

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:40 a.m. on January 29, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Derek Schmidt- excused
Senator Jean Schodorf- excused

Committee staff present:

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the Committee:

J. Russell Jennings, Commissioner, Juvenile Justice Authority
Randy Hearrell, Kansas Judicial Council, overview
Judge Jean F. Shepherd, Kansas Judicial Council

Others attending:

See attached list.

Bill Introductions

Senator Owens introduced three committee bills concerning adoption , civil procedure regarding worthless checks and interest rates on judgments. Senator Umbarger moved, Senator Lynn seconded to introduce the bills. Motion carried.

Senator Haley introduced a bill establishing a Silver Alert Plan. Senator Haley moved, Senator Lynn seconded, to introduce the bill. Motion carried.

Patrick Broxterman, Office of the Attorney General requested the introduction of two bills concerning the enforcement of tobacco. The first bill concerns an update of the Kansas Tobacco Act, the second bill concerns an update of the escrow portion of the act. The bills were introduced without objection.

The Chairman continued the hearing on **SB 15 - Court ordered custody to commissioner of juvenile justice.**

Russ Jennings appeared as a proponent indicating **SB 15** amends four statutes in the Kansas Code for Care of Children regarding juvenile offenders and out of home placement of juveniles in the custody of the Secretary of Social and Rehabilitation Services. Mr. Jennings reviewed the changes in detail stating the portion of the bill regarding the 18 month cap (page 5, line 17) may not be a prudent policy change at this time and needs further in depth review suggesting the subject be referred to an interim study. Given the Kansas Supreme Court's recent emphasis on the due process rights of juveniles, a limit on custody is warranted. The proposed limit on JJA custody allows ample time to address the risk and needs of a youth whose offense does not warrant commitment to a juvenile correctional facility. Enactment of **SB 15** may reduce the amount of money the agency spends on out of home placements. (Attachment 1)

There being no further conferees, the hearing on **SB 15** was closed.

The Chairman opened the hearing on **SB 88 - Children; permanency and priority of orders.**

Judge Jean Shepherd testified in support stating the bill would revise and clarify the Kansas Code for Care of Children and the Kansas Juvenile Justice Code regarding permanency for children by specifying that orders regarding the best interests of a child made under the revised codes would take precedence over orders made under other acts. Judge Shepherd reviewed the proposed legislation including an amendment addressing language regarding modification of child support to meet federal compliance with Title IV-D requirements. (Attachment 2)

CONTINUATION SHEET

Minutes of the Senate Judiciary Committee at 9:40 a.m. on January 29, 2009, in Room 545-N of the Capitol.

Following questions from the committee the Chairman indicated the hearing on **SB 88** will be continued at a later date.

Senator Bruce moved, Senator Schodorf seconded, to approve the Committee minutes of January 15 and January 16. Motion carried.

The next meeting is scheduled for February 2, 2009.

The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-29-09

NAME	REPRESENTING
V. Kelly Heanue	Judicial Council
Hoss Gears Shepherd	"
Yolaine Nelson	"
L.S. McKenna	SRS
Robin Lemits	Child Welfare Co.
Derek Hein	HLF
Sean Miller	Capital Strategies
Ed Keupp	KACP & KPCA
Juni Rex	KCSL
Ment Glasser	Judicial Branch
Mark Drummond	Intern (Sen. Healy)

TESTIMONY ON SB15

SENATE JUDICIARY COMMITTEE

January 29, 2009



J. Russell Jennings
Commissioner
785-296-0042
rjennings@jja.ks.gov

Senate Judiciary
1-29-09
Attachment 1

Based upon sound public policy and economy of services, I stand today in support of SB15. This bill amends four statutes in the revised juvenile justice code. I'll address each proposed amendment in order.

Under current law, if a youth is in an out of home placement in the custody of SRS as a child in need of care at the time of sentencing, the court may order the continued placement of the child as a CINC (Child In Need of Care) unless the youth is adjudicated of a felony or second or subsequent misdemeanor. SB15, as reflected in the balloon amendment, would amend K.S.A. 38-2304 to require the court to exercise discretion, in every instance, to determine which system, JO (juvenile offender) or CINC, best suits the youth's needs for custody. The amendment details six criteria the court must consider in making its decision. The proposal also eliminates the ability of a foster care placement to refuse to continue the juvenile in foster care thereby requiring custody to the Commissioner. The change would not require a foster family to continue foster care services. The change would allow for exploration within the child welfare system of alternatives for placement other than a current foster care placement and not trigger a jurisdictional change as a result of the refusal of a particular foster care placement to continuing placement within their home. This amendment was the collaborative result of discussions between JJA and SRS.

K.S.A. 38-2343 permits temporary custody to be awarded to the Commissioner for out of home placement when release to the parents is not in the best interest of the juvenile and detention is not necessary. There is no current limitation on how long a youth may be in temporary custody. The bill would require the court to review the temporary custody order every 30 days and, if after finding that release to the custody of a parent is still not in the best interests of the youth, may continue such order. The bill would limit temporary custody to 90 days total from the initial temporary custody order.

To be sure, there are instances where temporary custody is necessary. However, too often JJA has been awarded temporary custody of a youth who clearly should be placed in detention. One recent example of this involved a youth alleged to have attempted to murder his foster mother with a bow and arrow and then by stabbing her. Even though detention was clearly warranted, this youth was placed in temporary JJA custody. Because out of home placement was not possible, JJA paid for the continued detention cost. Indeed, there was some indication that temporary JJA custody was ordered for the sole purpose of pushing the cost of detention onto the state and away from the county. Apart from anecdotal cases such as this, there are sound policy reasons to limit the length of pre-adjudication custody. Given the Kansas Supreme Court's recent emphasis on due process rights of juveniles, a limit on temporary custody may be warranted. Further, these youth are placed into JJA custody without the benefit of an evaluation and assessment for services. Unlike SRS, JJA has no family preservation services to offer and these youth are, for all intents and purposes, warehoused pending the outcome of the case.

