Approved: May 5, 2010
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Tim Owens at 9:34 a.m. on March 15, 2010, in Room 548-S of the Capitol.

All members were present except:
David Haley, excused

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

Conferees appearing before the Committee:
Bob Stephan, Governor's Domestic Violence Fatality Review Board
Representative Jan Pauls
Judge Harold Flaigle, 18th Judicial Dist., Governor's Domestic Violence Fatality Review Board
Curtis & Christie Brungardt
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence
Travis Harrod, Assistant Attorney General
Mark Gleeson, Office of Judicial Administration
Ron Nelson, Kansas Judicial Council Family Law Advisory Committee
Valerie Moore, Kansas Bar Association
Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence

