

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 21, 2005 in Room 313-S of the Capitol.

All members were present except:

Dean Newton- excused
Michael Peterson- 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

The hearing on **HB 2457 - civil procedure; services of process, by delivery with return receipt**, was opened.

Randy Hearrell, Kansas Judicial Council, appeared as the sponsor of the proposed bill which would make a small correction to the civil code. In 2000, "service by return receipt delivery" replaced "use of certified mail" and now the U.S. Postal Service is using a new term "service by delivery with return receipt", which should be used to replace "service by return receipt" (Attachment 1).

The hearing on **HB 2457** was closed.

HB 2352 - revised Kansas Code for Care of Children

Professor Rick Levy, Kansas Judicial Council, provided the committee with a handout that addressed some of the issues the committee discussed in the hearing and made some proposed amendments (Attachment 2).

1. Amend Section 1 to include in the provision language to ensure that children of parents with disabilities are not improperly removed from the home.
2. Addressing the concern with the definition of "reasonable efforts". It was found that the term derives from longstanding federal law and any change in that definition could jeopardize federal funding for the state.
3. The reference in Section 5 (c) should actually be referencing subsection (d).
4. Amend Section 38(g)(2) line 27 on page 32 should read "(2) If the secretary....."
5. Section 42 addresses who can attend hearings. The Advisory Committee had serious concerns as to who can attend hearings and they decided to leave the dispositional hearing closed and to allow the court discretionary authority to leave the adjudication hearing closed or opened.
6. A technical correction is also needed on page 34, lines 35-38. It should read "(b) Disposition. Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to persons except **the parties**, the guardian ad litem, interested parties and their attorneys, officers of the court, a court appointed special advocate, and the custodian."
7. Amend Section 62 to expand the notice provisions to balance the interests of the parents and the interest of children. The compromise would provide greater protection to parents while minimizing the delay in moving towards termination.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 21, 2005 in Room 313-S of the Capitol.

Representative Jack made the motion to report **HB 2352** favorably for passage. Representative Colloton seconded the motion.

Representative Jack made a substitute motion to amend Section 1 to include in the provision language to ensure that children of parents with disabilities are not improperly removed from the home. Representative Owens seconded the motion. The motion carried.

Representative Loyd made the motion to change the reference in Section 5 (c) to subsection (d). Representative Owens seconded the motion. The motion carried.

Representative Pauls made the motion to amend Section 38(g)(2) line 27 on page 32 by inserting "If" after (2) and before "the". Representative Loyd seconded the motion. The motion carried.

Representative Loyd made the motion to adopt the a technical correction on page 34, lines 35-38. It should read "(b) Disposition. Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to persons except **the parties**, the guardian ad litem, interested parties and their attorneys, officers of the court, a court appointed special advocate, and the custodian." Representative Owens seconded the motion. The motion carried.

Chairman announced Professor Levy suggested a compromise amendment in Section 62 to expand the notice provisions to balance the interests of the parents and the interest of the children. Representative Ward didn't care for the compromise because it is truly important for parents to receive several notices of termination.

Representative Kiegerl made the motion to adopt the following proposed amendment:

- give foster parents legal standing in the case unless it's not in the best interest of the child
- allow for judicial review in permanent placement
- knowingly false reporting would be held in civil action

Chairman O'Neal announced that the motion would be divided into three parts.

Part 1 - giving foster parents legal standing. Representative Kinzer seconded the motion. Chairman O'Neal pointed out that the language on page 29, lines 3-9 comes pretty close to what he was asking and possibly would make it easier for a foster parent. The foster parent would simply have to reside with the child for a period of six months and then ask the court to have legal standing. With permission of the second, Representative Kiegerl withdrew his motion.

Part 2 - judicial review, the motion was seconded. Professor Levy informed the committee that under current law courts have "veto power" over pre-termination of parental rights of a child. However, if we apply "veto power" when parental rights have been terminated it could jeopardize federal funds. Representative Pauls commented that the courts jurisdiction is opened until an adoption in closed. With permission of the second, Representative Kiegerl withdrew his motion.

Part 3 - insert knowingly false reporting language on page 18, following line 12. Representative Watkins seconded the motion. Staff warned the committee that amendment could apply to any false accusation in any proceeding.

The motion was divided:

a. include subsection (h) of **HB 2456** to make willfully & knowingly making a false report a class B misdemeanor. Representative Jack was concerned that this would cause people who are thinking about reporting not to because they do not know for sure if the act has actually happened. The motion failed 6-7.

b. amend in subsection (i) of **HB 2456** to allow for the court to impose a fine not to exceed \$5,000 and any reasonable attorney fees for making false accusations that they knew were false at the time the accusation was made. The motion failed.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 21, 2005 in Room 313-S of the Capitol.

Representative Ward provided the committee with a balloon (Attachment 3). Chairman O'Neal announced that the committee would take each proposed amendment in the balloon separately.

Representative Ward made the motion to include a definition of "Reasonable efforts". Representative Kinzer seconded the motion. Representative Jack pointed out that the term "reasonable efforts" are used in two different contexts in the bill; "reasonable efforts" for notice and "reasonable efforts" removing a child from custody of it's parents. Representative Ward said that the "service language" would need to be changed to "due diligence".

Chairman O'Neal suggested that Representative Ward & Professor Levy get together and review the balloon and be ready to work the amendments tomorrow.

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for February 22, 2005 at 3:30 p.m. in room 313-S.



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MEMORANDUM

TO: House Judiciary Committee
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: February 21, 2005
RE: 2005 SB 2457

Prior to 2000, service by mail pursuant to K.S.A. 60-303 was limited to the use of certified mail via the U.S. Postal Service, either using certified mail evidenced by a return receipt signed by any person or using restricted delivery, which allows delivery only to the person to whom the letter is addressed. In 2000, K.S.A. 60-303 was amended in HB 2905 to change the name of this type of service to "service by return receipt delivery" and to expand the allowable methods to include "priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery."

In 2004, a member of the Judicial Council Civil Code Committee brought to the Committee's attention that there are multiple places in K.S.A. 60-304 where the name of service had not been changed from "certified mail" to "return receipt delivery" and that an amendment would foster consistency between the two statutes.

