Approved: March 6, 2006
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:31 A.M. on January 18, 2006, in Room 123-S of the Capitol.

All members were present.

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:
Kerrie Bacon, Kansas Commission of Disability Concerns
Shannon Jones, Executive Director, Statewide Independent Living Council
Rick Levy, Kansas Judicial Council
Hon. Thomas H. Graber, Judge of the District Court, 30th Judicial District

Others attending:
See attached list.

Introduction of bills

Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence, requested the introduction of two bills regarding the safety of victims of sexual crimes. The first bill would improve the privacy of victims by prohibiting the public release of identifying information of the victim. The other bill would prohibit the use of a polygraph on victims. Senator Bruce moved, Senator Betts seconded, to introduce both bills as committee bills. Motion carried.

Lt. John A. Eickhorn, Kansas Highway Patrol, requested the introduction of a bill regarding preliminary breath tests. Senator O'Connor moved, Senator Bruce seconded, to introduce the bill as a committee bill. Motion carried.

Senator Vratil introduced three bills. The first would require the court to inform non-citizens that their plea of guilty or *nolo contendre* could effect their immigration status. The second bill concerns eminent domain and appeals from an eminent domain award. The third bill involves animal cruelty. It was moved by Senator Bruce, seconded by Senator Betts, to introduce all three bills. Motion carried.

The hearing on **HB 2352 Revised Kansas code for care of children** was opened.

Kerrie Bacon appeared as a proponent of the bill stating her concern that parents with disabilities are having their children removed from their custody for reasons that may relate to the disability (Attachment 1). The commission believes that people with disabilities should not be singled out or be more likely to have their children removed from their custody. If there are issues, resources within the community and region should be explored to help keep children in their own home. The wording in this bill clarifies that:

- Kansas does not support discrimination against parents with disabilities, and
- accommodations such as adaptive equipment and support services are appropriate and acceptable to help keep children in their own home

Shannon Jones spoke in support of the bill and requested it be amended to include a prohibition of disability discrimination based solely on a parent's disability (Attachment 2). Kansas laws, as currently written, reflect bias against parents with disabilities by their referral to having a disability as a factor in a parent's ability to raise their children. The Council merely wants to ensure there is no unintentional adverse impact on parents with disabilities and their families.

Rick Levy gave a brief background of the bill and provided the committee with extensive written comments (Attachment 3). The goal of the Judicial Council was to make the bill as effective as possible for protecting children and to make the code as "user friendly" as possible. This resulted in three types of changes:

MINUTES OF THE Senate Judiciary Committee at 9:31 A.M. on January 18, 2006, in Room 123-S of the Capitol.

- technical, which are intended to clarify the bill
- organizational changes
- substantive and pro

- cedural changes

The more significant and procedural changes were identified as:

- Adoption and Safe Families Act Compliance
- Notice and Service of Process
- Parties, Interested Parties, and Attendance at Hearings
- Dispositional Hearings and Termination of Parental Rights
- Permanency Planning
- Permanent Custodian

Mr. Levy also provided a balloon amendment indicating the recommended changes. Senator Goodwin expressed her appreciation for the four year effort it required to revise the juvenile code.

Judge Thomas Graber spoke in opposition to the bill and requested several changes to language to clarify procedures within the bill and make it workable for the court to operate (Attachment 4). Judge Graber had not presented his proposed amendments to either the House Committee or to the Judicial Council Advisory Committee. Senator Vratil suggested he confer with Professor Levy or others on the Judicial Council Advisory Committee and possibly work out some of the concerns he has presented.

Ron W. Paschal did not appear before the committee but requested his written testimony in support of the bill be distributed and placed in the committee minutes (Attachment 5).

The Hon. Timothy H. Henderson did not appear before the committee but requested his neutral written testimony be distributed and placed in the committee minutes (Attachment 6) .

There being no further conferees to come before the committee, the Chairman closed the public hearing on **HB 2352**.

