEMAN	ARP - KS STATE LEG. COMM.



State of Kansas  
Department of Social  
and Rehabilitation  
Services

Janet Schalansky, Secretary

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Senate Judiciary Committee  
April 5, 2000

**Senate Bill 633**

Children and Family Policy  
Joyce Allegrucci, Assistant Secretary  
785-368-6448

Sr. Fred  
4-5-00  
att 1

Sr. Fred  
4-5-00  
att 1

Mr. Chairman and members of the Committee, I am Joyce Allegrucci, Assistant Secretary of SRS for Children and Family Policy. I am here today to discuss with you a modified substitute for Senate Bill 633 that has removed the changes to the Kansas Code for Care of Children proposed by SRS that would have separated the code into two categories.

The bill in front of you today contains those sections which the Judges and SRS have drafted to comply with the final regulations of the Adoption and Safe Families Act (ASFA) requiring reasonable efforts to prevent out-of-home placement for a child and specific findings in court orders. It also sets into statute that SRS is the entity responsible for documenting what efforts have been made and what services have been provided to prevent the need for a child to be placed out of home prior to the disposition hearing for a child in need of care. This bill also modifies the language of permanent guardianship passed last year to provide that when a permanent guardianship is created for a child in the custody of SRS, the child shall then be discharged from the custody of the Secretary.

Mr. Chairman, this is the bill that sets out the necessary statute changes for ASFA, and it has been agreed to between the Judiciary and SRS. This modified substitute bill **does not** bifurcate the code into two categories—child in need of protection and youth in need of community services. It **does not** allow SRS an early opportunity to provide services to prevent out-of-home placement in every case. **This bill does not allow us to manage the number of children entering the foster care system. The budget reduction of \$6 million SGF in the Governor's budget recommendation assumed we would have this authority.**

Diligent efforts must be made to continue to educate and persuade all partners of the necessity of providing services to children and families to prevent out-of-home placement whenever safely possible:

- policy makers,
- judges,
- county and district attorneys,
- educators,
- community service providers of physical, mental health, and behavioral management services,
- staff and contractors of SRS, and
- staff and contractors of the Juvenile Justice Authority (JJA).

We all must be aware that there are outcomes required by ASFA in regard to the education, physical health, mental health, and well-being of children and families that require all of us to be responsible for communication, collaboration, and coordination of services.



Mr. Chairman, this bill is critical to bring the state into compliance with the final regulations of the Adoption and Safe Families Act of 1997. Those regulations require what we, in Kansas, have believed for some time is the right thing to do for children and families. We urge your favorable consideration of this bill.

I thank the Chairman and the members of this committee for their continued attention to this important issue. I will now stand for questions.

**Substitute for Senate Bill 633**  
(With Balloon)

**Issues Related to Implementation of the Adoption and Safe Families Act (ASFA):**

- Whenever current statute refers to making a finding in the *best interests* of a child regarding placement, the code is amended to include language from the Adoption and Safe Families Act regarding whether the action would be *contrary to the welfare* of the child.
- Requires that findings or orders of the court be provided timely to the secretary for any child in the custody of the secretary. Such documentation will be required during federal audit for the State to receive federal financial participation under Title IV-E. [Sec. 8, page 16; Sec. 9, page 19]
- Requires at each permanency hearing a finding by the court whether reasonable efforts have been made to accomplish the permanency goal. [Sec. 13, page 26]
- If a child in the custody of the secretary has been placed at home for six or more months and the child is then removed for out of home placement, this constitutes a new episode and a court determination of reasonable efforts, or contrary to the welfare is required. [Sec. 14, page 27; Sec. 15, page 28 ]
- Includes as a permitted permanency goal, placement with a fit and willing relative or custody to remain with the secretary for another planned permanent living arrangement. [Sec. 19, page 33-35]

Reasonable efforts to avoid unnecessary placement:

- Requires the secretary or any person requesting a petition alleging a child to be a child in need of care to include in the petition, any information known to them about efforts to prevent unnecessary removal of a child or information which supports that an emergency exists which threatens the safety of the child. [Sec. 6, page 13]
- Requires notice to the secretary of a petition which requests custody to the secretary in order for the secretary to have the opportunity to provide preventive or protective services. [Section 7, page 14; Section 8, page 14]

Ex parte protective custody and temporary custody:

- A court may place the child in the custody of the secretary but only until the secretary presents the court with documentation of a plan for services to a child and family which the court finds is in place and is adequate to protect the safety of the child. [Sec 8, page 15; Sec. 9, page 18]

Dispositional custody:

- The court may place the child in the custody of the secretary if the secretary has not provided the court with documentation of services which the court finds to be sufficient to protect the safety of the child. If the secretary does present such plan the court shall approve the return home of the child. [Sec. 12, page 22, 23]

**Permanent Guardianship:**

- Allows for utilization of permanent guardianship by curing a technical difficulty with existing language. Current statute *dismisses* the CINC case which means it never existed. Suggested amendment would clarify that the child is discharged from the custody of the secretary. [Sec. 18, page 32; Sec. 21, page 36]

Substitute for SENATE BILL No. 633

By Committee on Ways and Means

3-17

10 ~~AN ACT concerning children in need of care; amending K.S.A. 38-1503,~~  
11 ~~38-1531, 38-1566, 38-1567, 38-1568 and 75-3329 and K.S.A. 1999~~  
12 ~~Supp. 38-1502, 38-1507, 38-1513, 38-1532, 38-1542, 38-1543, 38-~~  
13 ~~1544, 38-1562, 38-1563, 38-1565, 38-1581, 38-1583, 38-1584, 38-1585,~~  
14 ~~38-1587, and 38-1591 and 60-1610 and repealing the existing sections.~~  
15

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

17 New Section 1. There is hereby established in the state treasury the  
18 family services and community intervention fund which shall be admin-  
19 istered by the secretary of social and rehabilitation services. The secretary  
20 of social and rehabilitation services may accept money from any source  
21 for the purposes for which money in the family services and community  
22 intervention fund may be expended. Upon receipt of such money, the  
23 secretary shall remit the entire amount at least monthly to the state trea-  
24 surer, who shall deposit it in the state treasury and credit it to the family  
25 services and community intervention fund. All moneys in the special fund  
26 for family services and community intervention shall be used for the pur-  
27 pose of assisting state, county, or local governments or political subdivi-  
28 sions thereof; or community agencies; to provide services, intervention  
29 and support services to children alleged or adjudged to be a ~~youth~~ *child* in need  
30 of ~~community services~~ *care* as defined by K.S.A. 38-1502, and amendments  
31 thereto, especially those youth at risk because of their own actions or  
32 behaviors and not due to abuse or neglect by a parent, guardian or other  
33 person responsible for their care. The purpose of the family services and  
34 community intervention fund shall be to enhance the ability of families  
35 and children to resolve problems within the family and community that  
36 might otherwise result in a child becoming a ward of the court, by the  
37 collaboration of governmental and local service providers. All expendi-  
38 tures from the family services and community intervention fund shall be  
39 made in accordance with appropriation acts upon warrants of the director  
40 of accounts and reports issued pursuant to vouchers approved by the  
41 secretary or by a person or persons designated by the secretary.

42 Sec. 2. K.S.A. 1999 Supp. 38-1502 is hereby amended to read as  
43 follows: 38-1502. As used in this code, unless the context otherwise

1 indicates:

2 (a) "Child in need of care" means a person less than 18 years of age  
3 who: ~~is a child in need of protection or a youth in need of community  
4 services as defined by this code.~~

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

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

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

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

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

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

16 — (7) except in the case of a violation of K.S.A. 41-727, subsection (j)  
17 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-  
18 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-  
19 4204a and amendments thereto, does an act which, when committed by  
20 a person under 18 years of age, is prohibited by state law, city ordinance  
21 or county resolution but which is not prohibited when done by an adult;

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

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

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

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

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

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

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

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

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

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

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

16 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)  
17 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-  
18 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-  
19 4204a and amendments thereto, does an act which, when committed by  
20 a person under 18 years of age, is prohibited by state law, city ordinance  
21 or county resolution but which is not prohibited when done by an adult;

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

25 (9) is willfully and voluntarily absent from the child's home without

26 the consent of the child's parent or other custodian;  
27 (10) is willfully and voluntarily absent at least a second time from a  
28 court ordered or designated placement, or a placement pursuant to court  
29 order, if the absence is without the consent of the person with whom the  
30 child is placed or, if the child is placed in a facility, without the consent  
31 of the person in charge of such facility or such person's designee;  
32 (11) has been residing in the same residence with a sibling or another  
33 person under 18 years of age, who has been physically, mentally or emo-  
34 tionally abused or neglected, or sexually abused; or  
35 (12) while less than 10 years of age commits the offense defined in  
36 K.S.A. 21-4204a and amendments thereto.

37 ~~(b) "Child in need of protection" means a person less than 18 years-~~  
38 ~~of age who:-~~  
39 ~~(1) Has been physically, mentally or emotionally abused or neglected-~~  
40 ~~or sexually abused;-~~  
41 ~~(2) has been placed for care or adoption in violation of law;-~~  
42 ~~(3) has been abandoned or does not have a known living parent; or-~~  
43 ~~(4) has been residing in the same residence with a sibling or another-~~

~~1 person under 18 years of age, who has been physically, mentally or emo-~~  
~~2 tionally abused or neglected, or sexually abused.~~

~~3 (c) "Youth in need of community services" means a person less than~~  
~~4 18 years of age who:~~

~~5 (1) is without the care or control necessary for the youth's physical,~~  
~~6 mental or emotional health;~~

~~7 (2) is not attending school as required by K.S.A. 72-977 or 72-1111,~~  
~~8 and amendments thereto;~~

~~9 (3) except in the case of a violation of K.S.A. 41-727, subsection (j) of~~  
~~10 K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-~~  
~~11 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-~~  
~~12 4204a, and amendments thereto, does an act which, when committed by~~

~~13 a person under 18 years of age, is prohibited by state law, city ordinance~~  
~~14 or county resolution but which is not prohibited when done by an adult;~~

~~15 (4) while less than 10 years of age, commits any act which if done by~~  
~~16 an adult would constitute the commission of a felony or misdemeanor as~~  
~~17 defined by K.S.A. 21-3105, and amendments thereto;~~

~~18 (5) is willfully and voluntarily absent from the child's home without~~  
~~19 the consent of the child's parent or other custodian;~~

~~20 (6) is willfully and voluntarily absent from a court ordered or desig-~~  
~~21 nated placement, or a placement pursuant to a court order, if the absence~~  
~~22 is without the consent of the person with whom the child is placed or, if~~  
~~23 the child is placed in a facility, without the consent of the person in charge~~  
~~24 of such facility or such person's designee; or~~

~~25 (7) while less than 10 years of age commits the offense defined in~~  
~~26 K.S.A. 21-4204a, and amendments thereto.~~

~~27 (b) (d) "Physical, mental or emotional abuse or neglect" means the~~  
~~28 infliction of physical, mental or emotional injury or the causing of a de-~~  
~~29 terioration of a child and may include, but shall not be limited to, failing~~  
~~30 to maintain reasonable care and treatment, negligent treatment or mal-~~  
~~31 treatment or exploiting a child to the extent that the child's health or~~  
~~32 emotional well-being is endangered. A parent legitimately practicing re-~~  
~~33 ligious beliefs who does not provide specified medical treatment for a~~  
~~34 child because of religious beliefs shall not for that reason be considered~~  
~~35 a negligent parent; however, this exception shall not preclude a court from~~  
~~36 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513 and~~  
~~37 amendments thereto.~~

~~38 (e) (e) "Sexual abuse" means any act committed with a child which~~  
~~39 is described in article 35, chapter 21 of the Kansas Statutes Annotated~~  
~~40 and those acts described in K.S.A. 21-3602 or 21-3603, and amendments~~  
~~41 thereto, regardless of the age of the child.~~

~~42 (f) (f) "Parent," when used in relation to a child or children, includes~~  
~~43 a guardian, conservator and every person who is by law liable to maintain,~~



1 care for or support the child.

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

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

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

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

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

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

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

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

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

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

43 ~~(o)~~ (q) "Secretary" means the secretary of social and rehabilitation

1 services.

2 (p) (r) "Relative" means a person related by blood, marriage or adop-  
3 tion but, when referring to a relative of a child's parent, does not include  
4 the child's other parent.

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

9 (r) (t) "Multidisciplinary team" means a group of persons, appointed  
10 by the court or by the state department of social and rehabilitation serv-  
11 ices under K.S.A. 38-1523a and amendments thereto, which has knowl-  
12 edge of the circumstances of a child in need of care. *A multidisciplinary*  
13 *team may serve as a community services team.*

14 (s) (u) "Jail" means:

15 (1) An adult jail or lockup; or

16 (2) a facility in the same building or on the same grounds as an adult  
17 jail or lockup, unless the facility meets all applicable standards and licen-  
18 sure requirements under law and there is (A) total separation of the ju-  
19 venile and adult facility spatial areas such that there could be no haphaz-  
20 ard or accidental contact between juvenile and adult residents in the  
21 respective facilities; (B) total separation in all juvenile and adult program  
22 activities within the facilities, including recreation, education, counseling,  
23 health care, dining, sleeping, and general living activities; and (C) separate  
24 juvenile and adult staff, including management, security staff and direct  
25 care staff such as recreational, educational and counseling.