Upon further discussion, Robert Casad, a Civil Code Advisory Committee member and one of the authors of the treatise Kansas Code of Civil Procedure Annotated, 4th ed. (2003), introduced another issue with this form of service. Although K.S.A. 60-303(c)(3) states that service of process by return receipt delivery shall be considered obtained upon the *delivery* of the sealed envelope, the name given to the service method seems to emphasize the *return receipt* aspect. Professor Casad suggested that a minor change in the name to "delivery with return receipt" would eliminate lingering confusion regarding this newly expanded method of service. House Bill 2457 makes this change to the name of the service in K.S.A. 60-303 that was previously known as service by certified mail, and makes corresponding changes in other statutes in which the term appears.

To: Chairman Michael O'Neal and Members of the House Committee on the Judiciary
From: Richard E. Levy
Date: February 18, 2005
Re: HB 2352 Issues

Once again, on behalf of the Advisory Committee on Juvenile Justice and Child in Need of Care Reform of the Kansas Judicial Council, thank you for affording me the opportunity to present HB 2352, the Revised Child in Need of Care Code for the state of Kansas. The advisory committee and Judicial Council welcome the careful attention paid to the bill, which will help to ensure that the best possible Child in Need of Care Code emerges from the legislative process. This memorandum is intended to clarify and respond to various issues that arose as a result of the committee hearing on February 16, 2005. Although I am representing the advisory committee and the Judicial Council in presenting the bill, this memorandum has not been considered by the committee as a whole or by the Judicial Council and therefore should not be regarded as an official statement by either body.

I have organized my comments by affected section(s) so that they can be taken up by the Judiciary Committee as it works through the bill.

Sec. 1: Inclusion of Prohibition on Disability Discrimination (pages 1-2)

As indicated at the hearing, although the advisory committee has not formally considered this issue, those members present at the hearing believe the committee would be receptive to inclusion of a provision to ensure that children of parents with disabilities are not improperly removed from the home, as reflected in SB 230. Because SB 230 was drafted as an amendment to current law, it would need revision for incorporation into HB 2352. At the present time, however, careful consideration and incorporation of the more comprehensive amendments suggested by the Statewide Independent Living Council of Kansas is not feasible. As a compromise, I have incorporated some language from those amendments into a draft amendment to include a prohibition against disability discrimination in section 1. The proposal restructures the provision somewhat to provide a more logical organization.

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.

(a) 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.

(b) The code shall be liberally construed to carry out the policies of the state which are to:

(1) Consider the safety and welfare of a child to be paramount in all proceedings under the code;
(2) 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 in the child's home and recognizing that the child's relationship with such child's family is important to the child's well being;

(3) make the ongoing physical, mental and emotional needs of the child decisive considerations in proceedings under this code;

- (4) acknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under this code without unnecessary delay;
 - (5) encourage the reporting of suspected child abuse and neglect;
 - (6) investigate reports of suspected child abuse and neglect thoroughly and promptly;
 - (7) provide for the protection of children who have been subject to physical, mental or emotional abuse or neglect or sexual abuse;
 - (8) provide preventative and rehabilitative services, when appropriate, to abused and neglected children and their families so, if possible, the families can remain together without further threat to the children;
 - (9) provide stability in the life of a child who must be removed from the home of a parent; and
 - (10) place children in permanent family settings, in absence of compelling reasons to the contrary.
- (c) **Nothing in this code shall be construed to permit discrimination on the basis of disability.**
- (1) **The disability of a parent shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the disability and harm to the child.**
- (2) **In cases involving a parent with a disability, determinations made under this code shall consider the availability and use of accommodations for the disability, including adaptive equipment and support services.**

Sec. 2: Definition of Reasonable Efforts (Page 2)

During the hearing, Representative Ward inquired about the absence of a definition of "reasonable efforts," which appears in numerous provisions throughout the code. While it would be possible to draft a definition for the term, doing so could risk running afoul of federal law. The term "reasonable efforts" derives from longstanding federal law. It has been incorporated into several provisions of the revised code by the advisory committee to comply with the Adoption and Safe Families Act. Thus, any state definition of the term must be consistent with the federal understanding. A quick search for federal statutory provisions or regulations defining "reasonable efforts" did not uncover any official definition and I am informed by other members of the advisory committee that the federal government has not given clear guidance to the states on the issue. Until such guidance is forthcoming, if the state attempts to define the term by statute, it may risk enacting an understanding of the requirement that is at variance with federal requirements as they are further developed, which in turn could risk the loss of substantial federal funding.

Sec.5(c): Appontment of Counsel for Some Interested Parties (page 8)

In his testimony, Judge Grosko expressed concern that providing for court appointed counsel for interested parties was unnecessary, would impose costs on counties, and further complicate already complicated proceedings. These concerns should certainly be taken into account, but may be based on a misunderstanding of what the provision requires. Sec. 5(c) applies only to a limited subset of interested parties. As drafted, it contains an incorrect cross reference in line 20, which

should refer to **subsection (d)** of section 36, rather than subsection (c). Section 36(d) concerns interested parties with whom the child has been living within six months of the date on which the child in need of care petition is filed. As to this group of interested parties, the provision would permit, *but not require*, a court to appoint counsel for those who cannot afford their own lawyer. As explained in the specific comment accompanying this provision, “It was the opinion of the committee that such persons, which may include close relatives, often have a particularly strong relationship with the child, the continuation of which should receive particular attention.”

Sec. 38(g)(2): Temporary Custody and SRS discretion (page 32, lines 27 and following)

Representative Ward inquired about the discretionary authority of the secretary to make a placement without judicial approval (in lines 32-34) in cases when the court places temporary custody with the secretary. This language is carried forward from current K.S.A. 38-1543(g) unchanged and is necessary to remain eligible for federal IV-E foster care payments. Federal law specifies that responsibility for placing a child in a specific foster care placement must rest with the state agency or an agency under contract with it and that a court may not order specific placements. These concerns are also relevant to Sec. 50, discussed below. Because this provision deals with *temporary* placements, the kind of review mechanism contemplated for the dispositional phase of the adjudication under Sec. 50 (d), see page 40, especially lines 9-21.