Table 1 represents the number of alleged juvenile offenders in temporary custody according to judicial district and their length of time in temporary custody as of January 23, 2009. Table 2 illustrates the current placement of those alleged juvenile offenders who are in temporary custody as represented in Table 1.

Table 1
Temporary Custody Alleged Juvenile Offenders – January 23, 2009

JD	1-100 Days	101-200 Days	201-300 Days	301-400 Days	401-500 Days	Grand Total
1	4	1				5
3	1					1
5	4		1			5
6	5	1				6
7				1		1
8	4	3	4	1		12
11	3	2			1	6
14	3					3
16	2	1				3
17	5	1				6
20	1					1
21	3					3
25	6					6
26	1					1
27	3					3
28	2		1			3
29	7	3				10
30	2					2
31	1	1		1		3
Grand Total	57	13	6	3	1	80

Table 2

Length of Temp Custody by Placement Type						
Placement Type	1- 100	101- 200	201- 300	301- 400	401- 500	Grand Total
AWOL	1				1	2
Detention	10	3		1		14
Emergency Shelter Facility	2					2
Home	1	3	1	1		6
Kinship	1					1
Not Reported	1					1
PRTF	11	2	4			17
Residential D/A	1					1
YRC1	1					1
YRC2	28	5	1	1		35
Grand Total	57	13	6	3	1	80

K.S.A. 38-2361 currently provides for open ended orders of custody to the Commissioner. SB15 would limit the authority of the court to order custody to the Commissioner

to a period of 18 months or the youth's 21st birthday, whichever occurs first. The proposal would prohibit the court from establishing a specific term of custody.

Again, given the Kansas Supreme Court's recent emphasis on the due process rights of juveniles, a limit on custody is warranted. For serious offenses and youth with a pattern of escalating offenses, the code permits placement at a juvenile correctional facility for a specific period of time ranging from 3 months up to a youth's 22 ½ birthday, depending upon the severity of the offense. However, other youth, who have offenses that do not permit juvenile correctional facility placement, often times end up in JJA custody and out of home placement for periods exceeding those of youth with more serious offenses placed in a juvenile correctional facility.

The proposed limit on JJA custody allows ample time to address the risk and needs of a youth whose offense does not warrant commitment to a juvenile correctional facility. If out of home placement is necessary beyond 18 months, the youth may be better served in the child in need of care system rather than the juvenile offender system.

K.S.A. 38-2365 is amended to establish a custody termination date of 60 days following a successful return to home. Once home placement has been successfully achieved, continued state custody is no longer necessary or desirable. The amendment does not require that the case be closed, only that JJA custody be terminated. The court is free to enter other dispositional orders to facilitate supervision in the home. Table 3 illustrates the total period of time youth were in custody of JJA and the period of time they were placed in their home as of October 21, 2008.

Table 3

Months at Home	Months In Custody							Grand Total
	0-12	12-24	24-36	36-48	48-60	60-72	72-84	
0-12	118	155	84	41	13	6	3	420
12-24		6	10	8	2	2		28
24-36			3	1	1	2	2	9
36-48				1		2		3
48-60						2		2
Grand Total	118	161	97	51	16	14	5	462



KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH
JUDGE JERRY G. ELLIOTT, WICHITA
JUDGE ROBERT J. FLEMING, PARSONS
JUDGE JEAN F. SHEPHERD, LAWRENCE
SEN. THOMAS C. (TIM) OWENS, OVERLAND PARK
REP. LANCE Y. KINZER, OLATHE
J. NICK BADGEROW, OVERLAND PARK
GERALD L. GOODELL, TOPEKA
JOSEPH W. JETER, HAYS
STEPHEN E. ROBISON, WICHITA

Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us
www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR
RANDY M. HEARRELL
STAFF ATTORNEYS
NANCY J. STROUSE
CHRISTY R. MOLZEN
NATALIE F. GIBSON
ADMINISTRATIVE ASSISTANTS
JANELLE L. WILLIAMS
MARIAN L. CLINKENBEARD
BRANDY M. WHEELER

TESTIMONY OF THE JUDICIAL COUNCIL JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE ON 2009 SB 88

The Juvenile Offender/Child in Need of Care Advisory Committee (hereinafter "the Committee"), while reviewing aspects of the Revised Kansas Code for Care of Children (hereinafter "the CINC code") and the Revised Kansas Juvenile Justice Code (hereinafter "the JO code"), determined that orders affecting a child's custody, residency, parenting time, visitation or child support issued in child in need of care proceedings or juvenile offender proceedings should take precedence over orders addressing the same issues whether issued by the same court or a court in another jurisdiction. This has been the practice generally, but it has not been clarified by statute. It was brought to the attention of the Committee that 2008 House Bill 2820 related to these matters but was not adopted by the 2008 Legislature.

As proposed, 2008 HB 2820 would have revised the Kansas Code for Care of Children and the divorce code so that orders issued in juvenile court proceedings would supersede pre-existing orders concerning custody, residency, parenting time, and child support. The Committee reviewed the language in 2008 HB 2820 and revised it to include revisions not only to the divorce code, but to all areas of the law that the Committee was concerned with. The Committee's proposed amendments are intended to preserve the orders entered under the code for care of children (hereinafter "the CINC code") or the juvenile justice code (hereinafter "the JO code") unless a change in circumstances requires further court intervention.

In addition, the committee was asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. The Committee's recommendations relating to this study are represented by its proposed amendments in Section 8 of this bill.

Finally, the Committee has continued to review the CINC code and the JO code for consistency, to facilitate compliance with federal law to maximize federal financial participation, and to respond to the June 2008, Kansas Supreme Court case, *In re L.M.*, 186 P.3d 164 (Kan 2008) which held that juveniles 14 years of age or older who are charged with a felony have the right to a jury trial under the Kansas Constitution. Proposed amendments relating to these issues are included in this bill.