The meeting was adjourned at 10:34 a.m. The next committee meeting is scheduled for January 19, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-18-06

NAME	REPRESENTING
Judy M Haskell	Judicial Council
Richard E. Kenny	"
[illegible]	Intern
Sandy Barnett	KCSDV
Tori Martin	RCIL
Bruce Linhos	Children's Alliance
Luke Thompson	DHPF
Heather Morgan	JJA
Kerrie Bacon	KCDC
Josie Torrez	SLCK
Rae Marie [illegible]	SLCK
Shannon Jones	SLCK
Sheli Sweeney	ACMHCK
Jeff Bottenberg	Kansas Sheriffs' Ass'n
Melinda Lewis	El Centro, Inc.
Roberta Sue McKenna	SRS
Steve Solomon	TFI Family Services
Wade H. Bowers, Jr.	AG CO DA Office

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-18-06

NAME	REPRESENTING
Cecil E Walker JR	RCIL Inc.
ERIC RUCKER	A.G.'s OFFICE

Kansas Commission on Disability Concerns

Testimony to the Senate Judiciary Committee
HB 2352; regarding children in need of care and parents with disabilities
January 18, 2006

Chairperson Vratil and members of the committee, I am Kerrie Bacon, Legislative Liaison for the Kansas Commission on Disability Concerns (KCDC). We are charged with providing information to the Governor, the Legislature, and to State agencies about issues of concern to Kansans with disabilities (K.S.A. 74-6706).

The Kansas Commission on Disability Concerns urges you to support HB 2352, specifically New Section 1, c.1,2 (page 2, lines 23-33). Our concern is that parents with disabilities are having their children removed from their custody for reasons that may relate to the disability. This type of discrimination has been a concern in the disability community for some time and has been brought to the Commission's attention in many ways:

- Brought up at the KCDC legislative open forums for the last three years as a major concern (2003, 2004, and 2005).
- Part of the discussion at the Joint Committee on Children's Issues roundtable in September 2003.
- Brought up at the 2003 and 2005 Kansas Disability Caucus as a major legislative issue.
- KCDC receives phone calls from parents with disabilities whose children have been removed.

The Commission believes that people with disabilities should not be singled out or be more likely to have their children removed from their custody. If there are issues, resources within the community and region should be explored to help keep the children in their home.

The wording in this bill clarifies that

1. Kansas does not support discrimination of parents with disabilities, and
2. accommodations such as adaptive equipment and support services are appropriate and acceptable to help keep children in their own home.

The commission is supportive of this bill and encourages you to recommend it favorably for passage to the full Senate.

I would be glad to answer any questions you may have.

Thank you for your time.

1000 S.W. Jackson, Suite 100, Topeka, KS 66612-1354
Voice: (785) 296-1722 Toll Free: 1-800-295-5232
TTY: (785) 296-5044 Toll Free TTY: 1-877-340-5874 Fax: (785) 296-3490
www.kcdcinfo.com

Statewide Independent Living Council of Kansas

SILCK

700 S.W. Jackson, Suite 212, Topeka, KS 66603 ☎ (785) 234-6990 voice / tdd ☎ (785) 234-6651 fax

Testimony to
Senate Judiciary Committee
on HB 2352 as amended

January 18, 2006

Mr. Chairman, members of the committee, thank you for the opportunity to testify before you today on the HB 2352 as amended. 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 and Richard Levy about the unintentional consequences, that the SILCK believes could adversely impact parents with disabilities and/or their children with disabilities.

The SILCK supports HB 2352 as amended, in particular, Sec 1, (c), to include a prohibition on disability discrimination.

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.

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.

Senate Judiciary
1-18-06
Attachment 2

However, 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.

Therefore, the SILCK support HB 2352 as amended in new Sec.1, (c), that prohibits discrimination solely based on a parents disability and the need to consider the use of adaptive equipment or accommodation for their disability.

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.

