

MINUTES OF THE SENATE WAYS & MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on March 16, 2000 in Room 123-S of the Capitol.

All members were present except: Senator Downey, who was excused

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD
 Rae Anne Davis, KS Legislative Research Department
 Debra Hollon, KS Legislative Research Department
 Norman Furse, Revisor of Statutes
 Michael Corrigan, Asst. Revisor of Statutes
 Judy Bromich, Administrative Assistant to the Chairman
 Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Secretary Connie Hubbell, Department on Aging
 Doug Farmer, Commissioner of Finance, Department on Aging
 Duane Goossen, Director, Division of the Budget
 Bill Henry, Kansas Area Agencies on Aging
 Debra Zehr, Kansas Association of Home and Services for the Aging
 John Kiefhaber, Kansas Health Care Association
 Gina McDonald, Statewide Independent Living Council of Kansas
 Tom Bell, Kansas Hospital Association
 Senator Tim Huelskamp
 Joe Fritton, Acting Director, Division of Facilities Management
 Secretary Steve Williams, Wildlife & Parks
 Secretary Carlson, Department of Transportation

Others attending: See attached list

SB 653: Intergovernmental transfers with nursing facilities

Kathie Sparks, Kansas Legislative Research Department, distributed and reviewed a summary sheet of the Intergovernmental Transfer Program (Attachment 1). She told members that funds would be established under the new program and outlined the first year's and all subsequent years' distribution of the monies. Ms. Sparks stated that rural hospitals would be required to pay back loans from the Long-Term Care Loan Fund. Copies of a balloon for **SB 653** were distributed to members (Attachment 2).

Secretary Connie Hubbell, Department on Aging, provided background information on the Kansas Intergovernmental Transfer Program (Attachment 3). She introduced Doug Farmer, Commissioner of Finance for the Department, who reviewed the three processes which the Department must complete to receive intergovernmental transfer funding (Attachment 1-3 through 4). In answer to the Chairman, Mr. Farmer said that the state of Nebraska pays a \$10,000 fee to each of two nursing home facilities to get the funding, but the total amount of the funding does not appear to be tied to the number of nursing homes. He said that the Department has identified and contacted 42 locally owned and operated nursing facilities to determine their interest in taking part in the transfer.

Senator Petty voiced her concern that the funds might be used for construction costs though the state has enough beds. Secretary Hubbell stated that the philosophy of the IT program is to delay the need for Medicaid in Kansas by allowing nursing facilities to provide assisted living levels at lesser cost to the state. She added that the Department has worked with Commerce and Housing to provide congregate living in rural areas of the state. Secretary Hubbell told the Committee that the IT program does not add to the base budget or start new entitlements because of the uncertainty of future funding. In answer to a question, Secretary Hubbell stated that how the funds are spent will be a matter of regulations, but one

CONTINUATION SHEET

SENATE WAYS & MEANS COMMITTEE MINUTES

possibility could be maintaining the elderly who are not on Medicaid in their homes.

Duane Goossen, Director, Division of the Budget, distributed and reviewed the Governor's proposal for the use of the IT monies (Attachment 4). Mr. Goossen stated that **SB 653** does not include language that appropriates the money, but the Governor will provide a budget amendment during Omnibus. It was noted that it may be possible to receive 5 quarters of proceeds in FY 2001 which equals approximately \$120 million. Concern was expressed about the Legislature's ability to appropriate the funds since HCFA has up to 90 days from the end of March to respond to Kansas' plan. The Chairman stated that the Legislature could appropriate the monies but make the release of the monies subject to certification by the Secretary on Aging that the funds had been received.

Bill Henry appeared before the Committee on behalf of the Kansas Association of Area Agencies on Aging in support of **SB 653**. He said that 11 area agencies on aging view the funding as tentative and, therefore, believe that the key segment of the bill is the trust fund (Attachment 5).

Debra Zehr, Vice President of Kansas Association of Home and Services for the Aging, testified in support of **SB 653** (Attachment 6). She requested that the Committee consider an alternate allotment of the funds as described in her testimony.

John Kiefhaber, Executive Director of Kansas Health Care Association, appeared in support of **SB 653**. He asked that the Committee support funding for the nursing home wage pass-through. In response to Senator Petty's remarks, he stated that there will be a shortage of nursing home beds in the future based on population projections and commented that it will be important to upgrade buildings and staff. Mr. Kiefhaber agreed with the Chairman that funding the wage pass-through would add to the base.

Gina McDonald testified in support of **SB 653** on behalf of the Statewide Independent Living Council (Attachment 7). She suggested an amendment that would allow the possibility of using IT funding to provide services to individuals under age 65.

Written testimony in support of **SB 653** on behalf of the Kansas Hospital Association was distributed to members by Tom Bell (Attachment 8). His testimony asked that the Committee consider using \$5 million owed to health care providers as a result of the Horizon Medicaid HMO liquidation.

The Chairman closed the hearing on **SB 653** and noted that action would be taken at a later date.

SB 633: **Child in need of care; defining child in need of protection and youth in need of community intervention; creating the family services and community intervention fund**

The Chairman reminded members that this bill would be referred to the Judiciary Committee for legal review and for consideration of an amendment that the Juvenile Justice Authority had requested. He noted that SRS and the Judicial Branch had been working together on the bill and had come to an agreement with one exception. A copy of a balloon version of the bill was distributed (Attachment 9).

Assistant Secretary Joyce Allegrucci, Assistant Secretary of Children & Family Policy, SRS, told the Committee that there is one issue that remains unresolved and that language appears three times in the bill. It appears the first time on line 43, page 18 and goes through line 2 on page 19. She stated that some members of the Judicial Branch would like to add the following language, "The Secretary will not be relieved of responsibility for following the court's orders because a written order has not been received if a representative of the Secretary is present when the court makes the order."

A representative from the Kansas Counties District Attorneys Association stated that some county attorneys still have concerns similar to those expressed by Karen Langston and Don Hymer in their appearance before Ways & Means on February 29, 2000. It was uncertain whether the county attorneys had concerns about the original or the balloon version of the bill.

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SENATE WAYS & MEANS COMMITTEE MINUTES

There was discussion about concerns for the care of the child from the time the order is given to the time it is memorialized. Judge Graber stated that now that the courts are mandated to give orders, it is a matter of greater conflict for putting children at risk. He said he believes the risk is present in all three places in the bill. The Chairman stated that he would advise the Chairman of the Judiciary Committee of the difficulties in the bill.

Senator Ranson moved, Senator Morris seconded, that **SB 633** be amended by deleting the original language and inserting the language contained in the balloon and that **Sub for SB 633** be recommended favorably for passage. The motion carried on a roll call vote.

SB 602: Acquisition of real property by state; requiring certain studies, reports and hearings

Senator Tim Huelskamp appeared before the committee in support of **SB 602** and reviewed his written testimony (Attachment 10). Senator Huelskamp told members that **SB 602** would require state agencies to conduct a study of the impact of property purchase on neighboring properties, share the study with neighbors, and have an open hearing for public comment on the purchase.

Joe Fritton, Acting Director of the Division of Facilities Management, appeared before the Committee to request that the acquisition of buildings be excluded from the bill (Attachment 11).

Secretary Steve Williams, Department of Wildlife and Parks, appeared in opposition to **SB 602** and reviewed his written testimony (Attachment 12).

Secretary Dean Carlson, Department of Transportation, spoke to the Committee in opposition to **SB 602** (Attachment 13). He testified that **SB 602** would require excessive duplication of current procedures and would involve a great deal of time, money and personnel issues without benefit for Kansans.

The Chairman closed the hearing on **SB 602**.

Senator Jordan offered a motion which was seconded by Senator Salmans to approve the minutes of the March 9th meeting. The motion carried on a voice vote.

The meeting was adjourned at 12:30 p.m. by the Chairman. The next meeting will be March 17, 2000.

SENATE WAYS & MEANS COMMITTEE GUEST LIST

DATE: March 16, 2000

NAME	REPRESENTING
Donna Butledge	SRS/CFP
Bill Henry	Area Agencies on Aging
Greg Tynan	DOB
Doug Emerson	AG.org
Bill Howill	Governor's Office
Don Jordan	SRS
Stacy Pearson	Smart & Casper
Tom Anker	Dist. Ct
Sheli Sweeney	KDOA
Nancy Pierce	KHGA
John Kiefhaber	Ks Health Care Assn.
Theron Black	CPAAA
Mary Lou Allison	Harvey County Dept on Age - CPAAA
Audrey Philip	Three Rivers Ind. Living Center
Mary J. Evans	Three Rivers ILRC
Bill Brady	KS Gov't Consulting
Michael Hurry	JJA
Dodie Westhead Johnson	Ks Action for Children
Mark Gleason	OJA
Mike Huttles	Ks Gov't Consulting

March 16, 2000

To: Senate Ways and Means

From: Kathie Sparks, Senior Fiscal Analyst

SB 653

The Intergovernmental Transfer Program

1. Establishes the Long-Term Care Loan Fund
2. Establishes the Senior Services Trust Fund
3. The First Year Distributions:
 - 25% in the State General Fund
 - 15% in the Long-Term Care Loan Fund
 - Authorized uses of the Fund
 - Converting adult care homes from one type to another
 - Converting private residences to licensed homes plus facilities
 - Converting space in rural hospitals to adult care facilities
 - Improving adult care homes
 - Loans to rural hospitals to provide for incentive payments for physician, physician assistant or licensed professional nurse services
 - Building congregate housing for seniors in Kansas cities with populations of 2,500 or less

Senate Ways and Means Committee

Date *March 16, 2000*

Attachment # *1*

- 60% in the Senior Services Trust Fund
 - KPERS is responsible for the management and investment of the Senior Services Trust Fund
 - Only the interest ^{earnings} earned on the investments can be spent
 - Prohibited from creating or funding any entitlement program not in existence on the effective date of this act
 - Interest proceeds are to be used for:
 - ◆ Projects intended to reduce future Medicaid cost to the state
 - ◆ To help seniors avoid premature institutionalization
 - ◆ To improve quality of care or quality of life of seniors who are customers of long-term care programs
 - ◆ State match for senior service programs authorized by federal law

4. The Second Year Distributions:

- 30% in the State General Fund
- 70% in the Senior Services Trust Fund

SENATE BILL No. 653

By Committee on Ways and Means

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DRAFT OF Technical AMENDMENTS
March 16, 2000

Senate Ways and Means Committee
Date *March 16, 2000*
Attachment # *2*

9 AN ACT establishing an intergovernmental transfer program; concern-
10 ing nursing facilities owned and operated by units of government; re-
11 lating to the federal medical assistance (medicaid) program; establish-
12 ing an intergovernmental transfer fund, ~~a long-term care loan fund, a~~
13 senior services trust fund and a senior services fund within the state
14 treasury; authorizing certain participation agreements, loans, grants
15 and contracts; amending K.S.A. 75-5321a and repealing the existing
16 section.

an intergovernmental transfer administration fund,

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

18 Section 1. K.S.A. 75-5321a is hereby amended to read as follows: 75-
19 5321a. The secretary of social and rehabilitation services shall take nec-
20 essary actions to transfer the administration of certain long-term care
21 programs and services to the secretary of aging. The programs shall in-
22 clude the nursing facility services payment program, the home and com-
23 munity based ~~nursing facility services for the frail elderly~~ waiver program,
24 *the case management for the frail elderly program* and the income eligible
25 (home care) program. Excluding nursing facility programs, the programs
26 to be transferred shall not include long-term care programs for individuals
27 under the age of 65 with mental illness, mental retardation, other mental
28 disabilities or physical disabilities. All such transfers shall be made only
29 in accordance with federal grant requirements related to such programs.

(a) 31 New Sec. 2. The secretary of social and rehabilitation services and
32 the secretary of aging shall take necessary actions to establish an inter-
33 governmental transfer program as a part of the nursing facility services
34 payment program within the medicaid state plan.

shall disburse moneys received from the federal government for the intergovernmental transfer program and moneys transferred from the state general fund to the intergovernmental transfer fund for the program

(b) 35 (a) In implementing the intergovernmental transfer program, the
36 ~~state treasurer shall periodically transfer state general funds and federal~~
37 ~~funds in amounts certified by the~~ secretary of aging ~~to units of govern-~~
38 ment which have entered into participation agreements with the secretary
39 of aging and the secretary of social and rehabilitation services. The
40 amount of ~~state general funds transferred to the units of government~~ shall
41 not exceed the amount necessary to match federal funds available to the
42 state under the intergovernmental transfer program. The secretary of
43 aging shall periodically calculate the amount of federal funds available

moneys disbursed to the units of government from moneys transferred from the state general fund to the intergovernmental transfer fund for the program

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1 under the program according to the [program] methodology in the medi-
2 caid state plan.

prescribed for the intergovernmental transfer program

(c) 3 (b) The secretary of social and rehabilitation services and the secre-
4 tary of aging are authorized to enter into intergovernmental transfer pro-
5 gram participation agreements with units of government which own and
6 operate nursing facilities. The participation agreements may permit the
7 units of government to retain a participation fee specified by the secretary
8 of aging from [program funds] which are otherwise required to be trans-
9 ferred back to the secretary of aging.

moneys received under the intergovernmental transfer program

10 (c) Program funds transferred from participating units of government
11 to the secretary of aging shall be deposited in the intergovernmental
12 transfer fund established within the state treasury. The state treasurer
13 shall distribute portions of the transferred funds attributable to medicaid
14 federal financial participation within the intergovernmental transfer fund
15 to the senior services trust fund and the long-term care loan fund estab-
16 lished within the state treasury in the amounts required by this section.
17 The state treasurer shall transfer the portion of the transferred funds
18 attributable to medicaid state matching funds into the state general fund.

19 (d) Distributions from the senior services trust fund through the in-
20 tergovernmental transfer program may not be used to create or fund an
21 entitlement program not in existence on the effective date of this act. The
22 secretary of aging may recover the department's costs of administering
23 the intergovernmental transfer program from the intergovernmental
24 transfer fund after certifying the amount of those costs to the state trea-
25 surer each calendar quarter.

26 (e) Subject to appropriations, from the total program funds trans-
27 ferred into the intergovernmental transfer fund before July 1, 2001:

28 (1) A portion, not to exceed 60%, shall be transferred to the senior
29 services trust fund to be invested and managed by the Kansas public
30 employment retirement system board of trustees as described in sections
31 3 and 4 of this act and amendments thereto. Each calendar quarter, the
32 board of trustees shall transfer the interest earned on the senior services
33 trust fund investments to the senior services fund within the state treas-
34 ury. Subject to appropriations, the moneys in senior services fund shall
35 be used by the secretary of aging only for projects intended to reduce
36 future medicaid costs to the state, to help seniors avoid premature insti-
37 tutionalization or to improve the quality of care or the quality of life of
38 seniors who are customers of long-term care programs, or for state match
39 for senior service programs authorized by federal law.

40 (2) A portion, not to exceed 25%, shall be transferred to the state
41 general fund.

42 (3) A portion, not to exceed 15%, shall be transferred to the long-
43 term care loan fund for use by the secretary of aging to make market-

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1 ~~rate, low interest or no interest, fully or partially secured or unsecured~~
2 ~~loans for the following types of projects:~~

INSERT 1 attached

- (1) ~~(A)~~ Converting all or parts of some types of licensed adult care homes from their existing licensure types to different licensure types to meet demonstrated changing service demands in their communities;
- (2) ~~(B)~~ converting private residences to licensed homes plus facilities, as defined by K.S.A. 39-923 and amendments thereto;
- (3) ~~(C)~~ converting space in rural hospitals to hospital-based long-term care facilities;
- (4) ~~(D)~~ improving some types of licensed adult care homes;
- (5) ~~(E)~~ rural hospitals contracting for physician, physician assistant or licensed professional nurse services; or
- (6) ~~(F)~~ building congregate housing for seniors in Kansas cities with populations of 2,500 or less.

15 (f) Subject to appropriations, from the total program funds transferred into the intergovernmental transfer fund during each fiscal year beginning on and after July 1, 2001:

- (1) A portion, not to exceed 70%, shall be transferred to the senior services trust fund to be invested and managed by the Kansas public employment retirement system board of trustees as described in sections 3 and 4 and amendments thereto. Each calendar quarter, the board of trustees shall transfer the interest earned on the senior services trust fund investments to the senior services fund within the state treasury. Subject to appropriations, the moneys in the senior services fund shall be used by the secretary of aging only for projects intended to reduce future medicaid costs to the state, to help seniors avoid premature institutionalization or to improve the quality of care or the quality of life of seniors who are customers of long-term care programs, or for state match for senior service programs authorized by federal law.
- (2) A portion, not to exceed 30%, shall be transferred to the state general fund.

(j) ~~(g)~~ The secretary of aging may consider the following factors to prioritize and select ~~long term care fund~~ loans ~~and senior services fund~~ projects:

under the long-term care loan program and projects financed from the senior services fund

- (1) Type of loan — higher interest is preferable to lower interest and more secured is preferable to less secured;
- (2) location — rural is preferable to urban or suburban;
- (3) availability and utilization of the same type of facilities or services in the proposed loan or project area;
- (4) type of facility owner or borrower — unit of government, Kansas not-for-profit, Kansas for-profit, foreign not-for-profit, foreign for-profit organizations, and individuals, in that order of preference; and
- (5) type of research project organization — geriatric schools or pro-

INSERT 1

(d)(1) There is hereby established the intergovernmental transfer fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the intergovernmental transfer fund shall be to disburse the state match amount under the intergovernmental transfer program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Subject to the provisions of appropriation acts, when the secretary of aging determines that an amount of federal medicaid moneys is available for the intergovernmental transfer program, the secretary of aging shall determine the amount required as the state match and shall certify that amount to the director of accounts and reports. Upon receipt of each such state match certification, the director of accounts and reports shall transfer the amount certified by revenue transfer from the state general fund to the intergovernmental transfer fund. Upon the crediting of such state match amount in the intergovernmental transfer fund, the secretary of aging shall disburse the amount of federal moneys and the state match amount to the units of government that have entered into participation agreements under the program.