Senate Judiciary

1-29-09
Attachment 2

COMMITTEE'S COMMENTS TO PROPOSED LEGISLATION

- New Section 1: Pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in Adoption and Relinquishment proceedings and Guardians and Conservators proceedings while the CINC or JO case is pending.
- Section 2: Amends K.S.A. 38-1116 of the Kansas parentage act to include similar priority language as that in new section 1. Subsection (d) pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in parentage proceedings while the CINC or JO case is pending. Subsection (e) allows the transfer of CINC orders back into a parentage case as appropriate at the close of the CINC case.
- Section 3: Amends K.S.A. 38-1121 to give the court in parentage actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The only difference is in the last sentence of proposed subsection (e) where the word "disposition" has been replaced with "order" and the words "shall be binding and shall supersede" have been replaced with "take precedence over".
- Section 4: Amends K.S.A. 38-2201 to clarify that orders issued pursuant to the CINC code shall take precedence over any order under the parentage, adoption and relinquishment, guardians and conservators, divorce, protection from abuse, and protection from stalking act until jurisdiction under the CINC code is terminated.
- Section 5: Amends K.S.A. 2008 Supp. 38-2202 to include a definition of "civil custody case".
- Section 6: Amends K.S.A. 2008 Supp. 38-2203 to include a section clarifying that a court's order affecting a child's custody, residency, parenting time and visitation that is issued in a proceeding under the CINC code shall take precedence over such orders in a civil custody case (as defined by the amendment in Section 5 above), a proceeding under the protection from abuse act or a comparable case in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 7: Amends K.S.A. 38-2208 to correct an error and thereby clarify that in any case referred to a citizen review board, the court shall conduct a hearing at least annually.
- Section 8: Amends K.S.A. 38-2212 to include the Committee's revised amendments to 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. The proposed amendments would restrict disclosure of information from confidential reports or records relating to a child in need of care to instances where the individual or their representative has given written explicit consent unless the investigation or the filing of a petition has become public knowledge. In such instance, the authorized disclosure would be restricted to confirmation of procedural details relating to the handling of the case by professionals. Other technical amendments are

suggested in subsection (f) and pertain to removing reference to “department of social and rehabilitation services” and replacing it with “secretary” to maintain consistency, and reorganizing the content of the section for clarity.

- Sections 9 and 10: Amend K.S.A. 38-2242 and 38-2243 to address the federal requirement that the judicial determination of contrary to the welfare of the child be made in the first court order authorizing out of home placement. The federal law also requires a finding that reasonable efforts were made or were unnecessary due to an emergency which threatens the safety of the child shortly after loss of parental custody. The proposed amendments are intended to reflect that orders subsequent to the initial removal order need not continue to make the findings and in some instances the child is returned home to live with a parent prior to court returning custody to the parent. The reasonable efforts requirement subsequent to the initial order is addressed in K.S.A. 38-2264 which requires that, if the child continues in foster care for 12 months, the court must determine whether reasonable efforts are being made to provide a permanent family for the child.
- Section 11: Amends K.S.A. 2008 Supp. 38-2251 to clarify the time frame within which a final adjudication or dismissal of a CINC proceeding must be completed.
- Section 12: Amends K.S.A. 38-2255 to make a few technical changes for clarity, to remove subparagraph (d)(1)(B) as the Committee determined that the provision only served to cause confusion and it was not necessary, and to address the same issue as sections 9 and 10 above.
- Section 13: Amends K.S.A. 2008 Supp 38-2258 to specify that written notice of any change in placement of a child shall also be given to the petitioner, the attorney for the parents, if any, the child’s court appointed special advocate and any other interested party in addition to the court, each parent, foster parent or custodian, and the child as currently listed in the statute.
 - A balloon amendment is attached. The Committee overlooked making necessary amendments to subsections (b) and (c) as a result of the proposed amendments in subsection (a). The balloon amendment contains a reorganization of the enumerated paragraphs in subsection (a) so that subsections (b) and (c) can be amended accordingly. In addition, the Committee proposes a clarifying amendment and one which would allow change in placement to be expedited if no request for hearing is received.
- Section 14: Amends K.S.A. 2008 Supp. 38-2264 to clarify issues surrounding permanency as was intended with 2008 HB 2820.
- Section 15: Amends K.S.A. 38-2272 to make a correction pertaining to acknowledgment of consents to appointment of a permanent custodian which was apparently overlooked in the clean-up legislation of 2008 SB 435. This amendment makes the process consistent with consents to adoption.
- Section 16: Amends K.S.A. 38-2279 to address issues surrounding the modification of child support orders prior to the closing of a CINC case.

- Section 17: Amends K.S.A. 2008 Supp. 38-2304 to indicate that a court's order affecting a child's custody, residency, parenting time and visitation issued in a proceeding under the JO code shall take precedence over such orders in a proceeding under the parentage, divorce, protection from abuse, adoption and relinquishment, guardians or conservators acts, or comparable cases in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 18: Amends K.S.A. 38-2305 to clarify appropriate venue in cases involving a juvenile.
- Section 19: Amends K.S.A. 38-2344 to make corrections which address a juvenile's right to a jury trial as set forth in *In re L.M.*, 186 P.3d 164 (Kan 2008).
- Section 20: Amends K.S.A. 38-2357 to clarify the methods of trial in juvenile offender cases. The proposed language is a combination of language taken from three statutes in the Kansas adult criminal code. (See K.S.A. 22-3403, 22-3404 and 22-3421) Most of the language is identical to that of the adult statutes. The difference is that a juvenile must request the jury trial in writing within 30 days from the entry of the juvenile's plea.
- Section 21: Amends K.S.A. 38-2364 to provide some discretion to the court when determining, under extended juvenile jurisdiction cases, whether a juvenile's juvenile portion of the sentence should be revoked and the adult portion of the sentence should be enforced. The proposed amendments provide that the court may revoke the juvenile portion of a sentence if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence. The proposed amendments remove the mandatory language included in the statute and allow the court to determine whether violations are sufficient to require revocation of the juvenile sentence and imposition of the adult portion of the sentence.
- Section 22: Amends K.S.A. 38-2365 to require the commissioner to notify a juvenile's attorney of record in addition to the juvenile's parents of any changes in placement of the juvenile.
 - A balloon amendment relating to this section is attached and proposes a technical correction to subsection (g).
- Section 23: Amends K.S.A. 38-2373 to correct a technical error by replacing the word "study" with the intended word "custody".
- Section 24: Amends K.S.A. 2008 Supp. 60-1610 in subparagraph (a)(6) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a divorce proceeding. Subparagraph (3)(E) is added to allow the transfer of CINC orders back into a divorce case as appropriate at the close of the CINC case.

