Approved: 3-2-05
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 16, 2005 in Room 313-S of the Capitol.

All members were present except:
Dean Newton- excused
Delia Garcia- excused
Jeff Jack- excused
Ward Loyd- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Randy Hearrell, Kansas Judicial Council
Professor Rick Levy, Kansas Judicial Council, Juvenile Offender & Child in Need of Care Advisory Committee
Representative Frank Miller
Michael Grosko, District Court Judge, 29th Judicial District
Shannon Jones, Statewide Independent Living Council

The hearing on **HB 2352 - revised Kansas code for care of children**, was opened.

Randy Hearrell, Kansas Judicial Council, reported that most of the bill was conforming to current statutes. There were several conferees proposing amendments and while the Judicial Council had viewed them they requested that they would like to study the proposed amendments a little bit more and would like to help with the placement of the amendments into the bill.

Professor Rick Levy, Kansas Judicial Council, Juvenile Offender & Child in Need of Care Advisory Committee, appeared in support of the proposed bill.(Attachment 1) The Judicial Council undertook the project of reworking the Code for Care of Children to protect children and strengthen families. He stated that there are three types of changes: technical changes, organizational changes and substantive & procedural changes. He spoke mostly on the substantive & procedural changes, of which there are six:

- Adoption & Safe Families Act Compliance - the federal Adoption and Safe Families Act requires a determination that removal is justified either because efforts to preserve the family have failed or because an emergency exists requiring the immediate removal of the child from the home.

- Notice & Service of Process - the current Code requires service of process twice. The committee proposed allowing the state, after the first service of process at the outset of the proceedings, to provide subsequent notice of further proceeding by first class mail. The first notice would provide full notice that there could be the possibility of termination and the need for parents to keep the court aware of their current mailing address.

- Parties, Interested Parties and Attendance at Hearings - the committee distinguished between "parties" who would be those who are directly affected by the outcome of the proceeding and "interested parties" are those who have a recognized interest in the will being of the child, such as a grandparent.

- Dispositional Hearings & Termination of Parental Rights - the committee sought to clarify the delineation of factors to be considered in dispositional hearings, clarify the relationship between disposition & termination and to make the transition from one phase of the process to another clearer.

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 16, 2005 in Room 313-S of the Capitol.

- Permanency Planning - several provisions were added to expedite the process

- Permanent Custodian - would be used instead of "permanent guardian". The permanent guardian would have rights of a parent concerning the child, but would allow the parents to retain some rights if they have not been terminated. The committee believed that it is in the best interest of the child to maintain some type of relationship with their parent.

Representative Frank Miller appeared before the committee to request an amendment which would "allow a member of the House or Senate to attend proceedings upon the request of a parent or guardian of the child or their attorney to observe any hearing." (Attachment 2)

Michael Grosko, District Court Judge, 29th Judicial District, proposed three amendments:

1. On page 37, lines 40-44 change the requirement that adjudication must be made from 60 days to 90-120 days. The average time it takes for the adjudication in 88 days.
2. Delete on page 8, lines 20-22 the sentence that gives the court the discretion of appointing an attorney for any interested party. If left in the proposed bill it would costs the counties millions of dollars. Chairman O'Neal reminded him that the appointment of an attorney was totally up to the judges.
3. He disagreed with allowing the foster care reports to be open. He suggested that they should remain closed.

Shannon Jones, Statewide Independent Living Council, appeared before the committee with proposed amendments and was also concerned as to how the bill would impact parents with disabilities. She requested that the committee do an interim study on the proposed bill or if it was on a fast track consider amending in **SB 230** into the bill. (Attachment 3)

Written testimony in support of the bill was provided by Kansas Department of Social & Rehabilitation Services and Kansas Juvenile Justice Authority (Attachments 4 & 5)

The hearing on **HB 2352** was closed.

The committee meeting adjourned at 5:15 p.m. The next committee meeting was scheduled for February 17, 2005 at 3:30 p.m. in room 313-S.

February 16, 2005

JUDICIAL COUNCIL TESTIMONY ON 2005 H.B. 2352

THE REVISED KANSAS CODE FOR CARE OF CHILDREN

House Judiciary
2-16-05
Attachment 1

TABLE OF CONTENTS
FOR
2005 H.B. 2352

General Comments to
Revised Kansas Code for Care of Children

BACKGROUND

Near the end of the 2000 Legislature the Senate passed Senate Resolution No. 1862 which was a resolution establishing a study group to make recommendations as to the Kansas Juvenile Offenders Code and the Kansas Code for Care of Children.

The Legislative leadership subsequently decided that rather than establish the group contemplated by the resolution, that it would request that the Judicial Council undertake a study of the Kansas Juvenile Offender's Code and the Kansas Code for Care of Children. The Judicial Council agreed to undertake the study and appointed the Juvenile Offender/Child in Need of Care Advisory Committee to conduct the study. The members of the Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee are:

Honorable C. Fred Lorentz, Chair, Fredonia. Judge Lorentz is a district judge and member of the Judicial Council.

Senator Barbara P. Allen, Overland Park. Senator Allen is a state senator and member of the Senate Judiciary Committee.

Charles H. Apt, III, Iola. Mr. Apt is a practicing lawyer who practices in the juvenile area and has extensive experience as a guardian ad litem.

Wade H. Bowie, Jr., Topeka. Mr. Bowie is an attorney for the Kansas Juvenile Justice Authority.

Honorable Kathryn Carter, Concordia. Judge Carter is a district magistrate judge.

Senator Greta Goodwin, Winfield. Senator Goodwin is a state senator and ranking minority member of the Senate Judiciary Committee.

Donald W. Hymer, Olathe. Mr. Hymer is an assistant district attorney in Johnson County and practices exclusively in the area of juvenile law. He is a frequent presenter at continuing legal education programs on juvenile law and related subjects.

William E. Kennedy, III, Manhattan. Mr. Kennedy is County Attorney in Riley County and handles the juvenile matters in that office.

Representative Brenda Landwehr, Wichita. Representative Landwehr is state representative from Wichita and Vice-Chair of the Joint Committee on Children's Issues.

Professor Richard E. Levy, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

Sue Lockett, Topeka. Mrs. Lockett has served as Executive Director of C.A.S.A. of Shawnee County for a number of years.

Roberta Sue McKenna, Topeka. Mrs. McKenna was previously an attorney for Children and Family Policy with Kansas Department of Social and Rehabilitation Services and is now the Assistant Director for Foster Care and Adoption.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

Senator Edward W. Pugh, Wamego. Senator Pugh is an attorney, state senator and vice-chair of the Senate Judiciary Committee. Senator Pugh is the sponsor of the resolution that led to the creation of the committee.

Honorable Steven M. Roth, Westmoreland. Judge Roth is an attorney and is a district magistrate judge in Pottawatomie County.

Donavon Rutledge, Topeka. Mr. Rutledge is the recently retired Director of Evaluation and Program Improvement for the Kansas Department of Social and Rehabilitation Services. Previously Mr. Rutledge taught in the School of Social Work at Wichita State University.

Sarah Sargent, Topeka. Ms. Sargent is an attorney for the Kansas Children's Service League.

Honorable Jean F. Shepherd, Lawrence. Judge Shepherd is a member of the Judicial Council and a district judge, and handles juvenile matters in Douglas County.

The Committee also acknowledges the contributions of Representative Kathe Decker, Michael George, Lisa Mendosa and Helen Pedigo, who served on the Committee but are no longer members.

OVERVIEW OF PROPOSALS

The Advisory Committee on Juvenile Offender and Child in Need of Care Reform and the Judicial Council propose a substantial revision of the Child in Need of Care Code. The Committee believed that a comprehensive reworking of the code was necessary for a number of reasons. First, while the code was reasonably well organized and accessible as originally drafted, over the years since its adoption in 1982, it has been repeatedly amended. Over time the code has therefore become increasingly disorganized and difficult to use. Second, changes in the background law and standard child welfare practices have made some of the terminology and requirements of the current code outdated and inappropriate. Third, years of experience have revealed some aspects of the code that remain unclear or do not work well and should be changed in order to improve outcomes for children and families.

In revising the code, the Committee sought to achieve several interrelated goals. Most important, the committee sought to rework the code so that the state could achieve, to the extent possible, the code's underlying policies, which are articulated in proposed section 1. Of primary concern in this regard is the protection of children against physical and emotional harm and the preservation and strengthening of families. The committee also sought to make the code as "user friendly" as possible. To this end, the committee engaged in extensive reorganization of the code as a whole and of specific code provisions so that code followed a logical progression and related provisions could be found together in one place. In addition, the committee sought to clarify and simplify language whenever possible, use the correct terminology consistently throughout the code, and to resolve ambiguities in current law. These goals have led the committee to propose several types of changes.

- **Technical Changes:** Most of the changes proposed by the committee are technical in nature. These technical changes are intended to clarify the law without effecting significant changes in it. Technical changes include changes in terminology, phrasing of particular provisions, incorporation of cross references, and similar matters. The specific comments accompanying code provisions do not attempt to identify or explain all of the technical changes.

- **Organizational Changes:** Many changes proposed by the committee are organizational. They involve moving sections around within the code, moving material from one section to another, or consolidating related provisions in new sections. Like the technical changes, these organizational changes do not, of themselves, alter the content of the current law. Because these changes are less numerous and more significant than the technical changes, whenever possible the comments accompanying the individual sections identify organizational changes and explain the committee's rationale. Many organizational changes are accompanied by substantive and procedural changes in current law, which are discussed separately.

- **Substantive and Procedural Changes:** Although the committee's proposals do not contemplate fundamental changes in the current CINC system, the proposals do include a number of procedural and substantive changes. These changes range from some that are very minor to others that have more significant policy implications. These changes are highlighted in the comments that accompany individual sections of the code, which also explain the committee's rationale for proposing such changes. The following brief summary of the more significant procedural and substantive changes is offered to facilitate legislative consideration of the committee's proposals.

  1. Adoption and Safe Families Act Compliance: The federal Adoption and Safe Families Act (ASFA) imposes certain requirements on the state as a condition of receiving federal funding. Of particular importance is the ASFA requirement that state must make certain findings before removing a child from the home. These requirements must be met on first removal of the child from the home, which may include very preliminary and temporary removals. In general terms they require a determination that removal is justified either because efforts to preserve the family have failed or because an emergency exists requiring the immediate removal of the child from the home. Although

requiring these determinations is not inconsistent with Kansas law, the current code does not specify the findings that need to be made or the circumstances under which they are necessary in a way that ensures compliance with ASFA. The committee has added ASFA compliant language at various places in the code. Some provisions have also been changed in order to comply with other requirements of ASFA

Affected Provisions: Sections 37, 38, 46, 50, 53 and 54.

2. Notice and Service of Process: One recurrent problem in CINC proceedings is the delay caused by serving process on absentee parents. While service of process and adequate notice are to permit parents to protect their rights and interests, the committee believes that the current code unnecessarily requires service of process twice: once at the outset of proceedings and a second time if the proceedings move to a termination phase. Because the requirements for service of process on an absentee parent often take some time to complete, delaying the placement of the child in an appropriate and permanent living arrangement. If the absentee parent was not located at the outset of the proceedings and was served by publication notice, requiring a second service of process involving due diligence and eventually publication notice is both lengthy and unlikely to provide any additional notice to the absentee parent. So long as a parent, once found, is given adequate notice of the subsequent phases of the proceeding, further service offers no greater protection of the parent's right. The committee therefore proposes changes that would allow the state, after service of process at the outset of the proceedings, to provide subsequent notice of further proceedings, including termination proceedings, by first class mail. Because the original service of process would provide full notice of the possibility of termination and of the need for a parent to keep the court informed of his or her mailing address, the committee believes that this approach will more than adequately protect the rights of the parent while facilitating the prompt disposition of the case, which is of vital importance to the child.

   Affected Provisions: Sections 29, 31, 32, 34 and 62.

3. Parties, Interested Parties, and Attendance at Hearings: Currently, the status and role of various interested parties is a source of confusion and uncertainty. Current provisions of the code also restrict the categories of persons who may be made interested parties in a way that prevents some people with important interests from participation in a CINC proceeding. The committee sought to address these concerns by distinguishing between two groups of participants. First, the "parties" are those who are necessarily directly affected by the outcome of the proceeding, including the child, the parents, the petitioner, and the state, whose position is analogous to parties in traditional civil litigation. Second, "interested parties" are those who have a recognized interest in the well-being and potential placement of the child involve in the proceedings, including grandparents, persons with whom the child has been living, and others with a significant relationship to the child. The committee believes that rights, duties, and participatory roles of these two groups are distinct and warrant separate treatment. In most places throughout the code, the committee substituted the phrase "parties or interested parties" for the term

"interested parties." In some instances, the committee used the term "parties," excluding persons who are interested parties under the new terminology. In addition, the committee believes that there are substantial benefits to be obtained from opening public access to CINC proceedings in the adjudicatory phase, provided that this will not harm the child, and incorporated provisions making that possible.

Affected Provisions: Sections 36 and 42.

4. Dispositional Hearings and Termination of Parental Rights: The committee believes that the current process for dispositional hearings, determinations of fitness, and termination of parental rights is unnecessarily confusing and unclear, with the result being needless delays and, at times, improper orders. The committee sought to clarify and improve the delineation of factors to be considered in dispositional hearings, clarify the relationship between disposition and termination, and make the transition from one phase of the process to another clearer.

   Affected Provisions: Sections 48, 50 and 62.

5. Permanency Planning: The committee added several new provisions related to permanency planning and procedures to assess progress on those plans. When a child has been removed from the home, time is of the essence. Whether the goal is reintegration or it becomes necessary to terminate parental rights, the uncertainty of temporary placements, the impediment to developing healthy emotional relationships to parents or other caregivers, and the dislocations that comes with changes of placement are all harmful to the child. These concerns are magnified because children experience time differently than adults. Thus, unnecessary delays must be avoided at all costs. The provisions on case and permanency planning have therefore been reworked to expedite this process.

   Affected Provisions: 52, 58, 59 and 60.