(2) Each unit of government receiving a disbursement under the intergovernmental transfer program shall reimburse the amount of money received, less the amount of the participation fee, to the secretary of aging. Upon receipt of each amount of moneys from participating units of government under the intergovernmental transfer program, the secretary of aging shall deposit the entire amount in the state treasury to the credit of the intergovernmental transfer fund. The secretary of aging shall determine the amount of each such deposit that was transferred from the state general fund to match medicaid federal funds under the intergovernmental transfer program and shall certify such amount to the director of accounts and reports. Upon receipt of each such certification, the director of accounts and reports shall retransfer the amount certified from the intergovernmental transfer fund to the state general fund.

(e) There is hereby established the intergovernmental transfer administration fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the

intergovernmental transfer administration fund shall be to pay the costs of administering the intergovernmental transfer program and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. The secretary of aging shall recover the costs of administering the intergovernmental transfer program from the intergovernmental transfer fund by certifying the amount of such costs to the director of accounts and reports each calendar quarter. Upon receipt of each certification of costs from the secretary of aging under this subsection, the director of accounts and reports shall transfer the amount certified from the intergovernmental transfer fund to the intergovernmental transfer administration fund.

(f) After each amount of moneys is credited to the intergovernmental transfer fund and the amount of the state match that had been transferred from the state general fund has been transferred back to the state general fund pursuant to subsection (d)(2), and after the transfer of the amount certified by the secretary of aging to the intergovernmental transfer administration fund pursuant to subsection (e), if any, the director of accounts and reports shall transfer the remaining amount in the intergovernmental transfer fund as follows:

(1) During the period from the effective date of this act through June 30, 2001, 60% of such amount shall be transferred to the senior services trust fund established by section 4 and amendments thereto, 25% of such amount shall be transferred to the state general fund and 15% of such amount shall be transferred to the long-term care loan fund established by subsection (h); and

(2) after June 30, 2001, 70% of such amount shall be transferred to the senior services trust fund and 30% of such amount shall be transferred to the state general fund.

(g) There is hereby established the senior services fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the senior services fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the senior services fund shall be used by the secretary of aging only for projects intended (1) to reduce future medicaid costs to the state, (2) to help seniors avoid premature institutionalization, (3) to improve the quality of care or

the quality of life of seniors who are customers of long-term care programs, or (4) to satisfy state matching requirements for senior service programs authorized by federal law. Moneys credited to the senior services fund from income of investments of the moneys in the senior services trust fund shall not be used to create or fund any entitlement program not in existence on the effective date of this act.

(h) There is hereby established the long-term care loan fund in the state treasury which shall be administered by the secretary of aging in accordance with this act. All expenditures from the long-term care loan fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of aging or the secretary's designee. Moneys in the long-term care loan fund shall be used to make loans under the long-term care loan program developed by the secretary of aging in accordance with this section.

(i) The secretary on aging is hereby authorized to develop and implement a long-term care loan program in accordance with this section. Subject to the provisions of this section and the provisions of appropriation acts, the secretary of aging may enter into loan agreements for market-rate, low-interest or no-interest, fully or partially secured or unsecured loans with repayment provisions and other terms and conditions as may be prescribed by the secretary under such program. Loans under the long-term care loan program may be made for the following:

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1 grams in Kansas colleges or universities, Kansas colleges or universities,
2 educational foundations, foreign colleges or universities, Kansas not-for-
3 profit organizations, Kansas for-profit organizations, foreign not-for-profit
4 organizations, foreign for-profit organizations, and individuals, in that or-
5 der of preference.

(k) 6 ~~(h)~~ ~~The~~ principal and interest of any loan made under this act shall
7 be repaid to the long-term care loan fund within the state treasury and
8 used to make new loans. ~~Idle funds within the long-term care loan fund~~
9 ~~shall be invested as required by law and the interest may be used as part~~
10 ~~of the state general fund match required for the intergovernmental trans-~~
11 ~~fer program.]~~ The repayment of a loan or of a senior services fund project
12 contract or grant may not be forgiven, in whole or in part, except by an
13 act of the legislature.

All moneys received from repayments of
deposited in the state treasury and credited

(l) 14 ~~(i)~~ For purposes of this section, "units of government" and "units of
15 government which own and operate nursing facilities" which are eligible
16 to enter into intergovernmental transfer program participation agree-
17 ments shall be limited to cities of the first class, cities of the second class,
18 counties, hospital districts, or health care facilities and services hospital
19 districts which hold legal title to and are actively involved in the day-to-
20 day operations of any of the following:

- 21 (1) Medicaid-certified nursing facilities and nursing facilities for men-
22 tal health, as defined in K.S.A. 39-923 and amendments thereto;
- 23 (2) medicaid-certified long-term care facilities which are operated in
24 connection with city hospitals established under K.S.A. 13-14b01 *et seq.*
25 and amendments thereto or K.S.A. 14-601 *et seq.* and amendments
26 thereto, county hospitals established under K.S.A. 19-4601 *et seq.* and
27 amendments thereto, or district hospitals established under K.S.A. 80-
28 2501 *et seq.* and amendments thereto; or
- 29 (3) medicaid-certified long-term care facilities operated under au-
30 thority of K.S.A. 80-2550 *et seq.* and amendments thereto.

(m) 31 ~~(j)~~ Entities eligible to apply for loans under ~~this section shall be lim-~~
32 ited to the owners of:

the long-term care loan program under

- 33 (1) Licensed adult care homes, excluding nursing facilities for mental
34 health and intermediate care facilities for the mentally retarded, as de-
35 fined in K.S.A. 39-923 and amendments thereto;
- 36 (2) medicaid-certified licensed hospitals and medicaid-certified long-
37 term care facilities based in or operated in connection with licensed hos-
38 pitals as defined in K.S.A. 65-425 and amendments thereto;
- 39 (3) private residences which the owners will contract to convert into
40 licensed homes plus facilities, as defined in K.S.A. 39-923 and amend-
41 ments thereto, and in which the owners will reside after the conversion
42 and licensure; or
- 43 (4) congregare senior housing projects being built with loans in Kan-

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1 sas cities with a population of 2,500 or less.

2 New Sec. 3. (a) The board of trustees ~~of the Kansas public employees~~
3 ~~retirement~~ is responsible for the management and investment of the sen-
4 ior services trust fund ~~and~~ shall discharge the board's duties relative to
5 the fund for the exclusive purpose of providing investment revenue for
6 the purposes for which the fund moneys may be used and defraying rea-
7 sonable expenses of administering the fund. The board shall invest and
8 reinvest moneys in the fund and acquire, retain, manage, including the
9 exercise of any voting rights, and dispose of investments of the fund within
10 the limitations and according to the powers, duties and purposes as pre-
11 scribed by this section.

which is hereby established in the state treasury. The board of trustees

12 (b) Moneys in the fund shall be invested and reinvested to achieve
13 the investment objective which is preservation of the fund to provide
14 income and accordingly providing that the moneys are as productive as
15 possible, subject to the standards set forth in this act. No moneys in the
16 fund shall be invested or reinvested if the sole or primary investment
17 objective is for economic development or social purposes or objectives.

18 (c) In investing and reinvesting moneys in the fund and in acquiring,
19 retaining, managing and disposing of investments of the fund, the board
20 of trustees shall exercise the judgment, care, skill, prudence and diligence
21 under the circumstances then prevailing, which persons of prudence, dis-
22 cretion and intelligence acting in a like capacity and familiar with such
23 matters would use in the conduct of an enterprise of like character and
24 with like aims by diversifying the investments of the fund so as to mini-
25 mize the risk of large losses, unless under the circumstances it is clearly
26 prudent not to do so, and not in regard to speculation but in regard to
27 the permanent disposition of similar funds, considering the probable in-
28 come as well as the probable safety of their capital.

29 (d) In the discharge of such management and investment responsi-
30 bilities the board of trustees may contract for services of one or more
31 professional investment advisors or other consultants in the management
32 and investment of moneys in the fund and otherwise in the performance
33 of the duties of the board of trustees under this act.

34 (e) The board of trustees shall require that each person contracted
35 with under subsection (d) to provide services shall obtain commercial
36 insurance which provides for errors and omissions coverage for such per-
37 son in an amount to be specified by the board of trustees. The amount
38 of such coverage specified by the board of trustees shall be at least the
39 greater of \$500,000 or 1% of the funds entrusted to such person up to a
40 maximum of \$10,000,000. The board of trustees shall require a person
41 contracted with under subsection (d) to provide services give a fidelity
42 bond in a penal sum as may be fixed by law or, if not so fixed, as may be
43 fixed by the board of trustees, with corporate surety authorized to do

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1 business in this state. Such persons contracted with the board of trustees
2 pursuant to subsection (d) and any persons contracted with such persons
3 to perform the functions specified in subsection (b) shall be deemed to
4 be fiduciary agents of the board of trustees in the performance of con-
5 tractual obligations.

6 (f) (1) Subject to the objective set forth in subsection (b) and the
7 standards set forth in subsection (c), the board of trustees shall formulate
8 and adopt policies and objectives for the investment and reinvestment of
9 moneys in the fund and the acquisition, retention, management and dis-
10 position of investments of the fund. Such policies and objectives shall be
11 in writing and shall include:

- 12 (A) Specific asset allocation standards and objectives;
- 13 (B) establishment of criteria for evaluating the risk versus the poten-
14 tial return on a particular investment; and
- 15 (C) a requirement that all investment advisors, and any managers or
16 others with similar duties and responsibilities as investment advisors, shall
17 immediately report all instances of default on investments to the board
18 of trustees and provide such board of trustees with recommendations and
19 options, including, but not limited to, curing the default or withdrawal
20 from the investment.

21 (2) The board of trustees shall review such policies and objectives,
22 make changes considered necessary or desirable and readopt such policies
23 and objectives on an annual basis.

24 (g) (1) Except as provided in subsection (d) and this subsection, the
25 custody of money and securities of the fund shall remain in the custody
26 of the state treasurer, except that the board of trustees may arrange for
27 the custody of such money and securities as it considers advisable with
28 one or more member banks or trust companies of the federal reserve
29 system or with one or more banks in the state of Kansas, or both, to be
30 held in safekeeping by the banks or trust companies for the collection of
31 the principal and interest or other income or of the proceeds of sale.

32 (2) The state treasurer and the board of trustees shall collect the
33 principal and interest or other income of investments or the proceeds of
34 sale of securities ~~in the custody of the state treasurer and shall pay such~~
35 moneys when so collected into the state treasury to the credit of the fund.

36 (3) The principal and interest or other income or the proceeds of sale
37 of securities ~~as provided in paragraph (1) of this subsection shall be re-~~
38 ported to the state treasurer ~~and the board of trustees and credited to~~
39 the fund.

40 (h) All interest or other income of the investments of the moneys in
41 the fund, after payment of any management fees, shall be considered
42 income of the fund and shall be withdrawn and deposited quarterly in
43 the state treasury to the credit of the senior services fund to be used by

of the fund

, the director of accounts and reports

1 the secretary of aging for the purposes permitted by section 2 ~~[of this act]~~
2 and amendments thereto.

3 (i) As used in this section:

4 (1) "Board of trustees" means the board of trustees of the Kansas
5 public employees retirement system established by K.S.A. 74-4905 and
6 amendments thereto.

7 (2) "Fiduciary" means a person who, with respect to the fund, is a
8 person who:

9 (A) Exercises any discretionary authority with respect to administra-
10 tion of the fund;

11 (B) exercises any authority to invest or manage assets of the fund or
12 has any authority or responsibility to do so;

13 (C) provides investment advice for a fee or other direct or indirect
14 compensation with respect to the assets of the fund or has any authority
15 or responsibility to do so;

16 (D) provides actuarial, accounting, auditing, consulting, legal or other
17 professional services for a fee or other direct or indirect compensation
18 with respect to the fund or has any authority or responsibility to do so;
19 or

20 (E) is a member of the board of trustees or of the staff of the board
21 of trustees.

22 (3) "Fund" means the senior services trust fund.

23 (4) With respect to the investment of moneys in the senior services
24 trust fund, "purposes for which the moneys may be used" means the
25 purposes for which the moneys in the senior services ~~[trust]~~ fund may be
26 used, as provided in section 2 and amendments thereto.

27 New Sec. 4. The board of trustees of the Kansas public employees
28 retirement system shall report to the governor and to the legislature on
29 the moneys credited to the senior services trust fund and investment
30 earnings thereon at ~~least~~ once each calendar quarter and on a monthly
31 basis upon request of the governor, the president of the senate or the
32 speaker of the house of representatives. The director of the budget and
33 the governor shall use the information in such reports in the preparation
34 of the governor's budget report under K.S.A. 75-3721 and amendments
35 thereto.

least

36 Sec. 5. K.S.A. 75-5321a is hereby repealed.

37 Sec. 6. This act shall take effect and be in force from and after its
38 publication in the Kansas register.

**REPORT TO THE SENATE WAYS & MEANS COMMITTEE
BY
CONNIE HUBBELL
SECRETARY
KANSAS DEPARTMENT ON AGING
MARCH 16, 2000**

Kansas Intergovernmental Transfer Program

Mr. Chair and members of the Committee, thank you for this opportunity to appear before you and give an overview of the Kansas Intergovernmental Transfer (KSIT) Program.

History

The KSIT program is based on two premises. First, federal regulations allow states to make Medicaid payments to nursing facilities owned by political subdivisions at a different rate than that paid to nursing facilities not owned by political subdivisions. Second, the aggregate payments to all nursing facilities in the state for Medicaid residents may not exceed the amount that Medicare would have paid.

The Department on Aging began researching the possibility of a KSIT program following a presentation from an official with the Nebraska Department of Health and Human Services. At a seminar in Kansas City, the Nebraska official noted that the state's intergovernmental transfer program had been approved by the federal Health Care Financing Administration (HCFA) and has proven to be useful in providing alternatives for long term care for the elderly.

A work group was convened within the Department on Aging to assess the feasibility of implementing an intergovernmental transfer (IT) program in Kansas. The group was instructed to address two issues regarding such a program: 1) To what extent IT funds are used in other states, and 2) How an intergovernmental transfer program could be implemented in Kansas.

Members of the work group contacted a number of other states to inquire about their use of IT programs. To the extent that other states would discuss the IT concept with us, we found that four states (Michigan, Massachusetts, Wisconsin, and Pennsylvania) have a methodology similar to that described by Nebraska.

Staff members from KDOA and SRS went to the HCFA regional office in Kansas City to discuss the IT program. At that time, HCFA officials indicated that they were aware of the IT concept and that the program could work in Kansas. It should be noted that the HCFA officials did not guarantee a state plan amendment would be approved. Following the meeting, it was determined that we should present this opportunity to the Governor. The information that was provided to Governor Graves ultimately resulted in the plan that the Governor has submitted to you for consideration.

KSIT Program
Office of the Secretary * March 16, 2000

Senate Ways and Means Committee

Date *March 16, 2000*

Attachment # *3*

Process

The Department has to complete three processes in order to receive the IT funding: 1) approval of the Medicaid State Plan amendment by HCFA; 2) contract with a firm to develop the Medicare/Medicaid rate differential methodology and quarterly calculations; and, 3) Contracting with government owned and operated nursing facilities to handle the fund transfers.

Medicaid State Plan Amendment

In order to implement the IT program, SRS, as the single state Medicaid agency, is required to amend the Medicaid State Plan. However, before submitting an amendment for HCFA approval, a notice of the proposed change must be published with a provision for a public comment period. On February 17, 2000 a notice was published in the *Kansas Register*. The 30-day public comment period will end on March 17, 2000.

Barring substantial objections to the amendment from the public, I expect that SRS will submit the amendment to HCFA between March 23rd and 31st. In order to be eligible for IT funding for the quarter ending March 31, 2000, HCFA must have our State Plan amendment before the end of business on March 31st.

The amendment to the State Plan allows the state to request additional federal funding. I want to make it clear that HCFA has absolute authority as to whether or not we get these funds. As the Governor has indicated, this is a POSSIBILITY for Kansas, and is wholly dependent upon the approval of our request by HCFA.

Contract for Rate Setting

In order to receive the funding for this program, it is necessary to calculate the difference between the Medicaid rate currently paid to nursing facilities, and the Medicare upper limit. An accurate calculation of available funds requires an acceptable methodology for determining the differential between the current rate and the Medicare upper limit.

Medicare uses a prospective payment system (Medicare PPS) based on the acuity level of each resident. Prices are set based on the Resource Utilization Groups (RUGS III) which includes 34 of the 44 classifications. The seven categories within the RUGS III system are: Special Rehabilitation (12 classifications from low to very high), Extensive Services (3 classifications), Special Care (3 classifications) Clinically Complex (8 classifications), Impaired Cognition (4 classifications), Behavior Problems (4 classifications), Reduced Physical Functions (10 classifications). In addition, there are Medicare wage adjustments for the rural and four metropolitan statistical areas (Kansas City, Lawrence, Topeka and Wichita).

The Department issued a Request For Proposal (RFP) through the Division of Purchasing within the Department of Administration. Through the RFP process, the Department will

KSIT Program

Office of the Secretary * March 16, 2000

negotiate a competitively bid contract for an outside contractor to develop the Medicaid/Medicare rate differential methodology. The contract for this methodology and quarterly calculations will stipulate that the contractor receives payment if, and only if, HCFA approves the proposed methodology. Once the methodology has been approved by HCFA, the contractor will perform the calculations for the first year and will be required to train staff within the Department on Aging to perform future calculations.

Contracting With Local Facilities

Since the transfer of funds would require the services of locally owned and operated nursing facilities, the Department on Aging would enter into detailed contracts for service with each participating facility. The contract would describe the rights and responsibilities of both the facility and the Department with regard to the intergovernmental transfer program. The Department has identified 41 facilities that potentially qualify for participation in the transfer process, and is currently determining the most effective and efficient manner in which to proceed in terms of participation.