January 18, 2006

JUDICIAL COUNCIL TESTIMONY ON 2005 H.B. 2352

THE REVISED KANSAS CODE FOR CARE OF CHILDREN

Senate Judiciary
1-18-06
Attachment 3

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FOR
2005 H.B. 2352

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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 Jean F. Shepherd. Judge Shepherd is a district judge and member of the Judicial Council.

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 assistant district attorney in Douglas County and former attorney for the Kansas Juvenile Justice Authority.

Honorable Kathryn Carter, Jamestown. Judge Carter is a former 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 former County Attorney in Riley County and handled the juvenile matters in that office.

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

Michael E. Lazzo, Wichita. Mr. Lazzo is an attorney who specializes in representing parents in CINC proceedings.

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

Sue Lockett, Topeka. Mrs. Lockett is former Executive Director of C.A.S.A. of Shawnee County.

Roberta Sue McKenna, Topeka. Mrs. McKenna is Assistant Director for Legal Services for the Department of Social and Rehabilitation Services.

Lisa Mendoza, Topeka. Ms. Mendoza is an attorney and is General Counsel for Kansas Juvenile Justice Authority.

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 and former state senator. 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 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 Farm, Inc. Family Services.

The Committee also acknowledges the contributions of Senator Barbara Allen, Representative Kathe Decker, Michael George, Judge C. Fred Lorentz 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.

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.

TESTIMONY IN REGARD TO HOUSE BILL 2352
BEFORE THE SENATE JUDICIARY COMMITTEE
ON JANUARY 18TH , 2006
BY THOMAS H. GRABER, DISTRICT JUDGE

I request that the committee amend the bill in the following manner;

1. On page 8 beginning on line 10, the phrase "Any judge transferring any case to another court shall transmit a complete record thereof.." should be stricken and the following phrase substituted: "Upon a judge ordering a transfer of venue the clerk shall transmit the original pleadings in the official file, and a complete copy of the social file to the court to which venue is transferred..". The clerk is in charge of all court files and it should be the clerk's responsibility and not the judge's to transmit the documents and this language is consistent with the procedure for transfer of venue in all other proceedings. In addition the language ".....**a complete record**....." calls for transcripts of the record of the proceedings which is an expense that should not be incurred in every case and would cause a delay in the transfer of venue in every case in which a record was taken.

2. On page 10 beginning on line 18 paragraph (1) should be amended to read as follows with the high lighted language being added: "(1) Review each case **referred to them** of a child who is the subject of a child in need of care petition or who has been adjudicated a child in need of care, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;". This change makes this

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provision consistent with the provisions of New Sec. 96 page 82 beginning on line 42 through line 3 on page 83

3. On page 12 line 14 should be amended to read as follows adding the highlighted language: "..delivered the child to a person or facility designated **by the court or** by the secretary or". By adding the language the section is made consistent with New Section 27 on page 24 which provides, at lines 14 and 15, for law enforcement officer to deliver to a shelter facility designated by the court. In Sumner County we have no shelter designated by the secretary but the court has designated foster home, which have agreed to take law enforcement placements, as a shelter and SRS is currently paying for those placements. The change gives SRS the continuing discretion to pay for those placements. If that discretion is not retained then protective custody orders will have to be entered to effect placements in Sumner County and SRS and its contractors will have to have employees available to make placements after 5:00 and on weekends and holidays.

On page 14 beginning on line 38 the following highlighted language should be added: "..When the custodian of the child is the secretary, and the parents of the child are unknown or unavailable, and the child appears to be an exceptional child who requires special education, the secretary shall immediately notify the state board of education, or a designee of the state board, and the school district in which the child is residing that the child is in need of an education advocate. **As used in this section a**

parent is "unavailable" if: (1) repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure their participation and such attempts have been unsuccessful; (2) the parent having been provided actual notice of an IEP meeting has failed or refuses to attend and participate in the meeting; (3) the parent's whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent. As soon as possible after notification, the state board of education, or its designee shall appoint an education advocate for the child." In the last session the legislature expanded the pool of who could become an education advocate but the stumbling block that prevents the appointment is the failure to define when a parent is "unavailable". This change will enable more children who need an advocate to have them.