6. Permanent Custodian: The committee proposes a new kind of permanent caregiver for a child, replacing the current "permanent guardian," which the committee has called a "permanent custodian" to avoid confusion. The critical feature of this relationship is that appointment of a permanent custodian does not always require termination of parental rights. While a permanent custodian would have virtually all the rights of a parent concerning the child, if parental rights have not been terminated the parent may retain some rights, such as the right to consent to an adoption. This feature is designed to permit a parent to preserve some relationship with the child, to the extent that the custodian deems it to be in the child's best interest. The committee believed that this possibility might induce some parents to consent to the appointment of a permanent custodian without the need for a full termination hearing. The committee also believes that it is often in a child's best interest to maintain some relationship with a parent even though that parent is not capable of taking care of the child.

Affected Provisions: Sections 61, 62, 63, 64 and 67.

Section 1
COMMENT

Section 1 has been rewritten to provide a more comprehensive and systematic statement of the policies of the code and to consolidate that statement in a single provision. It also includes the first paragraph of current K.S.A. 38-1521, concerning the state's policy relating to reporting of abuse, and language from current K.S.A. 38-1584(a), which relates to the termination of parental rights. The policies reflected in all three of the provisions have been retained. Policy statement number 2 has been expanded to include language about recognition of the importance of the child's relationship with his or her family. See In the Matter of T.S., 276 Kan. 282, 74 P.3d 1009 (2003).

Section 2
COMMENT

Section 2 which contains the CINC Code definitions has been reorganized by placing the definitions in alphabetical order. The committee made some technical and stylistic changes to existing definitions that will not be discussed separately. Except as described below, the substance of the definitions remains unchanged.

Additions

Subsection (d)(13) has been added to the definition of a "child in need of care" to clarify that when a permanent custodianship fails a new CINC case is filed.

Subsection (e), defining a citizen review board by cross referencing relevant statutes, has been added.

Subsection (k) has been added to define the term "harm," which is now used in the definition of the term physical, mental, or emotional abuse in new subsection (x). (See comment on subsection (x), below.)

Subsection (u) has been added to define the term "party," in keeping with the committee's proposal to distinguish between parties (which include the state, the petitioner, the child, and the parents) and "interested parties" which include other persons with a significant interest in a child in need of care proceeding. The status of parties and interested parties is further specified in proposed section 36.

Changes

New subsection (l), which defines "interested parties," has been changed by eliminating references to persons having the status of parties under proposed subsection (u) and adding a cross reference to proposed section 36, which further specifies their status. Interested parties include grandparents, persons with whom the child has resided for a significant time within six months of the filing of the CINC petition, and other persons made interested parties by the court.

In new subsection (w), the term "permanent guardianship" was replaced with the term "permanent custodian," in keeping with the committee's proposal to rename and specify this relationship and to avoid confusion with other forms of guardianship. *See* proposed section 67 and comments thereto. The phrase "without ongoing state oversight or intervention by the secretary" was stricken because there is such oversight by some courts for a period of time and they would not appoint a permanent custodian if this were not the case. The last three sentences were stricken because they contain matters that should be in the substantive provisions of the statute. These matters are now specified in proposed section 67.

In new subsection (x), the definition of "physical, mental or emotional abuse" has been altered to reference the infliction of physical, mental, or emotional "harm" rather than "injury." It was the opinion of the committee that the term "injury" was sometimes misinterpreted to impose an excessively high threshold of damage, leaving too many children unprotected.

In new subsection (cc), the definition of "sexual abuse" has been rewritten by replacing references to specific criminal acts in the current law with a general definition. It is the opinion of the committee that sexual abuse for purposes of CINC proceedings should not be limited to criminally defined sexual abuse.

Deletions

Old subsection (l), which defined "ward of the court," has been stricken. It is the opinion of the committee that the phrase is confusing because it implies a status for the child but is defined in terms of jurisdiction. Where that phrase appears in the code the phrase "child subject to jurisdiction of the court" will replace it.

Old subsection (y), which defined "Permanency hearing" was stricken because the nature and content of such hearings is specified in new section 58 and a definition is unnecessary. Most of the language in old subsection (y) was a statement of substantive matters which should be addressed in the substantive provisions of the statute.

Old subsection (dd), which defined "community services team" was deleted because the term is not used elsewhere in the proposed code. It was the committee's understanding that in practice such teams are not used and their functions are performed by "multidisciplinary teams."

Section 3
COMMENT

In subsections (a), (b), and (c) some language has been rewritten for clarity.

Subsection (c) also has been reworked to specify that a child's request for jurisdiction to terminate shall be in writing, to require that the court give notice of the request to all parties and interested parties, and to provide for automatic termination of jurisdiction 30 days after receipt of the request, rather than requiring a court to enter an order discharging the child from further jurisdiction.

Subsection (d) has been amended to require that, before the court discharges the child from jurisdiction, it must hold a hearing or all the parties must agree. The agreement of interested parties is not required. Subsection (d) has also been amended to specify more clearly the circumstances under which a court may not enter an order discharging a child without the child's consent.

Old subsection (e) has been stricken because it speaks to the transitional period when this code took effect and is no longer necessary. New subsection (e) was previously K.S.A. 38-1515. It is the opinion of the committee it is more logically a part of this section.

Section 4
COMMENT

Subsection (b) has been amended by using the phrase "any party or interested party" to describe who may make the application for a change of venue. The other changes to this provision are technical and for purposes of clarification.

Section 5
COMMENT

Former subsections (b) and (c) have been combined into proposed subsection (b) and new subsection (c) was added to specify the right of interested parties to be represented by counsel at their own expense. A court is authorized but not required to provide counsel at state expense for interested parties with whom the child was living for a significant period of time in the six month period before the filing of the petition. It was the opinion of the committee that such persons, which may include grandparents and other close relatives, often have a particularly strong relationship with the child, the continuation of which should receive particular attention.

Other changes made in this section are for either simplification of language or structure or clarification.

Section 6
COMMENT

The language at the beginning of subsection (a) and all of subsections (c) and (d) have been stricken as unnecessary.

Section 7
COMMENT

Section 7, relating to citizen review boards, previously appeared at K.S.A. 38-1812 and was not a part of the Kansas code for care of children. The Committee was of the opinion that the statutes relating to citizen review boards should be a part of the revised Kansas code for care of children. The only change from the current statute is technical.

Section 8
COMMENT

Section 8, relating to citizen review boards, previously appeared at K.S.A. 38-1813 and was not a part of the Kansas code for care of children. The Committee was of the opinion that the statutes relating to citizen review boards should be a part of the revised Kansas code for care of children. A similar statute will be included in the revised Kansas juvenile offender code. The only changes from the current statute were made to remove reference to juvenile offenders or are technical.

Comment Regarding Confidentiality Sections

K.S.A. 2004 Supp. 38-1505b and 38-1505c were enacted and K.S.A. 2004 supp. 38-1506, 38-1507 and 38-1508 were amended by the Legislature in 2004 HB 2742. These sections are not amended or repealed by this bill. The sections are a part of the proposed Revised Kansas Code for Care of Children and when the code is enacted, the Revisor of Statutes will transfer the sections to the appropriate places in the revised code.

Section 9
COMMENT

The language of this provision has been amended to reflect current practice, in which a county or district attorney participates at all stages of a CINC proceeding.

Section 10
COMMENT

This provision remains substantially unchanged, except for a minor change in subsection (c) for purposes of clarity.

Section 11
COMMENT

References to the state social welfare fund have been removed from subsections (a)(2) and (c) because the language is outdated and the reference to the secretary is sufficient. The reference in subsection (c) to K.S.A. 39-718a has been removed because that section has been repealed.

Section 12
COMMENT

This provision was reworked somewhat to clarify the authority of child's custodian to consent to medical care and treatment and to consent to the disclosure of medical records: Subsection (a)(3) has been reworded to give the custodian legal authority at any time, whereas former section (a)(3) applied only prior to disposition. Language concerning disclosure of medical records has been added to both subsections (a)(3) and (a)(4) so as to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996. Subsection (a)(5) was deleted as unnecessary in light of other provisions in subsection (a).

Subsection (b) was amended to add references and citations to the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem to the existing language, which refers only to the Care and Treatment Act for Mentally Ill Persons.

Additional changes are for purposes of clarity. Subsection (a) (1) was amended to replace the word "maltreated" with the phrase "abused or neglected" because the term maltreated is not defined in the code. Subsection (a)(2) was amended by changing the phrase "a ward of the court" to "child who is subject to jurisdiction of the court." *See* Comment to proposed section 2..

Section 13
COMMENT

This provision has been amended for purposes of clarity by striking unnecessary language.

Section 14
COMMENT

This section has been reorganized to clarify the kinds of reports and evaluations that may be ordered by the court and the manner in which they may be considered. Subsection (a) deals with evaluations of the child, subsection (b) deals with physical, psychological, and emotional evaluations of the parent or custodian, and subsection (c) deals with evaluation of the parent's or custodian's parenting skills.

Subsection (a)(1) was amended to allow any party or interested party to make a motion to the court for an evaluation and written report of the psychological or emotional development or needs of the child. It was the committee's view that parties and interested parties may have information warranting an evaluation that might not otherwise come before the court. The decision whether to order an evaluation remains with the court.

Subsection (a) (3) has been amended to add a permanent custodian to the list of persons who may attend a child's educational assessment meeting.

Existing subsection (b) has been amended to allow the judge to order an evaluation of any person residing with a parent and of any person being considered for custody. The committee believes that because such persons may be living with the child, their psychological and emotional status may be highly relevant to the disposition of the case. Subsection (b)(1) has been further amended by striking the last sentence and reinserting it as new subsection (d). Existing subsection (b)(2) has been moved to subsection (c) and expanded to permit a report on parenting skills at any time during proceedings.

Subsection (d) Clarifies that all evaluations (including those of the child) will be considered.

Subsection (e), concerning confidentiality of reports, carries forward current subsection (c) with minor technical changes.

38-1515
COMMENT

This section has been moved to subsection (e) of K.S.A. 38-1503.

Section 15
COMMENT

The proposed changes to this section are intended to simplify the language of the provision without changing its meaning.

38-1517
COMMENT

This section was moved to subsection (a) of K.S.A. 1528, which relates to taking a child into custody, in order to consolidate provisions relating to taking a child into custody. This is especially important in order to ensure compliance with ASFA, which requires that certain findings must be made before removing a child from the home.

Section 16
COMMENT

This subsection has been amended to reflect sound child welfare practices by allowing fingerprints and photographs to be used for the benefit of the child. A definition of photograph has also been added to ensure that the provision applies as new technology develops.

38-1519
COMMENT

This provision (and section 38-1520) have been stricken as unnecessary because other information gathering systems currently in place are more extensive. These include the SRS information system (required by federal law) and the Kansas Court Improvement Project. The KBI has no objection to striking these sections.

38-1520
COMMENT

This provision (and section 38-1519) have been stricken as unnecessary because other information gathering systems currently in place are more extensive. These include the SRS information system (required by federal law) and the Kansas Court Improvement Project. The KBI has no objection to striking these sections.

Section 17
COMMENT

The first paragraph was moved to Section 1 and rewritten. It is the opinion of the Committee that there should be a single comprehensive statement of policy at the beginning of the code. (*See* comment to section1). The second paragraph was rewritten to give SRS the duty to conduct a public information and educational program, but to leave discretion with the Secretary as to how such program should be conducted.

Section 18
COMMENT

In reworking this section, an overriding concern for the committee was that too many cases of child abuse remain unreported. In the absence of reports, the Department of Social and Rehabilitation Services and law enforcement agencies cannot fulfill their duty to protect children. Thus, the committee made organizational and substantive changes designed to promote compliance with reporting obligations.

The committee considered a clear understanding of reporting obligations to be an essential prerequisite, and therefore reorganized this section for purposes of clarity. Existing provisions have been rearranged into four subsections, each of which addresses a distinct aspect of reporting obligations. Subsection (a) addresses who reports; subsection (b) addresses the form and content of the reports; subsection (c) addresses to whom the report should be made; subsection (d) addresses reporting of information concerning the death of a child; subsection (e) addresses the penalties for violation; and subsection (f) provides immunity for good faith reporting. To provide further clarity, in subsection (a), the various categories of individuals required to make reports have been grouped thematically in separate subparagraphs of paragraph (a)(1).

The committee also proposes several modest substantive changes. First, the term injury or injured has been replaced throughout this provision with the term "harm." This change corresponds to the definition of abuse (*see* comment to section 2) and reflects the concern that the terms "injury" or "injured" are too often misinterpreted to require serious physical harm before abuse is to be reported. Second, several additional categories of personnel involved with law enforcement and the juvenile justice system were added to the list of required reporters in (a)(1)(D). The committee believed that these individuals may often be in position to become aware of child abuse, and that, given their official duties, they should be required to report it when they do. Third, the committee deleted a provision directing staff members at medical facilities to report through the superintendent, manager, or other person in charge of the institution. The committee believes that medical staff personnel have an obligation to report directly to the Secretary or law enforcement and that adding an intermediate step increases the likelihood that a report of child abuse will not be made.

Subsection (f) is a rewritten version of current K.S.A. 38-1526. It is the opinion of the committee that this provision belongs in the same section as other provisions dealing with reporting of child abuse and neglect.

Section 19
COMMENT

This section currently appears at K.S.A. 38-1525 and has been moved because it is closely related to the surrounding provisions. As has been done throughout the code, the word "injury" has been replaced by the word "harm" to clarify that damage to a child may be other than a visible physical injury. The remedy provided in this provision is not intended to be an exclusive remedy.

Section 20
COMMENT

Most of this section has been stricken as unnecessary. The regulations covered are now in place and detailed provisions as to their content are no longer needed. Subsection (b) is now covered by section 38-1522(c)(2).

Section 21
COMMENT

Subsection (a) of this section has been amended to facilitate the secretary's role in investigating allegations of abuse and in protecting children. The secretary is authorized to investigate and take action whenever necessary to protect not only the child who is subject of the report, but other children who may be in the home or otherwise subject to abuse and neglect by adults who are the subject of the report. For the same reason, the committee has stricken language precluding an investigation after the alleged victim has turned 23. In some instances, evidence of abuse and neglect concerning a victim who is now over the age of 23 may indicate that another child is in danger of abuse or neglect, and the committee believed that the secretary and law enforcement agencies should not be precluded from investigating in such cases. Finally, new language has been inserted into subsection (a) to require persons or agencies, upon proper notification, to provide records relevant to the investigation of a report of child abuse or neglect.