Please note that there was an inadvertent omission in line 27 on page 32, which should read “(2) **If** the secretary presents the court with a plan”

Sec. 42: Attendance at hearings (Page 34)

Representative Miller in his testimony expressed concern about the lack of openness in CINC proceedings. The advisory committee shares that concern and consequently proposes opening the adjudication phase of the CINC process as a means of checking errors and abuse and of educating the public about the nature and extent of child abuse and neglect. At the same time, however, there are important confidentiality concerns to be weighed in the balance. These proceedings involve deeply private matters for the children, parents, prospective custodians, and others involved in the process. The advisory committee’s proposals reflect a careful effort to balance these concerns, which is explained in greater detail in the comment accompanying section 42.

Representative Miller found the relevant provisions of the revised code insufficient in two respects. First, Representative Miller offered an amendment that would require the court to permit a member of the Kansas House and a member of the Kansas Senate to attend, if a parent consents. Second, Representative Miller wanted legislators and others, including clergy and parent advocates to be able to attend the dispositional phase as well as the adjudication. While mandatory attendance for designated legislators would not pose a major threat to confidentiality concerns, such an

amendment is largely unnecessary at the adjudication phase in light of the presumptive openness of those proceedings. On the other hand, there are serious concerns that prompted the advisory committee to leave dispositional hearings presumptively closed. First, there is likely to be much more discussion of confidential information about the child's physical, emotional, psychological, and education needs at this phase of the process, where the focus is on the child's needs. Second, to the extent that candidates for custodianship or permanent placement are to be evaluated, failure to close the hearings might deter some individuals from coming forward because of the fear of public disclosure of private information.

Please note that, as I stated in my testimony at the hearing, a technical correction is necessary in lines 35-38 on page 34, which should read:

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

Sec. 50(d): Responsibility for Placement with a Foster Care Provider. (Page 40)

Representatives Kiegerl and Ward expressed concern over the allocation of responsibility for placement with a specific foster care provider under section 50(d) between the court and the secretary. Under the provision:

- (1) the court may recommend a specific placement and the secretary must consider it;
- (2) the secretary must notify the court of the proposed placement;
- (3) after notice and a hearing the court may reject the placement and the secretary must then make an alternative placement.

At the hearing I mistakenly implied that this arrangement gave the court greater control than under current law. In fact, while HB 2352 rewords the relevant provisions, the essential allocation of authority and procedure remains the same as that provided for in K.S.A. 38-1563(e).

The reason for this allocation of authority under current law and for its continuation in the revised code is (again) federal funding. Under 45 CFR § 1356.21(g)(3), "FFP [federal financial participation] is not available when a court orders a placement with a specific foster care provider." Whatever the merits of this allocation of authority as a matter of policy, compliance with it is essential for the state to maintain its federal funding. The current provision and the provisions of section 50(d) go as far as the state can go in giving the court oversight of foster care placement by the secretary.

Sec. 62: Second service of process before termination of parental rights (pages 50-51)

Representative Ward expressed concerns with provisions of the revised code that would permit the court to initiate proceedings for termination of parental rights without requiring a second service of process. The advisory committee is sensitive to Representative Ward's concern that parents receive adequate notice before termination of their parental rights and carefully weighed this provision before proposing it. The countervailing consideration that persuaded the advisory committee to propose this change is that delays in the proceedings inevitably harm children, who have a very different time frame from adults. It must be remembered that at this phase of the process, efforts to reintegrate the family have failed or are infeasible and termination is a necessary prerequisite to finding a permanent and loving family relationship for the child.

In the advisory committee's judgment, the critical issue under section 62 is whether the parent has sufficient *notice* of the proceedings so that he or she can participate and protect his or her rights. It is this kind of notice which lies at the heart of due process. Service of process is the law's most formal means of providing notice, but it is not the only one. The central question is whether a second round of service of process will provide significantly better notice to parents than the alternative proposed by section 62(b), which is notice by regular mail. To evaluate this question, we may divide the world of parents involved in CINC proceedings into several groups.

First, there are parents who have participated in proceedings throughout. These parents would not be adversely affected by the proposal because they will receive actual notice of the termination proceedings and have full opportunity to continue their participation.

Second, there are parents who were served and received actual notice at the outset of proceedings but have chosen not to participate. These parents might be harmed if they have not kept the court informed of their address and do not receive notice by mail that a termination hearing will be held. The advisory committee sought to minimize this possibility by strengthening the initial notice served on parents to ensure (1) the parent is informed that proceedings might result in termination of parental rights and (2) the parent is informed that further notice will be provided by mail and that he or she must keep the court informed of his or her whereabouts to ensure receipt of this notice. It was not clear to the members of the advisory committee why a permanent placement for a child should be delayed to secure service of process on a parent who receives this kind of notice but does not keep the court informed of his or her address. Parents might also be harmed if they do not take the notice of termination proceedings seriously because it comes by mail rather than by service of process. This risk must be weighed against the risk – not uncommon in many CINC cases – that a parent may seek to avoid service of process or certified mail.

Third, there are parents who never receive actual notice of the initial proceeding. Typically this is because they could not be served through any means other than publication. Obviously, such parents will not receive notification by mail because their address is not known, and thus the risk arises that their rights will be terminated without them ever having actual notice of the proceedings that lead to termination. This is a serious concern and was carefully considered by the committee. The question, however, is whether a second round of service of process will find these parents and

provide them notice. The advisory committee ultimately concluded that it would not. Service by publication was necessary at the outset because these parents cannot be located and it is unclear why a second search will be successful. Those on the committee with experience in these matters indicated that in such cases, the second round of service is accomplished by publication as well, which adds considerable delay and does not in practice provide any actual notice to affected parents.