4. On page 32 beginning on line 37 through line 3 on page 33 should be amended to add the highlighted language: "(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: (A) The child is likely to sustain harm if not immediately removed from the home; **or** (B) allowing the child to remain in the home is contrary to the welfare of the child **or that immediate placement of the child is in the best interest of the child**; and (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." The added language brings back into the act language currently in statute and makes it clear that subsections (A) and (B) are alternative. The language as it exists in the bill is to restrictive and it unnecessarily limits the protection that can be given children under the code. I think the restrictive language is prompted to comply with ASFTA requirements but it is not needed. The language currently in statute was suggested by judges and other interested parties who had participated in regional ASFTA training and in the recent federal audit we passed with flying colors with the language currently in statute. There is no reason to reduce the protection afforded to children under our current statutes.

5. On page 34 beginning on line 27 should be amended to add the highlighted language: (i) (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: (A) The child is likely to sustain harm if not immediately removed from the home; **or** (B) allowing the child to remain in the home is contrary to the welfare of the child **or that immediate placement of the child is in the best interest of the child**; and (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." The same reasons expressed in regard to 5 above apply to these changes.

6. On page 41 beginning on line 20 should amended to add the highlighted language: "(c) *Removal of a child from custody of a parent.* The court may

enter an order removing a child from the custody of a parent pursuant to this section if the court finds from the evidence: (1) That 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 that threatens the safety of the child; and (2) that allowing the child to remain in the home is contrary to the welfare of the child **or that immediate placement of the child is in the best interest of the child or** that the child is likely to sustain harm if not immediately removed from the home.

7. On page 40 beginning on line 19 the following highlighted language should be added: "New Sec 49. (a) The court shall require notice of the time and place of the dispositional hearing be given to the parties, **unless notice is waived by the parties**. (b) the court shall require notice**, unless notice is waived by the parties**, and opportunity to be heard as to proposals for living arrangements for the child, the services to be provided the child and the child's family, and the proposed permanency goal for the child to the following:" If all parties are present at a hearing and they waive notice of a disposition hearing the court can save time by proceeding immediately to disposition. These changes give that flexibility to the court while protecting the parties.

Office of the District Attorney
Juvenile Division
Eighteenth Judicial District of Kansas

District Attorney Nola Tedesco Foulston
Chief Deputy Kim T. Parker

January 18, 2006

Opposition Testimony
House Bill 2352
Ron W. Paschal
Deputy District Attorney on behalf of
Nola Foulston, District Attorney, Eighteenth Judicial District

Dear Chairman and Members of the Committee:

The Office of the District Attorney for the Eighteenth Judicial District provides the following testimony in opposition to an oral request for amendment to House Bill 2352.

It is this Office's understanding that although the current draft of House Bill 2352 does not change the current status of the law concerning K.S.A. 38-1528 and K.S.A. 38-1542, that a change will be proposed during the testimony on the bill this morning.

The present code allows law enforcement, under K.S.A. 38-1528 (police protective custody), to place a child in protective custody under the guidelines of the statute and ensure the child is protected until an SRS and/or law enforcement investigation is concluded, for a time period not to exceed 72 hours. The current law also allows the court, upon application, to place the child into protective custody on an ex parte basis, under the guidelines of K.S.A. 38-1542 (court protective custody), until a temporary custody hearing within 72 hours.