Subsection (b) has been amended to provide for free sharing of information between the secretary and law enforcement agencies when they are engaged in a joint investigation and to explicitly cross reference the provision on free sharing of information, K.S.A. 2004 Supp. 38-1505c.

Subsection (c) has been amended to read that investigations in cases involving alleged abuse or neglect occurring in SRS institutions are conducted by attorney general (removing "an agent under the direction of the") and that investigations of alleged abuse or neglect by SRS personnel should be conducted by the appropriate law enforcement agency (removing "under the direction of the appropriate county or district attorney"). The committee considered the stricken language unnecessary because investigations by the attorney general are in practice conducted by agents and investigations by law enforcement agencies are always subject to supervision by the local county or district attorney.

Subsection (g) has been amended to clarify that the secretary or law enforcement personnel have responsibility for determining who may attend an interview on school grounds with a child concerning alleged abuse and neglect. Language has also been added to confirm that the investigating agency may request the presence of school personnel to comfort the child and facilitate the interview.

Subsections (h), (i), and (j) have been moved to new section 24 and combined with nearly identical subsections (d), (e), and (f) of current K.S.A. 38-1523a.

Section 22
COMMENT

The section has been moved from former section 38-15,101. The committee believed that this was a more logical placement for the provision, near to provisions concerning multidisciplinary teams. Although the provision is essentially unchanged, the committee struck the last sentence of subsection (a)(5) and all of subsection (c) as unnecessary.

Section 23
COMMENT

Subsection (a) has been amended to provide the court with the broadest possible discretion to appoint a multidisciplinary team on its own motion or on request of anyone involved in the process. The subsection has been further amended to make explicit the current practice of permitting appointment of an individual or standing team to make recommendations regarding all children alleged or adjudged to be in need of care, not just those who are victims of abuse or neglect.

Subsection (b) has been combined with subsection (a).

Subsection (c) has been stricken as unnecessary.

Subsections (d), (e), and (f) have been stricken in their entirety and moved to a new section 24 where they have been combined with nearly identical subsections (h) (i) and (j) of current K.S.A. 38-1523.

Section 24
COMMENT

New section 24 combines subsections (h), (i), and (j) of current K.S.A. 38-1523 with nearly identical subsections (d), (e), and (f) of current K.S.A. 38-1523a. By combining the these provisions into a single new section, the provisions regarding disclosure of information and procedures for requesting or quashing a subpoena are made easier to find in the statute, minor differences in wording between the two previous subsections have been reconciled, and redundancy in the code has been eliminated.

Some minor changes to the wording of the section have been made for purposes of clarity.

Section 25
COMMENT

Subsection (a) has been stricken because its first sentence is covered in greater detail in new section 21 and its second sentence has been relocated to new section 26. Some minor technical changes have been made to the language of former subsection (b), which now constitutes the entire section.

38-1525
COMMENT

This section has been moved to new K.S.A. 38-1522a.

38-1526
COMMENT

This section has been stricken. Its language was rewritten and moved to new K.S.A. 38-1522(f).

Section 26
COMMENT

Subsections (a) and (b) have been amended to provide that a law enforcement officer or court services officer "shall" take a child into custody under the specified circumstances. This language reflects the committee's view that there is a duty to take the child into custody under the specified circumstances and the matter is not properly one for discretionary judgments.

Former subsections (b) and (c) have been rewritten and combined under subsection (b)(1) and (2). The language of (b)(1) (formerly (b)) has been substantially reworked. It requires the

officer to take a child into custody whenever the officer "reasonably believes" the child will be harmed if not immediately removed. This language eliminates the requirement of the prior law that there must be probable cause to believe the child is a child in need of care, which the committee believes should not be an additional requirement that might in some circumstances prevent the removal of a child from a place of danger. "Reasonably believes" means that the officer in fact believes that the child will be harmed if not immediately removed and that this belief is objectively reasonable in light of the facts known or that should be known to the officer. This language complies with the requirements of ASFA.

New subsection (c) is former K.S.A. 38-1530. It was moved to this provision because the committee believes that its subject matter is in keeping with the other provisions of this section.

Subsection (d) has been rewritten for clarity and to incorporate a cross reference to the officer's duty under section 27(g) to deliver the child to school if taken into custody for truancy.

Section 27
COMMENT

Most of the changes to this section are technical and for purposes of clarity. New language inserted in subsection (a) was previously found in K.S.A. 38-1517 and was moved to this subsection in order to consolidate provisions relating to custody in one section.

Section 28
COMMENT

The changes to this section are technical and for purposes of clarity and do not change its content or meaning.

38-1530
COMMENT

This section was moved, as amended, to new K.S.A. 38-1527(c). (*See* comment to section 38-1727.)

General Comment to Sections 29, 31, 32, 34 and 62:

One of the overarching purposes of the code is to "[a]cknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under the code without unnecessary delay." Current K.S.A. 38-1584(a), (proposed section 1, paragraph 4) Obtaining service of process on an absent parent or alleged parent, however, is often a significant cause of delay, particularly when moving to the termination phases of the proceedings. In particular, "publication notice" is generally time consuming and yet ineffective in providing a parent or alleged parent who could not otherwise be served with any actual notice of proceedings. Under the current provisions of the code, service of process is required once at the initiation of the proceedings and a second time if the proceedings move to a termination phase. K.S.A. 38-1582(a). Of course, ensuring that parents receive notice of proceedings in which their rights may be adversely affected is both essential to a fair outcome and constitutionally required, but the committee believed that the focus of the code should be on providing notice, as opposed to requiring service of process. For that reason, these related provisions have been reworked with the intent of creating a system in which process is served on parents only once, at the outset of a child in need of care proceeding, and subsequent notice is provided through first class mail.

The committee believes that a second service of process is unnecessary to provide fair and adequate notice. The termination of parental rights is the culmination of an ongoing process. It is almost always the result of the same facts supporting a child in need of care adjudication, and arises when there is a failure to complete a reintegration program successfully. Provided that the initial notice makes parents fully aware of the possibility that the proceeding may result in a termination of their parental rights, it is not unreasonable to expect that, if they are properly served at the outset of the proceedings, they will become involved in the proceeding. At a minimum, it is reasonable to require them to keep the court informed of their address if they wish to follow the proceedings and possibly participate at some later phase of the proceedings, such as termination. This system provides parents with sufficient notice to apprise them of the pendency of the action and afford them the opportunity to present their objections. *See In re H.C. and K.S.C.*, 23 Kan App. 2d 955, 958 (Kan. Ct. App. 1997) (defining due process in those terms). Other states have dispensed with a second formal service of process when a case moves to the termination phases. *See In re D.P. and M.P.*, 488 N.W.2d 133 (Wis. Ct. App. 1992); *In re R.E. and T.E.*, 262 N.W.2d 723 (Ia. Ct. App. 1990).

To implement this approach, the committee changed existing provisions in several respects. First, the provisions relating to the initial service of process were reworked to ensure that the initial petition, summons, and published notice would make clear: (1) that the proceeding could result in loss of custody, an order of child support, appointment of a permanent custodian or the termination of parental rights; and (2) that subsequent notice would be provided by first class mail. (*See* Proposed sections 29, 31 and 32.) Second, provisions requiring service of process following the service of the initial summons and petition were revised to permit notice by first class mail or directly by the court.. (*See* Proposed sections 34 and 32.)

Section 29

COMMENT

This provision has been amended by combining subsections (a) and (b) into a single provision and by adding new paragraphs (8) and (9) to subsection (a) (previously subsection (b)). New paragraphs (8) and (9) implement the committee's proposal to require service of process to be made once at the outset of the proceedings and permit subsequent notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 62. Paragraph (8) provides notice of the adverse consequences that may result from the proceedings and paragraph (9) informs the recipient that further notices of hearings, proceedings and actions will be provided by mail to the recipient's known address or an address provided by the recipient.

The language added to subsection (a)(7) is necessary to comply with ASFA.

Other changes are technical and for purposes of clarity.

Section 30
COMMENT

This section has been reorganized for purposes of clarity by combining subsections (a) and (b) into a single subsection (a) and renumbering subsection (c) as (b). In subsection (a)(2) (formerly (b)), the sentence "The court shall attempt to notify both parents, if known" is stricken because the parents will be given notice as parties.

In subsection (b) the last sentence is stricken because notice to the secretary is not jurisdictional.

Other changes were for simplification and clarity of language.

Section 31
COMMENT

This provision has been amended by separately numbering the persons on whom the summons must be served under subsection (a) and by making changes in the form of the summons specified by subsection (b). The changes to subsection (b) implement the committee's proposal to require service of process to be made once at the outset of the proceedings and permit subsequent notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 62. To ensure adequate notice is provided, the summons would specify that the proceedings may result in removal of custody, an order of child support, appointment of a permanent custodian, or the termination of parental rights. It also informs the recipient that further notices of hearings, proceedings and actions will be provided by mail to the recipient's last known address or an address provided by the recipient.

Section 32
COMMENT

Several amendments to this provision were made for purposes of clarity and simplification. Personal and residential service were combined into a single section, as were two separate sections dealing with service by publication. The committee has replaced the phrase "registered mail" with the phrase "return receipt delivery" because that is the current term used by the postal service. This change has been applied throughout the code. Similarly, in this provision and throughout the code, the committee has replaced the term "regular mail" with the term "first class mail." This term is more precise and clear.

The form of published notice, as specified in paragraph (e)(2), has also been amended to implement the committee's proposal to require service of process to be made once at the outset of the proceedings and permit subsequent notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 72. The published notice now specifies that the proceedings may result in removal of custody, an order of child support, appointment of a permanent custodian, or the termination of parental rights. It also informs the recipient that further notices of hearings, proceedings and actions will be provided by mail to the recipient's known address or an address provided by the recipient.

Subsection (e)(2)(B) has been amended to require publication in a newspaper in the locality where the court determines, after reasonable efforts, that an absent parent is most likely to be found. This new language addresses a potential constitutional problem with the current provisions, which provide for publication in a "local" official newspaper. In *Board of County Commissioners v. Akins*, 271 Kan. 192, 21 P.3d 535 (2001), the Kansas Supreme Court held that it is constitutionally insufficient to publish notice in a local paper when reasonable efforts were not made to locate an absentee landowner whose last known address was out of state. See also *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). The rights of parents are, if anything, stronger than those of landowners and the *Akins* holding would presumably apply in CINC proceedings when an absent parent was last known to be located in a different geographical area.

Section 33
COMMENT

The only amendments to this section are minor technical changes that do not alter its meaning or effect.

Section 34
COMMENT

Subsection (c) of this section has been amended to implement the committee's proposal to require service of process to be made once at the outset of the proceedings and permit subsequent notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 62. Under current subsections (c) and (d), notification of motions, pleadings, and hearings must be served on an interested party, except that new service is not required for parties in default for failure to appear unless new claims are asserted. As amended by the committee, subsection (c) would permit notification of motions, pleadings, and hearings to be made by first class mail or oral notification by the court. With the amendments to subsection (c), subsection (d) became unnecessary.

Section 35
COMMENT

This section was amended by adding a reference to new section 36, which permits the Court in some instances to restrict the rights of some interested parties.

Section 36
COMMENT

Proposed section 36 has been substantially amended and reworked to clarify the participatory rights of parties and interested parties. As defined in proposed section 2(u) parties include the state, the petitioner, the child, and any parent of the child. As defined in proposed section 2(l), "interested parties" include other persons who have a significant relationship to the child, including grandparents, persons with whom a child was residing for a significant time in the period before the filing of the petition, relatives, and other persons with whom the child has lived.

Current law distinguishes between mandatory interested parties and optional interested parties, but does not specify their participatory rights or differentiate between various classes of mandatory and optional interested parties. In addition, current law limits optional interested parties to certain relatives and other individuals with whom the child has been residing. The committee proposals would provide broader discretion to the court to recognize additional interested parties and to impose limits on participation by interested parties (but not on participation by the parties). These changes reflect the committee's view that current law may prevent persons from participating whose participation would be desirable, either to further the interests of children or to improve the conduct of proceedings. At the same time, the committee believed that, to control the orderly conduct of the proceedings and protect the interests of the child, a judge must have discretion to limit participatory rights in appropriate circumstances.

The section has also been reworked to provide clarity regarding participatory rights and procedures for determining interested party status. These provisions also are intended to provide an appropriate compromise of the competing interests involved.

Proposed subsection (a) is new language specifying that all parties and interested parties are subject to the jurisdiction of the court. This language makes explicit what is assumed in current practice.

Proposed subsection (b) is also new language that specifies the participatory rights of parties, with cross references to relevant provisions of the code. This language is intended to reflect current understandings but to make them more explicit. The rights of parties are subject to the court's inherent power to provide for the orderly conduct of the proceedings.

Proposed subsection (c) deals with grandparents as interested parties. The current code provides that grandparents are mandatory interested parties, but does not specify the extent of their participatory rights or provide procedural safeguards for those rights. Nor does the current code appear to permit grandparents the right to decline interested party status. Under the proposed subsection (c), grandparents would be made interested parties upon notifying the court of their desire to be interested parties. Grandparents who are interested parties would have full participatory rights of parties (subject to the court's inherent power to provide for the orderly conduct of the proceedings) unless the court restricts those rights based on a finding that doing so is in the best interests of the child. The court could not, however, prevent grandparents who are interested parties from attending the proceedings, having access to the child's official file in the court records, or making a statement to the court. The court could restrict or deny those rights only by denying or terminating interested party status for grandparents, which can be done only for good cause after notice and a hearing. (*See* proposed subsection (f).)

Proposed subsection (d) contains new language concerning a new class of interested parties: persons with whom the child has resided for a significant period of time in the six month period immediately preceeding the filing of the CINC petition. The committee believes that such persons, which may include grandparents, other relatives, or other individuals with a substantial relationship to the child, are often the persons with whom the best chance of a successful placement lies in the event that reintegration of a family is not possible. (A court could order court-appointed counsel for a grandparent who is also an interested party under this subsection.) These individuals also often care deeply about the child and may have important information about the child's circumstances or needs. The committee also believes that the presence of such persons in the proceedings is likely to be of comfort to the child. The participatory rights of these interested parties are handled in much the same way as grandparents.