- A balloon amendment relating to this section is attached and proposes an amendment in subparagraph (a)(5)(C)(ii) to maintain consistency between statutes.
- Section 25: Amends K.S.A. 60-3103 to add subsection (b) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a protection from abuse proceeding.
- Section 26: Amends K.S.A. 60-3107 to give the court in protection from abuse actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The difference is that the last three lines of the language in the divorce statute do not apply in this case and have not been included in the proposed language.

Proposed Balloon Amendments to Section 13 of 2009 SB 88

1 Sec. 13. K.S.A. 2008 Supp. 38-2258 is hereby amended to read as
 2 follows: 38-2258. (a) Except as provided in K.S.A. 2008 Supp. 38-
 3 2255(d)(2) and 38-2259, and amendments thereto, if a child has been in
 4 the same foster home or shelter facility for six months or longer, or has
 5 been placed by the secretary in the home of a parent or relative, the
 6 secretary shall give written notice of any plan to move the child to a
 7 different placement unless the move is to the selected preadoptive family
 8 for the purpose of facilitating adoption. The notice shall be given to: (1)
 9 The court having jurisdiction over the child; (2) *the petitioner*; (3) *the*
 10 *attorney for the parents, if any*; (4) each parent whose address is available;
 11 ~~(3) (5) the foster parent or custodian from whose home or shelter facility~~
 12 ~~it is proposed to remove the child; (4) (6) the child, if 12 or more years~~
 13 ~~of age; and (5) (7) the child's guardian ad litem; (8) *the child's court*~~
 14 ~~*appointed special advocate*; and (9) *any other interested parties* (8) *any*~~
 15 ~~*other party or interested party*; and (9) *the child's court appointed*~~
 16 ~~*special advocate*.~~
 17 (b) The notice shall state the placement to which the secretary plans
 18 to transfer the child and the reason for the proposed action. The notice shall
 19 be mailed by first class mail 30 days in advance of the planned
 20 transfer, except that the secretary shall not be required to wait 30 days
 21 to transfer the child if all persons enumerated in subsection (a) (2)
 22 through ~~(5) (8)~~ consent in writing to the transfer.
 23 (c) Within 10 days after receipt of the notice, any person *enumerated in (a)(2)*
 24 *through (8)* receiving notice as provided above may request, either orally or in
 25 writing, that the court conduct a hearing to determine whether or not the
 26 change in placement is in the best interests of the child concerned. When the
 27 request has been received, the court shall schedule a hearing and immediately
 28 notify the secretary of the request and the time and date the matter will
 29 be heard. The court shall give notice of the hearing to persons enumer-
 30 ated in subsection (a) (2) through ~~(5) (9)~~. *If the court does not receive a*
 31 *request for hearing within the specified time, the change in placement*
 32 *may occur prior to the expiration of the 30 days.* The secretary shall not
 33 change the placement of the child, except for the purpose of adoption, unless the
 34 change is approved by the court.
 35 (d) When, after the notice set out above, a child in the custody of the
 36 secretary is removed from the home of a parent after having been placed
 37 in the home of a parent for a period of six months or longer, the secretary
 38 shall request a finding that: (1)(A) The child is likely to sustain harm if
 39 not immediately removed from the home;

1. The Committee overlooked making necessary amendments to subsections (b) and (c) as a result of the proposed amendments in subsection (a). The balloon amendment is simply a reorganization of the enumerated paragraphs in subsection (a) so that subsections (b) and (c) can be amended accordingly.

2. Proposed change for consistency with subsection (a).

3. Proposed amendment to clarify who is entitled to receive notice and request a hearing.

4. Proposed change for consistency with subsection (a). In addition, the Committee proposes the additional sentence in order to allow the court to expedite a change in placement if there isn't any request for a hearing within the 10 days after notice is received.

Proposed Balloon Amendments to Section 13 of 2009 SB 88

2-7

- 1 (B) allowing the child to remain in home is contrary to the welfare
- 2 of the child; or
- 3 (C) immediate placement of the child is in the best interest of the
- 4 child; and
- 5 (2) reasonable efforts have been made to maintain the family unit
- 6 and prevent the unnecessary removal of the child from the child's home
- 7 or that an emergency exists which threatens the safety to the child.
- 8 (e) The secretary shall present to the court in writing the efforts to
- 9 maintain the family unit and prevent the unnecessary removal of the child
- 10 from the child's home. In making the findings, the court may rely on
- 11 documentation submitted by the secretary or may set the date for a hear-
- 12 ing on the matter. If the secretary requests such finding, the court, not
- 13 more than 45 days from the date of the request, shall provide the secretary
- 14 with a written copy of the findings by the court for the purpose of doc-
- 15 umenting these orders.