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

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

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

35 (w) (y) "Permanent guardianship" means a judicially created rela-  
36 tionship between child and caretaker which is intended to be permanent  
37 and self-sustaining without ongoing state oversight or intervention *by the*  
38 *secretary*. The permanent guardian stands in loco parentis and exercises  
39 all the rights and responsibilities of a parent. ~~Upon appointment of a~~  
40 ~~permanent guardian, the child in need of care proceedings shall be dis-~~  
41 ~~missed.~~ A permanent guardian may be appointed after termination of  
42 parental rights *or without termination of parental rights, if the parent*  
43 *consents and agrees to the appointment of a permanent guardian. Upon*

1 appointment of a permanent guardian, ~~the court shall continue to have~~  
 2 ~~jurisdiction to review the placement and appoint successor or replacement~~  
 3 ~~guardian or guardians.~~

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

6 (y) (aa) "Permanency hearing" means a notice and opportunity to be  
 7 heard is provided to interested parties, foster parents, preadoptive parents  
 8 or relatives providing care for the child. The court, after consideration of  
 9 the evidence, shall determine whether progress toward the case plan goal  
 10 is adequate or reintegration is a viable alternative, or if the case should  
 11 be referred to the county or district attorney for filing of a petition to  
 12 terminate parental rights or to appoint a permanent guardian.

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

17 (aa) (cc) "Educational institution" means all schools at the elementary  
 18 and secondary levels.

19 (bb) (dd) "Educator" means any administrator, teacher or other pro-  
 20 fessional or paraprofessional employee of an educational institution who  
 21 has exposure to a pupil specified in subsection (a) of K.S.A. 1999 Supp.  
 22 72-89b03 and amendments thereto.

23 (ee) "Neglect" means acts or omissions by a parent, guardian or per-  
 24 son responsible for the care of a child resulting in harm to a child or  
 25 presenting a likelihood of harm and the acts or omissions are not due  
 26 solely to the lack of financial means of the child's parents or other cus-  
 27 todian. Neglect may include but shall not be limited to:

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

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

34 (3) failure to use resources available to treat a diagnosed medical con-  
 35 dition if such treatment will make a child substantially more comfortable,  
 36 reduce pain and suffering, correct or substantially diminish a crippling  
 37 condition from worsening. A parent legitimately practicing religious be-  
 38 liefs who does not provide specified medical treatment for a child because  
 39 of religious beliefs shall not for that reason be considered a negligent  
 40 parent; however, this exception shall not preclude a court from entering  
 41 an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and amendments  
 42 thereto.

43 (ff) "Community services team" means a group of persons, appointed

the child shall  
 be discharged  
 from the  
 custody of the  
 secretary

1 by the court or by the state department of social and rehabilitation serv-  
2 ices for the purpose of assessing the needs of a child who is alleged to be  
3 a youth in need of ~~community services~~ care.

4 Sec. 3. K.S.A. 38-1503 is hereby amended to read as follows: 38-  
5 1503. (a) Proceedings concerning any child who appears to be a child in  
6 need of care shall be governed by this code, except in those instances  
7 when the Indian child welfare act of 1978 (25 U.S.C. § § 1901 *et seq.*)  
8 applies.

9 (b) Subject to the uniform child custody jurisdiction act, K.S.A. 38-  
10 1301 *et seq.* and amendments thereto, the district court shall have original  
11 jurisdiction to receive and determine proceedings under this code.

12 (c) When jurisdiction has been acquired by the court over the person  
13 of a child in need of care it may continue until the child: (1) Has attained  
14 the age of 21 years; (2) has been adopted; or (3) has been discharged by  
15 the court. Any child 18 years of age or over may request, by motion to  
16 the court, that the jurisdiction of the court cease. Subsequently, the court  
17 shall enter an order discharging the person from any further jurisdiction  
18 of the court.

19 (d) When it is no longer appropriate for the court to exercise juris-  
20 diction over a child the court, upon its own motion or the motion of an  
21 interested party, shall enter an order discharging the child. Except upon  
22 request of the child, the court shall not enter an order discharging a child  
23 which reaches 18 years of age before completing the child's high school  
24 education until June 1 of the school year during which the child became  
25 18 years of age as long as the child is still attending high school.

26 (e) Unless the court finds that substantial injustice would result, the  
27 provisions of this code shall govern with respect to acts or omissions oc-  
28 ccurring prior to the effective date of this code, *and amendments thereto*,  
29 and with respect to children alleged or adjudicated to have done or to  
30 have been affected by the acts or omissions, to the same extent as if the  
31 acts or omissions had occurred on or after the effective date of *this code*,  
32 *and amendments thereto*, and the children had been alleged or adjudi-  
33 cated to be children in need of care.

34 Sec. 4. K.S.A. 1999 Supp. 38-1507 is hereby amended to read as  
35 follows: 38-1507. (a) Except as otherwise provided, in order to protect  
36 the privacy of children who are the subject of a child in need of care  
37 record or report, all records and reports concerning children in need of  
38 care, including the juvenile intake and assessment report, received by the  
39 department of social and rehabilitation services, a law enforcement  
40 agency or any juvenile intake and assessment worker shall be kept con-  
41 fidential except: (1) To those persons or entities with a need for infor-  
42 mation that is directly related to achieving the purposes of this code, or  
43 (2) upon an order of a court of competent jurisdiction pursuant to a

1 determination by the court that disclosure of the reports and records is  
 2 in the best interests of the child or are necessary for the proceedings  
 3 before the court, or both, and are otherwise admissible in evidence. Such  
 4 access shall be limited to in camera inspection unless the court otherwise  
 5 issues an order specifying the terms of disclosure.

6 (b) The provisions of subsection (a) shall not prevent disclosure of  
 7 information to an educational institution or to individual educators about  
 8 a pupil specified in subsection (a) of K.S.A. 1999 Supp. 72-89b03 and  
 9 amendments thereto.

10 (c) When a report is received by the department of social and reha-  
 11 bilitation services, a law enforcement agency or any juvenile intake and  
 12 assessment worker which indicates a child may be in need of care, the  
 13 following persons and entities shall have a free exchange of information  
 14 between and among them:

- 15 (1) The department of social and rehabilitation services;
- 16 (2) the commissioner of juvenile justice;
- 17 (3) the law enforcement agency receiving such report;
- 18 (4) members of a court appointed multidisciplinary team;
- 19 (5) an entity mandated by federal law or an agency of any state au-  
 20 thorized to receive and investigate reports of a child known or suspected  
 21 to be in need of care;
- 22 (6) a military enclave or Indian tribal organization authorized to re-  
 23 ceive and investigate reports of a child known or suspected to be in need  
 24 of care;
- 25 (7) a county or district attorney;
- 26 (8) a court services officer who has taken a child into custody pursuant  
 27 to K.S.A. 38-1527, and amendments thereto;
- 28 (9) a guardian ad litem appointed for a child alleged to be in need of  
 29 care;
- 30 (10) an intake and assessment worker; and
- 31 (11) any community corrections program which has the child under  
 32 court ordered supervision;
- 33 (12) *the department of health and environment or persons authorized*  
 34 *by the department of health and environment pursuant to K.S.A. 59-512,*  
 35 *and amendments thereto, for the purpose of carrying out responsibilities*  
 36 *relating to licensure or registration of child care providers as required by*  
 37 *chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments*  
 38 *thereto; and*
- 39 (13) *members of a duly appointed community services team.*

40 (d) The following persons or entities shall have access to information,  
 41 records or reports received by the department of social and rehabilitation  
 42 services, a law enforcement agency or any juvenile intake and assessment  
 43 worker. Access shall be limited to information reasonably necessary to

1 carry out their lawful responsibilities to maintain their personal safety and  
2 the personal safety of individuals in their care or to diagnose, treat, care  
3 for or protect a child alleged to be in need of care.

4 (1) A child named in the report or records.

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

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

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

14 (5) A person or entity licensed or registered by the secretary of health  
15 and environment or approved by the secretary of social and rehabilitation  
16 services to care for, treat or supervise a child in need of care. In order to  
17 assist a child placed for care by the secretary of social and rehabilitation  
18 services in a foster home or child care facility, the secretary shall provide  
19 relevant information to the foster parents or child care facility prior to  
20 placement and as such information becomes available to the secretary.

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

23 (7) The state child death review board established under K.S.A. 22a-  
24 243, and amendments thereto.

25 (8) A prospective adoptive parent prior to placing a child in their care.

26 (9) The department of health and environment or person authorized  
27 by the department of health and environment pursuant to K.S.A. 59-512,  
28 and amendments thereto, for the purpose of carrying out responsibilities  
29 relating to licensure or registration of child care providers as required by  
30 chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments  
31 thereto.

32 (10) The state protection and advocacy agency as provided by sub-  
33 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.  
34 74-5515, and amendments thereto.

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

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

40 (13) *The secretary of social and rehabilitation services.*

41 (14) *A law enforcement agency.*

42 (15) *A juvenile intake and assessment worker.*

43 (16) *The commissioner of juvenile justice.*



1 (e) Information from a record or report of a child in need of care  
2 shall be available to members of the standing house or senate committee  
3 on judiciary, house committee on appropriations, senate committee on  
4 ways and means, legislative post audit committee and joint committee on  
5 children and families, carrying out such member's or committee's official  
6 functions in accordance with K.S.A. 75-4319 and amendments thereto,  
7 in a closed or executive meeting. Except in limited conditions established  
8 by 2/3 of the members of such committee, records and reports received  
9 by the committee shall not be further disclosed. Unauthorized disclosure  
10 may subject such member to discipline or censure from the house of  
11 representatives or senate.

12 (f) Nothing in this section shall be interpreted to prohibit the secre-  
13 tary of social and rehabilitation services from summarizing the outcome  
14 of department actions regarding a child alleged to be a child in need of  
15 care to a person having made such report.

16 (g) Disclosure of information from reports or records of a child in  
17 need of care to the public shall be limited to confirmation of factual details  
18 with respect to how the case was handled that do not violate the privacy  
19 of the child, if living, or the child's siblings, parents or guardians. Further,  
20 confidential information may be released to the public only with the ex-  
21 press written permission of the individuals involved or their representa-  
22 tives or upon order of the court having jurisdiction upon a finding by the  
23 court that public disclosure of information in the records or reports is  
24 necessary for the resolution of an issue before the court.

25 (h) Nothing in this section shall be interpreted to prohibit a court of  
26 competent jurisdiction from making an order disclosing the findings or  
27 information pursuant to a report of alleged or suspected child abuse or  
28 neglect which has resulted in a child fatality or near fatality if the court  
29 determines such disclosure is necessary to a legitimate state purpose. In  
30 making such order, the court shall give due consideration to the privacy  
31 of the child, if, living, or the child's siblings, parents or guardians.

32 (i) Information authorized to be disclosed in subsections (d) through  
33 (g) shall not contain information which identifies a reporter of a child in  
34 need of care.

35 (j) Records or reports authorized to be disclosed in this section shall  
36 not be further disclosed, except that the provisions of this subsection shall  
37 not prevent disclosure of information to an educational institution or to  
38 individual educators about a pupil specified in subsection (a) of K.S.A.  
39 1999 Supp. 72-89b03 and amendments thereto.

40 (k) Anyone who participates in providing or receiving information  
41 without malice under the provisions of this section shall have immunity  
42 from any civil liability that might otherwise be incurred or imposed. Any  
43 such participant shall have the same immunity with respect to participa-

1 tion in any judicial proceedings resulting from providing or receiving  
2 information.

3 (l) No individual, association, partnership, corporation or other entity  
4 shall willfully or knowingly disclose, permit or encourage disclosure of  
5 the contents of records or reports concerning a child in need of care  
6 received by the department of social and rehabilitation services, a law  
7 enforcement agency or a juvenile intake and assessment worker except  
8 as provided by this code. Violation of this subsection is a class B  
9 misdemeanor.

10 Sec. 5. K.S.A. 1999 Supp. 38-1513 is hereby amended to read as  
11 follows: 38-1513. (a) *Physical or mental care and treatment.* (1) When a  
12 child less than 18 years of age is alleged to have been *physically, mentally*  
13 *or emotionally abused or neglected* or sexually abused, no consent shall  
14 be required to medically examine the child to determine whether ~~there~~  
15 ~~has been sexual abuse~~ *the child has been maltreated.*

16 (2) When the health or condition of a child who is a ward of the court  
17 requires it, the court may consent to the performing and furnishing of  
18 hospital, medical, surgical or dental treatment or procedures, including  
19 the release and inspection of medical or dental records. A child, or parent  
20 of any child, who is opposed to certain medical procedures authorized by  
21 this subsection may request an opportunity for a hearing thereon before  
22 the court. Subsequent to the hearing, the court may limit the performance  
23 of matters provided for in this subsection or may authorize the perform-  
24 ance of those matters subject to terms and conditions the court considers  
25 proper.