Proposed subsection (e) permits the court to make other persons having a relationship with the child interested parties. Subsection (e)(1) covers persons who would be optional interested parties under current law. Subsection (e)(2) permits the court to accord other persons interested party status, provided the court finds that the person has a sufficient relationship with the child to warrant interested party status or that the person's participation would be beneficial to the proceedings. Subsection (e)(3) permits the court to make a person an interested party on its own

motion if it finds that it is in the best interest of the child to do so. This may be necessary, for example, in the case of a parent's boyfriend or girlfriend who is living in the home. The expansion of persons who may be made interested parties beyond those covered under current law is intended to account for the admittedly unusual case where a person who does not otherwise qualify is sufficiently involved in the child's life to make interested party status appropriate.

Proposed subsection (f) provides procedures for determining interested party status. Subsection (f)(1) carries forward language from current K.S.A. 38-1541. Subsection (f)(2) is new language providing for notice and a hearing before the court can deny or terminate interested party status. Subsection (f)(3) is new language providing a mechanism for reviewing disputed denials or terminations of interested party status. The committee was concerned that an ordinary appeal, if it stayed the proceedings, would unduly delay the process, thereby causing harm to the child. On the other hand, if the appeal did not stay the proceedings it would be of little use or could lead to an appellate decision upsetting the disposition ordered by the court, again harming the child. Denying review, however, would offer little protection for the important participatory interests recognized in the statute. The committee opted for a collateral review by the chief judge of the relevant judicial district (or the chief judge's designee), which can be held promptly and can permit the proceedings to go forward in the meantime without unduly prejudicing the interests of the child or of those claiming interested party status.

Section 37
COMMENT

Some changes in this section are technical and for purpose of clarity and do not warrant further discussion. More significant amendments relate to compliance with ASFA, as well as a few additional matters.

Changes in subsection (a) and (f) are intended to clarify the requirements for removing a child from a parent's custody and ensure compliance with ASFA, which permits removal of a child from the home only if one of two situations is present: (1) there have been reasonable efforts to preserve the family; or (2) it is an emergency situation. In addition to one of these two prerequisites, ASFA also requires a finding that remaining in the home is contrary to the welfare of the child. These requirements are not inconsistent with current Kansas practices, but the use of different language in the statute makes it difficult to document compliance with ASFA in some cases.

Subsection (c) was amended to permit the court to place a child in protective custody in a shelter facility. The committee believed that this placement option is at times the best alternative for protective custody and that it should be made available to the court. The committee removed language limiting placement with the Secretary to cases in which the child is alleged to be a child in need of care because that language was superfluous. Subsection (a) requires such an allegation in every application and subsection (b) permits an order only if the court finds probable cause to believe the allegations are true.

In subsections (d) and (e), the committee inserted cross-references to proposed section 32(a), which specifies the means of serving the petition and other orders.

Section 38
COMMENT

Some changes in this section are technical and for purpose of clarity and do not warrant further discussion.

Subsection (g) was amended to permit the court to place temporary custody of a child in a shelter facility. The committee believed that this placement option is at times the best alternative for temporary custody and that it should be made available to the court. The committee removed language limiting placement with the Secretary only when the child is alleged to be a child in need of care because that language was unnecessary. These changes parallel changes in proposed section 37(c).

In subsection (h), language was added to permit the court to issue a restraining order to prevent improper contact with other family members or witnesses. Current law only allows a restraining order to protect the child himself or herself in conjunction with an order of temporary custody. The proposed language is the same language currently included for restraining orders in connection with an order of protective custody (*see* current 38-1542(e)), and the committee believed that the court should have similar authority in this context. The committee also added language requiring the restraining order to be served on the person to whom the order is issued pursuant to proposed section 32(a).

Subsection (i) was amended to promote compliance with ASFA. (*See* comment to proposed section 37.

Section 39
COMMENT

Subsection (e) was amended to cross reference section 32a as the provision governing the means of serving a restraining order issued in connection with an order for informal supervision.

A new subsection (f) is proposed to reconcile the statute to with current practice. When cases are appropriate for an informal supervision, it is important that supervision be implemented in a timely fashion. In many cases the non-custodial parent is not present and has not been served at the time of the first appearance. This proposed subsection would allow the custodial parent to consent to informal supervision. The rights of the non-custodial parent are preserved by allowing a non-custodial parent to request reconsideration of the order of informal supervision and by specifying that efforts to serve process on the non-custodial parent shall continue if the order effects a change in custody.

Section 40
COMMENT

The changes to subsection (a) are technical. Subsection (b) was previously found at K.S.A. 33-1551(b). The committee moved it to this section to consolidate all of the provisions dealing with discovery into a single section.

38-1546
COMMENT

This provision was stricken in its entirety because the guardian ad litem has access to records pursuant to K.S.A. 2004 Supp. 38-1507 as part of 2004 HB 2742 which revised the confidentiality provisions of the CINC Code.

Section 41
COMMENT

Changes to current subsection (a) are technical. The underlying policy of this provision is also reflected in proposed section 1, paragraph 4. Subsection (b), which deals with a discovery-related matter, was moved to proposed section 40.

Section 42
COMMENT

Proposed section 42 would expand public access to the adjudication phase of child in need of care proceedings. A number of states have moved to or experimented successfully with open proceedings in child in need of care cases and recent changes in federal law permit states to do so. *See* 42 U.S.C. § 5106a(b)(2). The committee agrees with these other states that openness would serve two important purposes. First, openness of child in need of care proceedings promotes the accountability of all those involved, including SRS and the courts. Second, openness would promote public awareness and provide legislators with information that would aid in making sound policy decisions in this important area. At the same time, the committee recognized that opening proceedings raises some privacy concerns, and sought to preserve privacy in various ways so as to strike an appropriate balance.

Proposed subsection (a) provides that the adjudicatory phase is open unless the court rules otherwise. The committee believed that openness is desirable during this phase because there is a great public interest in whether the alleged abuse and neglect occurred and whether parental rights will be restricted or terminated, while privacy concerns of those peripherally involved are less likely to be affected in the adjudication phase. The court, however, could close the proceedings or exclude

individuals if the court determines that it would be in the best interests of the child or is necessary to protect the parent's privacy rights.

In subsection (a)(1) the committee made some changes to the list of those who may not be excluded. First, the list includes both parties and interested parties in keeping with the committee's decision to recognize two classes of participants under section 36. (*See* comments to proposed section 36. That provision is cross referenced to make clear that interested party status may be terminated or restricted under that provision. Second, specific references to attorneys have been removed from the list because the committee considered such a reference to be unnecessary, as the presence of attorneys is inherent in the right of representation articulated in section 5. This deletion was not intended to change current law.

Proposed subsection (b) provides that the dispositional phase is closed. Other persons would be permitted to attend if the parties consent (but the consent of interested parties is not required) or if the court determines that it would be in the best interest of the child or the conduct of the proceedings, subject to the court's ultimate power to exclude them at a later time. In contrast to the adjudicatory phase, the committee considered the public interest in disposition to be relatively small and was particularly concerned that prospective adoptive parents, permanent custodians, or foster parents should not be deterred from coming forward by the public disclosure of personal information.

In light of the increased openness of proceedings as proposed in this section, proposed subsection (c) provides a mechanism for excluding attendees when confidential information is to be entered into evidence.

38-1552a
COMMENT

In keeping with the language of proposed 38-1552(b)(1), the committee proposes that the parties may consent to the attendance of additional persons in child in need of care proceedings under this section which deals with "parent advocate" pilot programs. The consent of interested parties would not be required. Other changes to this section are technical.

Section 43
COMMENT

This section was amended to provide the option of making a no contest statement respecting allegations in a child in need of care petition. A no contest statement is analogous to a "nolo contendere" plea in criminal law in that it does not constitute an admission of the truth of the facts in the petition, but permits the court to treat the allegations as established (with respect to the non-contesting party) for purposes of the proceedings. The committee believed that this option would significantly expedite proceedings when parents or other individuals do not wish to contest allegations in a petition but are reluctant to make potentially damaging admissions. Language has been inserted at various points in the section to accommodate this option. In addition, the section has been reorganized.

Most of the current section has been placed in subsection (a), which now sets for the option of stipulating aor entering a no contest statement, and the questions that the court must ask before accepting a stipulation or no contest statement. Some material from the current section has been placed in subsection (b), (c), and (d), which concerns the manner of proceeding if stipulations or no contest statements are made.

In the first sentence subsection (a), the general reference to interested parties was stricken and those who may stipulate or enter no contest statements have been specifically listed. They include the parents, legal guardians, persons with whom the child has been living and the guardian ad litem (on behalf of the child). In light of the committee's decision to distinguish between parties and interested parties and to expand the category of persons who may be made interested parties (*see* proposed section 36 and comments thereto), the committee believed that stipulations or no contest statements should not be necessary from all interested parties. Because the allegations in a petition may include allegations concerning abuse or neglect by a person with whom the child has been living, however, the committee believed that an opportunity to stipulate or enter a no contest statement should be given to this category of interested parties. Former subsections (a), (b), (c), (d), and (e) have been incorporated, with some changes in language, into subsection (a) and renumbered as paragraphs (1), (2), (3), (4), and (5).

Proposed subsections (b), (c), and (d) specify the manner of proceeding when there have been stipulations or no contest statements. Under subsection (b), which carries forward existing law, the court must find there is a factual basis for a stipulation before accepting it. This does not require any proffer of evidence. Under subsection (c), before a no contest statement can be accepted the court must find that there is a factual basis "from a proffer of evidence." The committee considered a proffer of evidence, which is a relatively easy burden to meet, to be an appropriate requirement in the case of a no contest statement. Subsection (d) specifies that if some, but not all, of the listed persons do not stipulate or enter no contest statements as to some allegations, there must be a hearing as to those persons on those allegations unless the person is in default, in which case the matter can proceed by proffer of evidence (as if the defaulting party had entered a no contest statement).

Section 44

COMMENT

Subsection (b) has been amended to require strict adherence to the rules of evidence only during the adjudicatory phase of a child in need of care proceeding. This limitation is in keeping with the committee's recommendation that a clear differentiation be made between the adjudicatory phase, in which the child's status as a child in need of care is determined, and the dispositional phase, which focuses on how best to meet the needs of the child who is a child in need of care. It is the committee's view that evidentiary rules are less desirable during this phase, in which the judge should have the broadest possible information to make the best possible placement decisions for the child. In addition, because the dispositional phase typically involves the consideration of a number of written reports and other documentary information, strict adherence to evidentiary requirements is costly and interferes with the expeditious conduct of the hearing.

Subsections (c) and (d), which deal with special rules for taking evidence from victims of abuse under the age of 13, were moved from current K.S.A. 38-1557 and 38-1558, respectively, so that all the CINC provisions concerning evidentiary rules would be consolidated into a single section. In both subsections, the requirement that a written transcript be provided to the parties was deleted because the committee believed that the requirement was both unnecessary and costly.

Other changes are technical.

Section 45
COMMENT

Changes to this section are for purposes of clarity and are not intended to alter its meaning.

Section 46
COMMENT

The committee proposes amendments to this provision that establish a time limit on adjudication to assist in meeting the requirements of ASFA. Historically, there have been isolated cases and courts where adjudication was delayed. While delay is less of a problem with the current emphasis on timeliness, the Committee considers the imposition of a time limit for adjudication in cases where the child has been removed from the home to be a useful policy. 60 days is a compromise as the parent and child have an interest in the finding being made as soon as possible and the courts and state agency need time to obtain information necessary for the determination. More flexibility is allowed as to time for adjudication if the child remains at home.

38-1557
COMMENT

This section was moved to proposed section 38-1554(c) to consolidate all provisions concerning evidentiary rules in one section.

38-1558
COMMENT

This section was moved to proposed section 38-1554(d) to consolidate all provisions concerning evidentiary rules in one section.

Section 47
COMMENT

Current subsections (a) and (b) of this section, which contain nearly identical provisions for predispositional placement conferences at the behest of the secretary (subsection (a)) or the court (subsection (b)) have been consolidated into a single subsection for purposes of simplicity. This subsection has been amended to expand the conference and placement alternatives beyond relatives to include all persons determined by the secretary, the court, or the court services officer to have the requisite interest in the child's placement. Likewise, the conference may recommend placement with a person other than a relative. While the persons participating in the conference and recommended for temporary placement are typically relatives, the committee believes that in some cases there are nonrelatives with a sufficient interest in the child's placement to warrant inclusion in the conference and/or consideration for placement and that this option should not be foreclosed.

In addition, the current provision indicates that the conference may "decide" the placement of the child and the committee proposes that the conference may "recommend" placement. This language more accurately describes the role of the conference. The requirement that the recommendation must be accepted unless there is good cause to reject it has not been changed.

Subsection (d) has been eliminated as unnecessary.

Section 48
COMMENT

This section has been reworked into a general provision concerning dispositional hearings. This change is part of a larger effort to clarify the post-adjudication phase of the CINC process, especially the dispositional phase and permanency planning. (*See* proposed sections 48, 49, 50, 52, 58 and 59 and accompanying comments)

The section has been amended by adding a new subsection (a) describing the nature and function of the dispositional hearing. This language is intended to clarify the role of the dispositional phase of the process.

Subsection (b) carries forward the current provision on the timing of dispositional hearings, but has amended that language in two ways. First, language has been added requiring that in order for the dispositional order to be entered at the time of adjudication, there must have been prior notice to that effect. Second, language concerning the timing of a permanency hearing has been moved to new section 59 which deals more comprehensively with the timing of permanency planning. Subsection (c) is new language specifying that the dispositional hearing may also serve as a permanency hearing, but only if it meets the requirements for a permanency hearing. The relevant code provision for permanency hearings is cross-referenced.