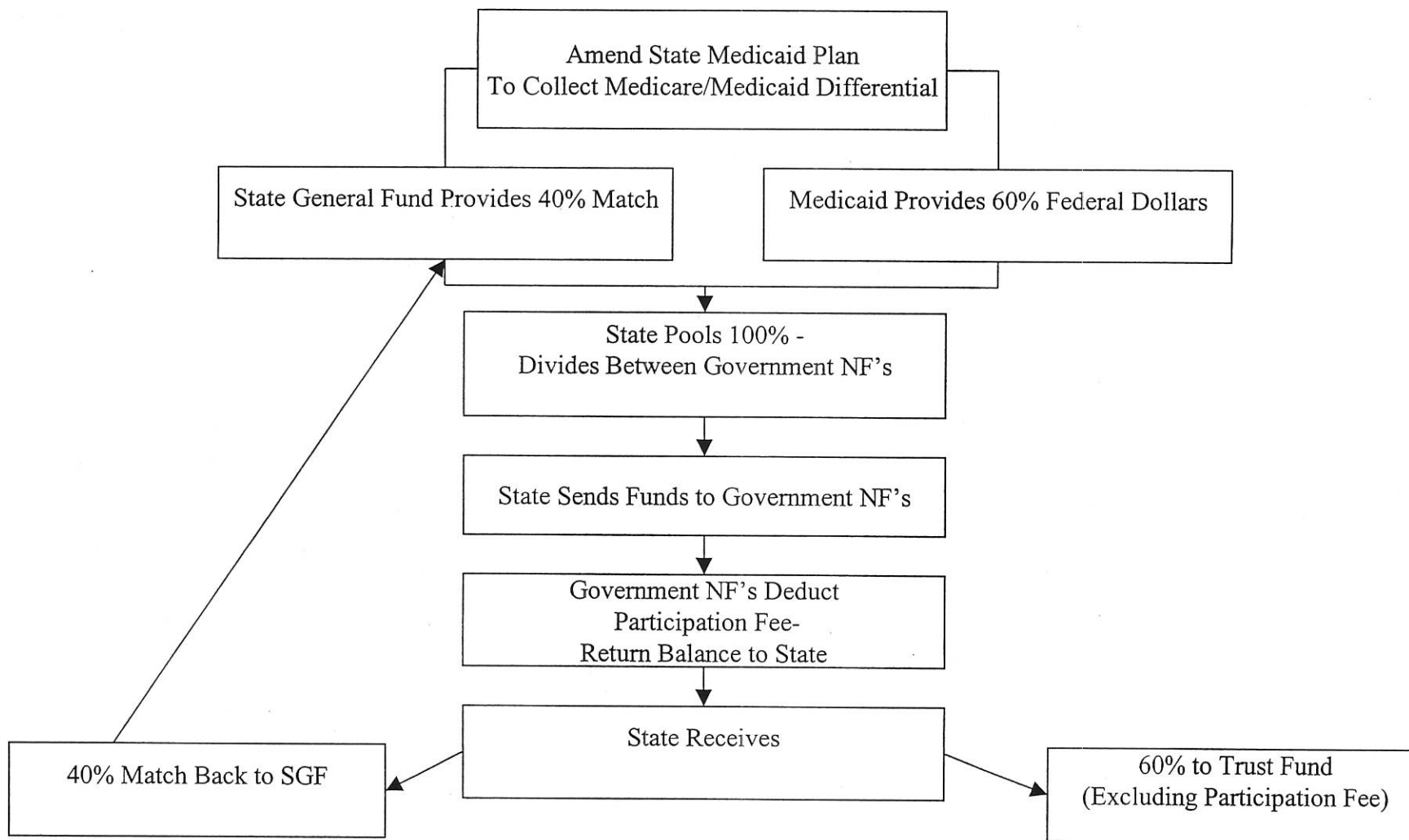
Transfer of Funds

Assuming that HCFA approves our Medicaid State Plan Amendment and the calculations made by the contractor, the following describes how the transfer of funds would take place. A flow chart describing the process is attached.

1. Using the Calculations made by the contractor, the Secretary would certify to the State Treasurer that federal funds are available for transfer.
2. The State Treasurer would provide the State General Fund match necessary to drawn-down the federal funds.
3. The State General Fund portion and the Federal portion would be sent to government owned and operated nursing facilities.
4. The government owned and operated nursing facilities would return the entire amount of State General Fund dollars to be credited to the account of origin by the State Treasurer.
5. The government owned and operated nursing facilities would return the federal portion, less an administrative fee, to be credited to the Intergovernmental Transfer Fund.

KANSAS INTERGOVERNMENTAL TRANSFER PROGRAM

3-4





DIVISION OF THE BUDGET
Room 152-E
State Capitol Building
Topeka, Kansas 66612-1575
(785) 296-2436
FAX (785) 296-0231

Bill Graves
Governor

Duane A. Goossen
Director

Kansas Intergovernmental Transfer Program Governor's Proposal

Potential proceeds: Approximately \$24 million per quarter

FY 2001

SGF – 25%

- Nursing Home Wage Pass Through
- Nursing Home Caseload Expenses
- Special Education at 85 % of Excess Costs
- Base Budget Per Pupil

Loan Fund – 15%

- Capitalize a loan fund to be used to improve the efficiency or care options in nursing homes.

Senior Services Trust Fund – 60%

- Earnings used to fund a senior citizens pharmacy program.

FY 2002 and Forward

SGF – 30%

Senior Services Trust Fund – 70%

Senate Ways and Means Committee

Date *March 16, 2000*

Attachment # *4*

TESTIMONY
SENATE WAYS AND MEANS COMMITTEE
March 16, 2000

Chairman Kerr, members of the Ways and Means Committee. I am Bill Henry and I appear before you today on behalf of the Kansas Association of Area Agencies on Aging in support of Senate Bill 653.

The Area Agencies on Aging support in particular the statutory authorization of a senior trust service fund and the use of interest on the fund by the Secretary of Aging for "projects intended to reduce future Medicaid costs to the State, to help seniors avoid premature institutionalization or to improve the quality of care or the quality of life of seniors who are customers of long-term care programs. . ."

The Area Agencies also support the dedication of 60% of the funds produced by the intergovernmental transfer program to the senior trust services fund in the initial year of operation and the 70% dedication to the trust services fund thereafter.

Based on the indefinite nature of the source of these funds the Area Agencies on Aging believe the use of the trust concept is the wisest methodology to handle this unexpected funding resource. The Area Agencies on Aging are cognizant of the current state fiscal condition but would prefer the 25% that is to be transferred to the state general fund might be better utilized for projects that would expand home-care services for seniors.

As explained earlier today by the Department of Aging, the purpose of the Federal Enabling Regulation is to ensure reduction of future Medicaid costs. The Area Agencies on Aging believe the 25% (30% in the second year of the program) transferred to state general funds could further the federal intent better by transferring this 25% to those special projects designated by the Secretary of Aging that would expand and improve home-care services which are declining statewide in availability.

Mr. Chairman, I would be happy to respond to questions.

Respectfully submitted,
Bill Henry, Kansas Association of Area Agencies on Aging

Senate Ways and Means Committee

Date *March 16, 2000*

Attachment #

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**To: Senator Dave Kerr, Chairman, and Members,
Senate Ways and Means Committee**
From: Debra Zehr, Vice President
Date: March 16, 2000

Testimony in Support of Senate Bill 653

Thank you Chairman Kerr and Members of the Committee. The Kansas Association of Homes and Services for the Aging represents 160 not-for-profit long-term health care, housing and community service providers throughout the state. Our goal as an association is to assist our members to provide high quality, cost-effective care and services to the elderly in their care.

I just returned from a trip to Washington, DC, where I had the opportunity to meet with many not-for-profit long-term care providers and state association colleagues from around the country. I came away with renewed belief that in Kansas, while we are not perfect, our policymakers and practitioners have done many things right when it comes to care for our elderly. My peers from around the country are astounded at our nursing home pre-screening program that has effectively diverted 19% of persons seeking nursing home care into the community with services. Many states either have no HCBS/FE waiver program for low-income seniors or have very underdeveloped programs with waiting lists numbering in the thousands. Kansas has not enacted arbitrary budget cuts that severely compromise providers' ability to care for the frail elders in their charge. Kansas is gaining recognition for groundbreaking work in the critical area of identifying and addressing causes of staff turnover in nursing homes.

We support pursuit of the Intergovernmental Transfer Program. It provides us with a unique opportunity to forge ahead to do an even better job of providing care and services for our elderly citizens. We believe its primary purpose should be to improve quality, accessibility and efficiency of long-term care for Kansas seniors, and that it should be considered "above and beyond" to the extent possible and focused on long-range objectives, rather than building a base or replacing normal state general fund expenditures.

We agree with the language of Senate Bill 653 with the following changes:

1. *Expansion of the percentage allocated to the long-term care loan fund from 15% to 40% in year one, with a provision for grants in addition to loans.* This loan and grant fund could be used to convert existing facilities to different levels of care such as assisted living and to build congregate housing in small communities. In addition, it should be used improve quality of life and care for adult care home residents through upgrades of physical environment, research-based projects to decrease staff turnover, and innovations in fall prevention, dementia care or other clinical areas.

2. *A continued 15% allocation to the long-term care loan and grant fi*

Senate Ways and Means Committee

Date *March 16, 2000*

Attachment #

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3. *To accommodate the increased allocation, adjust the allocation to the Senior Services Trust Fund from 60% to 40% in year one and from 70% to 60% in the out years. In addition, adjust the percentage allocated to the State General Fund from 25% to 20% in the first year and 30% to 25% in the out years.*
4. *We agree with the existing provision in Senate Bill 653 that priority be given to qualifying not-for-profit facilities for the loan program, and also ask that Kansas not-for-profits headquartered out-of-state also be given priority because of their long-term presence and commitment in many Kansas communities.*

The balloon attached to your testimony outlines details of our proposed amendments.

Thank you for this opportunity to offer support for the bill. And thank you for grappling with the important and hard issues related to care for the elderly. I would be happy to answer questions.

SENATE BILL No. 653

By Committee on Ways and Means

3-2

9 AN ACT establishing an intergovernmental transfer program; concern-
10 ing nursing facilities owned and operated by units of government; re-
11 lating to the federal medical assistance (medicaid) program; establish-
12 ing an intergovernmental transfer fund, a long-term care loan fund, a
13 senior services trust fund and a senior services fund within the state
14 treasury; authorizing certain participation agreements, loans, grants
15 and contracts; amending K.S.A. 75-5321a and repealing the existing
16 section.

17

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

19 Section 1. K.S.A. 75-5321a is hereby amended to read as follows: 75-
20 5321a. The secretary of social and rehabilitation services shall take nec-
21 essary actions to transfer the administration of certain long-term care
22 programs and services to the secretary of aging. The programs shall in-
23 clude the nursing facility services payment program, the home and com-
24 munity based ~~nursing facility services~~ *services for the frail elderly* waiver program,
25 *the case management for the frail elderly program* and the income eligible
26 (home care) program. Excluding nursing facility programs, the programs
27 to be transferred shall not include long-term care programs for individuals
28 under the age of 65 with mental illness, mental retardation, other mental
29 disabilities or physical disabilities. All such transfers shall be made only
30 in accordance with federal grant requirements related to such programs.

31 New Sec. 2. The secretary of social and rehabilitation services and
32 the secretary of aging shall take necessary actions to establish an inter-
33 governmental transfer program as a part of the nursing facility services
34 payment program within the medicaid state plan.

35 (a) In implementing the intergovernmental transfer program, the
36 state treasurer shall periodically transfer state general funds and federal
37 funds in amounts certified by the secretary of aging to units of govern-
38 ment which have entered into participation agreements with the secretary
39 of aging and the secretary of social and rehabilitation services. The
40 amount of state general funds transferred to the units of government shall
41 not exceed the amount necessary to match federal funds available to the
42 state under the intergovernmental transfer program. The secretary of
43 aging shall periodically calculate the amount of federal funds available

6-3

6-24

under the program according to the program methodology in the medicaid state plan.

(b) The secretary of social and rehabilitation services and the secretary of aging are authorized to enter into intergovernmental transfer program participation agreements with units of government which own and operate nursing facilities. The participation agreements may permit the units of government to retain a participation fee specified by the secretary of aging from program funds which are otherwise required to be transferred back to the secretary of aging.

(c) Program funds transferred from participating units of government to the secretary of aging shall be deposited in the intergovernmental transfer fund established within the state treasury. The state treasurer shall distribute portions of the transferred funds attributable to medicaid federal financial participation within the intergovernmental transfer fund to the senior services trust fund and the long-term care loan fund established within the state treasury in the amounts required by this section. The state treasurer shall transfer the portion of the transferred funds attributable to medicaid state matching funds into the state general fund.

(d) Distributions from the senior services trust fund through the intergovernmental transfer program may not be used to create or fund an entitlement program not in existence on the effective date of this act. The secretary of aging may recover the department's costs of administering the intergovernmental transfer program from the intergovernmental transfer fund after certifying the amount of those costs to the state treasurer each calendar quarter.

(e) Subject to appropriations, from the total program funds transferred into the intergovernmental transfer fund before July 1, 2001:

(1) A portion, not to exceed ~~60%~~ 40, shall be transferred to the senior services trust fund to be invested and managed by the Kansas public employment retirement system board of trustees as described in sections 3 and 4 of this act and amendments thereto. Each calendar quarter, the board of trustees shall transfer the interest earned on the senior services trust fund investments to the senior services fund within the state treasury. Subject to appropriations, the moneys in senior services fund shall be used by the secretary of aging only for projects intended to reduce future medicaid costs to the state, to help seniors avoid premature institutionalization or to improve the quality of care or the quality of life of seniors who are customers of long-term care programs, or for state match for senior service programs authorized by federal law.

(2) A portion, not to exceed ~~25%~~ 20, shall be transferred to the state general fund. 40

(3) A portion, not to exceed ~~15%~~ and grant, shall be transferred to the long-term care loan fund for use by the secretary of aging to make market-

at least half of which will be designated

6-5

1 rate, low-interest or no-interest, fully or partially secured or unsecured
2 loans for the following types of projects:

And the remainder of which will be designated for grants

3 (A) Converting all or parts of some types of licensed adult care homes
4 from their existing licensure types to different licensure types to meet
5 demonstrated changing service demands in their communities;

6 (B) converting private residences to licensed homes plus facilities, as
7 defined by K.S.A. 39-923 and amendments thereto;

8 (C) converting space in rural hospitals to hospital-based long-term
9 care facilities;

quality in

10 (D) improving ~~some types of~~ licensed adult care homes;

11 ~~(E) rural hospitals contracting for physician, physician assistant or
12 licensed professional nurse services; or~~

(E)

13 ~~(F) building congregate housing for seniors in Kansas cities with pop-
14 ulations of 2,500 or less.~~

15 (f) Subject to appropriations, from the total program funds trans-
16 ferred into the intergovernmental transfer fund during each fiscal year
17 beginning on and after July 1, 2001:

60

18 (1) A portion, not to exceed ~~70%~~, shall be transferred to the senior
19 services trust fund to be invested and managed by the Kansas public
20 employment retirement system board of trustees as described in sections
21 3 and 4 and amendments thereto. Each calendar quarter, the board of
22 trustees shall transfer the interest earned on the senior services trust fund
23 investments to the senior services fund within the state treasury. Subject
24 to appropriations, the moneys in the senior services fund shall be used
25 by the secretary of aging only for projects intended to reduce future
26 medicaid costs to the state, to help seniors avoid premature institution-
27 alization or to improve the quality of care or the quality of life of seniors
28 who are customers of long-term care programs, or for state match for
29 senior service programs authorized by federal law.

25

30 (2) A portion, not to exceed ~~30%~~, shall be transferred to the state
31 general fund.

32 (g) The secretary of aging may consider the following factors to pri-
33 oritize and select long-term care fund loans ~~and senior services fund~~
34 projects:

and grants

35 (1) Type of loan — higher interest is preferable to lower interest and
36 more secured is preferable to less secured;

37 ~~(2) location — rural is preferable to urban or suburban;~~

38 ~~(3) availability and utilization of the same type of facilities or services
39 in the proposed loan or project area;~~

40 ~~(4) type of facility owner or borrower — unit of government, Kansas
41 not-for-profit, Kansas for-profit, foreign not-for-profit, foreign for-profit
42 organizations, and individuals, in that order of preference; and~~

43 ~~(5) type of research project organization — geriatric schools or pro-~~

(6)

(3) A portion, not to exceed 15%, shall be transferred to the long-term care loan and grant fund at least half of which will be designated for use by the secretary of aging to make market-based, low interest or no-interest, fully or partially secured or unsecured loans and the remainder of which will be designated for grants for the following types of projects:
(A) Converting all or parts of some types of licensed adult care homes from their existing licensure types to different licensure types to meet demonstrated changing service demands in their communities;
(B) converting private residences to licensed homes plus facilities, as defined in KSA 39-923 and amendments thereto;
(C) converting space in rural hospitals to hospital long-term care facilities;
(D) improving quality in licensed adult care homes;
(E) building congregate housing for seniors in Kansas cities with populations of less than 2,500 or less.

(2) Type of grant - one-time competitively awarded with priority given to projects that will enhance the quality of care for long-term care facility residents

Kansas for-profit

(5)

(4)

(3)

grams in Kansas colleges or universities, Kansas colleges or universities, educational foundations, foreign colleges or universities, Kansas not-for-profit organizations, ~~Kansas for-profit organizations,~~ foreign not-for-profit organizations, ~~foreign for-profit organizations,~~ and individuals, in that order of preference.

Kansas for-profit organizations,

(h) The principal and interest of any loan made under this act shall be repaid to the long-term care loan fund within the state treasury and used to make new loans. Idle funds within the long-term care loan fund shall be invested as required by law and the interest may be used as part of the state general fund match required for the intergovernmental transfer program. The repayment of a loan or of a senior services fund project contract or grant may not be forgiven, in whole or in part, except by an act of the legislature.

(i) For purposes of this section, "units of government" and "units of government which own and operate nursing facilities" which are eligible to enter into intergovernmental transfer program participation agreements shall be limited to cities of the first class, cities of the second class, counties, hospital districts, or health care facilities and services hospital districts which hold legal title to and are actively involved in the day-to-day operations of any of the following:

(1) Medicaid-certified nursing facilities and nursing facilities for mental health, as defined in K.S.A. 39-923 and amendments thereto;

(2) medicaid-certified long-term care facilities which are operated in connection with city hospitals established under K.S.A. 13-14b01 *et seq.* and amendments thereto or K.S.A. 14-601 *et seq.* and amendments thereto, county hospitals established under K.S.A. 19-4601 *et seq.* and amendments thereto, or district hospitals established under K.S.A. 80-2501 *et seq.* and amendments thereto; or

(3) medicaid-certified long-term care facilities operated under authority of K.S.A. 80-2550 *et seq.* and amendments thereto.