26 (3) Prior to ~~adjudication~~ *disposition* the person having custody of the  
27 child may give consent to the following:

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

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

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

33 (D) immunizations for the child;

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

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

38 (4) When the court has granted legal custody of a child in a disposi-  
39 tional hearing to any agency, association or individual, the custodian or  
40 an agent designated by the custodian shall have authority to consent to  
41 the performance and furnishing of hospital, medical, surgical or dental  
42 treatment or procedures or mental care or treatment other than inpatient  
43 treatment at a state psychiatric hospital, including the release and in-

1    specification of medical or hospital records, subject to terms and conditions  
2    the court considers proper.

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

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

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

14       (b) *Mental care and treatment requiring court action.* If it is brought  
15   to the court's attention, while the court is exercising jurisdiction over the  
16   person of a child under this code, that the child may be a mentally ill  
17   person as defined in K.S.A. 1999 Supp. 59-2946 and amendments thereto,  
18   the court may:

19       (1) Direct or authorize the county or district attorney or the person  
20   supplying the information to file the petition provided for in K.S.A. 1999  
21   Supp. 59-2957 and amendments thereto and proceed to hear and deter-  
22   mine the issues raised by the application as provided in the care and  
23   treatment act for mentally ill persons; or

24       (2) authorize that the child seek voluntary admission to a treatment  
25   facility as provided in K.S.A. 1999 Supp. 59-2949 and amendments  
26   thereto.

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

33       Sec. 6. K.S.A. 38-1531 is hereby amended to read as follows: 38-  
34   1531. (a) *Filing of petition.* An action pursuant to this code is commenced  
35   by the filing of a petition with the clerk of the district court.

36       (b) *Contents of petition.* (1) The petition shall state, if known:

37       (A) The name, date of birth and residence address of the child;

38       (B) the name and residence address of the child's parents;

39       (C) the name and residence address of any persons having custody  
40   or control of the child, or the nearest known relative if no parent can be  
41   found; and

42       (D) plainly and concisely in the language of the statutory definition,  
43   the basis for requesting that the court assume jurisdiction over the child.

1 (2) The petition shall also state the specific facts which are relied  
2 upon to support the allegation referred to in the preceding paragraph  
3 including any known dates, times and locations.

4 (3) The proceedings shall be entitled: "In the Interest of \_\_\_\_\_."

5 (4) The petition shall contain a request that the court find the child  
6 to be a child in need of care.

7 (5) The petition shall contain a request that the parent or parents be  
8 ordered to pay child support. The request for child support may be omit-  
9 ted with respect to a parent already ordered to pay child support for the  
10 child and shall be omitted with respect to one or both parents upon  
11 written request of the secretary.

12 (6) *If the petition requests removal of the child from the child's home,*  
13 *the petition shall specify the efforts known to the petitioner to maintain*  
14 *the family unit and prevent the unnecessary removal of the child from the*  
15 *child's home, or shall specify the facts supporting that an emergency exists*  
16 *which threatens the safety of the child.*

17 (7) *If the petition requests custody of the child to the secretary, the*  
18 *petition shall specify the facts supporting that allowing the child to remain*  
19 *in the home would be contrary to the welfare of the child or that placement*  
20 *is in the best interests of the child.*

21 (c) *Motions.* Motions may be made orally or in writing. The motion  
22 shall state with particularity the grounds for the motion and shall state  
23 the relief or order sought.

24 Sec. 7. K.S.A. 1999 Supp. 38-1532 is hereby amended to read as  
25 follows: 38-1532. Upon the filing of a petition under this code the court  
26 shall proceed by one of the following methods:

27 (a) Issue summons stating the place and time at which the parties are  
28 required to appear and answer the allegations of the petition, which shall  
29 be within 30 days of the date the petition is filed, and deliver the summons  
30 with copies of the petition attached to the sheriff or a person specially  
31 appointed to serve it.

32 (b) If the child has been taken into protective custody under the  
33 provisions of K.S.A. 38-1542 and a temporary custody hearing is held as  
34 required by K.S.A. 38-1543, a copy of the petition shall be served at the  
35 hearing on each interested party who is in attendance at the hearing and  
36 a record of service made a part of the proceedings. The court shall an-  
37 nounce the time the parties will be required to next appear before the  
38 court. Process shall be served on any interested party not at the temporary  
39 custody hearing.

40 Upon the written request of the petitioner or the county or district  
41 attorney separate or additional summons shall be issued to any interested  
42 party.

43 The court shall attempt to notify both parents, if known.

1 (c) If the petition requests custody to the secretary, the court shall  
2 cause a copy of the petition to be provided to the secretary upon filing. for the purpose of  
3 However, the failure of the secretary to receive a copy of the petition shall documentation  
4 not affect the jurisdiction of the court or its authority in the proceeding.

5 Sec. 8. K.S.A. 1999 Supp. 38-1542 is hereby amended to read as  
6 follows: 38-1542. (a) The court upon verified application may issue ex  
7 parte an order directing that a child be held in protective custody and, if  
8 the child has not been taken into custody, an order directing that the  
9 child be taken into custody. The application shall state for each child:

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

15 (2) the specific facts which are relied upon to support the belief ap-  
16 plication, including efforts known to the applicant, to maintain the family  
17 unit and prevent the unnecessary removal of the child from the child's  
18 home, or the specific facts supporting that an emergency exists which  
19 threatens the safety of the child.

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

25 (2) No child shall be held in protective custody for more than 72  
26 hours, excluding Saturdays, Sundays and legal holidays, unless within the  
27 72-hour period a determination is made as to the necessity for temporary  
28 custody in a temporary custody hearing. Nothing in this subsection (b)(2)  
29 shall be construed to mean that the child must remain in protective cus-  
30 tody for 72 hours.

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

1 participate in the plan to perform as set out in the plan; or (5) if the child  
 2 is alleged to be a youth in need of community services, the court, before  
 3 placing the child in the custody of the secretary, shall consider written  
 4 documentation from the secretary of the services and/or community serv-  
 5 ices plan offered or delivered to prevent the need for such custody. Only  
 6 if the court finds that the services documented by the secretary are in-  
 7 sufficient to protect the safety of the child and that remaining in the  
 8 custody of the parent with such services in place is contrary to the welfare  
 9 or that placement is in the best interests of the child, may the court order  
 10 custody with the secretary. The secretary need not present a written plan  
 11 if the court finds an emergency exists. However, if the secretary presents  
 12 the court with a plan to provide services to a child or family which the  
 13 court finds will assure the safety of the child, the court may only place  
 14 the child in the protective custody of the secretary until the court finds  
 15 the services are in place. The court shall have the authority to require any  
 16 person or entity agreeing to participate in the plan to perform as set out  
 17 in the plan.

18 When the child is placed in the protective custody of the  
 19 secretary, the secretary shall have the discretionary authority to place the  
 20 child with a parent or to make other suitable placement for the child.  
 21 When circumstances require, a child in protective custody may be placed  
 22 in a juvenile detention facility or other secure facility pursuant to an order  
 23 of protective custody for not to exceed 24 hours, excluding Saturdays,  
 24 Sundays and legal holidays.

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

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

36 (f) The court shall not enter an order removing a child from the  
 37 custody of a parent pursuant to this section unless the court first finds  
 38 from evidence presented by the petitioner that reasonable efforts have  
 39 been made to maintain the family unit and prevent or eliminate the need  
 40 for the unnecessary removal of the child from the child's home or that an  
 41 emergency exists which threatens the safety of the child and requires the  
 42 that remaining in the home is contrary to the welfare of the child or that  
 43 immediate removal placement is in the best interest of the child. Such  
 findings shall be included in any order entered by the court. If the child



1 is placed in the custody of the secretary, the court shall provide the secretary with a written copy of any orders entered upon making the order.

for the purpose of documenting these orders

2  
3 Sec. 9. K.S.A. 1999 Supp. 38-1543 is hereby amended to read as follows: 38-1543. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

7  
8 (b) A hearing pursuant to this section shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, following a child having been taken into protective custody.

9  
10 (c) Whenever it is determined that a temporary custody hearing is required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be in substantially the following form:

15 (Name of Court)

16 (Caption of Case)

17

18 TO: NOTICE OF TEMPORARY CUSTODY HEARING

19	(Names)	(Relationship)	(Addresses)
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____

23 , 49\_\_ (year), at \_\_ o'clock \_\_m. the court  
24 (day) (date)

25 will conduct a hearing at \_\_\_\_\_ to determine if the above named child or children should be in the temporary custody of some person or agency other than the parent or other person having legal custody prior to the hearing on the petition filed in the above captioned case. The court may order one or both parents to pay child support.  
26  
27  
28  
29 \_\_\_\_\_, an attorney, has been appointed as guardian *ad litem* for the child or children. Each parent or other legal custodian has the right to appear and be heard personally, either with or without an attorney. An attorney will be appointed for a parent who can show that the parent is not financially able to hire one.

30  
31  
32 Date \_\_\_\_\_, 49\_\_ (year) Clerk of the District Court  
33 by \_\_\_\_\_  
34  
35

(Seal)

36

REPORT OF SERVICE

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

39	Name	Location of Service	Manner of Service	Date	Time
40		(other than above)			
41	_____	_____	_____	_____	_____
42	_____	_____	_____	_____	_____
43	_____	_____	_____	_____	_____

44

1 Date Returned \_\_\_\_\_, 49\_\_ (year)

2 \_\_\_\_\_

3

(Signature)

4

5

(Title)

6

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

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

15

16

17

18

(Name of Court)

19

(Caption of Case)

20

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

21

I gave oral notice that the court will conduct a hearing at \_\_\_\_\_ o'clock \_\_\_\_\_ m. on \_\_\_\_\_, 49\_\_ (year), to the persons listed, in the manner and at the times indicated below:

22

23	Name	Relationship	Date	Time	Method of Communication
24					(in person or telephone)
25	_____	_____	_____	_____	_____
26	_____	_____	_____	_____	_____
27	_____	_____	_____	_____	_____

28

I advised each of the above persons that:

29

30

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39

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

(Signature)

40

41

(Name Printed)

42

43

(Title)

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

6 (g) Whenever the court determines the necessity for an order of tem-  
7 porary custody the court may place the child in the temporary custody  
8 of: (1) A parent or other person having custody of the child and may enter  
9 a restraining order pursuant to subsection (h); (2) a person, other than  
10 the parent or other person having custody, who shall not be required to  
11 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-  
12 tated; (3) a youth residential facility; or or (4) the secretary <sup>if the child is</sup> *the secretary*  
13 *alleged to be a child in need of protection*, the court may award custody *care*  
14 *to the secretary. However, if the secretary presents the court with a plan*  
15 *to provide services to a child or family which the court finds will assure*  
16 *the safety of the child, the court may only place the child in the temporary*  
17 *custody of the secretary until the court finds the services are in place. The*  
18 *court shall have the authority to require any person or entity agreeing to*  
19 *participate in the plan to perform as set out in the plan; or (5) if the child*  
20 ~~*is alleged to be a youth in need of community services, the court, before*~~  
21 ~~*placing the child in the custody of the secretary, shall consider written*~~  
22 ~~*documentation from the secretary of the services and/or community serv-*~~  
23 ~~*ices plan offered or delivered to prevent the need for such custody. Only*~~  
24 ~~*if the court finds that the services documented by the secretary are in-*~~  
25 ~~*sufficient to protect the safety of the child and that remaining in the*~~  
26 ~~*custody of the parent with such services in place is contrary to the welfare*~~  
27 ~~*or that placement is in the best interests of the child, may the court order*~~  
28 ~~*custody with the secretary. However, if the secretary presents the court*~~  
29 ~~*with a plan to provide services to a child or family which the court finds*~~  
30 ~~*will assure the safety of the child, the court may only place the child in*~~  
31 ~~*the temporary custody of the secretary until the court finds the services*~~  
32 ~~*are in place. The court shall have the authority to require any person or*~~  
33 ~~*entity agreeing to participate in the plan to perform as set out in the plan.*~~  
34 ~~*When making a recommendation regarding custody, the secretary shall*~~  
35 ~~*present to the court in writing the specific actions taken to prevent or*~~  
36 ~~*eliminate the need for custody to the secretary.*~~ When the child is placed  
37 in the temporary custody of the secretary, the secretary shall have the  
38 discretionary authority to place the child with a parent or to make other  
39 suitable placement for the child. When circumstances require, a child  
40 may be placed in a juvenile detention facility or other secure facility, but  
41 the total amount of time that the child may be held in such facility under  
42 this section and K.S.A. 38-1542 and amendments thereto shall not exceed  
43 24 hours, excluding Saturdays, Sundays and legal holidays. The order of

1 temporary custody shall remain in effect until modified or rescinded by  
2 the court or a disposition order is entered but not exceeding 60 days,  
3 unless good cause is shown and stated on the record.

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

9 (i) The court shall not enter an order removing a child from the cus-  
10 tody of a parent pursuant to this section unless the court first finds from  
11 evidence presented by the petitioner that reasonable efforts have been  
12 made to *maintain the family unit and prevent or eliminate the need for*  
13 *the unnecessary removal of the child from the child's home* or that an  
14 emergency exists which threatens the safety of the child and ~~requires the~~  
15 ~~immediate removal that remaining in the home is contrary to the welfare~~  
16 ~~of the child or that placement is in the best interest of the child.~~ Such  
17 findings shall be included in any order entered by the court. *If the child*  
18 *is placed in the custody of the secretary, the court shall provide the sec-*  
19 *retary with a written copy of any orders entered upon making the order.*

for the purpose of  
documenting these  
orders

20 Sec. 10. K.S.A. 1999 Supp. 38-1544 is hereby amended to read as  
21 follows: 38-1544. (a) At any time after filing a petition, but prior to an  
22 adjudication, the court may enter an order for continuance and informal  
23 supervision without an adjudication if no interested party objects. Upon  
24 granting the continuance, the court shall include in the order any con-  
25 ditions with which the interested parties are expected to comply and  
26 provide the parties with a copy of the order. The conditions may include  
27 appropriate dispositional alternatives authorized by K.S.A. 38-1563 and  
28 amendments thereto.