Proposed Balloon Amendment to Section 22 of 2009 SB 88

2-8

1 Sec. 22. K.S.A. 2008 Supp. 38-2365 is hereby amended to read as
2 follows: 38-2365. (a) When a juvenile offender has been placed in the
3 custody of the commissioner, the commissioner shall have a reasonable
4 time to make a placement. If the juvenile offender has not been placed,
5 any party who believes that the amount of time elapsed without place-
6 ment has exceeded a reasonable time may file a motion for review with
7 the court. In determining what is a reasonable amount of time, matters
8 considered by the court shall include, but not be limited to, the nature
9 of the underlying offense, efforts made for placement of the juvenile
10 offender and the availability of a suitable placement. The commissioner
11 shall notify the court and the juvenile offender's, *the juvenile's attorney*
12 *of record and the juvenile's parent*, in writing, of the initial placement and
13 any subsequent change of placement as soon as the placement has been
14 accomplished. The notice to the juvenile offender's parent shall be sent
15 to such parent's last known address or addresses. The court shall have no
16 power to direct a specific placement by the commissioner, but may make
17 recommendations to the commissioner. The commissioner may place the
18 juvenile offender in an institution operated by the commissioner, a youth
19 residential facility or any other appropriate placement. If the court has
20 recommended an out-of-home placement, the commissioner may not re-
21 turn the juvenile offender to the home from which removed without first
22 notifying the court of the plan.
23 (b) If a juvenile is in the custody of the commissioner, the commis-
24 sioner shall prepare and present a permanency plan at sentencing or
25 within 30 days thereafter. If a permanency plan is already in place under
26 a child in need of care proceeding, the court may adopt the plan under
27 the present proceeding. The written permanency plan shall provide for
28 reintegration of the juvenile into such juvenile's family or, if reintegration
29 is not a viable alternative, for other permanent placement of the juvenile.
30 Reintegration may not be a viable alternative when: (1) The parent has
31 been found by a court to have committed murder in the first degree,
32 K.S.A. 21-3401, and amendments thereto, murder in the second degree,
33 K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-
34 3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403,
35 and amendments thereto, of a child or violated a law of another state
36 which prohibits such murder or manslaughter of a child;
37 (2) the parent aided or abetted, attempted, conspired or solicited to
38 commit such murder or voluntary manslaughter of a child;
39 (3) the parent committed a felony battery that resulted in bodily in-

Proposed Balloon Amendment to Section 22 of 2009 SB 88

6-9

1 jury to the juvenile who is the subject of this proceeding or another child;
2 (4) the parent has subjected the juvenile who is the subject of this
3 proceeding or another child to aggravated circumstances as defined in
4 K.S.A. 38-1502, and amendments thereto;
5 (5) the parental rights of the parent to another child have been ter-
6 minated involuntarily; or
7 (6) the juvenile has been in extended out-of-home placement as de-
8 fined in K.S.A. 2008 Supp. 38-2202, and amendments thereto.
9 (c) If the juvenile is placed in the custody of the commissioner, the
10 plan shall be prepared and submitted by the commissioner. If the juvenile
11 is placed in the custody of a facility or person other than the commis-
12 sioner, the plan shall be prepared and submitted by a court services of-
13 ficer. If the permanency goal is reintegration into the family, the per-
14 manency plan shall include measurable objectives and time schedules for
15 reintegration.
16 (d) During the time a juvenile remains in the custody of the com-
17 missioner, the commissioner shall submit to the court, at least every six
18 months, a written report of the progress being made toward the goals of
19 the permanency plan submitted pursuant to subsections (b) and (c) and
20 the specific actions taken to achieve the goals of the permanency plan. If
21 the juvenile is placed in foster care, the court may request the foster
22 parent to submit to the court, at least every six months, a report in regard
23 to the juvenile's adjustment, progress and condition. Such report shall be
24 made a part of the juvenile's court social file. The court shall review the
25 plan submitted by the commissioner and the report, if any, submitted by
26 the foster parent and determine whether reasonable efforts and progress
27 have been made to achieve the goals of the permanency plan. If the court
28 determines that progress is inadequate or that the permanency plan is no
29 longer viable, the court shall hold a hearing pursuant to subsection (e).
30 (e) When the commissioner has custody of the juvenile, a perma-
31 nency hearing shall be held no more than 12 months after the juvenile is
32 first placed outside such juvenile's home and at least every 12 months
33 thereafter. Juvenile offenders who have been in extended out-of-home
34 placement shall be provided a permanency hearing within 30 days of a
35 request from the commissioner. The court may appoint a *guardian ad*
36 *litem* to represent the juvenile offender at the permanency hearing. At
37 each hearing, the court shall make a written finding whether reasonable
38 efforts have been made to accomplish the permanency goal and whether
39 continued out-of-home placement is necessary for the juvenile's safety.

Proposed Balloon Amendment to Section 22 of 2009 SB 88

2-10

1 (f) Whenever a hearing is required under subsection (e), the court
2 shall notify all interested parties of the hearing date, the commissioner,
3 foster parent and preadoptive parent or relatives providing care for the
4 juvenile and hold a hearing. Individuals receiving notice pursuant to this
5 subsection shall not be made a party to the action solely on the basis of
6 this notice and opportunity to be heard. After providing the persons re-
7 ceiving notice an opportunity to be heard, the court shall determine
8 whether the juvenile's needs are being adequately met; whether services
9 set out in the permanency plan necessary for the safe return of the ju-
10 venile have been made available to the parent with whom reintegration
11 is planned; and whether reasonable efforts and progress have been made
12 to achieve the goals of the permanency plan.

13 (g) If the court finds reintegration continues to be a viable alternative,
14 the court shall determine whether and, if applicable, when the juvenile
15 will be returned to the parent. The court may rescind any of its prior
16 dispositional orders and enter any dispositional order authorized by this
17 code or may order that a new plan for the reintegration be prepared and
18 submitted to the court. If reintegration cannot be accomplished as ap-
19 proved by the court, the court shall be informed and shall schedule a
20 hearing pursuant to subsection (h). No such hearing is required when the
21 parent voluntarily relinquishes parental rights or agree(s) to appointment of
22 a permanent guardian.

23 (h) When the court finds any of the following conditions exist, the
24 county or district attorney or the county or district attorney's designee
25 shall file a petition alleging the juvenile to be a child in need of care and
26 requesting termination of parental rights pursuant to the Kansas code for
27 care of children: (1) The court determines that reintegration is not a viable
28 alternative and either adoption or permanent guardianship might be in
29 the best interests of the juvenile;
30 (2) the goal of the permanency plan is reintegration into the family
31 and the court determines after 12 months from the time such plan is first
32 submitted that progress is inadequate; or
33 (3) the juvenile has been in out-of-home placement for a cumulative
34 total of 15 of the last 22 months, excluding trial home visits and juvenile
35 in runaway status.