Section 49
COMMENT

Subsections (a) and (b) have been revised to clarify who is entitled to notice and to an opportunity to be heard in relation to the dispositional hearing following an adjudication. While the current statute provides that the court must notify and allow certain persons to be heard at any time after adjudication and before disposition, proposed subsection (a) specifies the issues as to which the notice and opportunity to be heard provisions are applicable and lists who is entitled to notice. Subsection (b) concerns the form of notice, which has been changed to permit notice by first class mail but is otherwise unchanged.

To limit this section to notice matters only, discussion of what the court should consider prior to disposition (currently contained in subsection (c)), has been moved to section 50.

Section 50
COMMENT

This section has been extensively revised to clarify the factors that should be considered at the dispositional phase and the orders that can be made. The section also clarifies the relationship between the dispositional hearing and permanency planning.

Subsection (a) outlines the considerations that must be evaluated at the dispositional hearing, which have been moved to this section from former section 49(c) and given separate enumeration.

Subsection (b) carries forward language from former subsection (a) with some minor rewording for purposes of clarity.

Subsection (c) contains the standards for removal of a child from the home, which are found in subsection (d) of the current statute. The standards have been revised to comply with ASFA. These revisions do not substantially alter current practice in the state but will ensure that findings are made that are consistent with federal law.

Proposed subsection (d) deals with the placement of a child removed from the home. It combines material in current subsections (d), (e), (f), and (g) with new language to provide a comprehensive treatment of placement options and related orders. In respect to these matters, the committee proposes some changes to current law. First, a youth residential facility is added to the placement options available to the court. Second, the committee has deleted language providing that if the secretary has presented a plan for services that would enable the child to remain with a parent, the court may not place the child with the secretary unless the court finds, inter alia, that placement with the parent would be contrary to the child's welfare. This language is unnecessary and repetitive in light of changes to the findings required for removal from the home. Third, subsection (d)(1) has been reworded to clarify the roles of the secretary and the court in determining placement when custody is awarded to the secretary. Finally, subsection (d)(2) is new language requiring notice to the court before a custodian may place the child with a parent based on a determination that such placement would no longer be contrary to the welfare of the child. The court may require a hearing and placement with the parent cannot proceed without the court's consent.

Subsection (e) concerns the procedure if custody is awarded to a person other than a parent. It contains new language specifying that a permanency plan must be prepared and that if a permanency plan is provided at the hearing, the court may proceed to consider whether reintegration is a viable option. The subsection then incorporates language from former subsection (h) concerning the factors to be considered in determining whether reintegration is a viable option. One new factor has been added to the list: whether the parents have failed to work diligently toward reintegration. The committee believes that this factor is critical, because reintegration will not be viable unless the parents will work diligently towards that goal.

Subsection (f) incorporates language from current section 49(c), with some changes, regarding the steps to be taken if the court finds that reintegration is not a viable option. It requires that proceedings for termination of parental rights and placement of the child for adoption or

appointment of a permanent custodian shall be initiated unless the court finds compelling reasons to the contrary. This is a change from current law, which does not require proceedings to be initiated unless the court finds that it would be in the best interests of the child to do so. The committee believes that the presumption should be strongly in favor of initiating such proceedings, to prevent a child from lingering in temporary custody arrangements without any hope of reintegration and without any progress toward permanent placement, except in the most compelling circumstances. Such uncertainty and impermanency is detrimental to the emotional and developmental needs of the child and the child will become more difficult to place as he or she gets older. The language directing the county or district attorney to file a motion within 30 days and the court to hold a hearing within 90 days carries forward the requirements of current law. Language has also been added specifying that no hearing is needed when parents voluntarily relinquish rights or consent to the appointment of a permanent custodian.

Subsection (g) combines language from several existing provisions concerning ancillary orders by the court into a single subsection. These include orders directing the parent or child to enter into counseling (former subsection (c)), drug treatment (former subsection (i)), and child support (former subsection (j)). These provisions have been carried forward with only minor changes in wording, For example, subsection (g)(3) (former subsection (j)) was amended for clarity by changing the phrase "a ward of the court" to "child who is subject to the jurisdiction of the court."

Section 51
COMMENT

This section has been amended for clarity and to replace its separate notice provisions with a cross reference to section 49, which deals comprehensively with notice during this phase of the proceedings.

Section 52
COMMENT

Most of this provision has been stricken because the committee is proposing several new sections dealing extensively with case and permanency planning in order to clarify this important aspect of the process. *See* proposed sections 58 and 59 and related comments. The proposed section would simply provide for the creation of a permanency plan in the event that no plan is adopted at the dispositional hearing and the child has been placed outside the home. The notice provisions of the current section are also unnecessary because notice of the dispositional hearing is dealt with comprehensively in proposed section 49 and notice for additional permanency hearings is dealt with in proposed section 60. The new provision on preparation of a permanency plan has been cross-referenced.

Section 53

COMMENT

Minor changes have been made to subsection (a), including the replacement of the phrase "home or shelter facility" with the term "placement," which is more generic. Language has also been inserted specifying that notice of a change in placement is to be made by "first class mail."

Subsection (b) has been amended by replacing current language with language that reflects ASFA. This language does not substantially change the current law but will ensure that the necessary findings are made. Other changes to subsection (b) are technical and for purposes of clarity.

Section 54
COMMENT

In addition to technical changes, language has been removed from this section referencing a finding that remaining in the home is "not in the best interest of the child" as a basis for emergency removal from the home. The committee believes that this standard does not always reflect an emergency and is not compliant with ASFA.

Section 55
COMMENT

This section has been extensively reorganized and reworded for purposes of clarity, but without effecting significant changes in its substance. Aside from changes in organization and rewording, there were a few minor substantive changes. First, in subsection (a), the categories of CINC adjudications that may provide the basis for a valid court order directing the child to remain in placement have been restricted to those categories that, under federal law, may provide the basis for such an order and for the subsequent detention of a child in a secure facility for violating the order. Second, a cross reference to proposed section 32, concerning service of process, has been added to subsection (c)'s requirement that an ex parte order be served on the child, the child's legal custodian, and the child's guardian ad litem. Third, in subsection (d), the committee added language permitting a child to enter a "no contest" statement as an alternative to admitting the allegations. The committee believed that this option would significantly expedite proceedings in some cases, when the child may be reluctant to make potentially damaging admissions. Fourth, in subsection (e) the committee eliminated the separate requirement that an evidentiary hearing be held within 24 hours of an application for a determination that the child has violated a valid court order if the child admits the allegations. Instead, all evidentiary hearings on these issues would fall within the general time limit of 72 hours, which is the time limit that would otherwise apply under current law. The committee believes that the 24 hour time frame for this class of cases was unrealistic and unnecessary.

Section 56

COMMENT

The requirement that foster parents submit reports has been deleted along with most of section52 (*see* comment to proposed section 52) and has not been reintroduced in the new provisions concerning case and permanency planning. The new provisions do afford the foster parents an opportunity to be heard, *see* proposed section 60, and foster parents may submit a report if they desire to do so. New language has been added to this section providing for notification to foster parents by the secretary of their right to submit the reports and the form for the reports has been retained. The committee added language providing that copies of the report shall be made available to the parties and interested parties because as a matter of fairness there should be no ex parte communication about active cases. SRS and private contractors still would not have access to the reports.

Section 57
COMMENT

The committee proposes reducing the age at which a child has a right to be heard concerning placement from 14 years of age to 10 years of age. It is the committee's opinion that no child who is 10 years of age or older and of sound intellect should be denied that opportunity. As under current law, the court would not be bound by the child's placement preferences. Subsection (b) has been deleted as unnecessary.

Section 58
COMMENT

This section is one of several new sections intended to provide a single comprehensive set of provisions for permanency planning and permanency hearings. (*See also* proposed sections 59 and 60.) This provision deals generally with permanency plans, while the other provisions deal with permanency hearings.

Subsection (a) specifies the goals and underlying policies of permanency planning. The committee believed that an explicit statement of these goals and policies would serve as a useful reminder to focus the attention of all those involved on the need for children to have permanence and stability and the importance of preserving family relations, while reminding them that the safety and well being of the child are paramount concerns.

Subsection (b) specifies the timing (within 30 days) and the responsibility for preparing the initial plan.

Subsection (c) specifies the content of the plan, to be prepared in consultation with the child's parents or guardians.

Subsection (d) specifies additional requirements for the plan that apply when a child is in out of home placement.

In most cases, permanency plans can be crafted by agreement of those involved. If agreement is not possible, subsection (e) provides for notification of the court and a hearing on the plan.

Subsection (f) provides that the plan can be changed at any time by agreement of the participants, except that if the permanency goal is changed, the court is to be notified and a permanency hearing will be held.

Section 59
COMMENT

This provision is a comprehensive provisions on permanency hearings. Subsection (a) specifies that the hearing will be conducted by a court or a citizen review board for purposes of determining progress toward accomplishment of the goals of the permanency plan.

Subsections (b) and (c) sets forth determinations to be made by the court or citizen review board. Subsection (b) concerns the permanency goal and its expected date of accomplishment, while subsection (c) requires a finding as to whether reasonable efforts have been m,ade to accomplish the permanency plan.

Subsection (d) carries forward the current requirement that a permanency hearing be conducted at least every twelve months, which is also required by federal law.

Subsection (e) carries forward the existing requirement that a permanency hearing must be held if the court determines that reintegration is no longer a viable alternative. Current law, however, does not specify the timing of such a hearing, which the committee believes should be held no later than 30 days after the determination.

Subsection (f) specifies the action that may be taken if the court determines that reintegration continues to be a viable alternative, which include rescinding, revising, or issuing new dispositional orders and ordering the preparation of a new plan for reintegration.

Subsection (g) incorporates, with some technical changes, language currently found in section 52(c). It specifies the considerations and determinations to be made if the court finds at a permanency hearing that reintegration is no longer a viable alternative. If the court determines that adoption or appointment of a permanent custodian are in the best interests of the child, the appropriate official is directed to file a motion for termination of parental rights or appoint a permanent custodian within 30 days and a hearing must be held within 90 days of the filing.

Subsection (h) incorporates, with some technical changes, language currently found in section 64(h)(2), which deals with permanency planning after termination of parental rights. It provides for

continued permanency planning and hearings until adoption or appointment of a permanent custodian has been accomplished.

Section 60
COMMENT

This subsection concerns notice of a permanency hearing, which is currently covered by section 52. Subsection (a) requires notice to the parties, while subsection (b) requires notice to additional persons with an interest in the permanency plan. Under both provisions, notice must be given at least ten days before the hearing by first class mail. Notice under subsection (b) does not make a person a party or interested party. The persons receiving notice will be heard at a time and in a manner determined by the court and do not have a right to appear in person. Subsection (c) specifies that notice pursuant to section 34 is sufficient to satisfy the notice requirements of this section. As explained in the comments to that section, if a party or interested party has been served at the outset of the proceedings, notice by first class mail is sufficient for further proceedings in the case.

Section 61
COMMENT

The amendments to subsection (a) of this section are technical and for purposes of clarity. Subsection (b) has been amended by adding a reference to the appointment of a permanent custodian, which the committee proposes as an alternative to the termination of parental rights that may be useful in some cases. *See* proposed section 64 and comments thereto. The language in subsection (c) has been moved to proposed sections 50(f) and 59(h).

Section 62
COMMENT

Subsection (a) of this section has been amended to require a hearing on termination or appointment of a permanent custodian to take place within 90 days of receiving the petition or motion for termination and permitting continuances only in the best interests of the child. The committee believes that, particularly when a proceeding moves to termination, time is of the essence for the child.

Subsection (b) of this section has been amended to implement the committee's proposal to require service of process to be made once at the outset of the proceedings and permit subsequent notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 62. Under current law, service of process pursuant to K.S.A. 38-1534 is required when the proceedings move to the termination phase. Although current paragraph (b)(2) provides an exception for any person otherwise receiving notice under section 34, this exception only applies to notice required by subparagraph (B) of paragraph (a)(2), which applies to grandparents or if there is no living grandparent, the child's closest living relative. The committee broadened the exception so that it applies to all persons required to be served in paragraph (b)(1). Thus, service is required only if a person has not previously been served, or if a person has not been notified by mail or orally by the court, as required by proposed section 34(c).

Subsection (b)(3) has been amended to require that the court assure due diligence in determining the location of parties and interested parties as well as their identity. This reflects constitutional due process requirements. *See* comments to proposed section 32.

References to appointment of a permanent custodian have been added in this section to reflect the committee's view that this option should be available. *See* proposed section 64 and comments thereto.

Other changes to this section are technical.

Section 63
COMMENT

This is a new provision with no counterpart in the current CINC code. The provision is designed to facilitate voluntary resolution of cases and avoid hearings on unfitness when possible and to clarify the powers and responsibilities of custodians after relinquishment or consent.

Under subsection (a), either or both parents may voluntarily relinquish parental rights, consent to an adoption, or consent to appointment of a permanent custodian for the child. The consent of the guardian ad litem and of the secretary is required.

Subsection (b) concerns relinquishment of a child to the secretary and cross references relevant provisions of K.S.A. 59-2111 through 59-2143 relating to relinquishment of a child. Subsection (b)(1) clarifies the secretary's authority and responsibilities for the child in such a case.

Subsections (b)(2) and (3) concern the procedures for relinquishment. Subsection (b)(4) specifies that relinquishment will terminate all rights, including the rights of the parent to inherit from the child. It also specifies that if a parent has relinquished his or her rights based on the belief that the other parent would also do so, the relinquishing parent does not lose his or her rights if the other parent fails to relinquish his or her rights as expected. Subsection (b)(5) specifies that the child does not lose inheritance rights if the parent relinquishes the child.

Subsection (c) references the new relationship of permanent custodianship (*see* proposed section 67, which is similar in many respects to a permanent guardianship, but would have distinctive features. A key feature of this relationship is that a parent may consent to appointment of a permanent custodian for the child without a finding of unfitness or the termination or relinquishment of parental rights. It also specifies that in a permanent custody arrangement, the permanent custodian stands in loco parentis with full right of a legal guardian. Subsection (c)(2) requires consent to be in writing and subsection (c)(3) specifies that if a parent consents to appointment of a permanent custodian based on the belief that the other parent would also consent, and the latter parent does not in fact consent, the first parent's consent is null and void.