These are matters about which reasonable people may disagree and it is certainly within the prerogative of the legislature to make the ultimate policy choice balancing the interests of parents and the interests of children in such cases. Perhaps as a compromise that could provide greater protection for parents while minimizing the delays in moving to termination, the Judiciary Committee might consider the following amendment to section 62(b)(3):

The provisions of paragraph (1) shall not require additional service of process to any person receiving notice of the hearing pursuant to section 34, and amendments thereto. **However, if service of the initial petition on a parent was accomplished by publication pursuant to section 32(e) and amendments thereto, there shall be further reasonable efforts to locate that parent and provide personal or residential service. If, after such further reasonable efforts, it is not possible to provide personal, residential, return receipt delivery or first class mail service, additional service by publication shall not be required.**

HOUSE BILL No. 2352

By Committee on Judiciary

2-8

Proposed Amendments
Representative Ward
February 21, 2005

Balloon #1

z2352h1.wpd

House Judiciary
2-21-05
Attachment 3

9 AN ACT creating the revised Kansas code for care of children: amending
10 K.S.A. 5-512, 28-170a, 38-140, 38-538, 38-1604, 38-1608, 38-1664, 38-
11 1813, 39-754, 39-756, 39-756a, 39-1305, 59-2129, 65-516, 65-6205, 72-
12 962, 72-1113, 72-53.106, 72-5427 and 75-7025 and K.S.A. 2004 Supp.
13 20-164, 20-302b, 20-319, 21-3604, 21-3612, 21-3721, 21-3843, 23-605,
14 28-170, 28-172b, 39-709, 44-817, 59-3059, 59-3060, 60-452a, 60-460,
15 60-1610, 65-1626, 75-4319, 75-4332, 75-7023 and 76-729 and repeal-
16 ing the existing sections: also repealing K.S.A. 38-1501, 38-1504, 38-
17 1505a, 38-1510, 38-1511, 38-1512, 38-1513, 38-1513a, 38-1514, 38-
18 1515, 38-1516, 38-1517, 38-1518, 38-1519, 38-1520, 38-1521,
19 38-1522b, 38-1523, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-
20 1528, 38-1529, 38-1530, 38-1531, 38-1532, 38-1533, 38-1534, 38-1535,
21 38-1536, 38-1537, 38-1541, 38-1542, 38-1543, 38-1544, 38-1545, 38-
22 1546, 38-1551, 38-1552, 38-1553, 38-1554, 38-1555, 38-1556, 38-1557,
23 38-1558, 38-1559, 38-1561, 38-1562, 38-1563, 38-1564, 38-1565, 38-
24 1566, 38-1567, 38-1568, 38-1569, 38-1570, 38-1581, 38-1582, 38-1584,
25 38-1585, 38-1586, 38-1587, 38-1591, 38-1592, 38-1593, 38-1594, 38-
26 1595, 38-1596, 38-1597, 38-1598, 38-1599 and 38-15,100 and K.S.A.
27 2004 Supp. 38-1502, 38-1503, 38-1505, 38-1522, 38-1552a, 38-1583,
28 38-15,101 and 75-4319b.

29
30 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

1 child from a situation which requires judgment or actions beyond the
2 child's level of maturity, physical condition or mental abilities and that
3 results in bodily injury or a likelihood of harm to the child; or

4 (3) failure to use resources available to treat a diagnosed medical
5 condition if such treatment will make a child substantially more com-
6 fortable, reduce pain and suffering, or correct or substantially diminish a
7 crippling condition from worsening. A parent legitimately practicing re-
8 ligious beliefs who does not provide specified medical treatment for a
9 child because of religious beliefs shall not for that reason be considered
10 a negligent parent; however, this exception shall not preclude a court from
11 entering an order pursuant to subsection (a)(2) of section 12, and amend-
12 ments thereto.

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

16 (u) "Party" means the state, the petitioner, the child and any parent
17 of the child.

18 (v) "Permanency goal" means the outcome of the permanency plan-
19 ning process which may be reintegration, adoption, appointment of a
20 permanent custodian or another planned permanent living arrangement.

21 (w) "Permanent custodian" means a judicially approved permanent
22 guardian of a child pursuant to section 67, and amendments thereto.

23 (x) "Physical, mental or emotional abuse" means the infliction of
24 physical, mental or emotional harm or the causing of a deterioration of a
25 child and may include, but shall not be limited to, maltreatment or ex-
26 ploiting a child to the extent that the child's health or emotional well-
27 being is endangered.

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

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

33 (aa) "Secretary" means the secretary of social and rehabilitation serv-
34 ices or the secretary's designee.

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

42 (cc) "Sexual abuse" means any contact or interaction with a child in
43 which the child is being used for the sexual stimulation of the perpetrator.

(z) "Reasonable efforts" mean the exercise of reasonable diligence and care to utilize all available services related to meeting the needs of the child and the child's family. In determining reasonable efforts to be made and in making such reasonable efforts, the child's safety and welfare shall be the paramount consideration. In support of its determination of whether reasonable efforts have been made, the court shall enter findings, including a brief description of what preventive or reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family. The state of Kansas shall have the burden of demonstrating reasonable efforts. The court shall weigh the harmful effects of removal against the need to insure the child's safety and welfare. Reasonable efforts shall not be required if a parent has been found by a court to have: (1) Committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: Murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or a felony battery that resulted in bodily injury; or (2) subjected the child or another child to aggravated circumstances.

Relettering the remaining subsections accordingly

1 the child or another person. Sexual abuse shall include allowing, permit-
2 ting or encouraging a child to engage in prostitution or to be photo-
3 graphed, filmed or depicted in pornographic material.

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

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

13 New Sec 3. (a) Proceedings concerning any child who may be a child
14 in need of care shall be governed by this code, except in those instances
15 when the Indian child welfare act of 1978 (25 U.S.C. §1901 et seq.)
16 applies.

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

21 (c) The court acquires jurisdiction over a child by the filing of a pe-
22 tition pursuant to this code or upon issuance of an *ex parte* order pursuant
23 to section 37, and amendments thereto. When the court acquires juris-
24 diction over a child in need of care, jurisdiction may continue until the
25 child has: (1) Attained the age of 21 years; (2) been adopted; or (3) been
26 discharged by the court. ~~Any child 18 years of age or over may request,~~
27 in writing to the court, that the jurisdiction of the court cease. The court
28 shall give notice of the request to all parties and interested parties ~~and~~
29 30 days after receipt of the request ~~jurisdiction will cease.~~

The court shall be notified upon the occurrence of paragraph (1) or (2).

. A hearing shall be held within

for the court to review the living plans of such child. Following the hearing, a journal entry shall be filed with the court ceasing jurisdiction.

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

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

42 New Sec. 4. (a) Venue of any case involving a child in need of care
43 shall be in the county of the child's residence or in the county where the

1 child is found.