36 Nothing in this subsection shall be interpreted to prohibit termination
37 of parental rights prior to the expiration of 12 months.

38 (i) A petition to terminate parental rights is not required to be filed
39 if one of the following exceptions is documented to exist: (1) The juvenile

1. Technical correction.

Proposed Balloon Amendment to Section 22 of 2009 SB 88

1 is in a stable placement with relatives;
2 (2) services set out in the case plan necessary for the safe return of
3 the juvenile have not been made available to the parent with whom re-integration is planned; or
4 (3) there are one or more documented reasons why such filing would
5 not be in the best interests of the juvenile. Documented reasons may
6 include, but are not limited to: The juvenile has close emotional bonds
7 with a parent which should not be broken; the juvenile is 14 years of age
8 or older and, after advice and counsel, refuses to be adopted; insufficient
9 grounds exist for termination of parental rights; the juvenile is an unac-
10 companied refugee minor; or there are international legal or compelling
11 foreign policy reasons precluding termination of parental rights.

2-11

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-12

1 Sec. 24. K.S.A. 2008 Supp. 60-1610 is hereby amended to read as
2 follows: 60-1610. A decree in an action under this article may include
3 orders on the following matters:
4 (a) *Minor children.* (1) *Child support and education.* The court shall
5 make provisions for the support and education of the minor children. The
6 court may modify or change any prior order, including any order issued
7 in a title IV-D case, within three years of the date of the original order
8 or a modification order, when a material change in circumstances is
9 shown, irrespective of the present domicile of the child or the parents. If
10 more than three years has passed since the date of the original order or
11 modification order, a material change in circumstance need not be shown.
12 The court may make a modification of child support retroactive to a date
13 at least one month after the date that the motion to modify was filed with
14 the court. Any increase in support ordered effective prior to the date the
15 court's judgment is filed shall not become a lien on real property pursuant
16 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
17 custodial arrangement ordered by the court, the court may order the child
18 support and education expenses to be paid by either or both parents for
19 any child less than 18 years of age, at which age the support shall ter-
20minate unless: (A) The parent or parents agree, by written agreement
21 approved by the court, to pay support beyond the time the child reaches
22 18 years of age; (B) the child reaches 18 years of age before completing
23 the child's high school education in which case the support shall not ter-
24minate automatically, unless otherwise ordered by the court, until June
25 30 of the school year during which the child became 18 years of age if
26 the child is still attending high school; or (C) the child is still a bona fide
27 high school student after June 30 of the school year during which the
28 child became 18 years of age, in which case the court, on motion, may
29 order support to continue through the school year during which the child
30 becomes 19 years of age so long as the child is a bona fide high school
31 student and the parents jointly participated or knowingly acquiesced in
32 the decision which delayed the child's completion of high school. The
33 court, in extending support pursuant to subsection (a)(1)(C), may impose
34 such conditions as are appropriate and shall set the child support utilizing
35 the guideline table category for 12-year through 18-year old children.
36 Provision for payment of support and educational expenses of a child after
37 reaching 18 years of age if still attending high school shall apply to any
38 child subject to the jurisdiction of the court, including those whose sup-
39port was ordered prior to July 1, 1992. If an agreement approved by the

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-13

1 court prior to July 1, 1992, provides for termination of support before the
2 date provided by subsection (a)(1)(C), the court may review and modify
3 such agreement, and any order based on such agreement, to extend the
4 date for termination of support to the date provided by subsection
5 (a)(1)(C). For purposes of this section, "bona fide high school student"
6 means a student who is enrolled in full accordance with the policy of the
7 accredited high school in which the student is pursuing a high school
8 diploma or a graduate equivalency diploma (GED). In determining the
9 amount to be paid for child support, the court shall consider all relevant
10 factors, without regard to marital misconduct, including the financial re-
11 sources and needs of both parents, the financial resources and needs of
12 the child and the physical and emotional condition of the child. Until a
13 child reaches 18 years of age, the court may set apart any portion of
14 property of either the husband or wife, or both, that seems necessary and
15 proper for the support of the child. Except for good cause shown, every
16 order requiring payment of child support under this section shall require
17 that the support be paid through the central unit for collection and dis-
18 bursement of support payments designated pursuant to K.S.A. 23-4,118,
19 and amendments thereto. A written agreement between the parties to
20 make direct child support payments to the obligee and not pay through
21 the central unit shall constitute good cause, unless the court finds the
22 agreement is not in the best interest of the child or children. The obligor
23 shall file such written agreement with the court. The obligor shall main-
24 tain written evidence of the payment of the support obligation and, at
25 least annually, shall provide such evidence to the court and the obligee.
26 If the divorce decree of the parties provides for an abatement of child
27 support during any period provided in such decree, the child support
28 such nonresidential parent owes for such period shall abate during such
29 period of time, except that if the residential parent shows that the criteria
30 for the abatement has not been satisfied there shall not be an abatement
31 of such child support.