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

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

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

42 (e) *If the court issues an order for informal supervision pursuant to*  
43 *this section, the court may enter an order restraining any alleged perpe-*

1 *trator of physical, sexual, mental or emotional abuse of the child from*  
2 *residing in the child's home, visiting, contacting, harassing or intimidating*  
3 *the child, other family member or witness; or attempting to visit, contact,*  
4 *harass or intimidate the child, other family member or witness.*

5 Sec. 11. K.S.A. 1999 Supp. 38-1562 is hereby amended to read as  
6 follows: 38-1562. (a) At any time after a child has been adjudicated to be  
7 a child in need of care and prior to disposition, the judge shall permit any  
8 interested parties, and any persons required to be notified pursuant to  
9 subsection (b), to be heard as to proposals for appropriate disposition of  
10 the case.

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

25 (c) Prior to entering an order of disposition, the court shall give con-  
26 sideration to the child's physical, mental and emotional condition; the  
27 child's need for assistance; the manner in which the parent participated  
28 in the abuse, neglect or abandonment of the child; any relevant infor-  
29 mation from the intake and assessment process; and the evidence re-  
30 ceived at the dispositional hearing. In determining when reunification is  
31 a viable alternative, the court shall specifically consider whether the par-  
32 ent has been found by a court to have: (1) Committed murder in the first  
33 degree, K.S.A. 21-3401 and amendments thereto, murder in the second  
34 degree, K.S.A. 21-3402 and amendments thereto, capital murder, K.S.A.  
35 21-3439 and amendments thereto, voluntary manslaughter, K.S.A. 21-  
36 3403 and amendments thereto or violated a law of another state which  
37 prohibits such murder or manslaughter of a child; (2) aided or abetted,  
38 attempted, conspired or solicited to commit such murder or voluntary  
39 manslaughter of a child as provided in subsection (c)(1); (3) committed a  
40 felony battery that resulted in bodily injury to the child or another child;  
41 (4) subjected the child or another child to aggravated circumstances as  
42 defined in ~~subsection (x)~~ of K.S.A. 38-1502 and amendments thereto; (5)  
43 parental rights of the parent to another child have been terminated in-

1 voluntarily; or (6) the child has been in extended out of home placement  
 2 as defined in ~~subsection (z)~~ of K.S.A. 38-1502 and amendments thereto.  
 3 If reintegration is not a viable alternative, the court shall consider whether  
 4 a compelling reason has been documented in the case plan to find neither  
 5 adoption nor permanent guardianship are in the best interests of the  
 6 child, the child is in a stable placement with a relative, or services set out  
 7 in the case plan necessary for the safe return of the child have been made  
 8 available to the parent with whom reintegration is planned. If reintegration  
 9 is not a viable alternative and either adoption or permanent guardi-  
 10 anship might be in the best interests of the child, the county or district  
 11 attorney or the county or district attorney's designee shall file a motion  
 12 to terminate parental rights or a *motion to establish* permanent guardi-  
 13 anship within 30 days and the court shall set a hearing on such motion  
 14 within 90 days of the filing of such motion. No such hearing is required  
 15 when the parents voluntarily relinquish parental rights or agree to ap-  
 16 pointment of a permanent guardian.

17 Sec. 12. K.S.A. 1999 Supp. 38-1563 is hereby amended to read as  
 18 follows: 38-1563. (a) After consideration of any evidence offered relating  
 19 to disposition, the court may retain jurisdiction and place the child in the  
 20 custody of the child's parent subject to terms and conditions which the  
 21 court prescribes to assure the proper care and protection of the child,  
 22 including supervision of the child and the parent by a court services of-  
 23 ficer, or may order the child and the parent to participate in programs  
 24 operated by the secretary or another appropriate individual or agency.  
 25 The terms and conditions may require any special treatment or care which  
 26 the child needs for the child's physical, mental or emotional health.

27 (b) The duration of any period of supervision or other terms or con-  
 28 ditions shall be for an initial period of no more than ~~48~~ 12 months. The  
 29 court, at the expiration of that period, upon a hearing and for good cause  
 30 shown, may make successive extensions of the supervision or other terms  
 31 or conditions for up to 12 months at a time.

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

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



1 of the following:

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

4 (2) any other suitable person;

5 (3) a shelter facility; ~~or or~~

6 (4) the secretary; ~~i If the child is adjudged to be a child in need of care~~

7 ~~by reason of a finding by the court that the child is a child in need of~~  
8 ~~protection; or~~

9 ~~(5) If the child is adjudged to be a child in need of care by reason of~~  
10 ~~a finding that the child is a youth in need of community services, the court~~

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

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

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

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

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

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

contrary to the welfare or

1 resources available to meet the needs of children in the custody of the  
2 secretary.

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

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

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

19 (h) The court shall not enter an order removing a child from the  
20 custody of a parent pursuant to this section unless the court first finds  
21 from evidence presented by the petitioner that reasonable efforts have  
22 been made to *maintain the family unit and prevent or eliminate the need*  
23 *for the unnecessary removal of the child; from the child's home or that*  
24 *reasonable efforts are not necessary because* reintegration is not a viable  
25 alternative; or that an emergency exists which threatens the safety of the  
26 child and ~~requires the immediate removal that allowing the child to re-~~  
27 ~~main in the home is contrary to the welfare of the child or the best interests~~  
28 ~~of the child. If the child is placed in the custody of the secretary, the court~~  
29 ~~shall provide the secretary with a copy of any orders entered within 10~~  
30 ~~days of making the order.~~ Reintegration may not be a viable alternative  
31 when the: (1) Parent has been found by a court to have committed murder  
32 in the first degree, K.S.A. 21-3401, and amendments thereto, murder in  
33 the second degree, K.S.A. 21-3402, and amendments thereto, capital  
34 murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaugh-  
35 ter, K.S.A. 21-3403, and amendments thereto, or violated a law of another  
36 state which prohibits such murder or manslaughter of a child; (2) parent  
37 aided or abetted, attempted, conspired or solicited to commit such mur-  
38 der or voluntary manslaughter of a child as provided in subsection (h)(1);  
39 (3) parent committed a felony battery that resulted in bodily injury to the  
40 child or another child; (4) parent has subjected the child or another child  
41 to aggravated circumstances as defined in ~~subsection (x) of~~ K.S.A. 38-  
42 1502, and amendments thereto; (5) parental rights of the parent to an-  
43 other child have been terminated involuntarily or (6) the child has been

that placement would be in  
for the purpose of  
documenting these  
orders

1 in extended out of home placement as defined in ~~subsection (z)~~ of K.S.A.  
 2 38-1502, and amendments thereto. Such findings shall be included in any  
 3 order entered by the court.

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

17 (j) In addition to any other order authorized by this section, if child  
 18 support has been requested and the parent or parents have a duty to  
 19 support the child, the court may order one or both parents to pay child  
 20 support and, when custody is awarded to the secretary, the court shall  
 21 order one or both parents to pay child support. The court shall determine,  
 22 for each parent separately, whether the parent is already subject to an  
 23 order to pay support for the child. If the parent is not presently ordered  
 24 to pay support for any child who is a ward of the court and the court has  
 25 personal jurisdiction over the parent, the court shall order the parent to  
 26 pay child support in an amount determined under K.S.A. 38-1595, and  
 27 amendments thereto. Except for good cause shown, the court shall issue  
 28 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*  
 29 *seq.*, and amendments thereto, for each parent ordered to pay support  
 30 under this subsection, regardless of whether a payor has been identified  
 31 for the parent. A parent ordered to pay child support under this subsec-  
 32 tion shall be notified, at the hearing or otherwise, that the child support  
 33 order may be registered pursuant to K.S.A. 38-1597, and amendments  
 34 thereto. The parent shall also be informed that, after registration, the  
 35 income withholding order may be served on the parent's employer with-  
 36 out further notice to the parent and the child support order may be en-  
 37 forced by any method allowed by law. Failure to provide this notice shall  
 38 not affect the validity of the child support order.

39 Sec. 13. K.S.A. 1999 Supp. 38-1565 is hereby amended to read as  
 40 follows: 38-1565. (a) If a child is placed outside the child's home and no  
 41 *permanency* plan is made a part of the record of the dispositional hearing,  
 42 a written *permanency* plan shall be prepared which provides for reinte-  
 43 gration of the child into the child's family or, if reintegration is not a

1 viable alternative, for other *permanent* placement of the child. Reinte-  
 2 gration may not be a viable alternative when the: (1) Parent has been  
 3 found by a court to have committed murder in the first degree, K.S.A.  
 4 21-3401 and amendments thereto, murder in the second degree, K.S.A.  
 5 21-3402 and amendments thereto, capital murder, K.S.A. 21-3439 and  
 6 amendments thereto, voluntary manslaughter, K.S.A. 21-3403 and  
 7 amendments thereto or violated a law of another state which prohibits  
 8 such murder or manslaughter of a child; (2) parent aided or abetted,  
 9 attempted, conspired or solicited to commit such murder or voluntary  
 10 manslaughter of a child as provided in subsection (a)(1); (3) parent com-  
 11 mitted a felony battery that resulted in bodily injury to the child or an-  
 12 other child; (4) parent has subjected the child or another child to aggra-  
 13 vated circumstances as defined in ~~subsection (x)~~ of K.S.A. 38-1502, and  
 14 amendments thereto; (5) parental rights of the parent to another child  
 15 have been terminated involuntarily; or (6) the child has been in extended  
 16 out of home placement as defined in ~~subsection (z)~~ of K.S.A. 38-1502  
 17 and amendments thereto. If the *permanency* goal is reintegration into the  
 18 family, the *permanency* plan shall include measurable objectives and time  
 19 schedules for reintegration. The plan shall be submitted to the court not  
 20 later than 30 days after the dispositional order is entered. If the child is  
 21 placed in the custody of the secretary, the plan shall be prepared and  
 22 submitted by the secretary. If the child is placed in the custody of a facility  
 23 or person other than the secretary, the plan shall be prepared and sub-  
 24 mitted by a court services officer.

25 (b) A court services officer or, if the child is in the secretary's custody,  
 26 the secretary shall submit to the court, at least every six months, a written  
 27 report of the progress being made toward the goals of the *permanency*  
 28 plan submitted pursuant to subsection (a) *and the specific actions taken*  
 29 *to achieve the goals of the permanency plan*. If the child is placed in foster  
 30 care, the foster parent or parents shall submit to the court, at least every  
 31 six months, a report in regard to the child's adjustment, progress and  
 32 condition. The department of social and rehabilitation services shall notify  
 33 the foster parent or parents of the foster parent's or parent's duty to  
 34 submit such report, on a form provided by the department of social and  
 35 rehabilitation services, at least two weeks prior to the date when the  
 36 report is due, and the name of the judge and the address of the court to  
 37 which the report is to be submitted. Such report shall be confidential and  
 38 shall only be reviewed by the court and the child's guardian ad litem. The  
 39 court shall review the ~~progress being made toward plan submitted by the~~  
 40 ~~secretary, the reports submitted by foster parents and determine whether~~  
 41 ~~reasonable efforts and progress have been made to achieve~~ the goals of  
 42 the *permanency* plan ~~and the foster parent report and~~. If the court de-  
 43 termines that progress is inadequate or that the *permanency* plan is no

1 longer viable, the court shall hold a hearing pursuant to subsection (c). If  
2 the secretary has custody of the child, such hearing shall be held no more  
3 than 12 months after the child is placed outside the child's home and at  
4 least every 12 months thereafter. ~~For children in the custody of the sec-~~  
5 ~~retary prior to July 1, 1998, within 30 days of receiving a request from~~  
6 ~~the secretary, a permanency hearing shall be held. At each hearing, the~~  
7 ~~court shall make a written finding whether reasonable efforts have been~~  
8 ~~made to accomplish the permanency goal and whether continued out of~~  
9 ~~home placement is necessary for the child's safety.~~ If the goal of the per-  
10 manency plan submitted pursuant to subsection (a) is reintegration into  
11 the family and the court determines after 12 months from the time such  
12 plan is first submitted that progress is inadequate, the court shall hold a  
13 hearing pursuant to subsection (c). Nothing in this subsection shall be  
14 interpreted to prohibit termination of parental rights prior to the expi-  
15 ration of 12 months.