2 (b) Upon application of any party or interested party and after notice
 3 to all other parties and interested parties, the court in which the petition
 4 was originally filed alleging that a child is a child in need of care may
 5 order the proceedings transferred to the court of the county where: (1)
 6 The child is physically present; (2) the parent or parents reside; or (3)
 7 other proceedings are pending in this state concerning custody of the
 8 child. The judge of the court in which the case is pending shall consult
 9 with the judge of the proposed receiving court prior to transfer of the
 10 case. ~~If the judges do not agree that the case should be transferred or if~~
 11 ~~a hearing is requested,~~ a hearing shall be held on the desirability of the
 12 transfer, with notice to parties or interested parties, the secretary and the
 13 proposed receiving court. ~~If the judge of the transferring court orders the~~
 14 ~~case transferred,~~ the order of transfer shall include findings stating why
 15 the case is being transferred and, if available, the names and addresses
 16 of all interested parties to whom the receiving court should provide notice
 17 of any further proceedings. The receiving court shall accept the case. Any
 18 judge transferring any case to another court shall transmit a complete
 19 record thereof and, upon receipt of the record, the receiving court shall
 20 assume jurisdiction as if the proceedings were originally filed in that court.
 21 The transferring judge, if an adjudicatory hearing has been held, shall
 22 also transmit recommendations as to disposition. The court may return
 23 the case to the court where it originated if the child is not present in the
 24 receiving county or, the receiving county is not the residence of the child's
 25 parent or parents.

Upon such application,

The judge shall base any decision to transfer on whether the evidence and witnesses are located in the county where the proceedings are to be transferred.

26 New Sec. 5. (a) *Appointment of guardian ad litem and attorney for*
 27 *child: duties.* Upon the filing of a petition, the court shall appoint an
 28 attorney to serve as guardian *ad litem* for a child who is the subject of
 29 proceedings under this code. The guardian *ad litem* shall make an inde-
 30 pendent investigation of the facts upon which the petition is based and
 31 shall appear for and represent the best interests of the child. When the
 32 child's position is not consistent with the determination of the guardian
 33 *ad litem* as to the child's best interests, the guardian *ad litem* shall inform
 34 the court of the disagreement. The guardian *ad litem* or the child may
 35 request the court to appoint a second attorney to serve as attorney for
 36 the child, and the court, on good cause shown, may appoint such second
 37 attorney. The attorney for the child shall allow the child and the guardian
 38 *ad litem* to communicate with one another but may require such com-
 39 munications to occur in the attorney's presence.

40 (b) *Attorney for parent or custodian.* A parent of a child alleged or
 41 adjudged to be a child in need of care may be represented by an attorney,
 42 in connection with all proceedings under this code.

43 (1) If at any stage of the proceedings a parent desires but is financially

1 unable to employ an attorney, the court shall appoint an attorney for the
2 parent. It shall not be necessary to appoint an attorney to represent a
3 parent who fails or refuses to attend the hearing after having been prop-
4 erly served with process in accordance with section 32, and amendments
5 thereto. A parent or custodian who is not a minor, a mentally ill person
6 or a disabled person may waive counsel either in writing or on the record.

7 (2) The court shall appoint an attorney for a parent who is a minor,
8 a mentally ill person or a disabled person unless the court determines
9 that there is an attorney retained who will appear and represent the in-
10 terests of the person in the proceedings under this code.

11 (3) As used in this subsection: (A) "Mentally ill person" shall have the
12 meaning ascribed thereto in K.S.A. 2004 Supp. 59-2946, and amendments
13 thereto; and (B) "disabled person" shall have the meaning ascribed
14 thereto in K.S.A. 77-201, and amendments thereto.

15 (c) *Attorney for interested parties.* A person who, pursuant to section
16 36, and amendments thereto, is an interested party in a proceeding in-
17 volving a child alleged to be a child in need of care may be represented
18 by an attorney in connection with all proceedings under this code. If at
19 any stage of the proceedings a person who is an interested party under,
20 subsection (c) of section 36, and amendments thereto, desires but is fi-
21 nancially unable to employ an attorney, the court may appoint an attorney
22 for the interested party. It shall not be necessary to appoint an attorney
23 to represent an interested party who fails or refuses to attend the hearing
24 after having been properly served with process in accordance with section
25 32, and amendments thereto.

(d)

if the court finds such appointment would enhance the proceedings pursuant to the code

26 (d) *Continuation of representation.* A guardian *ad litem* appointed to
27 represent the best interests of a child or a second attorney appointed for
28 a child as provided in subsection (a), or an attorney appointed for a parent
29 or custodian shall continue to represent the client at all subsequent hear-
30 ings in proceedings under this code, including any appellate proceedings,
31 unless relieved by the court upon a showing of good cause or upon trans-
32 fer of venue.

33 (e) *Fees for counsel.* An attorney appointed pursuant to this section
34 shall be allowed a reasonable fee for services, which may be assessed as
35 an expense in the proceedings as provided in section 10, and amendments
36 thereto.

37 New Sec. 6. (a) The court at any stage of a proceeding pursuant to
38 this code may appoint a special advocate for the child who shall serve
39 until discharged by the court and whose primary duties shall be to ad-
40 vocate the best interests of the child and assist the child in obtaining a
41 permanent, safe and homelike placement. The court-appointed special
42 advocate shall have such qualifications and perform such specific duties
43 and responsibilities as prescribed by rule of the supreme court.

1 recommendations into an order in lieu of the six-month review hearing.

2 (e) Three members of the citizen review board shall be present to
3 review a case.

4 (f) The court shall provide a place for the reviews to be held. The
5 citizen review board members shall travel to the county of the family
6 residence of the child being reviewed to hold the review.

7 New Sec. 9. It shall be the duty of the county or district attorney or
8 the county or district attorney's designee to prepare and file the petition
9 alleging a child to be a child in need of care, and to appear at the hearing
10 on the petition and to present evidence as necessary, at all stages of the
11 proceedings, that will aid the court in making appropriate decisions. The
12 county or district attorney or the county or district attorney's designee
13 shall also have the other duties required by this code.

14 New Sec. 10. (a) *Docket fee.* The docket fee for proceedings under
15 this code, if one is assessed as provided in this section, shall be \$25. Only
16 one docket fee shall be assessed in each case.

17 (b) *Expenses.* The expenses for proceedings under this code, includ-
18 ing fees and mileage allowed witnesses and fees and expenses approved
19 by the court for appointed attorneys, shall be paid by the board of county
20 commissioners from the general fund of the county.