(j) Entities eligible to apply for loans under this section shall be limited to the owners of:

(1) Licensed adult care homes, excluding nursing facilities for mental health and intermediate care facilities for the mentally retarded, as defined in K.S.A. 39-923 and amendments thereto;

(2) medicaid-certified licensed hospitals and medicaid-certified long-term care facilities based in or operated in connection with licensed hospitals as defined in K.S.A. 65-425 and amendments thereto;

(3) private residences which the owners will contract to convert into licensed homes plus facilities, as defined in K.S.A. 39-923 and amendments thereto, and in which the owners will reside after the conversion and licensure; or

(4) congregate senior housing projects being built with loans in Kan-

sas cities with a population of 2,500 or less.

2
3 New Sec. 3. (a) The board of trustees of the Kansas public employees
4 retirement is responsible for the management and investment of the sen-
5 ior services trust fund and shall discharge the board's duties relative to
6 the fund for the exclusive purpose of providing investment revenue for
7 the purposes for which the fund moneys may be used and defraying rea-
8 sonable expenses of administering the fund. The board shall invest and
9 reinvest moneys in the fund and acquire, retain, manage, including the
10 exercise of any voting rights, and dispose of investments of the fund within
11 the limitations and according to the powers, duties and purposes as pre-
scribed by this section.

12 (b) Moneys in the fund shall be invested and reinvested to achieve
13 the investment objective which is preservation of the fund to provide
14 income and accordingly providing that the moneys are as productive as
15 possible, subject to the standards set forth in this act. No moneys in the
16 fund shall be invested or reinvested if the sole or primary investment
17 objective is for economic development or social purposes or objectives.

18 (c) In investing and reinvesting moneys in the fund and in acquiring,
19 retaining, managing and disposing of investments of the fund, the board
20 of trustees shall exercise the judgment, care, skill, prudence and diligence
21 under the circumstances then prevailing, which persons of prudence, dis-
22 cretion and intelligence acting in a like capacity and familiar with such
23 matters would use in the conduct of an enterprise of like character and
24 with like aims by diversifying the investments of the fund so as to mini-
25 mize the risk of large losses, unless under the circumstances it is clearly
26 prudent not to do so, and not in regard to speculation but in regard to
27 the permanent disposition of similar funds, considering the probable in-
28 come as well as the probable safety of their capital.

29 (d) In the discharge of such management and investment responsi-
30 bilities the board of trustees may contract for services of one or more
31 professional investment advisors or other consultants in the management
32 and investment of moneys in the fund and otherwise in the performance
33 of the duties of the board of trustees under this act.

34 (e) The board of trustees shall require that each person contracted
35 with under subsection (d) to provide services shall obtain commercial
36 insurance which provides for errors and omissions coverage for such per-
37 son in an amount to be specified by the board of trustees. The amount
38 of such coverage specified by the board of trustees shall be at least the
39 greater of \$500,000 or 1% of the funds entrusted to such person up to a
40 maximum of \$10,000,000. The board of trustees shall require a person
41 contracted with under subsection (d) to provide services give a fidelity
42 bond in a penal sum as may be fixed by law or, if not so fixed, as may be
43 fixed by the board of trustees, with corporate surety authorized to do

1 business in this state. Such persons contracted with the board of trustees
2 pursuant to subsection (d) and any persons contracted with such persons
3 to perform the functions specified in subsection (b) shall be deemed to
4 be fiduciary agents of the board of trustees in the performance of con-
5 tractual obligations.

6 (f) (1) Subject to the objective set forth in subsection (b) and the
7 standards set forth in subsection (c), the board of trustees shall formulate
8 and adopt policies and objectives for the investment and reinvestment of
9 moneys in the fund and the acquisition, retention, management and dis-
10 position of investments of the fund. Such policies and objectives shall be
11 in writing and shall include:

12 (A) Specific asset allocation standards and objectives;

13 (B) establishment of criteria for evaluating the risk versus the poten-
14 tial return on a particular investment; and

15 (C) a requirement that all investment advisors, and any managers or
16 others with similar duties and responsibilities as investment advisors, shall
17 immediately report all instances of default on investments to the board
18 of trustees and provide such board of trustees with recommendations and
19 options, including, but not limited to, curing the default or withdrawal
20 from the investment.

21 (2) The board of trustees shall review such policies and objectives,
22 make changes considered necessary or desirable and readopt such policies
23 and objectives on an annual basis.

24 (g) (1) Except as provided in subsection (d) and this subsection, the
25 custody of money and securities of the fund shall remain in the custody
26 of the state treasurer, except that the board of trustees may arrange for
27 the custody of such money and securities as it considers advisable with
28 one or more member banks or trust companies of the federal reserve
29 system or with one or more banks in the state of Kansas, or both, to be
30 held in safekeeping by the banks or trust companies for the collection of
31 the principal and interest or other income or of the proceeds of sale.

32 (2) The state treasurer and the board of trustees shall collect the
33 principal and interest or other income of investments or the proceeds of
34 sale of securities in the custody of the state treasurer and shall pay such
35 moneys when so collected into the state treasury to the credit of the fund.

36 (3) The principal and interest or other income or the proceeds of sale
37 of securities as provided in paragraph (1) of this subsection shall be re-
38 ported to the state treasurer and the board of trustees and credited to
39 the fund.

40 (h) All interest or other income of the investments of the moneys in
41 the fund, after payment of any management fees, shall be considered
42 income of the fund and shall be withdrawn and deposited quarterly in
43 the state treasury to the credit of the senior services fund to be used by

the secretary of aging for the purposes permitted by section 2 of this act and amendments thereto.

(i) As used in this section:

(1) "Board of trustees" means the board of trustees of the Kansas public employees retirement system established by K.S.A. 74-4905 and amendments thereto.

(2) "Fiduciary" means a person who, with respect to the fund, is a person who:

(A) Exercises any discretionary authority with respect to administration of the fund;

(B) exercises any authority to invest or manage assets of the fund or has any authority or responsibility to do so;

(C) provides investment advice for a fee or other direct or indirect compensation with respect to the assets of the fund or has any authority or responsibility to do so;

(D) provides actuarial, accounting, auditing, consulting, legal or other professional services for a fee or other direct or indirect compensation with respect to the fund or has any authority or responsibility to do so; or

(E) is a member of the board of trustees or of the staff of the board of trustees.

(3) "Fund" means the senior services trust fund.

(4) With respect to the investment of moneys in the senior services trust fund, "purposes for which the moneys may be used" means the purposes for which the moneys in the senior services trust fund may be used, as provided in section 2 and amendments thereto.

New Sec. 4. The board of trustees of the Kansas public employees retirement system shall report to the governor and to the legislature on the moneys credited to the senior services trust fund and investment earnings thereon at least once each calendar quarter and on a monthly basis upon request of the governor, the president of the senate or the speaker of the house of representatives. The director of the budget and the governor shall use the information in such reports in the preparation of the governor's budget report under K.S.A. 75-3721 and amendments thereto.

Sec. 5. K.S.A. 75-5321a is hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

b-9

Testimony to Senate Ways and Means Committee
Senator Kerr, Chairperson
Senate Bill 653
March 16, 2000
Gina McDonald

My name is Gina McDonald and I am speaking on behalf of the Statewide Independent Living Council of Kansas (SILCK) and the Kansas Association of Centers for Independent Living (KACIL).

KACIL and SILCK request that you consider the following changes:

1. Delete the sentence beginning on line 26 which states " Excluding nursing facility programs, the programs to be transferred shall not include long-term care programs for individuals under the age of 65 with mental illness, mental retardation, other mental disabilities or physical disabilities".
2. Eliminate all language that is specific to only senior programs and refer instead to programs which provide home and community based services to all populations.

These changes will allow the possibility of using this funding to provide services to individuals under age 65. The proposed changes would not require that funds be used for any purpose, but would allow that option.

As this committee is aware, these dollars are available to the state as a result of the population that resides in nursing facilities. The committee is also aware that many individuals with disabilities under age 65 reside in nursing facilities. Many more individuals, prior to the HCBS waiver program resided in nursing facilities. Therefore, KACIL and SILCK believe that these intergovernmental transfer funds should benefit all populations in community based services.

Thank you for the opportunity to present this testimony, and for your considerations of our request. Shannon Jones or I would be happy to be available to answer any questions you may have regarding our request.

Memorandum



Donald A. Wilson
President

TO: Senate Ways and Means Committee

FROM: Kansas Hospital Association *Tan Bell*

RE: Senate Bill 653

DATE: March 15, 2000

The Kansas Hospital Association appreciates the opportunity to comment regarding the provisions of SB 653. This bill establishes the Kansas Intergovernmental Transfer Program. We support SB 653 as a way to utilize the Medicaid program to maximize the receipt of federal matching funds.

We would like to make specific comment about two issues. First, New Section 2 (e) (3) establishes the "long-term care loan fund" to be used for numerous purposes, including conversion of certain types of health care facilities to better meet the needs of the community and recruitment of health care personnel to rural areas. We are very supportive of this part of the proposal, especially given the uncertainties that currently surround the future funding of the Medicare program.

Second, as this program takes shape, we strongly urge the legislature to consider one other expenditure for these additional funds. As you know, there is currently over \$10 million owed to health care providers in Kansas as a result of the Horizon Medicaid HMO liquidation. At this point, the state is saying that only about half of those bills will be paid. We are concerned about the message that is being sent to Kansas health care providers. We have sometimes heard the opinion expressed that the Horizon failure was due at least partly to the State not being a good business partner. Failure to pay the amounts owed (which were less than provider costs anyway) could only confirm this for many. On the other hand, using part of the additional funds to make a one-time payment for these Medicaid-related claims would be a large step in restoring the integrity of the program.

Kansas Hospital Association

215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 7

Senate Ways and Means Committee

Date *March 16, 2000*

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The proposed intergovernmental transfer program is based on obtaining additional federal funds from Medicaid. Our request is to use \$5 million of those funds to make good on a promise made under the Medicaid program—the payment of contractually agreed amounts to providers.

Thank you for your consideration of our comments.

SUBSTITUTE FOR SENATE BILL No. 633

By Committee on Ways and Means

9 AN ACT concerning children in need of care; amending K.S.A. 38-1503,
 10 38-1523a, 38-1524, 38-1529, 38-1531, 38-1566, 38-1568 and 75-3329
 11 and K.S.A. 1999 Supp. 38-1502, 38-1507, 38-1513, 38-1532, 38-1542,
 12 38-1543, 38-1544, 38-1562, 38-1563, 38-1565, 38-1581, 38-1583, 38-
 13 1584, 38-1585, 38-1587, 38-1591, 38-1608 and 60-1610 and repealing
 14 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 in need
 30 of community services 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.

28 Sec. 3. K.S.A. 1999 Supp. 38-1502 is hereby amended to read as
 29 follows: 38-1502. As used in this code, unless the context otherwise
 30 indicates:

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

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

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

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

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

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

43 ~~(6) is not attending school as required by K.S.A. 72-977 or 72-1414;~~

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1 and amendments thereto;
2 — (7) except in the case of a violation of K.S.A. 41-727, subsection (j)
3 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
4 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
5 4204a and amendments thereto, does an act which, when committed by
6 a person under 18 years of age, is prohibited by state law, city ordinance
7 or county resolution but which is not prohibited when done by an adult;
8 — (8) while less than 10 years of age, commits any act which if done by
9 an adult would constitute the commission of a felony or misdemeanor as
10 defined by K.S.A. 21-3105 and amendments thereto;
11 — (9) is willfully and voluntarily absent from the child's home without
12 the consent of the child's parent or other custodian;
13 — (10) is willfully and voluntarily absent at least a second time from a
14 court ordered or designated placement, or a placement pursuant to court
15 order, if the absence is without the consent of the person with whom the
16 child is placed or, if the child is placed in a facility, without the consent
17 of the person in charge of such facility or such person's designee;
18 — (11) has been residing in the same residence with a sibling or another
19 person under 18 years of age, who has been physically, mentally or emo-
20 tionally abused or neglected, or sexually abused; or
21 — (12) while less than 10 years of age commits the offense defined in
22 K.S.A. 21-4204a and amendments thereto.

23 (b) "Child in need of protection" means a person less than 18 years
24 of age who:
25 (1) Has been physically, mentally or emotionally abused or neglected
26 or sexually abused;
27 (2) has been placed for care or adoption in violation of law;
28 (3) has been abandoned or does not have a known living parent; or
29 (4) has been residing in the same residence with a sibling or another
30 person under 18 years of age, who has been physically, mentally or emo-
31 tionally abused or neglected, or sexually abused.

32 (c) "Youth in need of community services" means a person less than
33 18 years of age who:
34 (1) Is without the care or control necessary for the youth's physical,
35 mental or emotional health;
36 (2) is not attending school as required by K.S.A. 72-977 or 72-1111,
37 and amendments thereto;
38 (3) except in the case of a violation of K.S.A. 41-727, subsection (j) of
39 K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
40 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
41 4204a, and amendments thereto, does an act which, when committed by
42 a person under 18 years of age, is prohibited by state law, city ordinance
43 or county resolution but which is not prohibited when done by an adult;

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

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

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

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

13 ~~(b)~~ (d) "Physical, mental or emotional abuse or neglect" means the
 14 infliction of physical, mental or emotional injury or the causing of a de-
 15 terioration of a child and may include, but shall not be limited to, failing
 16 to maintain reasonable care and treatment, negligent treatment or mal-
 17 treatment or exploiting a child to the extent that the child's health or
 18 emotional well-being is endangered. ~~A parent legitimately practicing re-~~
 19 ~~ligious beliefs who does not provide specified medical treatment for a~~
 20 ~~child because of religious beliefs shall not for that reason be considered~~
 21 ~~a negligent parent; however, this exception shall not preclude a court from~~
 22 ~~entering an order pursuant to subsection (a)(2) of K.S.A. 38-1543 and~~
 23 ~~amendments thereto.~~

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

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

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

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

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

42 ~~(h)~~ (j) "Shelter facility" means any public or private facility or home
 43 other than a juvenile detention facility that may be used in accordance

- 1 with this code for the purpose of providing either temporary placement
 2 for the care of children in need of care prior to the issuance of a dispos-
 3 itional order or longer term care under a dispositional order.
- 4 (†) (k) "Juvenile detention facility" means any secure public or private
 5 facility used for the lawful custody of accused or adjudicated juvenile
 6 offenders which must not be a jail.
- 7 (†) (l) "Adult correction facility" means any public or private facility,
 8 secure or nonsecure, which is used for the lawful custody of accused or
 9 convicted adult criminal offenders.
- 10 (†) (m) "Secure facility" means a facility which is operated or struc-
 11 tured so as to ensure that all entrances and exits from the facility are
 12 under the exclusive control of the staff of the facility, whether or not the
 13 person being detained has freedom of movement within the perimeters
 14 of the facility, or which relies on locked rooms and buildings, fences or
 15 physical restraint in order to control behavior of its residents. No secure
 16 facility shall be in a city or county jail.
- 17 (†) (n) "Ward of the court" means a child over whom the court has
 18 acquired jurisdiction by the filing of a petition pursuant to this code and
 19 who continues subject to that jurisdiction until the petition is dismissed
 20 or the child is discharged as provided in K.S.A. 38-1503 and amendments
 21 thereto.
- 22 (†) (o) "Custody," whether temporary, protective or legal, means the
 23 status created by court order or statute which vests in a custodian,
 24 whether an individual or an agency, the right to physical possession of
 25 the child and the right to determine placement of the child, subject to
 26 restrictions placed by the court.
- 27 (†) (p) "Placement" means the designation by the individual or
 28 agency having custody of where and with whom the child will live.
- 29 (†) (q) "Secretary" means the secretary of social and rehabilitation
 30 services.
- 31 (†) (r) "Relative" means a person related by blood, marriage or adop-
 32 tion but, when referring to a relative of a child's parent, does not include
 33 the child's other parent.
- 34 (†) (s) "Court-appointed special advocate" means a responsible adult
 35 other than an attorney guardian *ad litem* who is appointed by the court
 36 to represent the best interests of a child, as provided in K.S.A. 38-1505a
 37 and amendments thereto, in a proceeding pursuant to this code.
- 38 (†) (t) "Multidisciplinary team" means a group of
 39 persons, appointed by the court or by the state department of social and
 40 rehabilitation services under K.S.A. 38-1523a and amendments thereto,
 41 which has knowledge of the circumstances of a child in need of care. *A multidisciplinary team may serve as a community services team.*

- 4 (Ⓢ) (u) "Jail" means:
5 (1) An adult jail or lockup; or
6 (2) a facility in the same building or on the same grounds as an adult
7 jail or lockup, unless the facility meets all applicable standards and licen-
8 sure requirements under law and there is (A) total separation of the ju-
9 venile and adult facility spatial areas such that there could be no haphaz-
10 ard or accidental contact between juvenile and adult residents in the
11 respective facilities; (B) total separation in all juvenile and adult program
12 activities within the facilities, including recreation, education, counseling,
13 health care, dining, sleeping, and general living activities; and (C) separate
14 juvenile and adult staff, including management, security staff and direct
15 care staff such as recreational, educational and counseling.
- 16 (Ⓣ) (v) "Kinship care" means the placement of a child in the home of
17 the child's relative or in the home of another adult with whom the child
18 or the child's parent already has a close emotional attachment.
- 19 (Ⓤ) (w) "Juvenile intake and assessment worker" means a responsible
20 adult authorized to perform intake and assessment services as part of the
21 intake and assessment system established pursuant to K.S.A. 75-7023, and
22 amendments thereto.
- 23 (Ⓡ) (x) "Abandon" means to forsake, desert or cease providing care
24 for the child without making appropriate provisions for substitute care.
- 25 (Ⓡ) (y) "Permanent guardianship" means a judicially created rela-
26 tionship between child and caretaker which is intended to be permanent
27 and self-sustaining without ongoing state oversight or intervention *by the secretary*. The
28 permanent guardian stands in loco parentis and exercises all the rights
29 and responsibilities of a parent. ~~Upon appointment of a permanent guard-~~
30 ~~ian, the child in need of care proceedings shall be dismissed.~~ A permanent
31 guardian may be appointed after termination of parental rights *or without*
32 *termination of parental rights, if the parent consents and agrees to the*
33 *appointment of a permanent guardian. Upon appointment of a permanent guardian, the court shall continue to have*
34 *jurisdiction to review the placement and appoint successor or replacement guardian or guardians.*
- 34 (Ⓡ) (z) "Aggravated circumstances" means the abandonment, torture,
35 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.
- 36 (Ⓡ) (aa) "Permanency hearing" means a notice and opportunity to be
37 heard is provided to interested parties, foster parents, preadoptive parents
38 or relatives providing care for the child. The court, after consideration of
39 the evidence, shall determine whether progress toward the case plan goal
40 is adequate or reintegration is a viable alternative, or if the case should
41 be referred to the county or district attorney for filing of a petition to
42 terminate parental rights or to appoint a permanent guardian.
- 43 (Ⓡ) (bb) "Extended out of home placement" means a child has been

1 in the custody of the secretary and placed with neither parent for 15 of
 2 the most recent 22 months beginning 60 days after the date at which a
 3 child in the custody of the secretary was removed from the home.