16 (c) Whenever a hearing is required under subsection (b), the court  
17 shall notify all interested parties and the foster parents, preadoptive par-  
18 ents or relatives providing care for the child and hold a hearing. Individ-  
19 uals receiving notice pursuant to this subsection shall not be made a party  
20 to the action solely on the basis of this notice and opportunity to be heard.  
21 After providing the interested parties, foster parents, preadoptive parents  
22 or relatives providing care for the child an opportunity to be heard, the  
23 court shall determine whether the child's needs are being adequately met  
24 and whether reintegration continues to be a viable alternative. If the court  
25 finds reintegration is no longer a viable alternative, the court shall con-  
26 sider whether the child is in a stable placement with a relative, services  
27 set out in the case plan necessary for the safe return of the child have  
28 been made available to the parent with whom reintegration is planned or  
29 compelling reasons are documented in the case plan to support a finding  
30 that neither adoption nor permanent guardianship are in the child's best  
31 interest. If reintegration is not a viable alternative and either adoption or  
32 permanent guardianship might be in the best interests of the child, the  
33 county or district attorney or the county or district attorney's designee  
34 shall file a motion to terminate parental rights or ~~for a motion to establish~~  
35 a permanent guardianship within 30 days and the court shall set a hearing  
36 on such motion within 90 days of the filing of such motion. When the  
37 court finds reintegration continues to be a viable alternative, the court  
38 shall determine whether and, if applicable, when the child will be returned  
39 to the parent; may rescind any of its prior dispositional orders and enter  
40 any dispositional order authorized by this code or may order that a new  
41 plan for the reintegration be prepared and submitted to the court. If  
42 reintegration cannot be accomplished as approved by the court, the court  
43 shall be informed and shall schedule a hearing pursuant to subsection (c).

1 No such hearing is required when the parents voluntarily relinquish pa-  
2 rental rights or agree to appointment of a permanent guardian.

3 Sec. 14. K.S.A. 38-1566 is hereby amended to read as follows: 38-  
4 1566. (a) Except as provided in K.S.A. 38-1567, *and amendments thereto*,  
5 if a child has been in the same foster home or shelter facility for six months  
6 or longer, or has been placed by the secretary in the home of a parent or  
7 relative, the secretary shall give written notice of any plan to move the  
8 child to a different placement. The notice shall be given to ~~(a)~~ (1) the  
9 court having jurisdiction over the child; ~~(b)~~ (2) each parent whose address  
10 is available; ~~(c)~~ (3) the foster parent or custodian from whose home or  
11 shelter facility it is proposed to remove the child; ~~(d)~~ (4) the child, if 12  
12 or more years of age; and ~~(e)~~ (5) the child's guardian *ad litem*. The notice  
13 shall state the home or shelter facility to which the secretary plans to  
14 transfer the child and the reason for the proposed action. The notice shall  
15 be delivered or mailed 30 days in advance of the planned transfer, except  
16 that the secretary shall not be required to wait 30 days to transfer the  
17 child if all persons enumerated in clauses ~~(b)~~ (2) through ~~(e)~~ (5) consent  
18 in writing to the transfer. Within 10 days after receipt of the notice any  
19 person receiving notice as provided above may request, either orally or  
20 in writing, that the court conduct a hearing to determine whether or not  
21 the change in placement is in the best interests of the child concerned.  
22 When the request has been received, the court shall schedule a hearing  
23 and immediately notify the secretary of the request and the time and date  
24 the matter will be heard. The court shall give notice of the hearing to  
25 persons enumerated in clauses ~~(b)~~ (2) through ~~(e)~~ (5). The secretary shall  
26 not change the placement of the child unless the change is approved by  
27 the court.

28 *(b) When, after the notice set out above, a child in the custody of the*  
29 *secretary is removed from the home of a parent after having been placed*  
30 *in the home of a parent for a period of six months or longer, the secretary*  
31 *shall request a finding by the court whether reasonable efforts were made*  
32 *to prevent the necessity for removal and whether allowing the child to*  
33 *remain in the home is contrary to the welfare of the child or not in the*  
34 *best interests of the child. The secretary shall present to the court in*  
35 *writing the efforts to maintain the family unit and prevent the unnecessary*  
36 *removal of the child from the child's home. In making the finding, the*  
37 *court may rely on documentation submitted by the secretary or may set*  
38 *the date for a hearing on the matter. If the secretary requests such finding,*  
39 *the court shall provide the secretary with a written copy of the finding*  
40 *by the court, not more than 45 days from the date of the request.*

41 Sec. 15. K.S.A. 38-1567 is hereby amended to read as follows: 38-  
42 1567. When an emergency exists requiring immediate action to assure  
43 the safety and protection of the child or the secretary is notified that the

for the purpose of  
documenting these  
orders



1 foster parents or shelter facility refuse to allow the child to remain, the  
 2 secretary may transfer the child to another foster home or shelter facility  
 3 without prior court approval, but the secretary shall notify the court of  
 4 the action at the earliest practical time. *When the child is removed from*  
 5 *the home of a parent after having been placed in the home or facility for*  
 6 *a period of six months or longer, the secretary shall present to the court*  
 7 *in writing the specific nature of the emergency and request a finding by*  
 8 *the court whether remaining in the home was contrary to the welfare of* or not in the best interests  
 9 *the child. In making the finding, the court may rely on documentation*  
 10 *submitted by the secretary or may set the date for a hearing on the matter.*  
 11 *If the secretary requests such a finding, the court shall provide the sec-*  
 12 *retary with a written copy of the finding by the court not more than 45*  
 13 *days from the date of the request.*

14 Sec. 16. K.S.A. 38-1568 is hereby amended to read as follows: 38-  
 15 1568. (a) *Valid court order.* During proceedings under this code, the court  
 16 to remain in a present or future placement if:

17 (1) The court makes a finding that the child has been adjudicated to  
 18 be a child in need of care pursuant to: ~~(A) Subsection (a)(10) (c)(6) of~~  
 19 ~~K.S.A. 38-1502, and amendments thereto; or (B) any of the subsections~~  
 20 ~~(a)(1) through (a)(9) or (a)(11) (b), (c)(1) through (c)(5) or (c)(7) (a)(1) through (a) 12 of K.S.A.~~  
 21 38-1502, and amendments thereto, and the court determines that the  
 22 child is not likely to be available within the jurisdiction of the court for  
 23 future proceedings;

24 (2) the child and the child's guardian *ad litem* are present before the  
 25 court at the time the order is entered; and

26 (3) the child and the child's guardian *ad litem* are given adequate and  
 27 fair warning, both orally and in writing, of the consequences of violation  
 28 of the order and a copy of such warning is recorded in the official file of  
 29 the case.

30 (b) *Application.* Any person may file with the court a verified appli-  
 31 cation for a determination that a child has violated an order entered pur-  
 32 suant to subsection (a) and for an order authorizing the holding of such  
 33 child in a secure facility as provided by this section. Such application shall  
 34 state the applicant's belief that the child has violated a valid court order  
 35 entered pursuant to subsection (a) and the specific facts which are relied  
 36 upon to support the belief.

37 (c) *Ex parte order.* Upon the filing of an application in accordance  
 38 with subsection (b), the court may enter *ex parte* an order directing that  
 39 the child be taken into custody and held in a secure facility designated  
 40 by the court if the court determines that there is probable cause to believe  
 41 the allegations in the application. The order shall remain in effect for not  
 42 more than 24 hours following the child's being taken into custody. The  
 43 order shall be served on the child's parents, any legal custodian of the



1 child and the child's guardian *ad litem*.

2 (d) *Preliminary hearing.* Within 24 hours following a child's being  
 3 taken into custody pursuant to an order issued under subsection (c), the  
 4 court shall hold a hearing to determine whether the child admits or denies  
 5 the allegations of the application and, if the child denies such allegations,  
 6 whether there is probable cause to hold the child in a secure facility  
 7 pending a hearing on the application pursuant to subsection (e). Notice  
 8 of the time and place of the preliminary hearing shall be given orally or  
 9 in writing to the child's parents, any legal custodian of the child and the  
 10 child's guardian *ad litem*. At the hearing, the child shall have the right to:  
 11 (1) Have in writing the alleged violation and the facts relied upon in the  
 12 application; (2) a guardian *ad litem* pursuant to K.S.A. 38-1505, and  
 13 amendments thereto; and (3) the right to confront and present witnesses.  
 14 If, upon the hearing, the court finds that the child admits the allegations  
 15 of the application, the court shall proceed without delay to hold a hearing  
 16 on the application pursuant to subsection (e). If, upon the hearing, the  
 17 court finds that the child denies the allegations of the application, the  
 18 court may enter an order directing that the child be held in a secure  
 19 facility pending a hearing pursuant to subsection (e) if the court finds  
 20 that there is probable cause to believe that the child has violated a valid  
 21 court order entered pursuant to subsection (a) and that secure detention  
 22 of the child is necessary for the protection of the child or to assure the  
 23 appearance of the child at the hearing on the application pursuant to  
 24 subsection (e).

25 (e) *Hearing on violation of order; authorization.* The court shall hold  
 26 a hearing on an application filed pursuant to subsection (b) within 24  
 27 hours following the child's being taken into custody, if the child admits  
 28 the allegations of the application, or within 72 hours following the child's  
 29 being taken into custody, if secure detention of the child is ordered pur-  
 30 suant to subsection (d). Notice of the time and place of such hearing shall  
 31 be given orally or in writing to the child's parents, any legal custodian of  
 32 the child and the child's guardian *ad litem*. Upon such hearing, the court  
 33 may enter an order awarding custody of the child to : (1) A parent; (2) a  
 34 person other than the parent or other person having custody, who shall  
 35 not be required to be licensed under article 5 of chapter 65 of the Kansas  
 36 Statutes Annotated, and amendments thereto; (3) a youth residential fa-  
 37 cility; or (4) the secretary, if the secretary does not already have legal  
 38 custody of the child, and authorizing the ~~secretary~~ *custodian* to place the  
 39 child in a secure facility if the court determines that:

40 (1) The child has been adjudicated to be a child in need of care  
 41 pursuant to subsection ~~(a)(10)~~ ~~(c)(6)~~ (a) (10) of K.S.A. 38-1502, and amendments  
 42 thereto;

43 (2) the child has violated a valid court order entered pursuant to sub-

1 section (a);

2 (3) the child has been provided at the hearing with the right to: (A)  
3 Have the alleged violation in writing and served upon the child a reason-  
4 able time before the hearing; (B) a hearing before the court on the issue  
5 of placement in a secure facility; (C) an explanation of the nature and  
6 consequences of the proceeding; (D) a guardian *ad litem* pursuant to  
7 K.S.A. 38-1505, and amendments thereto; (E) confront and present wit-  
8 nesses; (F) have a transcript or record of the proceedings; and (G) appeal;  
9 and

10 (4) there is no less restrictive alternative appropriate to the needs of  
11 the juvenile and the community.

12 The authorization to place a child in a secure facility pursuant to this  
13 subsection shall expire 60 days, including Saturdays, Sundays and legal  
14 holidays, after it is issued. The court may grant extensions of such au-  
15 thorization for two additional periods not exceeding 60 days, including  
16 Saturdays, Sundays and legal holidays, upon rehearing pursuant to K.S.A.  
17 38-1564, and amendments thereto. Payment by the secretary to a secure  
18 facility for child care services provided pursuant to this subsection shall  
19 be paid only upon receipt by the secretary of a copy of a valid court order.

20 (f) *Limitations on facilities used.* Nothing in this section shall author-  
21 ize placement of a child in a juvenile detention facility, except that a child  
22 may be held in any such facility which, if in an adult jail, is in quarters  
23 separated by sight and sound from adult prisoners:

24 (1) When ordered by a court pursuant to subsection (c) or (d), for  
25 not longer than the times permitted by those subsections; or

26 (2) when ordered by a court pursuant to subsection (e), for not more  
27 than 24 hours following the hearing provided for by that subsection, ex-  
28 cept that nothing in this subsection shall allow a child to be held in an  
29 adult jail for more than 24 hours.

30 (g) *Time limits, computation.* Except as otherwise specifically pro-  
31 vided by subsection (e), Saturdays, Sundays and legal holidays shall not  
32 be counted in computing any time limit imposed by this section.

33 (h) This section shall be part of and supplemental to the Kansas code  
34 for care of children.

35 Sec. 17. K.S.A. 1999 Supp. 38-1581 is hereby amended to read as  
36 follows: 38-1581. (a) Either in the petition filed under this code or in a  
37 motion made in proceedings under this code, any interested party may  
38 request that either or both parents be found unfit and the parental rights  
39 of either or both parents be terminated or a permanent guardianship be  
40 appointed.

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

1 to the extent known.

2 (c) The county or district attorney or the county or district attorney's  
3 designee shall file pleadings alleging a parent is unfit and requesting ter-  
4 mination of parental rights or *the establishment of a* permanent guardi-  
5 anship within 30 days after the court has determined reintegration is not  
6 a viable alternative ~~and~~ *unless the court* has ~~not~~ found a compelling reason  
7 why adoption or permanent guardianship may *not* be in the best interest  
8 of the child. The court shall set a hearing on such pleadings and matters  
9 within 90 days of the filing of such pleadings.

10 Sec. 18. K.S.A. 1999 Supp. 38-1583 is hereby amended to read as  
11 follows: 38-1583. (a) When the child has been adjudicated to be a child  
12 in need of care, the court may terminate parental rights when the court  
13 finds by clear and convincing evidence that the parent is unfit by reason  
14 of conduct or condition which renders the parent unable to care properly  
15 for a child and the conduct or condition is unlikely to change in the  
16 foreseeable future.