21 (c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket
22 fee may be assessed or waived by the court conducting the initial disposi-
23 tional hearing and the docket fee may be assessed against the complain-
24 ing witness or person initiating the proceedings or a party or interested
25 party other than the state, a political subdivision of the state, an agency
26 of the state or of a political subdivision of the state, or a person acting in
27 the capacity of an employee of the state or of a political subdivision of
28 the state. Any docket fee received shall be remitted to the state treasurer
29 pursuant to K.S.A. 20-362, and amendments thereto.

30 (2) *Expenses.* Expenses may be assessed against the complaining wit-
31 ness or person initiating the proceedings or an interested party, other
32 than the state, a political subdivision of the state, an agency of the state
33 or of a political subdivision of the state or a person acting in the capacity
34 of an employee of the state or of a political subdivision of the state. When
35 expenses are recovered from a party against whom they have been as-
36 sessed the general fund of the county shall be reimbursed in the amount
37 of the recovery. If it appears to the court in any proceedings under this
38 code that expenses were unreasonably incurred at the request of any party
39 the court may assess that portion of the expenses against the party.

40 (d) *Cases in which venue is transferred.* If venue is transferred from
41 one county to another, the court from which the case is transferred shall
42 send to the receiving court a statement of expenses paid from the general
43 fund of the sending county. If the receiving court collects any of the

Pursuant to a written agreement between the department and the county or district attorney, the department may perform the duties of the county or district attorney after disposition has been determined by the court.

1 to a facility or person designated by the secretary, a shelter facility des-
2 ignated by the court, court services officer, juvenile intake and assessment
3 worker, licensed attendant care center or other person. If, after delivery
4 of the child to a shelter facility, the person in charge of the shelter facility
5 at that time and the law enforcement officer determine that the child will
6 not remain in the shelter facility, the law enforcement officer shall deliver
7 the child to a juvenile detention facility or other secure facility, designated
8 by the court, where the child shall be detained for not more than 24
9 hours, excluding Saturdays, Sundays and legal holidays. No child taken
10 into custody pursuant to this code shall be placed in a juvenile detention
11 facility or other secure facility, except as authorized by this section and
12 by sections 37, 38 and 55, and amendments thereto. It shall be the duty
13 of the law enforcement officer to furnish to the county or district attorney,
14 without unnecessary delay, all the information in the possession of the
15 officer pertaining to the child, the child's parents or other persons inter-
16 ested in or likely to be interested in the child and all other facts and
17 circumstances which caused the child to be taken into custody.

18 (b) When any law enforcement officer takes into custody any child as
19 provided in subsection (b)(2) of section 26, and amendments thereto,
20 proceedings shall be initiated in accordance with the provisions of the
21 interstate compact on juveniles, K.S.A. 38-1001 et seq., and amendments
22 thereto, or K.S.A. 2004 Supp. 38-1008, and amendments thereto, when
23 effective. Any child taken into custody pursuant to the interstate compact
24 on juveniles may be detained in a juvenile detention facility or other
25 secure facility.

26 (c) Whenever a child under the age of 18 years is taken into custody
27 by a law enforcement officer without a court order and is thereafter
28 placed as authorized by subsection (a), the facility or person shall, upon
29 written application of the law enforcement officer, have physical custody
30 and provide care and supervision for the child. The application shall state:

31 (1) The name and address of the child, if known;

32 (2) the names and addresses of the child's parents or nearest relatives
33 and persons with whom the child has been residing, if known; and

34 (3) the officer's belief that the child is a child in need of care and that
35 there are reasonable grounds to believe that the circumstances or con-
36 dition of the child is such that the child would be harmed unless placed
37 in the immediate custody of the shelter facility or other person.

38 (d) A copy of the application shall be furnished by the facility or
39 person receiving the child to the county or district attorney without un-
40 necessary delay.

41 (e) The shelter facility or other person designated by the court who
42 has custody of the child pursuant to this section shall discharge the child
43 not later than 72 hours following admission, excluding Saturdays, Sundays

1 and legal holidays, unless a court has entered an order pertaining to tem-
 2 porary custody or release.

3 (f) In absence of a court order to the contrary, the county or district
 4 attorney or the placing law enforcement agency shall have the authority
 5 to direct the release of the child at any time.

6 (g) When any law enforcement officer takes into custody any child as
 7 provided in subsection (d) of section 26, and amendments thereto, the
 8 child shall forthwith be delivered to the school in which the child is en-
 9 rolled, any location designated by the school in which the child is enrolled
 10 or the child's parent or other custodian.

11 *New Sec. 26.* (a) Whenever the secretary or any other person refers
 12 a case to the county or district attorney for the purpose of filing a petition
 13 alleging that a child is a child in need of care, the county or district
 14 attorney shall review the facts, recommendations and any other evidence
 15 available and determine if the circumstances warrant filing a petition.

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

19 (c) When a petition is filed alleging an infant surrendered pursuant
 20 to section 77, and amendments thereto, is a child in need of care, the
 21 petition shall include a request that the court find that reintegration is
 22 not a viable alternative. Such petition also shall include a request to ter-
 23 minate the parental rights of the parents of such infant. An expedited
 24 hearing shall be granted on any petition filed pursuant to this subsection.

25 *New Sec. 29.* (a) *Filing and contents of petition.* (1) A petition filed
 26 to commence an action pursuant to this code shall be filed with the clerk
 27 of the district court and shall state, if known:

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

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

30 (C) the name and address of the child's nearest known relative if no
 31 parent can be found;

32 (D) the name and residence address of any persons having custody
 33 or control of the child; and

34 (E) plainly and concisely in the language of the statutory definition,
 35 the basis for the petition.

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

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

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

42 (5) The petition shall contain a request that the parent or parents be
 43 ordered to pay child support. The request for child support may be omit-

The facility or person who has custody of the child shall allow one supervised visit between the child and the parent or parents within such 72 hour period.

1 the child has not been taken into custody, an order directing that the
2 child be taken into custody. The application shall state for each child:

- 3 (1) The applicant's belief that the child is a child in need of care;
4 (2) that the child is likely to sustain harm if not immediately removed
5 from the home;
6 (3) that allowing the child to remain in the home is contrary to the
7 welfare of the child; and
8 (4) the facts relied upon to support the application, including efforts
9 known to the applicant to maintain the family unit and prevent the un-
10 necessary removal of the child from the child's home, or the specific facts
11 supporting that an emergency exists which threatens the safety of the
12 child.