4 ~~(aa)~~ (cc) "Educational institution" means all schools at the elementary
 5 and secondary levels.

6 ~~(bb)~~ (dd) "Educator" means any administrator, teacher or other pro-
 7 fessional or paraprofessional employee of an educational institution who
 8 has exposure to a pupil specified in subsection (a) of K.S.A. 1999 Supp.
 9 72-89b03 and amendments thereto.

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

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

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

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

30 (ff) "Community services team" means a group of persons, ap-
 31 pointed by the court or by the state department of social and rehabilitation
 32 services for the purpose of assessing the needs of a child who is alleged to
 33 be a youth in need of community services.

34 Sec. 4. K.S.A. 38-1503 is hereby amended to read as follows: 38-
 35 1503. (a) Proceedings concerning any child who appears to be a child in
 36 need of care shall be governed by this code, except in those instances
 37 when the Indian child welfare act of 1978 (25 U.S.C. § § 1901 *et seq.*)
 38 applies.

39 (b) Subject to the uniform child custody jurisdiction act, K.S.A. 38-
 40 1301 *et seq.* and amendments thereto, the district court shall have original
 41 jurisdiction to receive and determine proceedings under this code.

42 (c) When jurisdiction has been acquired by the court over the person
 43 of a child in need of care it may continue until the child: (1) Has attained

1 the age of 21 years; (2) has been adopted; or (3) has been discharged by
2 the court. Any child 18 years of age or over may request, by motion to
3 the court, that the jurisdiction of the court cease. Subsequently, the court
4 shall enter an order discharging the person from any further jurisdiction
5 of the court.

6 (d) When it is no longer appropriate for the court to exercise juris-
7 diction over a child the court, upon its own motion or the motion of an
8 interested party, shall enter an order discharging the child. Except upon
9 request of the child, the court shall not enter an order discharging a child
10 which reaches 18 years of age before completing the child's high school
11 education until June 1 of the school year during which the child became
12 18 years of age as long as the child is still attending high school.

13 (e) Unless the court finds that substantial injustice would result, the
14 provisions of this code shall govern with respect to acts or omissions oc-
15 ccurring prior to the effective date of this code, *and amendments thereto*,
16 and with respect to children alleged or adjudicated to have done or to
17 have been affected by the acts or omissions, to the same extent as if the
18 acts or omissions had occurred on or after the effective date *of this code*,
19 *and amendments thereto*, and the children had been alleged or adjudi-
20 cated to be children in need of care.

21 Sec. 5. K.S.A. 1999 Supp. 38-1507 is hereby amended to read as
22 follows: 38-1507. (a) Except as otherwise provided, in order to protect
23 the privacy of children who are the subject of a child in need of care
24 record or report, all records and reports concerning children in need of
25 care, including the juvenile intake and assessment report, received by the
26 department of social and rehabilitation services, a law enforcement
27 agency or any juvenile intake and assessment worker shall be kept con-
28 fidential except: (1) To those persons or entities with a need for infor-
29 mation that is directly related to achieving the purposes of this code, or
30 (2) upon an order of a court of competent jurisdiction pursuant to a
31 determination by the court that disclosure of the reports and records is
32 in the best interests of the child or are necessary for the proceedings
33 before the court, or both, and are otherwise admissible in evidence. Such
34 access shall be limited to in camera inspection unless the court otherwise
35 issues an order specifying the terms of disclosure.

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

40 (c) When a report is received by the department of social and reha-
41 bilitation services, a law enforcement agency or any juvenile intake and
42 assessment worker which indicates a child may be in need of care, the
43 following persons and entities shall have a free exchange of information

- 1 between and among them:
- 2 (1) The department of social and rehabilitation services;
- 3 (2) the commissioner of juvenile justice;
- 4 (3) the law enforcement agency receiving such report;
- 5 (4) members of a court appointed multidisciplinary *child protection*
- 6 *team*;
- 7 (5) an entity mandated by federal law or an agency of any state au-
- 8 thorized to receive and investigate reports of a child known or suspected
- 9 to be in need of care;
- 10 (6) a military enclave or Indian tribal organization authorized to re-
- 11 ceive and investigate reports of a child known or suspected to be in need
- 12 of care;
- 13 (7) a county or district attorney;
- 14 (8) a court services officer who has taken a child into custody pursuant
- 15 to K.S.A. 38-1527, and amendments thereto;
- 16 (9) a guardian ad litem appointed for a child alleged to be in need of
- 17 care;
- 18 (10) an intake and assessment worker; ~~and~~
- 19 (11) any community corrections program which has the child under
- 20 court ordered supervision;
- 21 (12) *the department of health and environment or persons authorized*
- 22 *by the department of health and environment pursuant to K.S.A. 59-512,*
- 23 *and amendments thereto, for the purpose of carrying out responsibilities*
- 24 *relating to licensure or registration of child care providers as required by*
- 25 *chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments*
- 26 *thereto; and*
- 27 (13) *members of a duly appointed community services team.*
- 28 (d) The following persons or entities
- 29 shall have access to information, records or reports, received by
- 30 the department of social and rehabilitation services, a law enforcement
- 31 agency or any juvenile intake and assessment worker. Access shall be
- 32 limited to information reasonably necessary to carry out their lawful responsibilities
- 33 to maintain their personal safety and the personal safety of individuals in
- 34 their care or to diagnose, treat, care for or protect a child alleged to be
- 35 in need of care.
- 36
- 37 (1) A child named in the report or records.
- 38 (2) A parent or other person responsible for the welfare of a child,
- 39 or such person's legal representative.
- 40 (3) A court-appointed special advocate for a child, a citizen review
- 41 board or other advocate which reports to the court.
- 42 (4) A person licensed to practice the healing arts or mental health
- 43 profession in order to diagnose, care for, treat or supervise: (A) A child

1 whom such service provider reasonably suspects may be in need of care;
2 (B) a member of the child's family; or (C) a person who allegedly abused
3 or neglected the child.

4 (5) A person or entity licensed or registered by the secretary of health
5 and environment or approved by the secretary of social and rehabilitation
6 services to care for, treat or supervise a child in need of care. In order to
7 assist a child placed for care by the secretary of social and rehabilitation
8 services in a foster home or child care facility, the secretary shall provide
9 relevant information to the foster parents or child care facility prior to
10 placement and as such information becomes available to the secretary.

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

13 (7) The state child death review board established under K.S.A. 22a-
14 243, and amendments thereto.

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

16 (9) The department of health and environment or person authorized
17 by the department of health and environment pursuant to K.S.A. 59-512,
18 and amendments thereto, for the purpose of carrying out responsibilities
19 relating to licensure or registration of child care providers as required by
20 chapter 65 of article 5 of the Kansas Statutes Annotated, and amendments
21 thereto.

22 (10) The state protection and advocacy agency as provided by sub-
23 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.
24 74-5515, and amendments thereto.

25 (11) Any educational institution to the extent necessary to enable
26 the educational institution to provide the safest possible environment for
27 its pupils and employees.

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

30
31 (13) *A law enforcement agency.*

32 (14) *A juvenile intake and assessment worker.*

(15) *The secretary of social and rehabilitation services.*

(16) *The commissioner of juvenile justice.*

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

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

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

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

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

24 (j) Records or reports authorized to be disclosed in this section shall
25 not be further disclosed, except that the provisions of this subsection shall
26 not prevent disclosure of information to an educational institution or to
27 individual educators about a pupil specified in subsection (a) of K.S.A.
28 1999 Supp. 72-89b03 and amendments thereto.

29 (k) Anyone who participates in providing or receiving information
30 without malice under the provisions of this section shall have immunity
31 from any civil liability that might otherwise be incurred or imposed. Any
32 such participant shall have the same immunity with respect to participa-
33 tion in any judicial proceedings resulting from providing or receiving
34 information.

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

42 Sec. 6. K.S.A. 1999 Supp. 38-1513 is hereby amended to read as
43 follows: 38-1513. (a) *Physical or mental care and treatment.* (1) When a

1 child less than 18 years of age is alleged to have been *physically, mentally*
2 *or emotionally abused or neglected or sexually abused*, no consent shall
3 be required to medically examine the child to determine whether ~~there~~
4 ~~has been sexual abuse~~ *the child has been maltreated*.

5 (2) When the health or condition of a child who is a ward of the court
6 requires it, the court may consent to the performing and furnishing of
7 hospital, medical, surgical or dental treatment or procedures, including
8 the release and inspection of medical or dental records. A child, or parent
9 of any child, who is opposed to certain medical procedures authorized by
10 this subsection may request an opportunity for a hearing thereon before
11 the court. Subsequent to the hearing, the court may limit the performance
12 of matters provided for in this subsection or may authorize the perform-
13 ance of those matters subject to terms and conditions the court considers
14 proper.

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

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

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

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

22 (D) immunizations for the child;

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

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

27 (4) When the court has granted legal custody of a child in a disposi-
28 tional hearing to any agency, association or individual, the custodian or
29 an agent designated by the custodian shall have authority to consent to
30 the performance and furnishing of hospital, medical, surgical or dental
31 treatment or procedures or mental care or treatment other than inpatient
32 treatment at a state psychiatric hospital, including the release and in-
33 spection of medical or hospital records, subject to terms and conditions
34 the court considers proper.

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

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

43 (7) Nothing in this section shall be construed to mean that any person

1 shall be relieved of legal responsibility to provide care and support for a
2 child.

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

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

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

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

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1 Sec. 9. K.S.A. 38-1529 is hereby amended to read as follows: 38-
2 1529. (a) Whenever the state department of social and rehabilitation serv-
3 ices or any other person refers a case to the county or district attorney
4 for the purpose of filing a petition alleging that a child is a child in need
5 of care, the county or district attorney shall review the facts and recom-
6 mendations of the department and any other evidence available and make
7 a determination whether or not the circumstances warrant the filing of
8 the petition.

17 (b) Any individual may file a petition alleging a child is a child in need
18 of care and the individual may be represented by the individual's own
19 attorney in the presentation of the case.

20 Sec. 10. K.S.A. 38-1531 is hereby amended to read as follows: 38-
21 1531. (a) *Filing of petition.* An action pursuant to this code is commenced
22 by the filing of a petition with the clerk of the district court.

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

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

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

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

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

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

34 (3) The proceedings shall be entitled: "In the Interest of _____."

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

37 (5) The petition shall contain a request that the parent or parents be
38 ordered to pay child support. The request for child support may be omit-
39 ted with respect to a parent already ordered to pay child support for the
40 child and shall be omitted with respect to one or both parents upon
41 written request of the secretary.

42 (6) *If the petition requests removal of the child from the child's home, the petition shall specify the efforts known to the
petitioner to maintain the family unit and prevent*

1 *the unnecessary removal of the child from the child's home, or shall specify the facts supporting that an emergency exists which threatens the safety of the child.*

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

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

5 Sec. 11. K.S.A. 1999 Supp. 38-1532 is hereby amended to read as
6 follows: 38-1532. Upon the filing of a petition under this code the court
7 shall proceed by one of the following methods:

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

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

21 Upon the written request of the petitioner or the county or district
22 attorney separate or additional summons shall be issued to any interested
23 party.

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

25 (c) *If the petition requests custody to the secretary*
26 *the court shall cause a copy of the petition to be pro-*
27 *vided to the secretary upon filing. However, the failure of the secretary to receive a copy of the petition shall not affect the*
jurisdiction of the court or its authority in the proceedings.

28 Sec. 12. K.S.A. 1999 Supp. 38-1542 is hereby amended to read as
29 follows: 38-1542. (a) The court upon verified application may issue *ex*
30 *parte* an order directing that a child be held in protective custody and, if
31 the child has not been taken into custody, an order directing that the
32 child be taken into custody. The application shall state *for each child*:

33 (1) The applicant's belief that the child is a child in need of care and *that allowing the child to remain in the home is*
34 *contrary to the welfare of the child or placement is in the best interests of the child and that the child*
35 *is likely to sustain harm if not immediately afforded protective custody;*
and

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

40 (b) (1) The order of protective custody may be issued only after the
41 court has determined there is probable cause to believe the allegations
42 in the application are true. The order shall remain in effect until the
43 temporary custody hearing provided for in K.S.A. 38-1543, and amend-

1 ments thereto, unless earlier rescinded by the court.

2 (2) No child shall be held in protective custody for more than 72
3 hours, excluding Saturdays, Sundays and legal holidays, unless within the
4 72-hour period a determination is made as to the necessity for temporary
5 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
6 shall be construed to mean that the child must remain in protective cus-
7 tody for 72 hours.

8 (c) Whenever the court determines the necessity for an order of pro-
9 tective custody, the court may place the child in the protective custody
10 of: (1) A parent or other person having custody of the child and may enter
11 a restraining order pursuant to subsection ~~(d)~~ (e); (2) a person, other than
12 the parent or other person having custody, who shall not be required to
13 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
14 tated; (3) a youth residential facility; ~~or~~ (4) *if the child is*
15 *alleged to be a child in need of protection the court may award custody to the secretary. However, if the secretary presents*
the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may
only place the child in the protective custody of the secretary until the court finds the services are in place. The court shall have the
authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. (5) If the child is alleged
to be a youth in need of community services, the court, before placing the child in the custody of the secretary, shall consider written
documentation from the secretary of the services and/or community services plan offered or delivered to prevent the need for such
custody. Only if the court finds that the services documented by the secretary are insufficient to protect the safety of the child and
that remaining in the custody of the parent with such services in place is contrary to the welfare or that placement is in the best
interests of the child, may the court order custody with the secretary. The secretary need not present a written plan if the court finds
an emergency exists. However, if the secretary presents the court with a plan to provide services to a child or family which the court
finds will assure the safety of the child, the court may only place the child in the protective custody of the secretary until the court
finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to
perform as set out in the plan.

When the

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

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

37 (f) The court shall not enter an order removing a child from the
38 custody of a parent pursuant to this section unless the court first finds
39 from evidence presented by the petitioner that reasonable efforts have
40 been made to *maintain the family unit and prevent or eliminate the need for the unnecessary removal of the child from the*
child's home or

41 that an emergency exists which threatens the safety of the child and ~~re~~
42 quires ~~the~~ *that remaining in the home is contrary to the welfare of the child or that immediate removal placement is in the*
best interests of the child. Such

43 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.

2
3 Sec. 13. K.S.A. 1999 Supp. 38-1543 is hereby amended to read as
4 follows: 38-1543. (a) Upon notice and hearing, the court may issue an
5 order directing who shall have temporary custody and may modify the
6 order during the pendency of the proceedings as will best serve the child's
7 welfare.

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

11 (c) Whenever it is determined that a temporary custody hearing is
12 required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be in substantially the
13 following form:
14

15

(Name of Court)

16 (Caption of Case)

17

NOTICE OF TEMPORARY CUSTODY HEARING

18

TO:

(Names) (Relationship) (Addresses)

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_____, 49__ (year), at __ o'clock __m. the court
(day) (date)

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.

_____, 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.

Date _____, 49__ (year) Clerk of the District Court
by _____

(Seal)

36

REPORT OF SERVICE

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

Name Location of Service Manner of Service Date Time
(other than above)

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Date Returned _____, 49__ (year)

(Signature)

(Title)

(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.

(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:

(Name of Court)
(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

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:

Name	Relationship	Date	Time	Method of Communication
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I advised each of the above persons that:

- (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)

(Name Printed)

1 (Title)

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

7 (g) Whenever the court determines the necessity for an order of tem-
8 porary custody the court may place the child in the temporary custody
9 of: (1) A parent or other person having custody of the child and may enter
10 a restraining order pursuant to subsection (h); (2) a person, other than
11 the parent or other person having custody, who shall not be required to
12 be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-
13 tated; (3) a youth residential facility; ~~or~~ (4) *If the child is*

14 *alleged to be a child in need of protection the court may award custody to the secretary. However, if the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the temporary custody of the secretary until the court finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. (5) If the child is alleged to be a youth in need of community services, the court, before placing the child in the custody of the secretary, shall consider written documentation from the secretary of the services and/or community services plan offered or delivered to prevent the need for such custody and only if the court finds that the services documented by the secretary are insufficient to protect the safety of the child and that remaining in the custody of the parent with such services in place is contrary to the welfare or that placement is in the best interests of the child, the court may order custody with the secretary. However, if the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the temporary custody of the secretary until the court finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan.*

When making a recommendation regarding custody, the secretary shall present to the court in writing the specific actions taken to
20 *prevent or eliminate the need for custody to the secretary. When the child*
21 *is placed in the temporary custody of the secretary, the secretary shall*
22 *have the discretionary authority to place the child with a parent or to*
23 *make other suitable placement for the child. When circumstances re-*
24 *quire, a child may be placed in a juvenile detention facility or other secure*
25 *facility, but the total amount of time that the child may be held in such*
26 *facility under this section and K.S.A. 38-1542 and amendments thereto*
27 *shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-*
28 *days. The order of temporary custody shall remain in effect until modified*
29 *or rescinded by the court or a disposition order is entered but not ex-*
30 *ceeding 60 days, unless good cause is shown and stated on the record.*

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

1 *with a written copy of any orders entered upon making the order.*

2 Sec. 14. K.S.A. 1999 Supp. 38-1544 is hereby amended to read as
3 follows: 38-1544. (a) At any time after filing a petition, but prior to an
4 adjudication, the court may enter an order for continuance and informal
5 supervision without an adjudication if no interested party objects. Upon
6 granting the continuance, the court shall include in the order any con-
7 ditions with which the interested parties are expected to comply and
8 provide the parties with a copy of the order. The conditions may include
9 appropriate dispositional alternatives authorized by K.S.A. 38-1563 and
10 amendments thereto.