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

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

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

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

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

28 (5) conviction of a felony and imprisonment;

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

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

33 (8) lack of effort on the part of the parent to adjust the parent's cir-  
34 cumstances, conduct or conditions to meet the needs of the child.

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

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

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

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

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

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

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

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

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

29 (g) If, after finding the parent unfit, the court determines a compel-  
30 ling reason why it is not in the best interests of the child to terminate ~~parental rights or upon agreement of the parents, the court may award~~ *contrary to the welfare or*  
31 ~~permanent guardianship to an individual providing care for the child, a~~  
32 ~~relative or other person with whom the child has a close emotional at-~~  
33 ~~tachment. Prior to awarding permanent guardianship, the court shall re-~~  
34 ~~ceive and consider an assessment as provided in K.S.A. 59-2132 and~~  
35 ~~amendments thereto of any potential permanent guardian. Upon appoint-~~  
36 ~~ment of a permanent guardian, the court shall enter an order discharging~~  
37 ~~the child from the court's jurisdiction **continue to have jurisdiction to**~~  
38 ~~**review placement and appoint a successor guardian or guardians and**~~  
39 ~~**shall discharge the child from the custody of the secretary.**~~

40  
41 (h) If a parent is convicted of an offense as provided in subsection  
42 (7) of K.S.A. 38-1585 and amendments thereto or is adjudicated a juvenile  
43 offender because of an act which if committed by an adult would be an

1 offense as provided in subsection (7) of K.S.A. 38-1585 and amendments  
 2 thereto, and if the victim was the other parent of a child, the court may  
 3 disregard such convicted or adjudicated parent's opinions or wishes in  
 4 regard to the placement of such child.

**(i) If the secretary has documented to the court a compelling reason why neither custody for adoption nor custody for permanent guardianship nor custody for permanent guardianship nor custody for placement with a fit and willing relative are currently a viable option, the court may order custody to remain with the secretary for continued permanency planning and another planned permanent living arrangement.**

5 Sec. 19. K.S.A. 1999 Supp. 38-1584 is hereby amended to read as  
 6 follows: 38-1584. (a) *Purpose of section.* The purpose of this section is to  
 7 provide stability in the life of a child who must be removed from the  
 8 home of a parent, to acknowledge that time perception of a child differs  
 9 from that of an adult and to make the ongoing physical, mental and emo-  
 10 tional needs of the child the decisive consideration in proceedings under  
 11 this section. The primary goal for all children whose parents' parental  
 12 rights have been terminated is placement in a permanent family setting.

13 (b) *Actions by the court.* (1) *Custody for adoption.* When parental  
 14 rights have been terminated and it appears that adoption is a viable al-  
 15 ternative, the court shall enter one of the following orders:

16 (A) An order granting custody of the child, for adoption proceedings,  
 17 to a reputable person of good moral character, the secretary or a corpo-  
 18 ration organized under the laws of the state of Kansas authorized to care  
 19 for and surrender children for adoption as provided in K.S.A. 38-112 *et*  
 20 *seq.* and amendments thereto. The person, secretary or corporation shall  
 21 have authority to place the child in a family home, be a party to proceed-  
 22 ings and give consent for the legal adoption of the child which shall be  
 23 the only consent required to authorize the entry of an order or decree of  
 24 adoption.

25 (B) An order granting custody of the child to proposed adoptive par-  
 26 ents and consenting to the adoption of the child by the proposed adoptive  
 27 parents.

28 (2) *Custody for long-term foster care permanent guardianship.* When  
 29 parental rights have been terminated and it does not appear that adoption  
 30 is a viable alternative, the court shall ~~may~~ enter an order granting custody  
 31 of the child for ~~foster care permanent guardianship~~ to a reputable person  
 32 of good moral character, ~~a youth residential facility, the secretary or a~~  
 33 ~~corporation or association willing to receive the child, embracing in its~~  
 34 ~~objectives the purpose of caring for or obtaining homes for children. Upon~~  
 35 ~~appointment of a permanent guardian, the court shall~~ **continue to have**  
 36 ~~jurisdiction to review placement and appoint a successor guardian or~~  
 37 ~~guardians and shall~~ discharge the child from the custody of the secretary.

38 (3) *Custody for placement with a fit and willing relative.* When pa-  
 39 rental rights have been terminated and it does not appear that adoption  
 40 is a viable alternative, the court may enter an order granting custody of  
 41 the child for placement with a willing relative who is a reputable person  
 42 of good moral character. Upon an order of custody and placement with  
 43 a fit and willing relative, the court shall ~~continue to have jurisdiction to~~

1 ~~review placement and shall~~ discharge the child from the custody of the  
 2 secretary.

3 ~~(3)~~ (4) Preferences in custody for adoption or long-term foster care  
 4 permanent guardianship. In making an order under subsection (b)(1) or  
 5 (2), the court shall give preference, to the extent that the court finds it is  
 6 in the best interests of the child, first to granting such custody to a relative  
 7 of the child and second to granting such custody to a person with whom  
 8 the child has close emotional ties.

9 (c) Guardian and conservator of child. The secretary shall be guard-  
 10 ian and conservator of any child placed in the secretary's custody, subject  
 11 to any prior conservatorship.

12 (d) Reports and review of progress and reasonable efforts to imple-  
 13 ment a permanency plan of adoption; permanent guardianship; or place-  
 14 ment with a fit and willing relative. After parental rights have been ter-  
 15 minated and up to the time an adoption has been accomplished, the  
 16 person or agency awarded custody of the child shall within 60 days submit  
 17 a written plan for permanent placement which shall include measurable  
 18 objectives and time schedules and shall thereafter not less frequently than  
 19 each six months make a written report to the court stating the progress  
 20 having been made toward finding an adoptive placement or long-term  
 21 foster care permanent guardianship or placement for the child with a fit  
 22 and willing relative. Upon the receipt of each report the court shall review  
 23 the contents thereof and determine whether or not a hearing should be  
 24 held on the subject. In any case, the court shall notify all interested parties  
 25 and hear evidence regarding progress toward finding an adoptive home  
 26 or the acceptability of the long-term foster care permanent guardian or  
 27 placement with a fit and willing relative plan within 48 12 months after  
 28 parental rights have been terminated and every 12 months thereafter. If  
 29 the court determines that inadequate progress is being reasonable efforts  
 30 or progress have not been made toward finding an adoptive placement or  
 31 establishing an acceptable long-term foster care plan permanent guardi-  
 32 anship or placement with a fit and willing relative, the court may rescind  
 33 its prior orders and make other orders regarding custody and adoption  
 34 that are appropriate under the circumstances. Reports of a proposed  
 35 adoptive placement need not contain the identity of the proposed adop-  
 36 tive parents.

37 (e) Discharge upon adoption. When the adoption of a child has been  
 38 accomplished, the court shall enter an order discharging the child from  
 39 the court's jurisdiction in the pending proceedings.

40 (f) If the ~~department~~ has documented to the court a compelling reason \ secretary  
 41 why neither custody for adoption nor custody for permanent guardian-  
 42 ship nor custody for placement with a fit and willing relative are currently  
 43 a viable option, the court may order custody to remain with the secretary

1 *for continued permanency planning and another planned permanent liv-*  
 2 *ing arrangement.*

3 Sec. 20. K.S.A. 1999 Supp. 38-1585 is hereby amended to read as  
 4 follows: 38-1585. (a) It is presumed in the manner provided in K.S.A. 60-  
 5 414 and amendments thereto that a parent is unfit by reason of conduct  
 6 or condition which renders the parent unable to fully care for a child, if  
 7 the state establishes by clear and convincing evidence that:

8 (1) A parent has previously been found to be an unfit parent in pro-  
 9 ceedings under K.S.A. 38-1581 *et seq.* and amendments thereto, or com-  
 10 parable proceedings under the laws of another state, or the federal gov-  
 11 ernment;

12 (2) a parent has twice before been convicted of a crime specified in  
 13 article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, or  
 14 comparable offenses under the laws of another state, the federal govern-  
 15 ment or any foreign government, or an attempt or attempts to commit  
 16 such crimes and the victim was under the age of 18 years;

17 (3) on two or more prior occasions a child in the physical custody of  
 18 the parent has been adjudicated a child in need of care as defined by  
 19 subsection ~~(a)(3)~~ ~~(b)(1)~~ **(a)(3)** of K.S.A. 38-1502 and amendments thereto;

20 (4) the parent has been convicted of causing the death of another  
 21 child or stepchild of the parent;

22 (5) the child has been in an out-of-home placement, other than kin-  
 23 ship care, under court order for a cumulative total period of one year or  
 24 longer and the parent has substantially neglected or willfully refused to  
 25 carry out a reasonable plan, approved by the court, directed toward re-  
 26 integration of the child into the parental home;

27 (6) (1) the child has been in an out-of-home placement, other than  
 28 kinship care, under court order for a cumulative total period of two years  
 29 or longer; (2) the parent has failed to carry out a reasonable plan, ap-  
 30 proved by the court, directed toward reintegration of the child into the  
 31 parental home; and (3) there is a substantial probability that the parent  
 32 will not carry out such plan in the near future; or

33 (7) a parent has been convicted of capital murder, K.S.A. 21-3439  
 34 and amendments thereto, murder in the first degree, K.S.A. 21-3401 and  
 35 amendments thereto, murder in the second degree, K.S.A. 21-3402 and  
 36 amendments thereto or voluntary manslaughter, K.S.A. 21-3403 and  
 37 amendments thereto, or if a juvenile has been adjudicated a juvenile of-  
 38 fender because of an act which if committed by an adult would be an  
 39 offense as provided in this subsection, and the victim of such murder was  
 40 the other parent of the child.

41 (b) The burden of proof is on the parent to rebut the presumption.  
 42 If a parent has been convicted of capital murder, K.S.A. 21-3439 and  
 43 amendments thereto or murder in the first degree, K.S.A. 21-3401 and



1 amendments thereto as provided in subsection (a)(7), the burden of proof  
 2 is on the parent to rebut the presumption by clear and convincing evi-  
 3 dence. In the absence of proof that the parent is presently fit and able to  
 4 care for the child or that the parent will be fit and able to care for the  
 5 child in the foreseeable future, the court shall now terminate the parents  
 6 parental rights in proceedings pursuant to K.S.A. 38-1581 *et seq.* and  
 7 amendments thereto.

8 Sec. 21. K.S.A. 1999 Supp. 38-1587 is hereby amended to read as  
 9 follows: 38-1587. (a) A permanent guardian may be appointed after a  
 10 finding of unfitness pursuant to K.S.A. 38-1583 and amendments thereto  
 11 or with the consent and agreement of the parents.

12 (b) Upon appointment of the permanent guardian, the child in need  
 13 of care proceeding shall be dismissed ~~court shall continue to have juris-~~  
 14 ~~isdiction to review placement and appoint a successor or replacement~~  
 15 ~~guardian or guardians and shall discharge the child from the custody of~~  
 16 ~~the secretary.~~

17 Sec. 22. K.S.A. 1999 Supp. 38-1591 is hereby amended to read as  
 18 follows: 38-1591. (a) An appeal may be taken by any interested party from  
 19 any adjudication, disposition, termination of parental rights or order of  
 20 temporary custody in any proceedings pursuant to this code.

21 (b) An appeal from an order entered by a district magistrate judge  
 22 shall be to a district judge. The appeal shall be heard within 30 days from  
 23 the date the notice of appeal is filed. If no record was made of the pro-  
 24 ceedings, the trial shall be de novo.

25 (c) Procedure on appeal shall be governed by article 21 of chapter  
 26 60 of the Kansas Statutes Annotated.

27 (d) Notwithstanding any other provision of law to the contrary, ap-  
 28 peals under this section shall have priority over all other cases.