13 (b) (1) The order of protective custody may be issued only after the
14 court has determined there is probable cause to believe the allegations
15 in the application are true. The order shall remain in effect until the
16 temporary custody hearing provided for in section 38, and amendments
17 thereto, unless earlier rescinded by the court.

18 (2) No child shall be held in protective custody for more than 72
19 hours, excluding Saturdays, Sundays and legal holidays, unless within the
20 72-hour period a determination is made as to the necessity for temporary
21 custody in a temporary custody hearing. Nothing in this subsection shall
22 be construed to mean that the child must remain in protective custody
23 for 72 hours. ~~†~~

24 (c) (1) Whenever the court determines the necessity for an order of
25 protective custody, the court may place the child in the protective custody
26 of:

- 27 (A) A parent or other person having custody of the child and may
28 enter a restraining order pursuant to subsection (e);
29 (B) a person, other than the parent or other person having custody,
30 who shall not be required to be licensed under article 5 of chapter 65 of
31 the Kansas Statutes Annotated, and amendments thereto;
32 (C) a youth residential facility;
33 (D) a shelter facility; or
34 (E) the secretary.

35 (2) If the secretary presents the court with a plan to provide services
36 to a child or family which the court finds will assure the safety of the
37 child, the court may only place the child in the protective custody of the
38 secretary until the court finds the services are in place. The court shall
39 have the authority to require any person or entity agreeing to participate
40 in the plan to perform as set out in the plan. When the child is placed in
41 the protective custody of the secretary, the secretary shall have the dis-
42 cretionary authority to place the child with a parent or to make other
43 suitable placement for the child. When circumstances require, a child

A child in protective custody shall be allowed one supervised visit between the child and the parent or parents within such 72 hour period.

1 may be placed in a juvenile detention facility or other secure facility pursuant to an order of protective custody for a period of not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

2
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4 (d) The order of protective custody shall be served pursuant to subsection (a) of section 32, and amendments thereto, on the child's parents and any other person having legal custody of the child. The order shall prohibit the removal of the child from the court's jurisdiction without the court's permission.

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9 (e) If the court issues an order of protective custody, the court may also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such 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.

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18 (f) (1) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that:

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21 (A) The child is likely to sustain harm if not immediately removed from the home;

22
23 (B) allowing the child to remain in the home is contrary to the welfare of the child; and

24
25 (C) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child.

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

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32 New Sec. 38. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

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

37
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39 (c) Whenever it is determined that a temporary custody hearing is required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be given to all parties and interested parties.

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

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

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

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

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

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

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

24 (C) a youth residential facility;

25 (D) a shelter facility; or

26 (E) the secretary.

27 (2) The secretary presents the court with a plan to provide services
28 to a child or family which the court finds will assure the safety of the
29 child, the court may only place the child in the temporary custody of the
30 secretary until the court finds the services are in place. The court shall
31 have the authority to require any person or entity agreeing to participate
32 in the plan to perform as set out in the plan. When the child is placed in
33 the temporary custody of the secretary, the secretary shall have the dis-
34 cretionary authority to place the child with a parent or to make other
35 suitable placement for the child. When circumstances require, a child
36 may be placed in a juvenile detention facility or other secure facility, but
37 the total amount of time that the child may be held in such facility under
38 this section and section 37, and amendments thereto, shall not exceed 24
39 hours, excluding Saturdays, Sundays and legal holidays. The order of tem-
40 porary custody shall remain in effect until modified or rescinded by the
41 court or a disposition order is entered but not exceeding 60 days, unless
42 good cause is shown and stated on the record.

43 (h) If the court issues an order of temporary custody, the court may

1 also enter an order restraining any alleged perpetrator of physical, sexual,
 2 mental or emotional abuse of the child from residing in the child's home;
 3 visiting, contacting, harassing or intimidating the child; or attempting to
 4 visit, contact, harass or intimidate the child, other family members or
 5 witnesses. Such restraining order shall be served by personal service pur-
 6 suant to subsection (a) of section 32, and amendments thereto, on any
 7 alleged perpetrator to whom the order is directed.

8 (1) (1) The court shall not enter an order removing a child from the
 9 custody of a parent pursuant to this section unless the court first finds
 10 probable cause that:

11 (A) The child is likely to sustain harm if not immediately removed
 12 from the home;

13 (B) allowing the child to remain in the home is contrary to the welfare
 14 of the child; and

15 (C) reasonable efforts have been made to maintain the family unit
 16 and prevent the unnecessary removal of the child from the child's home
 17 or that an emergency exists which threatens the safety of the child.

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

21 New Sec. 39. (a) At any time after filing a petition, but prior to an
 22 adjudication, the court may enter an order for continuance and informal
 23 supervision without an adjudication if no party or interested party objects.
 24 Upon granting the continuance, the court shall include in the order any
 25 conditions with which the parties or interested parties are expected to
 26 comply and provide the parties or interested parties with a copy of the
 27 order. The conditions may include appropriate dispositional alternatives
 28 authorized by section 50, and amendments thereto.

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

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

38 (d) Persons subject to the order for informal supervision who suc-
 39 cessfully complete the terms and period of supervision shall not again be
 40 proceeded against in any court based solely upon the allegations in the
 41 original petition and the proceedings shall be dismissed.

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

(j) If the court enters an order of temporary custody that provides for placement of the child with a person other than the parent, the court shall order such parent or parents to pay child support.

1 evidence of the code of civil procedure shall apply, except that no evi-
 2 dence relating to the condition of a child shall be excluded solely on the
 3 ground that the matter is or may be the subject of a physician-patient
 4 privilege, psychologist-client privilege or social worker-client privilege.

at all proceedings under this code

5 (b) The judge presiding ~~at the adjudicatory hearing~~ shall not consider,
 6 read or rely upon any report not properly admitted according to the rules
 7 of evidence, except as provided by section 14, and amendments thereto.