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

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

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

24 (e) *If the court issues an order for informal supervision pursuant to*
25 *this section, the court may enter an order restraining any alleged pepe-*
26 *trator of physical, sexual, mental or emotional abuse of the child from*
27 *residing in the child's home, visiting, contacting, harassing or intimidating*
28 *the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member*
29 *or witness.*

30 Sec. 15. K.S.A. 1999 Supp. 38-1562 is hereby amended to read as
31 follows: 38-1562. (a) At any time after a child has been adjudicated to be
32 a child in need of care and prior to disposition, the judge shall permit any
33 interested parties, and any persons required to be notified pursuant to
34 subsection (b), to be heard as to proposals for appropriate disposition of
the case.

35 (b) Before entering an order placing the child in the custody of a
36 person other than the child's parent, the court shall require notice of the
37 time and place of the hearing to be given to all the child's grandparents
38 at their last known addresses or, if no grandparent is living or if no living
39 grandparent's address is known, to the closest relative of each of the
40 child's parents whose address is known, and to the foster parent, prea-
41 doptive parent or relative providing care. Such notice shall be given by
42 restricted mail not less than 10 business days before the hearing and shall
43 state that the person receiving the notice shall have an opportunity to be

1 heard at the hearing. The provisions of this subsection shall not require
2 additional notice to any person otherwise receiving notice of the hearing
3 pursuant to K.S.A. 38-1536 and amendments thereto. Individuals receiv-
4 ing notice pursuant to this subsection shall not be made a party to the
5 action solely on the basis of this notice and opportunity to be heard.

6 (c) Prior to entering an order of disposition, the court shall give con-
7 sideration to the child's physical, mental and emotional condition; the
8 child's need for assistance; the manner in which the parent participated
9 in the abuse, neglect or abandonment of the child; any relevant infor-
10 mation from the intake and assessment process; and the evidence re-
11 ceived at the dispositional hearing. In determining when reunification is
12 a viable alternative, the court shall specifically consider whether the par-
13 ent has been found by a court to have: (1) Committed murder in the first
14 degree, K.S.A. 21-3401 and amendments thereto, murder in the second
15 degree, K.S.A. 21-3402 and amendments thereto, capital murder, K.S.A.
16 21-3439 and amendments thereto, voluntary manslaughter, K.S.A. 21-
17 3403 and amendments thereto or violated a law of another state which
18 prohibits such murder or manslaughter of a child; (2) aided or abetted,
19 attempted, conspired or solicited to commit such murder or voluntary
20 manslaughter of a child as provided in subsection (c)(1); (3) committed a
21 felony battery that resulted in bodily injury to the child or another child;
22 (4) subjected the child or another child to aggravated circumstances as
23 defined in ~~subsection (x)~~ of K.S.A. 38-1502 and amendments thereto; (5)
24 parental rights of the parent to another child have been terminated in-
25 voluntarily; or (6) the child has been in extended out of home placement
26 as defined in ~~subsection (z)~~ of K.S.A. 38-1502 and amendments thereto.
27 If reintegration is not a viable alternative, the court shall consider whether
28 a compelling reason has been documented in the case plan to find neither
29 adoption nor permanent guardianship are in the best interests of the
30 child, the child is in a stable placement with a relative, or services set out
31 in the case plan necessary for the safe return of the child have been made
32 available to the parent with whom reintegration is planned. If reintegra-
33 tion is not a viable alternative and either adoption or permanent guardi-
34 anship might be in the best interests of the child, the county or district
35 attorney or the county or district attorney's designee shall file a motion
36 to terminate parental rights or a *motion to establish* permanent guardi-
37 anship within 30 days and the court shall set a hearing on such motion
38 within 90 days of the filing of such motion. No such hearing is required
39 when the parents voluntarily relinquish parental rights or agree to ap-
40 pointment of a permanent guardian.

41 Sec. 16. K.S.A. 1999 Supp. 38-1563 is hereby amended to read as
42 follows: 38-1563. (a) After consideration of any evidence offered relating
43 to disposition, the court may retain jurisdiction and place the child in the

1 custody of the child's parent subject to terms and conditions which the
 2 court prescribes to assure the proper care and protection of the child,
 3 including supervision of the child and the parent by a court services of-
 4 ficer, or may order the child and the parent to participate in programs
 5 operated by the secretary or another appropriate individual or agency.
 6 The terms and conditions may require any special treatment or care which
 7 the child needs for the child's physical, mental or emotional health.

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

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

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

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

27 (2) any other suitable person;

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

29 (4) the secretary-, *if the child is adjudged to be a child in need of care*
 30 *by reason of a finding by the court that the child is a child in need of*
 31 *protection; or*

32 (5) *If the child is adjudged to be a child in need of care by reason of a finding that the child is a youth in need of*
community services, the court shall not place the child in the custody of the secretary if the court has received from the secretary,
written documentation of the services and/or community services plan offered or delivered to prevent the need for such custody
unless the court finds that the services documented by the secretary are insufficient to protect the safety of the child and that being
in the custody of the parent with such services in place is contrary to the welfare or that placement is in the best interests of the
child. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the
plan.

The secretary shall present to the court in writing

38 the specific actions taken to maintain the family unit and prevent the unnecessary removal of the child from the child's home.
 39

40 In making such a custody order, the court shall give preference, to the
 41 extent that the court finds it is in the best interests of the child, first to
 42 granting custody to a relative of the child and second to granting custody
 43 of the child to a person with whom the child has close emotional ties. If

1 the court has awarded legal custody based on the finding specified by this
 2 subsection, the legal custodian shall not return the child to the home of
 3 that parent without the written consent of the court.

4 (e) When the custody of the child is awarded to the secretary:
 5 (1) The court may recommend to the secretary where the child
 6 should be placed.
 7 (2) The secretary shall notify the court in writing of any placement
 8 of the child or, within 10 days of the order awarding the custody of the
 9 child to the secretary, any proposed placement of the child, whichever
 10 occurs first.
 11 (3) The court may determine if such placement is in the best interests
 12 of the child, and if the court determines that such placement is not in the
 13 best interests of the child, the court shall notify the secretary who shall
 14 then make an alternative placement subject to the procedures established
 15 in this paragraph. In determining if such placement is in the best interests
 16 of the child, the court, after providing the parties with an opportunity to
 17 be heard, shall consider the health and safety needs of the child and the
 18 resources available to meet the needs of children in the custody of the
 19 secretary.

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

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

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

34 (h) The court shall not enter an order removing a child from the
 35 custody of a parent pursuant to this section unless the court first finds
 36 from evidence presented by the petitioner that reasonable efforts have
 37 been made to *maintain the family unit and prevent or eliminate the need for the unnecessary removal of the child; from the*
 38 *child's home or that*
 39 *reasonable efforts are not necessary because reintegration is not a viable*
 40 *alternative; or that an emergency exists which threatens the safety of the*
 41 *child and requires the that immediate removal allowing the child to remain in the home is contrary to the welfare of the child*
 42 *or the best interest of*
 43 *the child. If the child is placed in the custody of the secretary, the court*
 44 *shall provide the secretary with a copy of each order entered within 10 days of making the order. Reintegration may*
 45 *not be a viable alternative when the: (1) Parent has been found by a court*

1 to have committed murder in the first degree, K.S.A. 21-3401, and
2 amendments thereto, murder in the second degree, K.S.A. 21-3402, and
3 amendments thereto, capital murder, K.S.A. 21-3439, and amendments
4 thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments
5 thereto, or violated a law of another state which prohibits such murder
6 or manslaughter of a child; (2) parent aided or abetted, attempted, con-
7 spired or solicited to commit such murder or voluntary manslaughter of
8 a child as provided in subsection (h)(1); (3) parent committed a felony
9 battery that resulted in bodily injury to the child or another child; (4)
10 parent has subjected the child or another child to aggravated circum-
11 stances as defined in ~~subsection (x)~~ of K.S.A. 38-1502, and amendments
12 thereto; (5) parental rights of the parent to another child have been ter-
13 minated involuntarily or (6) the child has been in extended out of home
14 placement as defined in ~~subsection (z)~~ of K.S.A. 38-1502, and amend-
15 ments thereto. Such findings shall be included in any order entered by
16 the court.

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

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

1 for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 38-1597, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

9 Sec. 17. K.S.A. 1999 Supp. 38-1565 is hereby amended to read as follows: 38-1565. (a) If a child is placed outside the child's home and no permanency plan is made a part of the record of the dispositional hearing, a written permanency plan shall be prepared which provides for reintegration of the child into the child's family or, if reintegration is not a viable alternative, for other permanent placement of the child. Reintegration may not be a viable alternative when the: (1) Parent has been found by a court to have committed murder in the first degree, K.S.A. 21-3401 and amendments thereto, murder in the second degree, K.S.A. 21-3402 and amendments thereto, capital murder, K.S.A. 21-3439 and amendments thereto, voluntary manslaughter, K.S.A. 21-3403 and amendments thereto or violated a law of another state which prohibits such murder or manslaughter of a child; (2) parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child as provided in subsection (a)(1); (3) parent committed a felony battery that resulted in bodily injury to the child or another child; (4) parent has subjected the child or another child to aggravated circumstances as defined in ~~subsection (x)~~ of K.S.A. 38-1502, and amendments thereto; (5) parental rights of the parent to another child have been terminated involuntarily; or (6) the child has been in extended out of home placement as defined in ~~subsection (z)~~ of K.S.A. 38-1502 and amendments thereto. If the permanency goal is reintegration into the family, the permanency plan shall include measurable objectives and time schedules for reintegration. The plan shall be submitted to the court not later than 30 days after the dispositional order is entered. If the child is placed in the custody of the secretary, the plan shall be prepared and submitted by the secretary. If the child is placed in the custody of a facility or person other than the secretary, the plan shall be prepared and submitted by a court services officer.

38 (b) A court services officer or, if the child is in the secretary's custody, the secretary shall submit to the court, at least every six months, a written report of the progress being made toward the goals of the permanency plan submitted pursuant to subsection (a) and the specific actions taken to achieve the goals of the permanency plan. If the child is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the child's adjustment, progress and

1 condition. The department of social and rehabilitation services shall notify
 2 the foster parent or parents of the foster parent's or parent's duty to
 3 submit such report, on a form provided by the department of social and
 4 rehabilitation services, at least two weeks prior to the date when the
 5 report is due, and the name of the judge and the address of the court to
 6 which the report is to be submitted. Such report shall be confidential and
 7 shall only be reviewed by the court and the child's guardian ad litem. The
 8 court shall review *the plan submitted by the secretary, the reports submitted by the foster parents, and determine the*
~~progress being made toward whether reasonable~~

9 *efforts and progress have been made to achieve the goals of the permanency plan and*
 10 ~~the foster parent report and, i~~ If the court determines that progress is
 11 inadequate or that the *permanency* plan is no longer viable, the court
 12 shall hold a hearing pursuant to subsection (c). If the secretary has custody
 13 of the child, such hearing shall be held no more than 12 months after the
 14 child is placed outside the child's home and at least every 12 months
 15 thereafter. ~~For children in the custody of the secretary prior to July 1,~~
 16 ~~1998, within 30 days of receiving a request from the secretary, a perma-~~
 17 ~~nency hearing shall be held. At each hearing, the court shall make a~~
 18 ~~written finding whether reasonable efforts have been made to accomplish~~
 19 ~~the permanency goal and whether continued out of home placement is~~
 20 ~~necessary for the child's safety.~~ If the goal of the *permanency* plan sub-
 21 mitted pursuant to subsection (a) is reintegration into the family and the
 22 court determines after 12 months from the time such plan is first sub-
 23 mitted that progress is inadequate, the court shall hold a hearing pursuant
 24 to subsection (c). Nothing in this subsection shall be interpreted to pro-
 25 hibit termination of parental rights prior to the expiration of 12 months.

26 (c) Whenever a hearing is required under subsection (b), the court
 27 shall notify all interested parties and the foster parents, preadoptive par-
 28 ents or relatives providing care for the child and hold a hearing. Individ-
 29 uals receiving notice pursuant to this subsection shall not be made a party
 30 to the action solely on the basis of this notice and opportunity to be heard.
 31 After providing the interested parties, foster parents, preadoptive parents
 32 or relatives providing care for the child an opportunity to be heard, the
 33 court shall determine whether the child's needs are being adequately met
 34 and whether reintegration continues to be a viable alternative. If the court
 35 finds reintegration is no longer a viable alternative, the court shall con-
 36 sider whether the child is in a stable placement with a relative, services
 37 set out in the case plan necessary for the safe return of the child have
 38 been made available to the parent with whom reintegration is planned or
 39 compelling reasons are documented in the case plan to support a finding
 40 that neither adoption nor permanent guardianship are in the child's best
 41 interest. If reintegration is not a viable alternative and either adoption or
 42 permanent guardianship might be in the best interests of the child, the
 43 county or district attorney or the county or district attorney's designee

1 shall file a motion to terminate parental rights or ~~for a motion to establish~~
2 a permanent guardianship within 30 days and the court shall set a hearing
3 on such motion within 90 days of the filing of such motion. When the
4 court finds reintegration continues to be a viable alternative, the court
5 shall determine whether and, if applicable, when the child will be returned to the parent; may rescind any of its
6 prior dispositional orders and enter any dispositional order authorized by
7 this code or may order that a new plan for the reintegration be prepared
8 and submitted to the court. *If reintegration can not be accomplished as approved by the court, the court shall be informed*
9 *and shall schedule a hearing pursuant to subsection (c).* No such hearing is required when the parents
10 voluntarily relinquish parental rights or agree to appointment of a per-
11 manent guardian.

11 Sec. 18. K.S.A. 38-1566 is hereby amended to read as follows: 38-
12 1566. (a) Except as provided in K.S.A. 38-1567, and amendments
13 thereto, if a child has been in the same foster home or shelter facility for
14 six months or longer, or has been placed by the secretary in the home of
15 a parent or relative, the secretary shall give written notice of any plan to
16 move the child to a different placement. The notice shall be given to ~~(a)~~
17 (1) the court having jurisdiction over the child; ~~(b)~~ (2) each parent whose
18 address is available; ~~(c)~~ (3) the foster parent or custodian from whose
19 home or shelter facility it is proposed to remove the child; ~~(d)~~ (4) the
20 child, if 12 or more years of age; and ~~(e)~~ (5) the child's guardian *ad litem*.
21 The notice shall state the home or shelter facility to which the secretary
22 plans to transfer the child and the reason for the proposed action. The
23 notice shall be delivered or mailed 30 days in advance of the planned
24 transfer, except that the secretary shall not be required to wait 30 days
25 to transfer the child if all persons enumerated in clauses ~~(b)~~ (2) through
26 ~~(e)~~ (5) consent in writing to the transfer. Within 10 days after receipt of
27 the notice any person receiving notice as provided above may request,
28 either orally or in writing, that the court conduct a hearing to determine
29 whether or not the change in placement is in the best interests of the
30 child concerned. When the request has been received, the court shall
31 schedule a hearing and immediately notify the secretary of the request
32 and the time and date the matter will be heard. The court shall give notice
33 of the hearing to persons enumerated in clauses ~~(b)~~ (2) through ~~(e)~~ (5).
34 The secretary shall not change the placement of the child unless the
35 change is approved by the court.
36 (b) *When, after the notice set out above, a child in the custody of the secretary is removed from the*
37 *home of a parent after having been placed in the home of a parent for a*
38 *period of six months or longer, the secretary shall request a finding by*
39 *the court whether reasonable efforts were made to prevent the necessity*
40 *for removal and whether allowing the child to remain in the home is contrary to the welfare of the child or not in the best*
41 *interests of the child. The secretary shall present to the court in writing the efforts to maintain the family unit and prevent the*
42 *unnecessary removal of the child from the child's home.*
43 *In making the finding, the court may rely on documentation submitted*
44 *by the secretary or may set the date for a hearing on the matter. If the*
45 *secretary requests such finding, the court shall provide the secretary with*

- 1 a written copy of the finding by the court not more than 45 days from
2 the date of the request.

Sec. xx. K.S.A. 38-1567 is hereby amended to read as follows: 38-1567. Emergency change of placement. When an emergency exists requiring immediate action to assure the safety and protection of the child or the secretary is notified that the foster parents or shelter facility refuse to allow the child to remain, the secretary may transfer the child to another foster home or shelter facility without prior court approval, but the secretary shall notify the court of the action at the earliest practical time. *When the child is removed from the home of a parent after having been placed in the home or facility for a period of six months or longer, the secretary shall present to the court in writing the specific nature of the emergency and request a finding by the court whether remaining in the home was contrary to the welfare of the child. In making the finding, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such a finding, the court shall provide the secretary with a written copy of the finding by the court not more than 45 days from the date of the request.*

3 Sec. 19. K.S.A. 38-1568 is hereby amended to read as follows: 38-
4 1568. (a) *Valid court order.* During proceedings under this code, the court
5 to remain in a present or future placement if:

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

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

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

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

26 (c) *Ex parte order.* Upon the filing of an application in accordance
27 with subsection (b), the court may enter *ex parte* an order directing that
28 the child be taken into custody and held in a secure facility designated
29 by the court if the court determines that there is probable cause to believe
30 the allegations in the application. The order shall remain in effect for not
31 more than 24 hours following the child's being taken into custody. The
32 order shall be served on the child's parents, any legal custodian of the
33 child and the child's guardian *ad litem*.