Subsection (d) provides for consent to adoption by a parent after the other parent's rights have been terminated or relinquished.

Section 64
COMMENT

In subsection (a), appointment of a permanent custodian is included as an alternative that does not require termination of parental rights.

In subsection (b), "unfitness" is inserted into the introductory phrase for clarification. Subsection (b)(3) has been amended to clarify the standard for termination based on substance abuse. The word "excessive" has been stricken as ambiguous and new language has been inserted specifying that the substance abuse must be such as to interfere with the parent's ability to care for the needs of the child.. In subsection (b)(4), the amendment makes a policy change in that it refers to the physical, mental or emotional neglect of any child as opposed to the current subsection which refers only to the child of the parent whose parental rights may be terminated. Similarly, in subsection (b)(6), the amendment permits the death of any child in the care of the parent to be considered in determining whether the parent is unfit, as opposed to the current version which refers only to that parent's child or stepchild. In both situations, the committee believes that a parent's conduct in relation to other children in their care is relevant to the determination whether his or her child is a child in need of care, regardless of whether those other children are also the children of the parent.

In subsection (d), the reference to termination of parental rights has been replaced by a reference to a finding of unfitness, which must be made prior to termination.

Proposed subsection (e) incorporates from K.S.A. 38-1586 with some technical changes. The committee believed that the substance of that provision properly belongs in this section of the code because it is a consideration relevant to termination of parental rights.
Most of the language of subsection (e) has been stricken or moved and, as amended, it provides only that any one of the factors to be considered in determining unfitness may, but need not be, sufficient.

Proposed subsection (f) carries forward some language from current subsection (e). Most of current subsection (e) however, was moved to proposed subsection (g)(1). The portion of current subsection (e) relating to evidence was deleted because it is covered by the rules of evidence which apply in CINC cases.

In new subsection (g), the procedure, standards and options to be used after a finding of unfitness are set out. Proposed subsection (g) incorporates some language from current subsections (g) and (i), and references adoption and permanent custodianship provisions. As a result current, subsection (i) is unnecessary and has been stricken.

Proposed subsection (h)carries forward existing subsection (h)

Proposed subsection (i) requires a record be made of the termination proceedings.

Proposed subsection (j) deals with continued permanency planning if placement for adoption, appointment of a permanent custodian, or continued planning are ordered. It replaces current subsection (i) with broader and more comprehensive requirements of continued permanency planning.

Section 65
COMMENT

This section has been reworked to deal exclusively with custody for adoption.

Subsection (a) has been moved to section 1. It is a general statement of policy that applies beyond this particular provision and should appear at the beginning of the code. *See* comment to proposed section 1.

In new subsection (a)(1), the phrase "be a party to the proceedings" is stricken because in other instances the secretary is not a party to the proceedings.

Subsections (b)(2) and (b)(3) have been moved to section 67 relating to appointment of a permanent custodian.

Subsection (c) has been deleted as unnecessary.

Subsection (d) has been moved to proposed section 64(h), which addresses permanency planning in cases of placement for adoption or custody and cases in which the court orders continued permanency planning.

Current subsection (e) has been renumbered as subsection (c) and language has been added providing that the secretary's custody shall cease once the child has been adopted. No further court order is required to terminate the secretary's custody. This language is intended to clarify the status of the child after adoption and facilitate the termination of the case.

Subsection (f) has been stricken as unnecessary because continued permanency planning is required by proposed section 64.

Section 66
COMMENT

In subsections (a)(1), (a)(2), (a)(3) and (a)(7), provisions concerning convictions for similar offenses under the laws of another jurisdiction have been amended or added. All four provision create a presumption of unfitness when the parent has previously been found unfit or convicted of specified criminal offenses under Kansas law. Current (a)(1) and (a)(2) provide that the presumption also arises when the parent has been found unfit or convicted of comparable offenses under the laws of another jurisdiction, but no such language is found in subsections (a)(3) and (a)(7). Moreover, in (a)(1) the comparable offense language applies to convictions of under the laws of another state or the federal government, while in (a)(2) it extends to foreign governments as well. The committee incorporated identical language in all four provisions extending the presumption of unfitness to convictions under the comparable laws of another "jurisdiction" to establish consistency and comprehensiveness of coverage for these presumptions.

Subsection (a)(3) has also been amended to extend the presumption of unfitness that arises when a child in the physical custody of a parent has previously been adjudicated a child in need of care on two or more prior occasions. Under current law, the presumption arises only if the adjudication was based on abuse or neglect. Under the committee's proposal provision, the presumption would also arise from two or more prior adjudications based on (1) lack of adequate care, control, or subsistence; (2) abandonment; and (3) abuse or neglect of a sibling. The committee considered these additional cases sufficiently severe and relevant to warrant inclusion in the presumption

In subsection (a)(5) and (a)(6), the language "other than kinship care" has been stricken. The committee believes that if a child has been in an out of home placement for extended periods and the parent's failure to carry out a court-ordered integration plan meets the criteria in these provisions, the presumption of unfitness should arise even if the child was in kinship care. Although kinship care is often preferable to other placements outside the home, these provisions focus on the conduct of the parent and the likelihood of a successful reintegration, not the desirability of the child's out of home placement.

Subsection (a) (8) was rewritten to combine the existing language with the language currently found in K.S.A. 59-2136 (h)(1).

New subsections (a)(9) through (a)(13) come from existing language in K.S.A. 59-2136 (h)(3) through (h)(7). A chronic problem in CINC cases is the absentee parent, who may be difficult to locate but whose rights can only be terminated based on a proper finding of unfitness. By authorizing the court in CINC cases to terminate parental rights on the same bases as are available in adoptions under K.S.A. 59-2136, the court can meaningfully address the absentee parent's status, while protecting the absentee parent's rights by including all relevant allegations in the original petition, which will be served in accordance with constitutional requirements on the absent parent.

The language of current 38-1585(b) was amended to require parents only to meet a preponderance of the evidence standard in rebutting the presumption of fitness. This standard is necessary to comply with the case of *In re L.D.B.*, 20 Kan.App.2d 643, 891 P.2d 468 (1995), which held that requiring parents to rebut the presumption of unfitness by a clear and convincing evidence standard violated the due process rights of the parents.

38-1586
COMMENT

This section has been moved to section 38-1583(e).

Section 67
COMMENT

This section has been completely reworked to provide for the appointment of a permanent custodian and to prescribe the procedures for appointing one and the rights and duties that arise from this new legal relationship. The committee intends that this new relationship would replace that of a permanent guardian under current law. The committee contemplates that the relationship would be substantially similar, although there would be some differences. The term "permanent custodian" was used to avoid confusion with other forms of guardianship and problematic legal implications. The proposed section deals comprehensively with matters that, under the current guardianship provisions, are scattered in various sections of the code.

Subsection (a) provides that a permanent custodian may be appointed under three circumstances: (1) when the parents consent and the court approves; (2) when there has been a finding of unfitness; or (3) when parental rights have been terminated. This provision reflects a fundamental change proposed by the committee, under which a permanent custodian may be appointed without the termination of parental rights. The committee believes that some parents recognize that their child would be better off in an alternative custodial arrangement but they are unwilling to completely surrender their parental rights. Making this option available may induce some parents to cooperate with a permanent placement for a child without the need for a termination proceeding. The delays inherent in such proceedings may cause harm to the child and make

permanent placement more difficult In addition, the committee believes that a continued relationship with the parent may at times be in the best interests of the child even though the parent is not capable of caring for the child.

Subsection (b) specifies the rights and obligations of the permanent custodian, who stands in loco parentis to the child (as does the guardian under current K.S.A. 38-1502(w)), with two exceptions. First, in keeping with the possibility that parental rights have not been terminated, the custodian cannot consent to an adoption, which would require a judicial decision terminating parental rights (if one has not already been made) and the placement of the child by the court for adoption. Second, to eliminate a potential disincentive to becoming a permanent custodian, this subsection specifies that the permanent custodian is not liable for court ordered child support or medical support.

Under subsection (c), which is new language, the court may retain jurisdiction after the appointment of a permanent custodian and, if it does so, may impose some restrictions on the rights and responsibilities of the custodian. The retention of jurisdiction may be necessary when the parent has not been found unfit and the parent's rights have not been terminated.

Subsection (d) permits the custodian to share parental responsibilities with a parent if the parent has not been found unfit and the court does not preclude it. This provision is in keeping with the committee's view that a continued relationship between a child and a parent may at times be desirable. The discretion in this regard rests with the custodian and the parent has no right to insist on any particular role in the child's life.

Subsections (e) and (f) concern parental consent. Subsection (e) specifies the requirements for consent to the appointment of a permanent custodian, including warnings to insure that consent is fully informed and voluntary. Subsection (f) concerns circumstances in which consent may be void, which include either proof by clear and convincing evidence prior to an order appointing a permanent custodian that the consent was not voluntary or the failure of the other parent to consent when the consenting parent's consent was premised on the other parent's consent.

Subsection (g) specifies the rights and duties retained if a permanent custodian is appointed after a parent has been found unfit but without a termination of parental rights. The parent retains the obligation to support the child, the right to inherit from the child, and the right to consent to an adoption. All other rights are transferred to the custodian.

Subsection (h) specifies that the parent retains no rights if a permanent custodian is appointed after termination of parental rights.

Subsection (i) contains some material found in current K.S.A. 38-1583(g), requiring an assessment of potential custodians under K.S.A. 59-2132. It also incorporates a preference for granting custody to a relative or a person with whom the child has close emotional ties.

Subsection (j) specifies that in the event that marriage of custodians dissolves, the court having jurisdiction over the proceedings may determine custody as between the custodians.

Section 68
COMMENT

Section (a) has been amended by including the appointment of a permanent custodian after a finding of unfitness as an appealable order.

Section 69
COMMENT

This section has been carried forward unchanged from K.S.A. 38-1592.

Section 70
COMMENT

This section has been carried forward with technical changes from current K.S.A. 38-1593.

Section 71
COMMENT

Changes to this section involve the deletion of unnecessary language.

Section 72
COMMENT

Changes to this section are technical.

Section 73
COMMENT

This section has been carried forward unchanged from current K.S.A. 38-1596.

Section 74
COMMENT

Changes to this section are technical.

Section 75
COMMENT

Subsection (b) has been deleted as unnecessary and with its elimination, enumeration of subsection (a) was also deleted as unnecessary.

Section 76
COMMENT

This section has been amended by replacing the phrase "a ward of the court" with the phrase "subject to the jurisdiction of the court" for purposes of clarity. Other changes are technical.

Section 77
COMMENT

This section has been carried forward unchanged from current K.S.A. 38-15,100.

38-15,101
COMMENT

This section has been moved to proposed section 38-1523.1.

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SECTIONS OF EXISTING CINC CODE NOT INCLUDED IN HB 2352

Comment Regarding Confidentiality Sections

K.S.A. 2004 Supp. 38-1505b and 38-1505c were enacted and K.S.A. 2004 supp. 38-1506, 38-1507 and 38-1508 were amended by the Legislature in 2004 HB 2742. These sections are not amended or repealed by this bill. The sections are a part of the proposed Revised Kansas Code for Care of Children and when the code is enacted, the Revisor of Statutes will transfer the sections to the appropriate places in the revised code.

38-1515
COMMENT

This section has been moved to subsection (e) of K.S.A. 38-1503.

38-1517
COMMENT

This section was moved to subsection (a) of K.S.A. 1528, which relates to taking a child into custody, in order to consolidate provisions relating to taking a child into custody. This is especially important in order to ensure compliance with ASFA, which requires that certain findings must be made before removing a child from the home.

38-1519
COMMENT

This provision (and section 38-1520) have been stricken as unnecessary because other information gathering systems currently in place are more extensive. These include the SRS information system (required by federal law) and the Kansas Court Improvement Project. The KBI has no objection to striking these sections.

38-1520
COMMENT

This provision (and section 38-1519) have been stricken as unnecessary because other information gathering systems currently in place are more extensive. These include the SRS information system (required by federal law) and the Kansas Court Improvement Project. The KBI has no objection to striking these sections.

38-1525
COMMENT

This section has been moved to new K.S.A. 38-1522a.

38-1526
COMMENT

This section has been stricken. Its language was rewritten and moved to new K.S.A. 38-1522(f).

38-1530
COMMENT

This section was moved, as amended, to new K.S.A. 38-1527(c). (*See* comment to section 38-1727.)

38-1546
COMMENT

This provision was stricken in its entirety because the guardian ad litem has access to records pursuant to K.S.A. 2004 Supp. 38-1507 as part of 2004 HB 2742 which revised the confidentiality provisions of the CINC Code.

38-1552a
COMMENT

In keeping with the language of proposed 38-1552(b)(1), the committee proposes that the parties may consent to the attendance of additional persons in child in need of care proceedings under this section which deals with "parent advocate" pilot programs. The consent of interested parties would not be required. Other changes to this section are technical

38-1557
COMMENT

This section was moved to proposed section 38-1554(c) to consolidate all provisions concerning evidentiary rules in one section.

38-1558
COMMENT

This section was moved to proposed section 38-1554(d) to consolidate all provisions concerning evidentiary rules in one section.

38-1586
COMMENT

This section has been moved to section 38-1583(e).

38-15,101
COMMENT

This section has been moved to proposed section 38-1523.1.

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Wednesday, February 16, 2005
House Judiciary Committee
Honorable Representative Michael O'Neal, Chairman
Testimony in Support of Amending HB 2126 Regarding Courtroom Access into HB 2352

Mr. Chairman and members of the Judiciary Committee, it is my pleasure to come before you today to testify in support of amending HB 2126 into HB 2352. The amendment is very simple, but much needed to open Child In Need Of Care (CINC) courtroom hearings to legislators and clergy. It is the opinion of this legislator that the wall of secrecy that surrounds SRS, Foster Care Contractors, and CINC courtroom hearings has led to abusive treatment of both children and parents.