8 (c) In any proceeding in which a child less than 13 years of age is
 9 alleged to have been physically, mentally or emotionally abused or ne-
 10 glected or sexually abused, a recording of an oral statement of the child,
 11 or of any witness less than 13 years of age, made before the proceeding
 12 began, is admissible in evidence if:

13 (1) The court determines that the time, content and circumstances
 14 of the statement provide sufficient indicia of reliability;

15 (2) no attorney for any party or interested party is present when the
 16 statement is made;

17 (3) the recording is both visual and aural and is recorded on film,
 18 videotape or by other electronic means;

19 (4) the recording equipment is capable of making an accurate re-
 20 cording, the operator of the equipment is competent and the recording
 21 is accurate and has not been altered;

22 (5) the statement is not made in response to questioning calculated
 23 to lead the child to make a particular statement or is clearly shown to be
 24 the child's statement and not made solely as a result of a leading or sug-
 25 gestive question;

26 (6) every voice on the recording is identified;

27 (7) the person conducting the interview of the child in the recording
 28 is present at the proceeding and is available to testify or be cross-examined
 29 by any party or interested party; and

30 (8) each party or interested party to the proceeding is afforded an
 31 opportunity to view the recording before it is offered into evidence.

32 (d) On motion of any party to a proceeding pursuant to the code in
 33 which a child less than 13 years of age is alleged to have been physically,
 34 mentally or emotionally abused or neglected or sexually abused, the court
 35 may order that the testimony of the child, or of any witness less than 13
 36 years of age, be taken:

37 (1) In a room other than the courtroom and be televised by closed-
 38 circuit equipment in the courtroom to be viewed by the court and the
 39 parties and interested parties to the proceeding; or

40 (2) outside the courtroom and be recorded for showing in the court-
 41 room before the court and the parties and interested parties to the pro-
 42 ceeding if:

43 (A) The recording is both visual and aural and is recorded on film.

1 viding care for the child;

2 (2) preadoptive parents for the child, if any;

3 (3) the child's grandparents at their last known addresses or, if no
4 grandparent is living or if no living grandparent's address is known, to the
5 closest relative of each of the child's parents whose address is known;

6 (4) the person having custody of the child; and

7 (5) upon request, by any person having close emotional ties with the
8 child and who is deemed by the court to be essential to the deliberations
9 before the court.

10 (c) The notices required by this subsection shall be given by first class
11 mail, not less than 10 business days before the hearing.

12 (d) Individuals receiving notice pursuant to subsection (b) shall not
13 be made a party or interested party to the action solely on the basis of
14 this notice and opportunity to be heard. Opportunity to be heard shall be
15 at a time and in a manner determined by the court and does not confer
16 an entitlement to appear in person.

17 (e) The provisions of this section shall not require additional notice
18 to any person otherwise receiving notice of the hearing pursuant to sec-
19 tion 34, and amendments thereto.

20 New Sec. 61. (a) Either in the original petition filed under this code
21 or in a motion made in an existing proceeding under this code, any party
22 or interested party may request that either or both parents be found unfit
23 and the parental rights of either or both parents be terminated or a per-
24 manent custodian be appointed.

25 (b) Whenever a pleading is filed requesting termination of parental
26 rights or appointment of a permanent custodian, the pleading shall con-
27 tain a statement of specific facts which are relied upon to support the
28 request, including dates, times and locations to the extent known.

29 (c) In any case in which a parent of a child cannot be located by the
30 exercise of due diligence, service by publication notice shall be ordered
31 upon the parent.

32 New Sec. 62. (a) Upon receiving a petition or motion requesting ter-
33 mination of parental rights or appointment of permanent custodian, the
34 court shall set the time and place for the hearing, which shall be held
35 within 90 days. A continuance shall be granted only if the court finds it
36 is in the best interests of the child. Upon motion of a party, the chief
37 judge shall reassign a petition or motion requesting termination of pa-
38 rental rights from a district magistrate judge to a district judge pursuant
39 to subsection (e) of K.S.A. 20-302b, and amendments thereto.

40 (b) (1) The court shall give notice of the hearing: (A) To the parties
41 and interested parties, as provided in sections 31 and 32, and amendments
42 thereto; (B) to all the child's grandparents at their last known addresses
43 or, if no grandparent is living or if no living grandparent's address is

1 known, to the closest relative of each of the child's parents whose address
2 is known; (C) in any case in which a parent of a child cannot be located
3 by the exercise of due diligence, to the parents nearest relative who can
4 be located, if any; and (D) to the foster parents, preadoptive parents or
5 relatives providing care.

6 (2) This notice shall be given by ~~first class mail~~ not less than 10 busi-
7 ness days before the hearing. Individuals receiving notice pursuant to this
8 subsection shall not be made a party or interested party to the action
9 solely on the basis of this notice.

return receipt delivery

10 (3) The provisions of ~~paragraph (1)~~ shall not require additional service
11 to any ~~person otherwise receiving notice of the hearing pursuant to sec-~~
12 ~~tion 34, and amendments thereto.~~

this subsection

13 (c) At the beginning of the hearing the court shall determine that due
14 diligence has been used in determining the identity and location of the
15 persons listed in subsection (b) and in accomplishing service of process.

interested party who could not be located by the exercise of due diligence in the
initial notice of the filing of a petition for a child in need of care

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

21 New Sec. 63. (a) Prior to a hearing to consider the termination of
22 parental rights, if the child's permanency plan is either adoption or ap-
23 pointment of a custodian, with the consent of the guardian *ad litem* and
24 the secretary, either or both parents may relinquish parental rights to the
25 child, consent to an adoption or consent to appointment of a permanent
26 custodian.

27 (b) *Relinquishment of child to secretary.* (1) Any parent or parents
28 may relinquish a child to the secretary, and if the secretary accepts the
29 relinquishment in writing, the secretary shall stand *in loco parentis* to the
30 child and shall have and possess over the child all rights of a parent,
31 including the power to place the child for adoption and give consent
32 thereto.

33 (2) All relinquishments to the secretary shall be in writing, in sub-
34 stantial conformity with the form for relinquishment contained in the
35 appendix of forms following K.S.A. 59-2143, and amendments thereto,
36 and shall be executed by either parent of the child.

37 (3) The relinquishment shall be acknowledged before a judge of a
38 court of record. It shall be the duty of the court to advise the relinquishing
39 parent of the consequences of the relinquishment.

40 (4) Except as otherwise provided, in all cases where a parent has
41 relinquished a child to the agency pursuant to K.S.A. 59-2111 through
42 59-2143, and amendments thereto, all the rights of the parent shall be
43 terminated, including the right to receive notice in a subsequent adoption