34 (d) *Preliminary hearing.* Within 24 hours following a child's being
35 taken into custody pursuant to an order issued under subsection (c), the
36 court shall hold a hearing to determine whether the child admits or denies
37 the allegations of the application and, if the child denies such allegations,
38 whether there is probable cause to hold the child in a secure facility
39 pending a hearing on the application pursuant to subsection (e). Notice
40 of the time and place of the preliminary hearing shall be given orally or
41 in writing to the child's parents, any legal custodian of the child and the
42 child's guardian *ad litem*. At the hearing, the child shall have the right to:
43 (1) Have in writing the alleged violation and the facts relied upon in the

1 application; (2) a guardian *ad litem* pursuant to K.S.A. 38-1505, and
 2 amendments thereto; and (3) the right to confront and present witnesses.
 3 If, upon the hearing, the court finds that the child admits the allegations
 4 of the application, the court shall proceed without delay to hold a hearing
 5 on the application pursuant to subsection (e). If, upon the hearing, the
 6 court finds that the child denies the allegations of the application, the
 7 court may enter an order directing that the child be held in a secure
 8 facility pending a hearing pursuant to subsection (e) if the court finds
 9 that there is probable cause to believe that the child has violated a valid
 10 court order entered pursuant to subsection (a) and that secure detention
 11 of the child is necessary for the protection of the child or to assure the
 12 appearance of the child at the hearing on the application pursuant to
 13 subsection (e).

14 (e) *Hearing on violation of order; authorization.* The court shall hold
 15 a hearing on an application filed pursuant to subsection (b) within 24
 16 hours following the child's being taken into custody, if the child admits
 17 the allegations of the application, or within 72 hours following the child's
 18 being taken into custody, if secure detention of the child is ordered pur-
 19 suant to subsection (d). Notice of the time and place of such hearing shall
 20 be given orally or in writing to the child's parents, any legal custodian of
 21 the child and the child's guardian *ad litem*. Upon such hearing, the court
 22 may enter an order awarding custody of the child to (1) *A parent; (2) a person other than the parent or other person having*
custody, who shall not be required to be licensed under article 5 or chapter 65 of the Kansas Statutes Annotated; (3) a youth
residential facility; or the secretary, if the

23 secretary does not *already* have legal custody of the child, and authorizing the
 24 ~~secretary~~ *custodian* to place the child in a secure facility if the court determines
 25 that:

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

29 (2) the child has violated a valid court order entered pursuant to sub-
 30 section (a);

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

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

41 The authorization to place a child in a secure facility pursuant to this
 42 subsection shall expire 60 days, including Saturdays, Sundays and legal
 43 holidays, after it is issued. The court may grant extensions of such au-

1 thORIZATION for two additional periods not exceeding 60 days, including
2 Saturdays, Sundays and legal holidays, upon rehearing pursuant to K.S.A.
3 38-1564, and amendments thereto. Payment by the secretary to a secure
4 facility for child care services provided pursuant to this subsection shall
5 be paid only upon receipt by the secretary of a copy of a valid court order.

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

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

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

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

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

21 Sec. 20. K.S.A. 1999 Supp. 38-1581 is hereby amended to read as
22 follows: 38-1581. (a) Either in the petition filed under this code or in a
23 motion made in proceedings under this code, any interested party may
24 request that either or both parents be found unfit and the parental rights
25 of either or both parents be terminated or a permanent guardianship be
26 appointed.

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

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

39 Sec. 21. K.S.A. 1999 Supp. 38-1583 is hereby amended to read as
40 follows: 38-1583. (a) When the child has been adjudicated to be a child
41 in need of care, the court may terminate parental rights when the court
42 finds by clear and convincing evidence that the parent is unfit by reason
43 of conduct or condition which renders the parent unable to care properly

1 for a child and the conduct or condition is unlikely to change in the
2 foreseeable future.

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

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

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

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

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

14 (5) conviction of a felony and imprisonment;

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

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

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

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

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

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

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

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

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

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

40 (e) The existence of any one of the above standing alone may, but
41 does not necessarily, establish grounds for termination of parental rights.
42 The determination shall be based on an evaluation of all factors which
43 are applicable. In considering any of the above factors for terminating the

1 rights of a parent, the court shall give primary consideration to the phys-
 2 ical, mental or emotional condition and needs of the child. If presented
 3 to the court and subject to the provisions of K.S.A. 60-419, and amend-
 4 ments thereto, the court shall consider as evidence testimony from a
 5 person licensed to practice medicine and surgery, a licensed psychologist
 6 or a licensed social worker expressing an opinion relating to the physical,
 7 mental or emotional condition and needs of the child. The court shall
 8 consider any such testimony only if the licensed professional providing
 9 such testimony is subject to cross-examination.

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

15 (g) If, after finding the parent unfit, the court determines a compel-
 16 ling reason why it is not in the best interests of the child to terminate
 17 parental rights, or upon agreement of the parents, the court may award
 18 permanent guardianship to an individual providing care for the child, a
 19 relative or other person with whom the child has a close emotional at-
 20 tachment. Prior to awarding permanent guardianship, the court shall re-
 21 ceive and consider an assessment as provided in K.S.A. 59-2132 and
 22 amendments thereto of any potential permanent guardian. Upon appoint-
 23 ment of a permanent guardian, the court shall ~~enter an order discharging~~
 24 ~~the child from the court's jurisdiction~~ *continue to have jurisdiction to*
 25 *review placement and appoint a successor guardian or guardians and shall discharge the child from the custody of the*
 26 *secretary.*

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

33 Sec. 22. K.S.A. 1999 Supp. 38-1584 is hereby amended to read as
 34 follows: 38-1584. (a) *Purpose of section.* The purpose of this section is to
 35 provide stability in the life of a child who must be removed from the
 36 home of a parent, to acknowledge that time perception of a child differs
 37 from that of an adult and to make the ongoing physical, mental and emo-
 38 tional needs of the child the decisive consideration in proceedings under
 39 this section. The primary goal for all children whose parents' parental
 40 rights have been terminated is placement in a permanent family setting.

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

1 (A) An order granting custody of the child, for adoption proceedings,
 2 to a reputable person of good moral character, the secretary or a corpo-
 3 ration organized under the laws of the state of Kansas authorized to care
 4 for and surrender children for adoption as provided in K.S.A. 38-112 *et*
 5 *seq.* and amendments thereto. The person, secretary or corporation shall
 6 have authority to place the child in a family home, be a party to proceed-
 7 ings and give consent for the legal adoption of the child which shall be
 8 the only consent required to authorize the entry of an order or decree of
 9 adoption.

10 (B) An order granting custody of the child to proposed adoptive par-
 11 ents and consenting to the adoption of the child by the proposed adoptive
 12 parents.

13 (2) ~~Custody for long-term foster care permanent guardianship.~~ When
 14 parental rights have been terminated and it does not appear that adoption
 15 is a viable alternative, the court shall may enter an order granting custody
 16 of the child for ~~foster care permanent guardianship~~ to a reputable person
 17 of good moral character, ~~a youth residential facility, the secretary or a~~
 18 ~~corporation or association willing to receive the child, embracing in its~~
 19 ~~objectives the purpose of caring for or obtaining homes for children.~~ Upon appoint-
 ment of a permanent guardian, the court shall continue to have jurisdiction to
 review placement and appoint a successor guardian or guardians and shall discharge the child from the custody of the
 secretary.

(3) *Custody for placement with a fit and willing relative.* When parental rights have been terminated and it does not
 appear that adoption is a viable alternative, the court may enter an order granting custody of the child for placement with a willing
 relative who is a reputable person of good moral character. Upon an order of custody and placement with a fit and willing relative,
 the court shall continue to have jurisdiction to review placement and shall discharge the child from the custody of the secretary.

20 (34) ~~Preferences in custody for adoption or long-term foster care per-~~
 21 ~~manent guardianship.~~ In making an order under subsection (b)(1) or (2),
 22 the court shall give preference, to the extent that the court finds it is in
 23 the best interests of the child, first to granting such custody to a relative
 24 of the child and second to granting such custody to a person with whom
 25 the child has close emotional ties.

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

29 (d) *Reports and review of progress and reasonable efforts to implement a*
 30 *permanency plan of adoption; permanent guardianship; or placement with a fit and willing relative.* After parental
 31 rights have been terminated and up to the time an adoption has been
 32 accomplished, the person or agency awarded custody of the child shall
 33 within 60 days submit a written plan for permanent placement which shall
 34 include measurable objectives and time schedules and shall thereafter not
 35 less frequently than each six months make a written report to the court
 36 stating the progress having been made toward finding an adoptive placement or long-

37 ~~term foster care permanent guardianship or placement with a fit and willing relative for the child.~~ Upon
 38 the receipt of each report the court shall review the contents thereof and
 39 determine whether or not a hearing should be held on the subject. In
 40 any case, the court shall notify all interested parties and hear evidence
 41 regarding progress toward finding an adoptive home or the acceptability

42 ~~of the long-term foster care permanent guardian or placement with a fit and willing relative plan within 48 12~~
 43 months after parental rights have been terminated and every 12 months

1 thereafter. If the court determines that ~~inadequate progress is being rea-~~
 2 ~~sonable efforts or progress have not been made toward finding an adoptive placement~~
 3 ~~or establishing an acceptable long-term foster care plan permanent~~
 4 ~~guardianship or placement with a fit and willing relative~~, the court may rescind its prior orders and make other or-
 5 ders regarding custody and adoption that are appropriate under the cir-
 6 cumstances. Reports of a proposed adoptive placement need not contain
 7 the identity of the proposed adoptive parents.

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

(4) *If the department has documented to the court a compelling reason why neither custody for adoption 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.*

11 Sec. 23. K.S.A. 1999 Supp. 38-1585 is hereby amended to read as
 12 follows: 38-1585. (a) It is presumed in the manner provided in K.S.A. 60-
 13 414 and amendments thereto that a parent is unfit by reason of conduct
 14 or condition which renders the parent unable to fully care for a child, if
 15 the state establishes by clear and convincing evidence that:

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

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

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

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

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

35 (6) (1) the child has been in an out-of-home placement, other than
 36 kinship care, under court order for a cumulative total period of two years
 37 or longer; (2) the parent has failed to carry out a reasonable plan, ap-
 38 proved by the court, directed toward reintegration of the child into the
 39 parental home; and (3) there is a substantial probability that the parent
 40 will not carry out such plan in the near future; or

41 (7) a parent has been convicted of capital murder, K.S.A. 21-3439
 42 and amendments thereto, murder in the first degree, K.S.A. 21-3401 and
 43 amendments thereto, murder in the second degree, K.S.A. 21-3402 and

1 amendments thereto or voluntary manslaughter, K.S.A. 21-3403 and
 2 amendments thereto, or if a juvenile has been adjudicated a juvenile of-
 3 fender because of an act which if committed by an adult would be an
 4 offense as provided in this subsection, and the victim of such murder was
 5 the other parent of the child.

6 (b) The burden of proof is on the parent to rebut the presumption.
 7 If a parent has been convicted of capital murder, K.S.A. 21-3439 and
 8 amendments thereto or murder in the first degree, K.S.A. 21-3401 and
 9 amendments thereto as provided in subsection (a)(7), the burden of proof
 10 is on the parent to rebut the presumption by clear and convincing evi-
 11 dence. In the absence of proof that the parent is presently fit and able to
 12 care for the child or that the parent will be fit and able to care for the
 13 child in the foreseeable future, the court shall now terminate the parents
 14 parental rights in proceedings pursuant to K.S.A. 38-1581 *et seq.* and
 15 amendments thereto.

16 Sec. 24. K.S.A. 1999 Supp. 38-1587 is hereby amended to read as
 17 follows: 38-1587. (a) A permanent guardian may be appointed after a
 18 finding of unfitness pursuant to K.S.A. 38-1583 and amendments thereto
 19 or with the consent and agreement of the parents.

20 (b) Upon appointment of the permanent guardian, the ~~child in need~~
 21 ~~of care proceeding shall be dismissed~~ *court shall continue to have juris-*
 22 *isdiction to review placement and appoint a successor or replacement guardian or guard-*
 23 *ians. and shall*
 24 *discharge the child from the custody of the secretary.*

25 Sec. 25. K.S.A. 1999 Supp. 38-1591 is hereby amended to read as
 26 follows: 38-1591. (a) An appeal may be taken by any interested party from
 27 any adjudication, disposition, termination of parental rights or order of
 28 temporary custody in any proceedings pursuant to this code.

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

33 (c) Procedure on appeal shall be governed by article 21 of chapter
 34 60 of the Kansas Statutes Annotated.

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

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

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Sec. 27. K.S.A. 1999 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

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

1 Provision for payment of support and educational expenses of a child after
2 reaching 18 years of age if still attending high school shall apply to any
3 child subject to the jurisdiction of the court, including those whose sup-
4 port was ordered prior to July 1, 1992. If an agreement approved by the
5 court prior to July 1, 1988, provides for termination of support before the
6 date provided by subsection (a)(1)(B), the court may review and modify
7 such agreement, and any order based on such agreement, to extend the
8 date for termination of support to the date provided by subsection
9 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
10 provides for termination of support before the date provided by subsec-
11 tion (a)(1)(C), the court may review and modify such agreement, and any
12 order based on such agreement, to extend the date for termination of
13 support to the date provided by subsection (a)(1)(C). For purposes of this
14 section, "bona fide high school student" means a student who is enrolled
15 in full accordance with the policy of the accredited high school in which
16 the student is pursuing a high school diploma or a graduate equivalency
17 diploma (GED). In determining the amount to be paid for child support,
18 the court shall consider all relevant factors, without regard to marital
19 misconduct, including the financial resources and needs of both parents,
20 the financial resources and needs of the child and the physical and emo-
21 tional condition of the child. Until a child reaches 18 years of age, the
22 court may set apart any portion of property of either the husband or wife,
23 or both, that seems necessary and proper for the support of the child.
24 Every order requiring payment of child support under this section shall
25 require that the support be paid through the clerk of the district court or
26 the court trustee except for good cause shown.

27 (2) *Child custody and residency. (A) Changes in custody.* Subject to
28 the provisions of the uniform child custody jurisdiction act (K.S.A. 38-
29 1301 *et seq.*, and amendments thereto), the court may change or modify
30 any prior order of custody when a material change of circumstances is
31 shown, but no ex parte order shall have the effect of changing the custody
32 of a minor child from the parent who has had the sole de facto custody
33 of the child to the other parent unless there is sworn testimony to support
34 a showing of extraordinary circumstances. If an interlocutory order is
35 issued ex parte, the court shall hear a motion to vacate or modify the
36 order within 15 days of the date that a party requests a hearing whether
37 to vacate or modify the order.

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

41 (3) *Child custody or residency criteria.* The court shall determine
42 custody or residency of a child in accordance with the best interests of
43 the child.

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

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

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

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

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

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

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

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

20 (vii) evidence of spousal abuse.

21 Neither parent shall be considered to have a vested interest in the
22 custody or residency of any child as against the other parent, regardless
23 of the age of the child, and there shall be no presumption that it is in the
24 best interests of any infant or young child to give custody or residency to
25 the mother.

26 (4) *Types of custodial arrangements.* Subject to the provisions of this
27 article, the court may make any order relating to custodial arrangements
28 which is in the best interests of the child. The order shall include, but
29 not be limited to, one of the following, in the order of preference:

30 (A) *Joint custody.* The court may place the custody of a child with
31 both parties on a shared or joint-custody basis. In that event, the parties
32 shall have equal rights to make decisions in the best interests of the child
33 under their custody. When a child is placed in the joint custody of the
34 child's parents, the court may further determine that the residency of the
35 child shall be divided either in an equal manner with regard to time of
36 residency or on the basis of a primary residency arrangement for the child.
37 The court, in its discretion, may require the parents to submit a plan for
38 implementation of a joint custody order upon finding that both parents
39 are suitable parents or the parents, acting individually or in concert, may
40 submit a custody implementation plan to the court prior to issuance of a
41 custody decree. If the court does not order joint custody, it shall include
42 in the record the specific findings of fact upon which the order for custody
43 other than joint custody is based.

1 (B) *Sole custody.* The court may place the custody of a child with one
2 parent, and the other parent shall be the noncustodial parent. The cus-
3 todial parent shall have the right to make decisions in the best interests
4 of the child, subject to the visitation rights of the noncustodial parent.

5 (C) *Divided custody.* In an exceptional case, the court may divide the
6 custody of two or more children between the parties.

7 (D) *Nonparental custody.* If during the proceedings the court deter-
8 mines that there is probable cause to believe that: (i) The child is a child
9 in need of care as defined by subsections ~~(a)(1), (2) or (3)~~ (b)(1) or (c)(1)
10 of K.S.A. 38-1502 and amendments thereto; (ii) neither parent is fit to
11 have custody; or (iii) the child is currently residing with such child's grand-
12 parent, grandparents, aunt or uncle and such relative has had actual phys-
13 ical custody of such child for a significant length of time, the court may
14 award temporary custody of the child to such relative, another person or
15 agency if the court finds the award of custody to such relative, another
16 person or agency is in the best interests of the child. In making such a
17 custody order, the court shall give preference, to the extent that the court
18 finds it is in the best interests of the child, first to awarding such custody
19 to a relative of the child by blood, marriage or adoption and second to
20 awarding such custody to another person with whom the child has close
21 emotional ties. The court may make temporary orders for care, support,
22 education and visitation that it considers appropriate. Temporary custody
23 orders are to be entered in lieu of temporary orders provided for in K.S.A.
24 38-1542 and 38-1543, and amendments thereto, and shall remain in effect
25 until there is a final determination under the Kansas code for care of
26 children. An award of temporary custody under this paragraph shall not
27 terminate parental rights nor give the court the authority to consent to
28 the adoption of the child. When the court enters orders awarding tem-
29 porary custody of the child to an agency or a person other than the parent
30 but not a relative as described in subpart (iii), the court shall refer a
31 transcript of the proceedings to the county or district attorney. The county
32 or district attorney shall file a petition as provided in K.S.A. 38-1531 and
33 amendments thereto and may request termination of parental rights pur-
34 suant to K.S.A. 38-1581 and amendments thereto. The costs of the pro-
35 ceedings shall be paid from the general fund of the county. When a final
36 determination is made that the child is not a child in need of care, the
37 county or district attorney shall notify the court in writing and the court,
38 after a hearing, shall enter appropriate custody orders pursuant to this
39 section. If the same judge presides over both proceedings, the notice is
40 not required. Any disposition pursuant to the Kansas code for care of
41 children shall be binding and shall supersede any order under this section.
42 When the court enters orders awarding temporary custody of the child
43 to a relative as described in subpart (iii), the court shall annually review

1 the temporary custody to evaluate whether such custody is still in the best
2 interests of the child. If the court finds such custody is in the best interests
3 of the child, such custody shall continue. If the court finds such custody
4 is not in the best interests of the child, the court shall determine the
5 custody pursuant to this section.