29 (e) *Every notice of appeal, docketing statement and brief shall be ver-*  
 30 *ified by the interested party if the party has been personally served at*  
 31 *any time during the proceedings. Failure to have the required verification*  
 32 *shall result in the dismissal of the appeal.*

33 ~~Sec. 23. K.S.A. 1999 Supp. 60-1610 is hereby amended to read as~~  
 34 ~~follows: 60-1610. A decree in an action under this article may include~~  
 35 ~~orders on the following matters:-~~

36 ~~(a) Minor children. (1) Child support and education. The court shall~~  
 37 ~~make provisions for the support and education of the minor children. The~~  
 38 ~~court may modify or change any prior order, including any order issued~~  
 39 ~~in a title IV-D case, within three years of the date of the original order~~  
 40 ~~or a modification order, when a material change in circumstances is~~  
 41 ~~shown, irrespective of the present domicile of the child or the parents. If~~  
 42 ~~more than three years has passed since the date of the original order or~~  
 43 ~~modification order, a material change in circumstance need not be shown.~~

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

~~1 the financial resources and needs of the child and the physical and emo-~~  
~~2 tional condition of the child. Until a child reaches 18 years of age, the~~  
~~3 court may set apart any portion of property of either the husband or wife,~~  
~~4 or both, that seems necessary and proper for the support of the child.~~  
~~5 Every order requiring payment of child support under this section shall~~  
~~6 require that the support be paid through the clerk of the district court or~~  
~~7 the court trustee except for good cause shown.~~

~~8 (2) *Child custody and residency. (A) Changes in custody.* Subject to~~  
~~9 the provisions of the uniform child custody jurisdiction act (K.S.A. 38-~~  
~~10 1301 et seq., and amendments thereto), the court may change or modify~~  
~~11 any prior order of custody when a material change of circumstances is~~  
~~12 shown, but no ex parte order shall have the effect of changing the custody~~  
~~13 of a minor child from the parent who has had the sole de facto custody~~  
~~14 of the child to the other parent unless there is sworn testimony to support~~  
~~15 a showing of extraordinary circumstances. If an interlocutory order is~~  
~~16 issued ex parte, the court shall hear a motion to vacate or modify the~~  
~~17 order within 15 days of the date that a party requests a hearing whether~~  
~~18 to vacate or modify the order.~~

~~19 (B) *Examination of parties.* The court may order physical or mental~~  
~~20 examinations of the parties if requested pursuant to K.S.A. 60-235 and~~  
~~21 amendments thereto.~~

~~22 (3) *Child custody or residency criteria.* The court shall determine~~  
~~23 custody or residency of a child in accordance with the best interests of~~  
~~24 the child.~~

~~25 (A) If the parties have a written agreement concerning the custody~~  
~~26 or residency of their minor child, it is presumed that the agreement is in~~  
~~27 the best interests of the child. This presumption may be overcome and~~  
~~28 the court may make a different order if the court makes specific findings~~  
~~29 of fact stating why the agreement is not in the best interests of the child.~~

~~30 (B) In determining the issue of custody or residency of a child, the~~  
~~31 court shall consider all relevant factors, including but not limited to:~~

~~32 (i) The length of time that the child has been under the actual care~~  
~~33 and control of any person other than a parent and the circumstances~~  
~~34 relating thereto;~~

~~35 (ii) the desires of the child's parents as to custody or residency;~~

~~36 (iii) the desires of the child as to the child's custody or residency;~~

~~37 (iv) the interaction and interrelationship of the child with parents,~~

~~38 siblings and any other person who may significantly affect the child's best~~  
~~39 interests;~~

~~40 (v) the child's adjustment to the child's home, school and community;~~

~~41 (vi) the willingness and ability of each parent to respect and appre-~~  
~~42 ciate the bond between the child and the other parent and to allow for a~~  
~~43 continuing relationship between the child and the other parent; and~~

~~1 (vii) evidence of spousal abuse.~~

~~2 Neither parent shall be considered to have a vested interest in the  
3 custody or residency of any child as against the other parent, regardless  
4 of the age of the child, and there shall be no presumption that it is in the  
5 best interests of any infant or young child to give custody or residency to  
6 the mother.~~

~~7 (4) Types of custodial arrangements. Subject to the provisions of this  
8 article, the court may make any order relating to custodial arrangements  
9 which is in the best interests of the child. The order shall include, but  
10 not be limited to, one of the following, in the order of preference:~~

~~11 (A) Joint custody. The court may place the custody of a child with  
12 both parties on a shared or joint custody basis. In that event, the parties  
13 shall have equal rights to make decisions in the best interests of the child  
14 under their custody. When a child is placed in the joint custody of the  
15 child's parents, the court may further determine that the residency of the  
16 child shall be divided either in an equal manner with regard to time of  
17 residency or on the basis of a primary residency arrangement for the child.  
18 The court, in its discretion, may require the parents to submit a plan for  
19 implementation of a joint custody order upon finding that both parents  
20 are suitable parents or the parents, acting individually or in concert, may  
21 submit a custody implementation plan to the court prior to issuance of a  
22 custody decree. If the court does not order joint custody, it shall include  
23 in the record the specific findings of fact upon which the order for custody  
24 other than joint custody is based.~~

~~25 (B) Sole custody. The court may place the custody of a child with one  
26 parent, and the other parent shall be the noncustodial parent. The cus-  
27 todial parent shall have the right to make decisions in the best interests  
28 of the child, subject to the visitation rights of the noncustodial parent.~~

~~29 (C) Divided custody. In an exceptional case, the court may divide the  
30 custody of two or more children between the parties.~~

~~31 (D) Nonparental custody. If during the proceedings the court deter-  
32 mines that there is probable cause to believe that: (i) The child is a child  
33 in need of care as defined by subsections (a)(1), (2) or (3) (b)(1) or (c)(1)  
34 of K.S.A. 38-1502 and amendments thereto; (ii) neither parent is fit to  
35 have custody; or (iii) the child is currently residing with such child's grand-  
36 parent, grandparents, aunt or uncle and such relative has had actual phys-  
37 ical custody of such child for a significant length of time, the court may  
38 award temporary custody of the child to such relative, another person or  
39 agency if the court finds the award of custody to such relative, another  
40 person or agency is in the best interests of the child. In making such a  
41 custody order, the court shall give preference, to the extent that the court  
42 finds it is in the best interests of the child, first to awarding such custody  
43 to a relative of the child by blood, marriage or adoption and second to~~

~~1 awarding such custody to another person with whom the child has close  
2 emotional ties. The court may make temporary orders for care, support,  
3 education and visitation that it considers appropriate. Temporary custody  
4 orders are to be entered in lieu of temporary orders provided for in K.S.A.  
5 38-1542 and 38-1543, and amendments thereto, and shall remain in effect  
6 until there is a final determination under the Kansas code for care of  
7 children. An award of temporary custody under this paragraph shall not  
8 terminate parental rights nor give the court the authority to consent to  
9 the adoption of the child. When the court enters orders awarding tem-  
10 porary custody of the child to an agency or a person other than the parent  
11 but not a relative as described in subpart (iii), the court shall refer a  
12 transcript of the proceedings to the county or district attorney. The county  
13 or district attorney shall file a petition as provided in K.S.A. 38-1531 and  
14 amendments thereto and may request termination of parental rights pur-  
15 suant to K.S.A. 38-1581 and amendments thereto. The costs of the pro-  
16 ceedings shall be paid from the general fund of the county. When a final  
17 determination is made that the child is not a child in need of care, the  
18 county or district attorney shall notify the court in writing and the court,  
19 after a hearing, shall enter appropriate custody orders pursuant to this  
20 section. If the same judge presides over both proceedings, the notice is  
21 not required. Any disposition pursuant to the Kansas code for care of  
22 children shall be binding and shall supersede any order under this section.  
23 When the court enters orders awarding temporary custody of the child  
24 to a relative as described in subpart (iii), the court shall annually review  
25 the temporary custody to evaluate whether such custody is still in the best  
26 interests of the child. If the court finds such custody is in the best interests  
27 of the child, such custody shall continue. If the court finds such custody  
28 is not in the best interests of the child, the court shall determine the  
29 custody pursuant to this section.~~

~~30 (b) Financial matters. (1) Division of property. The decree shall di-  
31 vide the real and personal property of the parties, including any retire-  
32 ment and pension plans, whether owned by either spouse prior to mar-  
33 riage, acquired by either spouse in the spouse's own right after marriage  
34 or acquired by the spouses' joint efforts, by: (A) a division of the property  
35 in kind; (B) awarding the property or part of the property to one of the  
36 spouses and requiring the other to pay a just and proper sum; or (C)  
37 ordering a sale of the property, under conditions prescribed by the court,  
38 and dividing the proceeds of the sale. Upon request, the trial court shall  
39 set a valuation date to be used for all assets at trial, which may be the  
40 date of separation, filing or trial as the facts and circumstances of the case  
41 may dictate. The trial court may consider evidence regarding changes in  
42 value of various assets before and after the valuation date in making the  
43 division of property. In dividing defined-contribution types of retirement~~

~~1 and pension plans, the court shall allocate profits and losses on the non-~~  
~~2 participant's portion until date of distribution to that nonparticipant. In~~  
~~3 making the division of property the court shall consider the age of the~~  
~~4 parties; the duration of the marriage; the property owned by the parties;~~  
~~5 their present and future earning capacities; the time, source and manner~~  
~~6 of acquisition of property; family ties and obligations; the allowance of~~  
~~7 maintenance or lack thereof; dissipation of assets; the tax consequences~~  
~~8 of the property division upon the respective economic circumstances of~~  
~~9 the parties; and such other factors as the court considers necessary to~~  
~~10 make a just and reasonable division of property. The decree shall provide~~  
~~11 for any changes in beneficiary designation on: (A) Any insurance or an-~~  
~~12 nuity policy that is owned by the parties, or in the case of group life~~  
~~13 insurance policies, under which either of the parties is a covered person;~~  
~~14 (B) any trust instrument under which one party is the grantor or holds a~~  
~~15 power of appointment over part or all of the trust assets, that may be~~  
~~16 exercised in favor of either party; or (C) any transfer on death or payable~~  
~~17 on death account under which one or both of the parties are owners or~~  
~~18 beneficiaries. Nothing in this section shall relieve the parties of the ob-~~  
~~19 ligation to effectuate any change in beneficiary designation by the filing~~  
~~20 of such change with the insurer or issuer in accordance with the terms~~  
~~21 of such policy.~~

~~22 (2) Maintenance. The decree may award to either party an allowance~~  
~~23 for future support denominated as maintenance, in an amount the court~~  
~~24 finds to be fair, just and equitable under all of the circumstances. The~~  
~~25 decree may make the future payments modifiable or terminable under~~  
~~26 circumstances prescribed in the decree. The court may make a modifi-~~  
~~27 cation of maintenance retroactive to a date at least one month after the~~  
~~28 date that the motion to modify was filed with the court. In any event, the~~  
~~29 court may not award maintenance for a period of time in excess of 121~~  
~~30 months. If the original court decree reserves the power of the court to~~  
~~31 hear subsequent motions for reinstatement of maintenance and such a~~  
~~32 motion is filed prior to the expiration of the stated period of time for~~  
~~33 maintenance payments, the court shall have jurisdiction to hear a motion~~  
~~34 by the recipient of the maintenance to reinstate the maintenance pay-~~  
~~35 ments. Upon motion and hearing, the court may reinstate the payments~~  
~~36 in whole or in part for a period of time, conditioned upon any modifying~~  
~~37 or terminating circumstances prescribed by the court, but the reinstate-~~  
~~38 ment shall be limited to a period of time not exceeding 121 months. The~~  
~~39 recipient may file subsequent motions for reinstatement of maintenance~~  
~~40 prior to the expiration of subsequent periods of time for maintenance~~  
~~41 payments to be made, but no single period of reinstatement ordered by~~  
~~42 the court may exceed 121 months. Maintenance may be in a lump sum,~~  
~~43 in periodic payments, on a percentage of earnings or on any other basis.~~



~~1 At any time, on a hearing with reasonable notice to the party affected,  
2 the court may modify the amounts or other conditions for the payment  
3 of any portion of the maintenance originally awarded that has not already  
4 become due, but no modification shall be made without the consent of  
5 the party liable for the maintenance, if it has the effect of increasing or  
6 accelerating the liability for the unpaid maintenance beyond what was  
7 prescribed in the original decree. Every order requiring payment of main-  
8 tenance under this section shall require that the maintenance be paid  
9 through the clerk of the district court or the court trustee except for good  
10 cause shown.~~

~~11 (3) Separation agreement. If the parties have entered into a separa-  
12 tion agreement which the court finds to be valid, just and equitable, the  
13 agreement shall be incorporated in the decree. The provisions of the  
14 agreement on all matters settled by it shall be confirmed in the decree  
15 except that any provisions for the custody, support or education of the  
16 minor children shall be subject to the control of the court in accordance  
17 with all other provisions of this article. Matters settled by an agreement  
18 incorporated in the decree, other than matters pertaining to the custody,  
19 support or education of the minor children, shall not be subject to sub-  
20 sequent modification by the court except: (A) As prescribed by the agree-  
21 ment or (B) as subsequently consented to by the parties.~~

~~22 (4) Costs and fees. Costs and attorney fees may be awarded to either  
23 party as justice and equity require. The court may order that the amount  
24 be paid directly to the attorney, who may enforce the order in the attor-  
25 ney's name in the same case.~~

~~26 (c) Miscellaneous matters. (1) Restoration of name. Upon the request  
27 of a spouse, the court shall order the restoration of that spouse's maiden  
28 or former name.~~

~~29 (2) Effective date as to remarriage. Any marriage contracted by a  
30 party, within or outside this state, with any other person before a judg-  
31 ment of divorce becomes final shall be voidable until the decree of divorce  
32 becomes final. An agreement which waives the right of appeal from the  
33 granting of the divorce and which is incorporated into the decree or  
34 signed by the parties and filed in the case shall be effective to shorten  
35 the period of time during which the remarriage is voidable.~~

36 Sec. 24. K.S.A. 75-3329 is hereby amended to read as follows: 75-  
37 3329. As used in this act:

38 (a) "Board" means the secretary of social and rehabilitation services.

39 (b) "State institution" means institution as defined in K.S.A. 76-  
40 12a01, and amendments thereto.

41 (c) "Child" or "children" means a person or persons under the age  
42 of eighteen (18) 18.