32 (2) *Child custody and residency. (A) Changes in custody.* Subject to
33 the provisions of the uniform child custody jurisdiction and enforcement
34 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
35 court may change or modify any prior order of custody, residency, visi-
36 tation and parenting time, when a material change of circumstances is
37 shown, but no ex parte order shall have the effect of changing residency
38 of a minor child from the parent who has had the sole de facto residency
39 of the child to the other parent unless there is sworn testimony to support

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-14

1 a showing of extraordinary circumstances. If an interlocutory order is
2 issued ex parte, the court shall hear a motion to vacate or modify the
3 order within 15 days of the date that a party requests a hearing whether
4 to vacate or modify the order.
5 (B) *Examination of parties.* The court may order physical or mental
6 examinations of the parties if requested pursuant to K.S.A. 60-235 and
7 amendments thereto.
8 (3) *Child custody or residency criteria.* The court shall determine
9 custody or residency of a child in accordance with the best interests of
10 the child.
11 (A) If the parties have entered into a parenting plan, it shall be pre-
12 sumed that the agreement is in the best interests of the child. This pre-
13 sumption may be overcome and the court may make a different order if
14 the court makes specific findings of fact stating why the agreed parenting
15 plan is not in the best interests of the child.
16 (B) In determining the issue of child custody, residency and parent-
17 ing time, the court shall consider all relevant factors, including but not
18 limited to:
19 (i) The length of time that the child has been under the actual care
20 and control of any person other than a parent and the circumstances
21 relating thereto;
22 (ii) the desires of the child's parents as to custody or residency;
23 (iii) the desires of the child as to the child's custody or residency;
24 (iv) the interaction and interrelationship of the child with parents,
25 siblings and any other person who may significantly affect the child's best
26 interests;
27 (v) the child's adjustment to the child's home, school and community;
28 (vi) the willingness and ability of each parent to respect and appre-
29 ciate the bond between the child and the other parent and to allow for a
30 continuing relationship between the child and the other parent;
31 (vii) evidence of spousal abuse;
32 (viii) whether a parent is subject to the registration requirements of
33 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-
34 ments thereto, or any similar act in any other state, or under military or
35 federal law;
36 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
37 21-3609, and amendments thereto;
38 (x) whether a parent is residing with an individual who is subject to
39 registration requirements of the Kansas offender registration act, K.S.A.

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-15

1 22-4901, et seq., and amendments thereto, or any similar act in any other
2 state, or under military or federal law; and

3 (xi) whether a parent is residing with an individual who has been
4 convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

5 (C) Neither parent shall be considered to have a vested interest in
6 the custody or residency of any child as against the other parent, regard-
7 less of the age of the child, and there shall be no presumption that it is
8 in the best interests of any infant or young child to give custody or resi-
9 dency to the mother.

10 (D) There shall be a rebuttable presumption that it is not in the best
11 interest of the child to have custody or residency granted to a parent who:

12 (i) Is residing with an individual who is subject to registration require-
13 ments of the Kansas offender registration act, K.S.A. 22-4901, et seq.,
14 and amendments thereto, or any similar act in any other state, or under
15 military or federal law; or

16 (ii) is residing with an individual who has been convicted of abuse of
17 a child, K.S.A. 21-3609, and amendments thereto.

18 *(E) If a court of competent jurisdiction within this state has entered*
19 *an order pursuant to the revised Kansas code for care of children regard-*
20 *ing custody or support of a child or children who are involved in a pro-*
21 *ceeding filed pursuant to this section, and such court has determined*
22 *pursuant to subsection (i)(2) of K.S.A. 38-226, and amendments thereto,*
23 *that the orders in that case shall become the custody orders in the divorce*
24 *case, such court shall file, after consultation with the judge presiding over*
25 *any proceeding filed pursuant to this section, a certified copy of the orders*
26 *with the civil case number in the caption and then close the case under*
27 *the revised Kansas code for care of children. Such orders shall be binding*
28 *on the parties, unless modified based on a material change in circum-*
29 *stances, even if such courts have different venues.*

30 (4) *Types of legal custodial arrangements.* Subject to the provisions
31 of this article, the court may make any order relating to custodial arrange-
32 ments which is in the best interests of the child. The order shall provide
33 one of the following legal custody arrangements, in the order of
34 preference:

35 (A) *Joint legal custody.* The court may order the joint legal custody
36 of a child with both parties. In that event, the parties shall have equal
37 rights to make decisions in the best interests of the child.

38 (B) *Sole legal custody.* The court may order the sole legal custody of
39 a child with one of the parties when the court finds that it is not in the

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-16

1 best interests of the child that both of the parties have equal rights to
2 make decisions pertaining to the child. If the court does not order joint
3 legal custody, the court shall include on the record specific findings of
4 fact upon which the order for sole legal custody is based. The award of
5 sole legal custody to one parent shall not deprive the other parent of
6 access to information regarding the child unless the court shall so order,
7 stating the reasons for that determination.

8 (5) *Types of residential arrangements.* After making a determination
9 of the legal custodial arrangements, the court shall determine the resi-
10 dency of the child from the following options, which arrangement the
11 court must find to be in the best interest of the child. The parties shall
12 submit to the court either an agreed parenting plan or, in the case of
13 dispute, proposed parenting plans for the court's consideration. Such op-
14 tions are:

15 (A) *Residency.* The court may order a residential arrangement in
16 which the child resides with one or both parents on a basis consistent
17 with the best interests of the child.

18 (B) *Divided residency.* In an exceptional case, the court may order a
19 residential arrangement in which one or more children reside with each
20 parent and have parenting time with the other.

21 (C) *Nonparental residency.* If during the proceedings the court de-
22 termines that there is probable cause to believe that the child is a child
23 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
24 of K.S.A. 2008 Supp. 38-2202, and amendments thereto, or that neither
25 parent is fit to have residency, the court may award temporary residency
26 of the child to a grandparent, aunt, uncle or adult sibling, or, another
27 person or agency if the court finds by written order that: (i) (a) The child
28 is likely to sustain harm if not immediately removed from the home;
29 (b) allowing the child to remain in home is contrary to the welfare of
30 the child; or

31 (c) immediate placement of the child is in the best interest of the
32 child; and

33 (ii) reasonable efforts have been made to maintain the family unit
34 and prevent the unnecessary removal of the child from the child's home
35 or that an emergency exists which threatens the safety to the child. In
36 making such a residency order, the court shall give preference, to the
37 extent that the court finds it is in the best interests of the child, first to
38 awarding such residency to a relative of the child by blood, marriage or
39 adoption and second to awarding such residency to another person with