Several years ago, the law only allowed 48 hours for the SRS/law enforcement investigation and 48 hours between the ex parte order and the temporary custody hearing. The two 48 hour time periods did not allow sufficient time for a thorough SRS/law enforcement investigation, which in the child's best interest and in the interest to preserve families, needed to include investigation into relative resources and the appropriateness of in-home services with parents to avoid the

Friendly Gables - 1001 South Minnesota - Wichita, Kansas 67211
Telephone (316) 660-9700 Facsimile (316) 383-7738
1 (800) 432-6878

filing of a child in need of care case. After testimony on this issue, that committee understood these concerns and the law was changed to the current status of two 72 hour periods to help decrease the number of children in the system. It is this Office's position that the change in law was successful. The 72 hour investigation time period is used to ensure children are returned home safely to parents when that is in their best interest. This time period allows workers to interview all necessary persons in the home, interview relatives, gather police reports, medical records, and school records and talk to other individuals with vital information about the family so that an informed decision is made in the best interest of the child, but with the focus on keeping the family together if the safety of the child is not at risk. There is no evidence of any need to amend these statutes or change the current procedure.

This Office has been working with SRS and its contract providers to help decrease the number of children in the system and the length of time children are in the system. This Office has worked on committees and attended meetings to ensure the Parent Ally program was implemented, that every parent on every CINC case is offered facilitation at the temporary custody hearing to work on issues of relative placement and visitation, to produce an informational calendar to give to parents at the time of the temporary custody hearing to ensure they have a better understanding of the system, to work with SRS to get children placed with relatives at the time of the temporary custody hearing when a case needs to be filed, and this Office has been the main voice in getting community service providers to work on pre-filing mediation to help avoid cases needing to be filed.

If the legislature does change the current law to decrease the two 72 hour periods, the resources of the District Attorney, law enforcement and SRS will be severely challenged. Due to the number of intakes in this jurisdiction, a thorough investigation into the matter will be difficult at best. For example, consider a situation where a child is placed into police protective custody due to being in a known drug house where the child's mother was arrested on warrants. The investigation would include talking to the parents, relatives, others living in the home, others present at the time the children were taken into police protective custody, information regarding who cares for the child, where the child really lives, verifying the information gained from family members during the investigation, and conducting records checks to see if anyone in the home poses a threat to the child.. If an investigation establishes this is an ongoing pattern, indicating the filing of a CINC case is appropriate, we may be able to determine a relative placement might be appropriate. Moreover, the investigation may indicate the mother was simply in the wrong place at the wrong time and in-home services will address the concerns while not putting the child at risk, thus eliminating the need to file a petition. As a result of the diminished time for investigation, more cases will be filed because the facts known at the time the case is presented indicate the child is in need of care while necessary information has not been developed or verified which may indicate the children could safely remain in their home. This would be a disservice to families in Kansas and bad public policy.

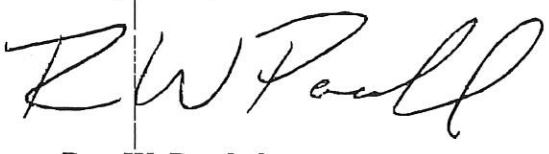
Sedgwick County is unlike any other county in the state. In speaking with other community service providers the population in Sedgwick County is different on many levels (mental health

issues, homelessness, crime rates, drug addiction, and chronic families with numerous SRS intakes). Sedgwick County also has three major regional hospitals and several medical experts (doctors and nurses) who are trained to medically determine if a child has been physically or sexually abused. As a county with regional medical facilities, children from other counties or other states are treated here in Wichita. As a result, this Office is required to file on these children when medical experts determine they have been abused and if their home county or state refuses to take responsibility for the children.

If the legislature determines the current law needs to be amended, we respectfully request the legislature consider adding a provision to the statute to allow the court, upon proper motion and a showing of necessity, to extend the time and allow an additional 72 hours.

Based on the foregoing, I would respectfully urge this committee to disapprove any amendments changing the current status of the law with regard to the time limits pertaining to protective custody and ex parte hearings.