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

41 (2) *Maintenance.* The decree may award to either party an allowance
42 for future support denominated as maintenance, in an amount the court
43 finds to be fair, just and equitable under all of the circumstances. The

1 decree may make the future payments modifiable or terminable under
2 circumstances prescribed in the decree. The court may make a modifi-
3 cation of maintenance retroactive to a date at least one month after the
4 date that the motion to modify was filed with the court. In any event, the
5 court may not award maintenance for a period of time in excess of 121
6 months. If the original court decree reserves the power of the court to
7 hear subsequent motions for reinstatement of maintenance and such a
8 motion is filed prior to the expiration of the stated period of time for
9 maintenance payments, the court shall have jurisdiction to hear a motion
10 by the recipient of the maintenance to reinstate the maintenance pay-
11 ments. Upon motion and hearing, the court may reinstate the payments
12 in whole or in part for a period of time, conditioned upon any modifying
13 or terminating circumstances prescribed by the court, but the reinstatement
14 shall be limited to a period of time not exceeding 121 months. The
15 recipient may file subsequent motions for reinstatement of maintenance
16 prior to the expiration of subsequent periods of time for maintenance
17 payments to be made, but no single period of reinstatement ordered by
18 the court may exceed 121 months. Maintenance may be in a lump sum,
19 in periodic payments, on a percentage of earnings or on any other basis.
20 At any time, on a hearing with reasonable notice to the party affected,
21 the court may modify the amounts or other conditions for the payment
22 of any portion of the maintenance originally awarded that has not already
23 become due, but no modification shall be made without the consent of
24 the party liable for the maintenance, if it has the effect of increasing or
25 accelerating the liability for the unpaid maintenance beyond what was
26 prescribed in the original decree. Every order requiring payment of main-
27 tenance under this section shall require that the maintenance be paid
28 through the clerk of the district court or the court trustee except for good
29 cause shown.

30 (3) *Separation agreement.* If the parties have entered into a separa-
31 tion agreement which the court finds to be valid, just and equitable, the
32 agreement shall be incorporated in the decree. The provisions of the
33 agreement on all matters settled by it shall be confirmed in the decree
34 except that any provisions for the custody, support or education of the
35 minor children shall be subject to the control of the court in accordance
36 with all other provisions of this article. Matters settled by an agreement
37 incorporated in the decree, other than matters pertaining to the custody,
38 support or education of the minor children, shall not be subject to sub-
39 sequent modification by the court except: (A) As prescribed by the agree-
40 ment or (B) as subsequently consented to by the parties.

41 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
42 party as justice and equity require. The court may order that the amount
43 be paid directly to the attorney, who may enforce the order in the attor-

1 ney's name in the same case.

2 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
3 of a spouse, the court shall order the restoration of that spouse's maiden
4 or former name.

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

12 Sec. 28. K.S.A. 75-3329 is hereby amended to read as follows: 75-
13 3329. As used in this act:

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

15 (b) "State institution" means institution as defined in K.S.A. 76-
16 12a01, *and amendments thereto.*

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

19 (d) "Private children's home" means any licensed home, institution
20 or charitable organization which is operated by a corporation organized
21 ~~not for profit~~ under the laws of this state which the secretary finds has
22 and maintains adequate facilities and is properly staffed to provide ade-
23 quate care, custody, education, training and treatment for any child which
24 the secretary may place therein under the authority of this act, or a li-
25 censed foster care home, boarding home, personal care home or nursing
26 home.

27 Sec. 29. K.S.A. 38-1503, 38-1524, 38-1529, 38-1531, 38-
28 1566, 38-1568 and 75-3329 and K.S.A. 1999 Supp. 38-1502, 38-1507, 38-
29 1513, 38-1532, 38-1542, 38-1543, 38-1544, 38-1562, 38-1563, 38-1565,
30 38-1581, 38-1583, 38-1584, 38-1585 38-1587, 38-1591 and 60-
31 1610 are hereby repealed.

32 Sec. 30. This act shall take effect and be in force from and after its
33 publication in the statute book.

03/14/2000

9-41

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SENATE WAYS & MEANS COMMITTEE

Testimony on Senate Bill 602
by
Senator Tim Huelskamp

March 16, 2000

Mr. Chairman and members of the Senate Ways and Means Committee: It is a pleasure to be here this morning to testify on behalf of SB 602, which I have named the "Good Neighbor" bill.

In summary, Senate Bill 602 has three basic common sense requirements that our state agencies would have to fulfil before acquiring an interest in any real property:

1. Conduct a study to identify the impact or restrictions this purchase may have on neighboring properties.
2. Share a summary of the study with our potential neighbors.
3. Have an open hearing for public comment on the proposed purchase.

As you can see from these simple requirements, this bill is not offered as a stranglehold on state purchases. Rather, SB 602 is simply a means to make sure we are a "good neighbor." And in the end, with more open discussion and opportunity for public comment, I believe Kansans will become more trusting of the actions of our state government.

Let me give you a couple of examples that could occur or are about to occur under current law. The first potential example has to do with road or construction or improvements. It is possible, and has happened, that the construction or rebuilding of a transportation project could alter drainage

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in a particular area. The resulting changes in drainage could then cause serious erosion on neighboring land owners. And to avoid these problems, the adjoining land owners would thereby be forced to make structural changes to accommodate the new drainage. In the end, the purchase and use of this property would force costs onto these innocent land owners.

A second potential example, perhaps more costly, involves significant environmental issues. Let's say that an agency would like to purchase land for the construction or restoration of a wetland. If the land is converted to a wetland, suddenly neighboring landowners will have enhanced environmental regulations with which to contend. As we all know, the federal environmental regulations on wetlands, and the waters which drain into them from adjoining properties, are very stringent. And in effort to meet these new regulations, land use might have to change, fertilizer and herbicide usage decreased or ended, and substantial changes in farming practices required. All of these are costly, and a direct result of having us as a new neighbor.

I offer these examples for one reason -- to indicate that what we do with taxpayer money can have serious ramifications. Purchase and control of property by the state can bring with it serious costs (to use the economic term -- negative externalities) to adjoining properties. That is not being a good neighbor. SB 602 would simply allow our future neighbors to know what will happen before a purchase or control takes place, have a general idea of the potential costs they may incur, and have the public opportunity to comment.

I understand, Mr. Chairman, that the Department of Administration has requested to be exempted from the bill. For the purchase of building in a city or town by the Department, there is already a public opportunity for these discussions to take place -- the local zoning board. I believe that building purchases, especially in Topeka, allow enough opportunity within the local process for public knowledge and comment. I have no problem with exempting these type of situations. (I also have some technical amendments to offer at a later time to clarify some questions about the bill.)

In summary, SB 602 simply reflects what most citizens expect of our state government -- that we be good neighbors. We tell them what we are doing before we acquire property, study how it may affect them, and give them a chance to respond. It is a simple concept -- one of being a good neighbor. I will be happy to stand for questions, Mr. Chairman.

Testimony on Senate Bill 602 - Relating to the Acquisition of Real Property by the State
Ways & Means Committee
Thursday March 16, 2000
Joe Fritton, P.E., Acting Director
Division of Facilities Management
Department of Administration

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide testimony on behalf of the Department of Administration regarding this Senate Bill. My name is Joe Fritton and I am the Acting Director of the Division of Facilities Management. My division assists state agencies in the leasing and acquisition of space. The majority of our work involves office space for state agencies. For example, the Department of Administration recently purchased the Security Benefit Building in Topeka near the Statehouse.

The provisions of Senate Bill 602 require a study to identify the impact of proposed use of acquired property on adjoining real property. When office space is purchased there is little effect on adjoining property owners. The purchase does not result in any kind of initial or annual cost to adjoining property owners. Under Senate Bill 602 if a state agency were to purchase an office building for office space, it would be required to prepare a report on:

- Whether the purchase restricts the adjacent property use;
- Whether the purchase imposes costs on adjacent property owners;

In addition, Senate Bill 602 would require the agency purchasing the building to:

- Mail to each of the property owners adjoining the property a summary of the findings;
- Hold a public hearing.

Because the Division was unsure if the intent of Senate Bill 602 was the case of the acquisition of a building, we contacted both the Senator who introduced the bill and the revisor. Both indicated the bill's focus is areas adjacent to agricultural land. Since the bill's focus is agricultural areas I am asking for consideration of the attached selective amendment to the bill which would exclude building purchases.

I have talked with the Senator who introduced the bill and he is aware of this amendment, which would exclude the acquisition of buildings from the bill. I will be happy to answer any questions.

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SENATE BILL No. 602

By Senator Huelskamp

2-9

11-2

9 AN ACT concerning acquisition of real property by the state; requiring
10 certain studies and reports; requiring public hearings.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) As used in this section, "state agency" means any of-
14 ficer, department, bureau, division, board, authority, agency, commission
15 or institution of this state

; (1)

16 (b) Before any state agency acquires any real property, the agency
17 shall conduct a study to identify the impact of the proposed use of the
18 property on adjoining real property, including, but not limited to: (1) Any
19 new, additional or more stringent restrictions or standards that adjoining
20 property owners will be required to comply with as a result of the pro-
21 posed use of the property; and (2) the initial and annual costs to adjoining
22 property owners to comply with such restrictions and standards. The state
23 agency shall prepare a written report of the results of the study. Such
24 report shall be available for public inspection in the office of the agency
25 and in the office of the county clerk of each county where the real prop-
26 erty is located.

; and (2) "agricultural land" shall have the
meaning ascribed to such phrase in
K.S.A. 2-3402, and amendments thereto

adjacent to agricultural land

27 (c) After the report provided for by subsection (b) is made available
28 for public inspection as required by subsection (b) and before acquiring
29 the real property, the state agency shall hold, in each county where the
30 property is located, a public hearing on the proposed acquisition. At least
31 21 days before the hearing, the state agency shall mail by first class mail
32 to each owner of property adjoining the property proposed to be acquired
33 and shall publish in a newspaper of general circulation in the county a
34 notice of the time and place of the hearing. The notice shall contain a
35 general description of the property proposed to be acquired, the proposed
36 use of the property, a summary of the findings of the study provided for
37 by subsection (b) and a notice that the full report of the study is available
38 in the county clerk's office of each county where the property is located.
39 At the hearing, all interested parties shall be given reasonable opportunity
40 to present their views regarding the acquisition of the property and the
41 proposed use of the property.

adjacent to agricultural land

42 Sec. 2. This act shall take effect and be in force from and after its
43 publication in the statute book.



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
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March 16, 2000

Senator David Kerr, Chairperson
Senate Committee on Ways and Means
Room 123-S, State Capitol Building
Topeka, Kansas 66612

Dear Senator Kerr:

Thank you for the opportunity to provide testimony regarding Senate Bill No. 602. This bill is new legislation pertaining to the acquisition of property by state agencies. The bill would require the Kansas Department of Wildlife and Parks (KDWP) to conduct a study and hold a public hearing prior to acquiring any real property. The required study would identify the impact of the proposed use of the property to be acquired on adjoining property, any restrictions on adjacent landowners that could occur from the KDWP obtaining the property, and the fiscal impact of any such restrictions, if there were any. The completed report would be made available for public inspection at KDWP and in the office of the County Clerk in which the property is to be acquired. In addition, the bill would require KDWP to hold a public hearing in the county in which the proposed acquisition would occur. Adequate notice of the public hearing is required and interested parties would be given reasonable opportunity to present their views regarding the acquisition of the property being considered.

The KDWP is opposed to this bill. The Department is of the opinion that the requirements of this bill are unnecessary and would add additional restrictions to a process which already averages 208 days per acquisition for the Department. In addition, the provisions of SB 602 provide a hindrance to private landowners who may desire to sell property to the state within certain time periods.

Since the provisions of this bill pertain to all state agencies it could have a major impact on the Kansas Department of Transportation. In the case of KDWP, the Department is already restricted by appropriation bill provisos and internal

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policy to acquiring property either adjacent to or within close proximity to existing KDWP properties. In most cases, the majority of the adjacent property will already be owned by the Department or the person who is selling the proposed acquisition to KDWP. In addition, KDWP is required by state law, KSA 32-844, to publish in the Kansas Register notice of any land acquisitions completed by the Department.

As I have stated before, the KDWP only acquires property from willing sellers and restrictions on the ability of a person to sell their property to whom they consider the most appropriate party may be inappropriate. It should also be noted that KDWP is restricted by state law to paying appraised value, as determined by court appointed appraisers, for property it desires to acquire. Required public hearings prior to acquisition would infringe on the privacy rights of the individual selling the property and could have a negative impact on the ability of KDWP to acquire the property for appraised value.

As I have stated before to this Committee, the amount of property that KDWP can acquire is limited by available funding and existing restrictions to minimal amounts. I do not consider it appropriate or necessary to add further restrictions. If you have any questions, please advise.

Sincerely,



Steven A. Williams, Secretary
Kansas Department of Wildlife and Parks

KANSAS DEPARTMENT OF WILDLIFE AND PARKS
Land Acquisition Guidelines and Priorities

Introduction:

Public lands are important to the quality of life in Kansas. They provide Kansans and visitors year-round opportunities for outdoor recreation. Currently, Kansas has less than three percent public land. KDWP currently owns approximately two tenths of one percent of the total land area in the state. We value the traditions and rights of private property ownership, and also the public's need for recreation. Our land acquisition program is based on our mission and state policy (K.S.A. 32-702) which includes providing opportunities for public outdoor recreation. Therefore, we aim land acquisition efforts at preserving and enhancing habitat for fish and wildlife, and public outdoor recreation. Historically, KDWP has had limited appropriations for acquisition and based on the opportunistic nature of property acquisition, these guidelines and priorities were established in 1995 to direct decisions on appropriate acquisitions.

Land Acquisition Guidelines:

- Acquire property only from willing sellers (no condemnation)
- Acquire property at appraised value (three appraiser method)
- KDWP will pay property taxes on acquired property
- Property acquired will be managed by existing personnel
- Acquire property that would enhance and be managed for public recreation and fish and wildlife values (primarily fishing and hunting)
- Acquisition funding sources include: Wildlife Fee Fund, Wildlife Conservation Fund, Playa Lakes Fund, Duck Stamp Fund, grants, donations (no State General or Park Fee Fund)
- Adhere to pertinent legislative proviso language

Land Acquisition Priorities:

- Properties adjacent or in close proximity to existing KDWP properties
- Properties with critical habitat values (threatened or endangered species habitats)
- Properties that have unique features of value to current and future generations
- Properties that have wetland values

Restrictions in place for FY2000 Acquisitions (appropriation act provisos):

- Wetland Acquisition Funds
 - properties in Barton or McPherson Counties
 - 1989 SCS wetland definition
 - within 1.1 miles of current KDWP property
- Playa Acquisition Fund
 - no groundwater pumping for newly acquired playas

SAW 9/3/99

K.S.A. 32-702. Policy statement. It shall be the policy of the state of Kansas to protect, provide and improve outdoor recreation and natural resources in this state and to plan and provide for the wise management and use of the state's natural resources, thus contributing to and benefitting the public's health and its cultural, recreational and economic life. For these purposes, the secretary, the commission, and the department are hereby vested with the duties and powers hereinafter set forth.



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E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor

**TESTIMONT BEFORE
SENATE WAYS & MEANS COMMITTEE**

**REGARDING SENATE BILL 602
ACQUIRING ANY REAL PROPERTY**

March 16, 2000

Mr. Chairman and Committee Members:

I am Dean Carlson, Secretary of the Department of Transportation. On behalf of the Department, I am here today to testify on Senate Bill 602 regarding acquiring any real property.

The proposed legislation would require all agencies to conduct a study before acquiring any real property. The purpose of the study is to identify the impact of the proposed use of the property to be acquired on the adjoining real property. The study must include, but is not limited to, (1) any new, additional or more stringent restrictions or standards that adjoining property owners will be required to comply with as a result of the proposed use of the property, and (2) the initial and annual costs to adjoining property owners to comply with such restrictions and standards.

During the recently completed Comprehensive Highway Program, over 1,000 tracts of land per year were purchased in the peak years. The Department anticipates that over 1,000 tracts per year will need to be acquired during some years of the current Comprehensive Transportation Program. The time, money, and personnel resources needed to simply identify the adjoining owners would be substantial. The studies, mailings of notices, and conducting public hearings would entail a significant commitment of limited resources. In every instance that I can envision, the Kansas Department of Transportation (KDOT) would be reporting that the study did not identify any impacts mentioned in subsection (b) on the adjoining property. The bill requires the study, notice, and public meeting regardless of how much property is being acquired, even if there is only one tract.

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KDOT already conducts numerous studies as part of the preconstruction process of project development. Environmental, archaeological, and historical assessments are conducted on major projects, and public meetings are conducted to seek public input and to inform interested parties of proposed projects. Adjoining property owners are afforded timely opportunity to learn of any impact on their property at these public meetings, and questions and feedback from all interested parties is encouraged throughout the project development stage. Owners of property to be acquired are contacted by appraisers, negotiators, and, if necessary, relocation specialists as part of the acquisition process. In the case of partial acquisitions, a determination is made as to damages, if any, to the remainder.

In recent years, KDOT has placed increased emphasis on public involvement. I believe that current procedures address whatever concerns caused this legislation to be proposed. Enactment of this bill would significantly increase the cost of projects and the time it takes to get them ready for construction, jeopardizing the successful completion of the Comprehensive Transportation Program.

In summary, the proposed bill would require excessive duplication of current project development procedures and would significantly increase the costs of project development with no apparent value added for the citizens of Kansas. I am therefore in strong opposition to SB602.