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-17

1 whom the child has close emotional ties. The court may make temporary
2 orders for care, support, education and visitation that it considers appro-
3 priate. Temporary residency orders are to be entered in lieu of temporary
4 orders provided for in K.S.A. 2008 Supp. 38-2243 and 38-2244, and
5 amendments thereto, and shall remain in effect until there is a final de-
6 termination under the revised Kansas code for care of children. An award
7 of temporary residency under this paragraph shall not terminate parental
8 rights nor give the court the authority to consent to the adoption of the
9 child. When the court enters orders awarding temporary residency of the
10 child to an agency or a person other than the parent, the court shall refer
11 a transcript of the proceedings to the county or district attorney. The
12 county or district attorney shall file a petition as provided in K.S.A. 2008
13 Supp. 38-2234, and amendments thereto, and may request termination
14 of parental rights pursuant to K.S.A. 2008 Supp. 38-2266, and amend-
15 ments thereto. The costs of the proceedings shall be paid from the general
16 fund of the county. When a final determination is made that the child is
17 not a child in need of care, the county or district attorney shall notify the
18 court in writing and the court, after a hearing, shall enter appropriate
19 custody orders pursuant to this section. If the same judge presides over
20 both proceedings, the notice is not required. Any ~~disposition order~~ pursuant to
21 the revised Kansas code for care of children shall ~~be binding and shall~~
22 **supersede take precedence over** any order under this section.

23 (6) *Priority. Any custody or parenting time order, or order relating*
24 *to the best interests of a child, issued pursuant to the revised Kansas code*
25 *for care of children or the revised Kansas juvenile justice code, shall be*
26 *binding and shall take precedence over any order under article 16 of*
27 *chapter 60 of the Kansas Statutes Annotated, and amendments thereto*
28 *(divorce), until jurisdiction under the revised Kansas code for care of*
29 *children or the revised Kansas juvenile justice code is terminated.*

30 (7) *Child health insurance coverage.* The court may order that each
31 parent execute any and all documents, including any releases, necessary
32 so that both parents may obtain information from and to communicate
33 with any health insurance provider regarding the health insurance cov-
34 erage provided by such health insurance provider to the child. The pro-
35 visions of this paragraph shall apply irrespective of which parent owns,
36 subscribes or pays for such health insurance coverage.

37 (b) *Financial matters.* (1) *Division of property.* The decree shall di-
38 vide the real and personal property of the parties, including any retire-
39 ment and pension plans, whether owned by either spouse prior to mar-

1. Proposed amendment to maintain consistency in language between this statute and the proposed language in Section 3 on page 4 of 2009 SB 88, lines 38-39.

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-18

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

33 (2) *Maintenance*. The decree may award to either party an allowance
34 for future support denominated as maintenance, in an amount the court
35 finds to be fair, just and equitable under all of the circumstances. The
36 decree may make the future payments modifiable or terminable under
37 circumstances prescribed in the decree. The court may make a modifi-
38 cation of maintenance retroactive to a date at least one month after the
39 date that the motion to modify was filed with the court. In any event, the

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-19

1 court may not award maintenance for a period of time in excess of 121
2 months. If the original court decree reserves the power of the court to
3 hear subsequent motions for reinstatement of maintenance and such a
4 motion is filed prior to the expiration of the stated period of time for
5 maintenance payments, the court shall have jurisdiction to hear a motion
6 by the recipient of the maintenance to reinstate the maintenance pay-
7 ments. Upon motion and hearing, the court may reinstate the payments
8 in whole or in part for a period of time, conditioned upon any modifying
9 or terminating circumstances prescribed by the court, but the reinstatement
10 shall be limited to a period of time not exceeding 121 months. The
11 recipient may file subsequent motions for reinstatement of maintenance
12 prior to the expiration of subsequent periods of time for maintenance
13 payments to be made, but no single period of reinstatement ordered by
14 the court may exceed 121 months. Maintenance may be in a lump sum,
15 in periodic payments, on a percentage of earnings or on any other basis.
16 At any time, on a hearing with reasonable notice to the party affected,
17 the court may modify the amounts or other conditions for the payment
18 of any portion of the maintenance originally awarded that has not already
19 become due, but no modification shall be made without the consent of
20 the party liable for the maintenance, if it has the effect of increasing or
21 accelerating the liability for the unpaid maintenance beyond what was
22 prescribed in the original decree. Except for good cause shown, every
23 order requiring payment of maintenance under this section shall require
24 that the maintenance be paid through the central unit for collection and
25 disbursement of support payments designated pursuant to K.S.A. 23-
26 4,118, and amendments thereto. A written agreement between the parties
27 to make direct maintenance payments to the obligee and not pay through
28 the central unit shall constitute good cause. If child support and main-
29 tenance payments are both made to an obligee by the same obligor, and
30 if the court has made a determination concerning the manner of payment
31 of child support, then maintenance payments shall be paid in the same
32 manner.

33 (3) *Separation agreement.* If the parties have entered into a separa-
34 tion agreement which the court finds to be valid, just and equitable, the
35 agreement shall be incorporated in the decree. A separation agreement
36 may include provisions relating to a parenting plan. The provisions of the
37 agreement on all matters settled by it shall be confirmed in the decree
38 except that any provisions relating to the legal custody, residency, visita-
39 tion parenting time, support or education of the minor children shall be

Proposed Balloon Amendment to Section 24 of 2009 SB 88

2-20

1 subject to the control of the court in accordance with all other provisions
2 of this article. Matters settled by an agreement incorporated in the de-
3 cree, other than matters pertaining to the legal custody, residency, visi-
4 tation, parenting time, support or education of the minor children, shall
5 not be subject to subsequent modification by the court except: (A) As
6 prescribed by the agreement or (B) as subsequently consented to by the
7 parties.

8 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
9 party as justice and equity require. The court may order that the amount
10 be paid directly to the attorney, who may enforce the order in the attor-
11 ney's name in the same case.

12 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
13 of a spouse, the court shall order the restoration of that spouse's maiden
14 or former name. The court shall have jurisdiction to restore the spouse's
15 maiden or former name at or after the time the decree of divorce becomes
16 final. The judicial council shall develop a form which is simple, concise
17 and direct for use with this paragraph.

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