Allow me briefly to tell you the story of Mr. X, who at the age of 19 lost his right leg to bone cancer. Two of X's four boys were sexually molested by his now estranged wife's brother more than three years ago, while he and his family were living in another State. The brother confessed and was tried, convicted and sentenced. X left his wife and brought his family back to Kansas. He made the mistake of leaving his boys with his sister while he voluntarily attended Valley Hope, Augusta for counseling and treatment for alcoholism. From both my observations and those of his pastor he was cured of alcoholism. During the time he was gone (about 2 weeks) his sister reported the situation to the administration of the school where she worked as an aide. The School reported the case to the SRS as required by law, and the boys were subsequently taken by SRS and put into Foster Care.

To my knowledge little effort was ever made to give Mr. X and his mother custody of the boys. Three years have now gone by at a cost to Kansas and the Federal Government of about $350,000, which would have been enough to buy X a home and provided him with a full time nanny. (See attached chart) For a time he was allowed occasional visitation with his boys – however none is allowed today. His youngest son has been adopted out and parental rights severed, the other two boys are still in foster care, but currently Mr. X has no contact with them and has no knowledge of their location. The oldest son had trouble with the law while under the supervision of foster care, and is now in a juvenile detention center and possibly serving jail time until he is 23. Most of Mr. X's government disability pay is being garnered by SRS, leaving Mr. X in a financial strait and living with his recently widowed mother.

During this three year period Mr. X has been required to: attend Parenting Classes; -- take an Anger Management Course; -- attend the Girard Alcohol treatment center a second and unnecessary time for this treatment; -- participate in outpatient alcohol counseling; -- attend other general counseling sessions; -- take a lie-detector test; -- and take an ABLE test. All of this offered with the expectation that X would get his boys back.

Today, Mr. X attends church regularly and because he is very musically gifted performs concerts in various churches in the community. He is not lazy and works in construction at various jobs, he even built the deck on my home. Needless to say he is not a very happy person and has told me "I feel I have been stripped of my constitutional rights as a parent and an American Citizen". **Note: Mr. X was not been proven guilty of anything other than neglect for having trusted his sister!**

House Judiciary
2-16-05
Attachment 2

This story is repeated many times in Kansas, but few people ever hear the details. I tell this story as a prelude to what prompted me to author HB 2126. Mr. X on one occasion asked me and his church minister to attend one of his hearings. The attorney, handling X's case, asked the judge for permission to allow us to remain in the courtroom as observers. The judge in accordance with K.S.A. 38-1552, asked if any of the interested parties objected. An objection was raised so the pastor and I were ordered out of the courtroom. I found this experience insulting, frustrating, and demeaning. We legislators are elected and sworn in to uphold the constitution of the United States and of Kansas, and entrusted to represent our constituents about the taxes they must pay, -- and the laws they must obey, -- **but cannot be trusted to sit in a courtroom when one of our constituents cries for help!**

Can our (legislators) presence in the courtroom add a better awareness of responsibility to all parties in the courtroom? I think it can and just this past summer with Mrs. Y I was involved in another case where the outcome was very encouraging. Mrs. Y about two years ago gave birth to a lovely healthy baby boy, but when both were tested for drugs and found positive; the SRS removed the boy from the mother and placed the child in foster care custody. Mrs. Y was then also ordered to take Drug Rehabilitation Treatment, which she did and also other counseling ….. etc. etc. etc. Mrs. Y then remarried to a good man who is working and providing well for his wife and step children. Bear in mine two older sons of Mrs. Y's were never removed from the home. Mr. and Mrs. Y have for about a year been attending church regularly and their minister supports their parental skills, and neither have tested positive for drugs in over a year. I checked into this family and even went to visit them and take pictures of their recently purchased four-bedroom home. It was a very adequate home. The Lawyer defending the Y's ask me and their minister to attend the courtroom hearing and even take the stand to testify what I knew about the family. The hearing was to sever parental rights and put the child up for adoption to the foster care parents. The judge was very courteous and agreed with the lawyer, but still we were ordered out of the courtroom. To the judge's credit he also ordered all SRS and Farm employees (6) out of the courtroom except for the one SRS employee that was to give testimony and be cross examined. Because the SRS witness failed to bring all documents supporting their claims the judge delayed the hearing until December 2004.

In the interim I sent a detailed summary of the case with photographs of the new home to the assistant to the Secretary of SRS, who was very gracious. To end this story briefly – Mr. and Mrs. Y have had their baby boy returned to them and are once again a united family. I asked the lawyer did my presence and participation have a bearing on the outcome of this case; his answer **"A whole bunch"**.

This bill will allow legislators who choose to help a constituent have opportunity of attending a CINC courtroom hearing if the legislator suspects mistreatment of the child or the parents. I believe adding this balloon to HB 2352 will improve the accountability of all parties participating in a CINC hearing, and for this reason I earnestly urge this committee to support this amendment.

Mr. Chairman and Committee I stand for questions.

Respectfully yours,

C Frank Miller

Representative Frank Miller

Cost of Child In Need Of Care (CINC) Services 1999-2003
Report to Health and Human Services Committee - January 16, 2003
Prepared by the Department of Social and Rehabilitation Services

	Family Preservation (FP)				Adoption (AD)				Foster Care (FC)			
Fiscal Year	(FP) Total Funding Millions	(FP) Number of Families	(FP) Ave. Cost Per Family Per Year	Percent Federal Funding %	(AD) Total Funding Millions	(AD) Average Monthly Children	(AD) Ave. Cost Per Child Per Year	Percent Federal Funding %	(FC) Total Funding Millions	(FC) Average Monthly Children	(FC) Ave. Cost Per Child Per Year	Percent Federal Funding %
1999	$9.457	2,849	$3,319	3.27%	$25.708	1,067	$24,094	31.07%	$111.939	4,968	$22,532	76.60%
2000	$12.185	3,436	$3,546	28.70%	$21.876	1,397	$15,659	59.01%	$84.366	3,776	$22,343	60.19%
2001	$12.985	3,812	$3,406	71.38%	$40.305	1,443	$27,931	47.63%	$94.039	3,662	$25,680	67.20%
2002	$10.554	2,731	$3,865	71.14%	$28.156	1,546	$18,212	45.49%	$91.940	3,264	$28,168	58.90%
2003	$9.373	2,570	$3,647	75.31%	$32.335	1,608	$20,109	54.08%	$88.406	3,046	$29,024	60.42%

Rep. Frank Miller

2-41

Proposed amendment
Representative Frank Miller
February 11, 2005

Session of 2005

HOUSE BILL No. 2352

By Committee on Judiciary

2-8

AN ACT creating the revised Kansas code for care of children; amending K.S.A. 5-512, 28-170a, 38-140, 38-538, 38-1604, 38-1608, 38-1664, 38-1813, 39-754, 39-756, 39-756a, 39-1305, 59-2129, 65-516, 65-6205, 72-962, 72-1113, 72-53,106, 72-5427 and 75-7025 and K.S.A. 2004 Supp. 20-164, 20-302b, 20-319, 21-3604, 21-3612, 21-3721, 21-3843, 23-605, 28-170, 28-172b, 39-709, 44-817, 59-3059, 59-3060, 60-452a, 60-460, 60-1610, 65-1626, 75-4319, 75-4332, 75-7023 and 76-729 and repealing the existing sections; also repealing K.S.A. 38-1501, 38-1504, 38-1505a, 38-1510, 38-1511, 38-1512, 38-1513, 38-1513a, 38-1514, 38-1515, 38-1516, 38-1517, 38-1518, 38-1519, 38-1520, 38-1521, 38-1522b, 38-1523, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-1528, 38-1529, 38-1530, 38-1531, 38-1532, 38-1533, 38-1534, 38-1535, 38-1536, 38-1537, 38-1541, 38-1542, 38-1543, 38-1544, 38-1545, 38-1546, 38-1551, 38-1552, 38-1553, 38-1554, 38-1555, 38-1556, 38-1557, 38-1558, 38-1559, 38-1561, 38-1562, 38-1563, 38-1564, 38-1565, 38-1566, 38-1567, 38-1568, 38-1569, 38-1570, 38-1581, 38-1582, 38-1584, 38-1585, 38-1586, 38-1587, 38-1591, 38-1592, 38-1593, 38-1594, 38-1595, 38-1596, 38-1597, 38-1598, 38-1599 and 38-15,100 and K.S.A. 2004 Supp. 38-1502, 38-1503, 38-1505, 38-1522, 38-1552a, 38-1583, 38-15,101 and 75-4319b.

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

New Section 1. Sections 1 through 78 and amendments thereto, K.S.A. 2004 Supp. 38-1505b and 38-1505c, and amendments thereto, and K.S.A. 38-1506, 38-1507 and 38-1508, and amendments thereto, shall be known as and may be cited as the revised Kansas code for care of children. Proceedings pursuant to this code shall be civil in nature and all proceedings, orders, judgments and decrees shall be deemed to be pursuant to the parental power of the state. The code shall be liberally construed to carry out the policies of the state which are to:

(a) Consider the safety and welfare of a child to be paramount in all proceedings under the code;

(b) provide that each child who comes within the provisions of the code shall receive the care, custody, guidance control and discipline that will best serve the child's welfare and the interests of the state, preferably

perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home, visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. The restraining order shall be served by personal service pursuant to subsection (a) of section 32, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(f) Lack of service on a parent shall not preclude an informal supervision under the provisions of this section. If an order of informal supervision is entered which effects change in custody, any parent not served pursuant to section 32, and amendments thereto, who has not consented to the informal supervision, may request reconsideration of the order of informal supervision. The court shall hear the request without unnecessary delay. If the informal supervision order effects a change in custody, efforts to accomplish service pursuant to section 32, and amendments thereto, shall continue.

New Sec. 40. (a) After a hearing and a finding that discovery procedures, as described in K.S.A. 60-226 through 60-237, and amendments thereto, will expedite the proceedings, the judge may allow discovery subject to limitations.

(b) Upon request of any party or interested party, any other party or interested party shall disclose the names of all potential witnesses.

New Sec. 41. All proceedings under this code shall be disposed of without unnecessary delay. Continuances shall not be granted unless good cause is shown.

New Sec. 42. (a) *Adjudication.* Except as provided in subsection (c), Proceedings pertaining to adjudications under this code shall be open to attendance by any person unless the court determines that closed proceedings or the exclusion of that person would be in the best interests of the child or is necessary to protect the privacy rights of the parents.

(1) The court may not exclude the guardian *ad litem*, parties and interested parties.

(2) Members of the news media shall comply with supreme court rule 10.01.

(b) *Disposition.* Except as provided in subsection (c), Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to all persons except the guardian *ad litem*, interested parties and their attorneys, officers of the court, a court appointed special advocate and the custodian.

(1) Other persons may be permitted to attend with the consent of the parties or by order of the court, if the court determines that it would be in the best interests of the child or the conduct of the proceedings, subject to such limitations as the court determines to be appropriate.

(2) The court may exclude any person if the court determines that

such person's exclusion would be in the best interests of the child or the conduct of the proceedings.

(c) *Preservation of confidentiality.* If information required to be kept confidential by K.S.A. 2004 Supp. 38-1505b, and amendments thereto, is to be introduced into evidence and there are persons in attendance who are not authorized to receive the information, the court may exclude those persons during the presentation of the evidence or conduct an *in camera* inspection of the evidence.

New Sec. 43. (a) In any proceedings under this code, parents, persons with whom the child has been residing pursuant to subsection (d) of section 36, and amendments thereto, and guardians *ad litem* may stipulate or enter no contest statements to all or part of the allegations in the petition.

(b) Prior to the acceptance of any stipulation or no contest statement, other than to names, ages, parentage or other preliminary matters, the court shall ask each of the persons listed in subsection (a) the following questions:

(1) Do you understand that you have a right to a hearing on the allegations contained in the petition?

(2) Do you understand that you may be represented by an attorney and, if you are a parent and financially unable to employ an attorney, the court will appoint an attorney for you, if you so request?

(3) One of the following: (A) Do you understand that a stipulation is an admission that the statements in the petition are true or (B) Do you understand that a no contest statement neither admits nor denies the statement in the petition but allows the court to find that the statements in the petition are true?

(4) Do you understand that, if the court accepts your stipulation or no contest statement, you will not be able to appeal that finding, the court may find the child to be a child in need of care and the court will then make further orders as to the care, custody and supervision of the child?

(5) Do you understand that, if the court finds the child to be a child in need of care, the court is not bound by any agreement or recommendation of the parties as to disposition and placement of the child?

(c) Before accepting a stipulation the court shall find that there is a factual basis for the stipulation.

(d) Before an adjudication based on a no contest statement, the court shall find from a proffer of evidence that there is a factual basis.

(e) If all persons listed in subsection (a) do not stipulate or enter no contest statements, the court shall hear evidence as to those persons, unless such persons are in default. If a person is in default, the matter may proceed by proffer as to that person.

New Sec. 44. (a) In all proceedings under this code, the rules of

Attendance at proceedings. (1) Upon the request of a parent or guardian of the child or their attorneys, the child or the guardian ad litem, the court shall allow a member of the senate and a member of the house of representatives to attend the proceedings as observers.

(2) Upon the request of a parent or guardian of the child or their attorneys, the child or the guardian ad litem, the court shall allow a parent advocate and a member of the clergy to attend the proceedings as observers, unless the court finds the presence of the persons would be disruptive to the proceedings. If the request is denied, the court, on the record, shall state the reasons for denying the request. Prior to attending the proceedings, a parent advocate shall have participated in a parent advocate orientation program approved by the judicial administrator. Such parent advocate orientation program shall include, but not be limited to, information concerning the confidentiality of the proceedings; the child and parent's right to counsel; the definitions and jurisdiction pursuant to the code; the types and purposes of the hearings; options for informal supervision and dispositions; placement options; the parent's obligation to financially support the child while the child is in the state's custody; obligations of the secretary of social and rehabilitation services; obligations of entities that contract with the department of social and rehabilitation services for family preservation, foster care and adoption; the termination of parental rights; the procedures for appeals; and the basic rules regarding court procedure.