43 (d) "Private children's home" means any licensed home, institution



1 or charitable organization which is operated by a corporation organized  
2 ~~not for profit~~ under the laws of this state which the secretary finds has  
3 and maintains adequate facilities and is properly staffed to provide ade-  
4 quate care, custody, education, training and treatment for any child which  
5 the secretary may place therein under the authority of this act, or a li-  
6 censed foster care home, boarding home, personal care home or nursing  
7 home.  
8 Sec. 25. K.S.A. 38-1503, 38-1531, 38-1566, 38-1567, 38-1568 and 75-  
9 3329 and K.S.A. 1999 Supp. 38-1502, 38-1507, 38-1513, 38-1532, 38-  
10 1542, 38-1543, 38-1544, 38-1562, 38-1563, 38-1565, 38-1581, 38-1583,  
11 38-1584, 38-1585, 38-1587, and 38-1591 ~~and 60-1610~~ are hereby repealed.  
12 Sec. 26. This act shall take effect and be in force from and after its  
13 publication in the statute book.

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Sen Jud  
4-5-00  
Att. 2

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April 5, 2000

To: Chair and Committee Members of the Senate Judiciary Committee

Submitted by: William E. Kennedy III  
Riley County Attorney

Dear Senators:

I have been the Riley County Attorney since 1985. I am the primary attorney in my office for Child in Need of Care cases, the area in which I specialized for 2 1/2 years as Assistant County Attorney. Prior to attending Law School, I was a teacher for three years and then a principal for five years, am certified from kindergarten through twelfth grade, and have five children of my own. I am extremely concerned with what I have seen so far of Senate Bill 633, both as currently published and used, the present proposed amendments.

This bill should be rejected until the Secretary has worked with experienced county and district attorney types and developed statutes that allow for appropriate orders from an independent judiciary.

There has not been time to completely flyspeck the latest version of Senate 633.

- 1) The permanent guardianship changes seem to be appropriate;
- 2) Page 14, lines 38-43, will result in trials to determine the appropriateness of the plan (no one trusts SRS);
- 3) Page 15, lines 17-19, removes too much authority from the Court; Page 18, lines 36-39, same problem; the statute should require judicial consent;
- 4) Page 22, lines 6-22, ridiculous and unwieldy; deals with safety of the child instead of welfare or best needs of the child;

- 5) Page 23, lines 3-8, deals with safety of the child instead of welfare or best needs of the child;
- 6) Page 26, line 9, deals with safety of the child instead of welfare or best needs of the child;
- 7) Page 27, lines 8-12, should also notify the district or county attorney;
- 8) Page 28, lines 14-16, omits words "May Order";
- 9) Page 29, lines 40-41, major continued mistake, should include all definitions of child in need of care, not just a runaway (we have been down this road before); and
- 10) — Page 34, lines 40-43, Page 35, lines 1-2, appears to be a blatant attempt to avoid responsibility. *delete*

The purposed amendment on Page 19, lines 20-43, Page 20, lines 1-4 to the informal supervision statute appear to be appropriate. However, hidden later in the proposed bill is a modification of the Court's authority under that statute (see Page 22, line 6). (Am I suspicious or what!)

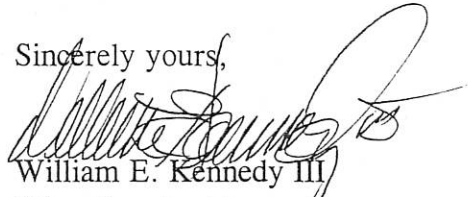
Referring to dealing with written orders only, I am sure we can comply, but please be aware that most of these matters finally get done in Court at about 6:00 p.m. on Friday night. If the Secretary anticipates needing a written order at that time, then the Secretary should provide twenty-four hour coverage instead of dealing with a contractor.

#### OOPS or DUE PROCESS ISSUES

Page 25, lines 32-38 of the published statute calls for a Court Service Officer or the Secretary to submit a written progress for permanency plan. If the child is in foster care, the foster parents are also required to submit supplementary reports to the Court. The existing statute calls for the report to be confidential, only reviewable by the Court and by the child's guardian ad litem. It appears that this information is never destined to reach either the county attorney or the attorney for the parents, thus creating a due process problem that in the event of the matter going on to a termination of parental rights could become extremely serious.

I affirmatively suggest that SRS should develop short-term (30 days) voluntary respite programs for out-of-control adolescents and teens that would operate to keep a great number of those kids from ever coming into SRS custody. A statutory change to lengthen the time of police protective custody for youths over 13 years of age would be of great help. My experience is that when these families are struggling with youths whose behavior is out of control, 72 hours is not enough time for the SRS worker to investigate and explore all the options for the youth. When the time runs out, then a petition has to be filed.

Sincerely yours,



William E. Kennedy III  
Riley County Attorney

HJB 2082 Am Jud  
4-5-00  
att 3

**JUDICIAL COUNCIL TESTIMONY  
BEFORE THE JUDICIARY CONFERENCE COMMITTEE  
ON KSA 75-37,121**

**APRIL 5, 2000**

I am appearing today on behalf of the Kansas Judicial Council. I am a member of Administrative Procedure Advisory Committee, Kansas Judicial Council, chaired by Professor David Ryan.

The Kansas Judicial Council is requesting the language of K.S.A. 75-37,121(d) be modified to more clearly reflect the intent of the statute. The intent of the statute subsection (d) is to grant the Office of Administrative Hearings (OAH) the authority to provide Administrative Law Judge (ALJ) services for KAPA and non-KAPA proceedings for state agencies and other governmental entities if so requested. This simply will be a technical change to make the original intent of the statute more clear.

The OAH was established on July 1, 1998. The Office was established to conduct all SRS administrative proceedings and to make available ALJ services to other state agencies and government entities for KAPA and/or non-KAPA proceedings.

The purpose of the request for clarifying language of K.S.A. 75-37,121 is that subsection (d) of 75-37,121 has been interpreted by a court as prohibiting the OAH from providing ALJs for KAPA proceedings for agencies other than SRS. Without the clarifying language, the OAH will not be able to provide ALJs to state agencies.

Eight different departments or agencies now use OAH ALJ services on a regular basis. That practice will have to be terminated until the language is clarified or we prevail in court.

History of Court Case

Kansas Board of Veterinary Examiners contracted with OAH to conduct a KAPA license revocation proceeding pursuant to K.S.A. 75-37,121(d). Counsel for affected veterinarian filed a motion in Shawnee County District Court for a restraining order and temporary injunction. The restraining order was issued on March 13, 2000, a day before the scheduled KAPA hearing. The hearing on the temporary injunction was conducted on March 27, 2000. Judge Parrish granted the temporary injunction and set a hearing for the permanent injunction on April 27, 2000. Judge Parrish interprets K.S.A. 75-37,121(d) as permitting OAH ALJs to be used in SRS proceedings and on a contract basis in only non-KAPA proceedings for other agencies. The Judge failed to recognize the permissive language of 75-37,121(d) and the mandatory language of K.S.A. 77-551 which must be read together to understand the full authority granted to OAH.

In Jud  
4-5-00  
att 3

Suggested Language

- (d) The director may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act *and any Kansas administrative procedure act proceeding* not listed in K.S.A. 77-551 and amendments thereto.

The Kansas Judicial Council requests the amendment to 75-37,121 be effective upon publication so the interruption of the operation of OAH and the other eight agencies using the services of OAH will be minimal.

Thank you for this opportunity to testify regarding K.S.A. 75-37,121 and for your consideration of the Judicial Council's request to clarify the language of the statute. I will stand for any question.

# 75-37,121

## Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

### Article 37.--DEPARTMENT OF ADMINISTRATION

**75-37,121. Office of administrative hearings; administrative law judges; director, duties of; rules and regulations.** On and after July 1, 1998: (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration.

(b) The office shall employ administrative law judges, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the department of social and rehabilitation services. The office shall conduct adjudicative proceedings of the department of social and rehabilitation services which are not under the Kansas administrative procedure act when requested by such agency. Only a person admitted to practice law in this state may be employed as an administrative law judge. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its administrative law judges in response to the department of social and rehabilitation services request, the director shall designate in writing a full-time employee of an agency other than the department of social and rehabilitation services to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the office.

(d) The director may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act or not listed in K.S.A. 77-551 and amendments thereto.

(e) On or before January 1, 1999, the department of administration shall adopt rules and regulations:

(1) To establish further qualifications for administrative law judges, procedures by which candidates will be considered for employment, and the manner in which public notice of vacancies in the staff of the office will be given;

(2) to establish procedures for agencies to request and for the director to assign administrative law judges. The department of social and rehabilitation services may neither select nor reject any individual administrative law judge for any proceeding except in accordance with the Kansas administrative procedure act;

(3) to establish procedures and adopt forms, consistent with the Kansas administrative procedure act, the model rules of procedure, and other provisions of law, to govern administrative law judges;

(4) to establish standards and procedures for the evaluation, training, promotion and discipline of administrative law judges; and

(5) to facilitate the performance of the responsibilities conferred upon the office by the Kansas administrative procedure act.

(f) The director may:

(1) Maintain a staff of reporters and other personnel; and

(2) implement the provisions of this section and rules and regulations adopted under its authority.

(g) The department of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using an administrative law judge.

(h) Effective July 1, 1998, personnel in the administrative hearings section of the department of social and rehabilitation services and support personnel for such administrative law judges, shall be transferred to the office of administrative hearings. Such personnel shall retain all rights under the state personnel system and retirement benefits under the laws of this state, and such person's services shall be deemed to have been continuous. This act shall not affect any matter pending before an administrative hearing officer at the time of the effective date of the transfer, and such matter shall proceed as though no transfer of employment had occurred.

**History:** L. 1997, ch. 182, § 88; July 3.



# 77-551

## Chapter 77.--STATUTES; ADMINISTRATIVE RULES AND REGULATIONS AND PROCEDURE

### Article 5.--ADMINISTRATIVEPROCEDURE ACT

**77-551. SRS hearings.** On and after July 1, 1998: (a) In hearings of the department of social and rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927, 75-3306 and 75-3340, and amendments thereto, the presiding officer shall be the agency head, one or more members of the agency head or an administrative law judge assigned by the office of administrative hearings.

(b) This section shall be part of and supplemental to the Kansas administrative procedure act.

**History:** L. 1997, ch. 182, § 90; July 3.

**75-37,121. Office of administrative hearings; administrative law judges; director, duties of; rules and regulations.** On and after July 1, 1998: (a) There is created the office of administrative hearings within the department of administration, to be headed by a director appointed by the secretary of administration.

(b) The office shall employ administrative law judges, court reporters and other support personnel as necessary to conduct proceedings required by the Kansas administrative procedure act for adjudicative proceedings of the department of social and rehabilitation services. The office shall conduct adjudicative proceedings of the department of social and rehabilitation services which are not under the Kansas administrative procedure act when requested by such agency. Only a person admitted to practice law in this state may be employed as an administrative law judge. The office may employ regular part-time personnel. Persons employed by the office shall be under the classified civil service.

(c) If the office cannot furnish one of its administrative law judges in response to the department of social and rehabilitation services request, the director shall designate in writing a full-time employee of an agency other than the department of social and rehabilitation services to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the office.

(d) The director may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding not subject to the Kansas administrative procedure act ~~but~~ not listed in K.S.A. 77-551 and amendments thereto.

and any Kansas administrative procedure act proceeding

(e) On or before January 1, 1999, the department of administration shall adopt rules and regulations:

(1) To establish further qualifications for administrative law judges, procedures by which candidates will be considered for employment, and the manner in which public notice of vacancies in the staff of the office will be given;

(2) to establish procedures for agencies to request and for the director to assign administrative

April 5, 2000

## SENATE JUDICIARY SUBCOMMITTEE REPORT Senators Oleen, Harrington, and Gilstrap

**SB 632.** Municipal courts and judges would be subject to general administrative authority of the Kansas Supreme Court.

- The Subcommittee took no action on the bill.
- The Subcommittee recommends this topic be the subject of an interim committee study.
- Other pertinent parties who indicated they will also suggest an interim study on this matter include:
  - Sandy Jacquot, League of Kansas Municipalities;
  - Mike Taylor, City of Wichita; and
  - Kelly Kultala, City of Overland Park.

**SB 341.** DUI criminal penalties and administrative sections.

After a review of the bill, the Subcommittee considered several items of concern as follows:

- That a substitute bill be drafted which will contain certain changes.
  - The provision containing a \$50 subpoena fee to be charged for each law enforcement officer at an administrative hearing would be capped at \$100.
  - The two-year suspension for a refusal to take a BAT test for a second offense would be deleted.
  - An increase in the driver's license reinstatement fee would be added.

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- A provision would be added whereby, a driver, under age 21, who tests at a .02 to .07999 level would have a 60-day minimum, with up to a year's driver's license suspension, at the discretion of the judge. For a level of .08 or above, under current law, driving privileges are suspended for up to one year. If the driver enters into a diversion agreement, driving privileges are suspended for the terms of the diversion.
- A diversion agreement can include several factors such as payment of costs, restitution, participation in programs offering medical, educational, vocational, social, and psychological services, among other things.

The Committee also considered a proposal that would limit the number of times an individual can have a DUI conviction with a subsequent reinstatement of the driver's license before driving privileges would be lost.

In addition, the Committee expressed great concern over the number of repeat DUI convictions and requested an update on the statistics regarding repeat DUIs next session. Along these lines, the Committee requested information on the incidents when DUI administrative hearings are continued when the pertinent parties are present for the hearing.