Respectfully Submitted,



Ron W. Paschal
Deputy District Attorney

TIMOTHY H. HENDERSON
DISTRICT JUDGE
DIVISION 24

(316) 660-5267
FAX: (316) 660-5267
thenders@dc18.org

DISTRICT COURT
EIGHTEENTH JUDICIAL DISTRICT
JUVENILE DEPARTMENT COURT BUILDING
1015 S. MINNESOTA
WICHITA, KANSAS
67211

January 17, 2006

Senate Judiciary Committee
Senator John Vatril, Chairman

Mr. Chairman Vatril and Members of the Senate Judiciary Committee:

My name is Timothy H. Henderson and I am a District Court Judge in the 18th Judicial District assigned to the Juvenile Division. On behalf of myself and Judges Burgess, Flaigle, Brooks of the 18th Judicial District Juvenile Division I am submitting this testimony concerning HB2352. HB2352 amends The Kansas Code for the Care of Children. It is further my understanding that the Judicial Council is recommending an amendment that places limitations on the time frame concerning temporary custody hearings. The Kansas Code in Care of Children currently allows 72 hours from the time a child is placed in police protective custody to an ex parte order of custody can be entered granting an additional 72 hour before a temporary custody hearing is required. This allows for two 72-hour periods before a temporary custody hearing is held after a child is removed from the home. There is concern by the judicial council at the length of the period from which a child is removed to a temporary custody hearing when those two 72-hour periods are used one on top of another for the maximum amount of time allowed by law. To the that end, they are recommending that the code be expressly amended to reflect only a total of 72 hours from the time of removal until a temporary custody hearing is held. I fully understand and support the desire to get a child's status resolved as quickly as possible. However, I wish to make the committee aware of the unintended consequences to this proposed amendment.

It is always the desire of the court and, based upon my experience and observation the District Attorney's office, to prevent the removal of any child from the home. As I'm sure the representatives of the Department of Social and Rehabilitation Services will acknowledge Sedgwick County has been recently credited with greatly reducing the number of children in custody over the past few years. We in Sedgwick County are all extremely proud of that work, for any child that is prevented from being removed from the home is a child and a family preserved.

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For the large part, the reason for this continuing decline of the children in custody in Sedgwick County is a result of the excellent work done by the local SRS office in conjunction with the District Attorney's office. Both offices strive to develop safety plans and take other measures to prevent the removal of a child from the home.

The natural consequence of the Judicial Councils proposed amendment will be an increase in the number of children placed in custody. For if the District Attorney's office and SRS do not have the full opportunity to explore alternatives to custody, the court is left with no other option than placing the child in the custody of the Department of Social and Rehabilitation Services. For that reason, if this Committee believes it to be appropriate to adopt the amendment of the Judicial Council, I would respectively request language be added to allow the court and/or the family to waive the 72-hour period when circumstances dictate that a child may avoid having to be placed in the temporary custody of the Department of Social and Rehabilitation Services. The court, in working with the staff involved in these cases, is able to ascertain when there is a legitimate function or purpose served in delaying the temporary custody hearing. Under those circumstances, the court, and more importantly the children, would benefit from a delay in the temporary custody hearing. Further, as we increase our involvement with Kinship Care and family solutions to child welfare problems, the ability of a family to agree to a delay in the temporary custody hearing in order to prevent a child from being placed in the custody of SRS would be desirable. This would further enable and empower families to come up with creative solutions and to address the problems before they come to court consistent with SRS', the court's, the District Attorney's office and the legislator's desire for families to be able to solve their own problems without the interference of the State.

To use that well-worn phrase, I would respectively submit to not "throw the baby out with the bath water." I support always the expeditious resolution of temporary custody as soon as it can be accomplished. However, to create a blanket rule without any exceptions or ability to focus on the best interest of the child is contrary to the goal sought by those who seek to place this restriction on the court.

Thank you for your attention and concern to this matter.

Sincerely,

Timothy H. Henderson
District Court Judge
18th Judicial District

Harold Flaigle
District Court Judge
18th Judicial District

Dan Brooks
District Court Judge
18th Judicial District

James L. Burgess
District Court Judge
18th Judicial District