(d)

Statewide Independent Living Council of Kansas SILCK

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Testimony to
House Judiciary Committee
on HB 2352

February 16, 2005

Mr. Chairman, members of the committee, thank you for the opportunity to testify before you today on the HB 2352. My name is Shannon Jones and I am the executive director of the Statewide Independent Living Council of Kansas (SILCK). The SILCK is mandated by the federal Rehabilitation Act as amended in 1993. We are governor appointed, consumer controlled and comprised of statewide and cross-disability, cross age representation. Our Council seeks input from older Kansans and those with disabilities in order to develop the State Plan for Independent Living. The SILCK's primary purpose is to facilitate and promote freedom of choice and equal access to all facets of community life for people with disabilities of any age.

First of all, I want to applaud the Judicial Council for their dedicated efforts towards the enormous job of revising the Child In Need of Care code. This was a huge project that took a considerable amount of time. Unfortunately, during the time of revisions, the SILCK was not involved, but most recently we have had several conversations with Randy Herrell about the unintentional consequences, that the SILCK believes could adversely impact parents with disabilities and/or their children with disabilities.

Over the past decade, the SILCK has been deeply involved in reforms that increasingly emphasize community living for people with disabilities. We have seen significant changes made in the delivery of community-based services. As a result, more and more people with disabilities live in the community, are productive members of their communities and are often times parents.

In recent years, the SILCK has been contacted by a number of parents with disabilities and their advocates who have had their children taken from their homes, in some cases for considerable periods of time by SRS or other governmental intervention. In some cases their parental rights have been terminated. Basically because an SRS worker questioned whether the parents were qualified to care for their children solely based on the parent's disability. Parents with varying types of disabilities, i.e., parents who are blind or low vision, parents with mental illness, parents with developmental disabilities, parents who are deaf, and parents with physical disabilities have experience these situations.

After checking with a number of states and the national parent-training network it appears our statute is somewhat lacking. Kansas child custody laws as currently written reflect the historical bias against parents with disabilities and present an unrealistic view of parents with disabilities by their referral to having a disability as a factor in a parents ability to raise their children. Many parents with significant disabilities provide excellent care and stable homes for their children.

The SILCK would suggest an interim study where the attached issues would be taken into consideration and further discussed. Due to the enormity of this bill, the SILCK merely wants to ensure there is no unintentional adverse impact to parents with disabilities and their families.

Thank you for your consideration. I'd be happy to stand for any questions.

Statewide Independent Living Council of Kansas SILCK

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The SILCK requests the following sections be considered for further study and discussion.

Revised Kansas Code for Care of Children, §38-1500 et seq.

A. Pages 2, new (k)

Current Text: This is a policy statement regarding the care of children. No mention is made of discrimination.

Proposed Text: new item (k) stating: "Nothing in this chapter shall be construed to allow discrimination on the basis of disability."

Reason: There is no anti-discrimination clause.

B. Page 2, New Sec. 2

Current Text: Definitions. There is no definition for disability or support services and adaptive equipment.

Proposed Text: "**Disability**," for purposes of this chapter means, with respect to an individual, any physical, mental or intellectual impairment which substantially limits one (1) or more major life activities of the individual including, but not limited to, self-care, manual tasks, walking seeing, hearing, speaking, learning, or working or a record of such impairment, or being regarded as having such an impairment. Disability shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, or substance use disorders, compulsive gambling, kleptomania, or pyromania. Sexual preference or orientation is not considered an impairment or disability. Whether an impairment substantially limits a major life activity shall be determined without consideration of the effect of corrective or mitigating measures used to reduce the effects of the impairment.

"**Adaptive Equipment**," for purposes of this chapter, means any piece of equipment or any item that is used to increase, maintain, or improve the parenting capabilities of a parent with a disability."

Support Services," as used in this chapter means assisting another person with a disability with tasks which the disabled individual would typically do for themselves in the absence of a disability, whether formal

or informal. services which assist a parent with a disability to compensate for those aspects of their disability which affect their ability to care for their child and which will enable them to discharge their parental responsibilities.

Note: The definition of disability should be compared to that in K.S.A. 77-201 for clarity and conformity.
Reason: Obvious.

C. Page14, New Section 14.

Current: New Section 14 is the "Evaluation of development or needs." Subsection (a) is "of child" and subsection (b) is "of parent or custodian."

Proposed: In subsection (b) the language in subsection (a) giving a parent a right to obtain a private "second opinion" of status/health should be repeated.

Reason: The evaluator appointed to conduct the court ordered exam/evaluation may or may not be sensitive or educated about disability and if there is a failure to adjust the evaluation, i.e. failure to provide materials that are large print for visually impaired parents, a failure to evaluate the functioning of a parent in their own home if the parent is a wheelchair user and the parent's home is modified while the office of the evaluator is not modified.

D. Page 20, New Section 23.

Current Text: Describes the process and substance involving MDTs.

Proposed Text: It would be useful to include language stating either "Where a parent has a disability it is appropriate to appoint to the MDT an individual knowledgeable about adaptive equipment and support services for parents or custodians with disabilities," or, (in case there is no such person readily available) "Where a parent has a disability it is appropriate that one member of the MDT be designated as the individual responsible for gathering information about adaptive equipment and support services for parents or custodians with disabilities, making this information available to the parent or custodian and the other members of the MDT."

Reason: There needs to be someone who can discuss intelligently the options for service and equipment with the team and the parents.

E. Page 29 - 31, New section 37(a-f)

Current Text: The enumerated sections outline process and substance of justifying protective custody applications and orders. Disability is not mentioned.

Proposed Text: A new section (b)(1) to state: "The disability of the parent shall not constitute a basis in whole or in part for holding a child in protective custody without further specific allegations that there is a causative relationship between the disability and harm to the child."

Reason: The failure of courts to require causation between disability and harm is one of the most basic reasons that cases without any allegation of abuse or neglect find their way into the court system, burdening the families of people with disabilities, the courts and social services.

F. Page 38, new Section 49 (b)

Current Text: Requires notice and a right to be heard on the issue of what services will be provided to parents and children, "...the services to be provided the child and the child's family..."

Proposed Text: "...the services, support services and adaptive equipment to be provided or utilized by the child and/or the child's family."

Reason: May or may not be the best place for this section, since this is a notice section. However, somewhere needs to be mention of the right to present information to the court as to support services and adaptive equipment.

G. Page 39, New Section 50 (a)(1-5)

Current Text: The enumerated items are what the court should consider prior to entering an order of disposition. No mention is made of disability.

Proposed Text: New number 4 stating "If the parent is disabled, the support services and/or adaptive equipment available to assist the parent in caring for the child."

Reason: Steer the court to examine these issues if the parent or social worker has presented evidence to that effect.

H. Page 41, New Section 50 (e)(1-7)

Current Text: The enumerated items are what the court should consider when deciding whether reintegration is a viable alternative. No mention of disability is made.

Proposed Text: New number 5 stating "If a parent is disabled, whether the secretary has provided the parent with information regarding available support services and adaptive equipment to assist the parent in caring for the child."

Reason: This is yet another point when the court should be considering whether support services and adaptive equipment have been made known to the parent, offered to the parent or used by the parent. Somewhere needs to work in a statement that nothing in this chapter shall be construed to oblige the state to provide adaptive equipment.

I. Page 43, New Section 53 (b) (1-2)

Current Text: The enumerated items are what findings the secretary shall request to be made when a child will be moved from their current placement with a parent. There is no mention of disability.

Proposed Text: A new number 3 stating "A parent's disability shall not constitute a basis in whole or in part for removing a child from a placement with that parent without further specific allegations that there is a causative relationship between the disability and the allegation that the child is being harmed or is likely to be harmed in the home.

Reason: The failure of courts to require causation between disability and harm is one of the most basic reasons children are placed in out of home placements, burdening the families of people with disabilities, the courts and social services.

J. Page 52, New Section 64 (b)(1)

Current Text: The enumerated items in this section are the factors to be considered in termination of parental rights cases. Item (1) is "emotional illness, mental illness, mental deficiency or physical disability of the parent of such duration or nature as to render the parent unable to care for the ongoing physical, mental and emotional needs of the child."

Proposed Text: Remove Item (1).

Reason: Items 2, 4-6 and section (c) items 1-4 list exhaustively the behaviors that would justify a finding that the parent is unfit to have custody. Disability is only relevant as a *cause* of one of these listed behaviors and does not need to be carved out and listed separately. It is redundant.

Kansas Department of Social and Rehabilitation Services
Gary Daniels, Acting Secretary

House Judiciary Committee
February 16, 2005

HB 2352 - Child in Need of Care Code Revision

Chairman O'Neal and members of the committee , thank you for the opportunity to provide written comments on HB 2352. This bill represents the work of several years by a subcommittee of the Judicial Council. SRS was represented on this subcommittee and is pleased to support the final product.

First adopted in 1982, the current code has been revised numerous times. The technical and organizational changes recommended will facilitate access and understanding of the law.

The changes balance sometimes competing needs, rights and interests while emphasizing the child's need and right to remain connected to family or, if connection with the family of origin is not viable, to an alternative permanent family. These changes support SRS' commitment to family centered, community based child welfare service delivery.

The Judicial Council did not consider the changes contained in SB 171 and recommendations to maintain families and support older youth are not contained in HB 2352.

Thank you for the opportunity to provide input.

Kansas Department of

Social and Rehabilitation Services

Gary Daniels, Acting Secretary

House Judiciary Committee
February 16, 2005

HB 2352 - Child in Need of Care Code Revision

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KANSAS

JUVENILE JUSTICE AUTHORITY
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

DATE: February 16, 2005

TO: Representative Michael O'Neal, Chairman
Members of the House Committee on the Judiciary

FROM: Denise L. Everhart, Commissioner
Juvenile Justice Authority

SUBJECT: House Bill 2352

Mr. Chairman and members of the Committee, JJA is neither a proponent nor opponent of HB 2352 but offers this testimony for an issue which has the potential to adversely impact the receipt of funding under the Juvenile Justice and Delinquency Prevention Act (JJDPA). The specific issue of concern has its origin in current law and section 55 of the bill does satisfactorily resolve the issue with respect to its counterpart provision in current law. But instances of a similar nature occurring in other sections of the bill would perpetuate the problem.

In order to receive its full share of federal funds under the JJDPA, Kansas must not place or hold non offenders nor most "status offenders" (as defined in the federal act) in locked facilities. Numerous violations in this regard were noted by the Department of Justice, Office of Juvenile Justice Delinquency Prevention staff during a compliance audit in 2004.

The preponderance of these violations arose from exercising provisions contained in K.S.A. 38-1568 which permit a non offender to be held temporarily in a juvenile detention facility and to be placed in a "secure care facility" (which the Kansas compliance monitor determined is a "secure facility" as defined in the JJDPA – *i.e.*, a "locked" facility). Section 55 of HB 2352 has been crafted to overcome that problem.

However, in the current proposed revisions to the code, three instances exist (all of which are carried over from present law) that permit non offenders and status offenders who do not meet any exception to the prohibition, to be temporarily held in a juvenile detention facility. The three instances appear at section 27 - pg 23, lines 3 - 9; section 37 - pg 30, line 43 through pg 31, line 3; and section 38 - pg 32, lines 35 - 39. The plain language in all of the instances cited would permit the temporary holding in a juvenile detention facility of both non offender juvenile and status offenders who do not meet criteria for one of the exceptions. Thus, unless modified, both the bill and present law provide the potential for continued violations of the JJDPA.

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With that in mind, it is JJA's recommendation that the three sections cited be revised in a fashion that eliminates the authority for the secure holding of non offenders and of status offenders who do not meet the criteria as an exception. After that discrepancy is resolved, JJA would not object to the bill as presented.

JJA staff can be made available to collaborate with the bill's proponents to find suitable language to resolve the issue. However, the substantive subject matter of the bill is not within JJA's purview, and it is preferable for JJA staff only to advise on the specific issue of compliance with the JJDPA and implementing regulations thereto.

Thank you for the opportunity to present this testimony.

Attachment: Excerpt from JJDPA

42 USC 5633 State Plans
Current through P.L. 108-106, approved 11-06-03

(a) Requirements - **In order to receive formula grants** under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, projects, and activities. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall--

(11) shall, in accordance with rules issued by the Administrator, provide that—

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding--
(i) juveniles who are charged with or who have committed a violation of section 922(x)(2) of Title 18 or of a similar State law;
(ii) juveniles who are charged with or who have committed a violation of a valid court order; and
(iii) juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State;

shall <u>not</u> be placed in secure detention facilities or secure correctional facilities; and

(B) juveniles--
(i) who are not charged with any offense; and
(ii) who are--
(I) aliens; or
(II) alleged to be dependent, neglected, or abused;

shall <u>not</u> be placed in secure detention facilities or secure correctional facilities;

...

(23) provide that if a juvenile is taken into custody for violating a ***valid court order*** issued for committing a status offense--
(A) an appropriate public agency shall be promptly notified that such juvenile is held in custody for violating such order;
(B) not later than 24 hours during which such juvenile is so held, an authorized representative of such agency shall interview, in person, such juvenile; and
(C) not later than 48 hours during which such juvenile is so held--
(i) such representative *shall submit an assessment to the court* that issued such order, regarding the immediate needs of such juvenile; and
(ii) such court shall conduct a hearing to determine--

Attachment
Commissioner, JJA
Testimony to House Judiciary Committee
February 16, 2005

(I) whether there is reasonable cause to believe that such juvenile violated such order; and
(II) the appropriate placement of such juvenile pending disposition of the violation alleged;

...

(c) Compliance with statutory requirements

If a State fails to comply with any of the applicable requirements of paragraphs **(11)**, (12), (13), and (22) of subsection (a) of this section in any fiscal year beginning after September 30, 2001, then--

(1) subject to paragraph (2), the amount allocated to such State under section 222 for the subsequent fiscal year shall be reduced by not less than 20 percent for each such paragraph with respect to which the failure occurs, and

(2) the State shall be ineligible to receive any allocation under such section for such fiscal year unless--

(A) the State agrees to expend 50 percent of the amount allocated to the State for such fiscal year to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

(B) the Administrator determines that the State--

(i) has achieved substantial compliance with such applicable requirements with respect to which the State was not in compliance; and

(ii) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance with such applicable requirements within a reasonable time."

...

NOTE: all instances of emphasis by bold, italic and/or underlining have been added.

Attachment
Commissioner, JJA
Testimony to House Judiciary Committee
February 16, 2005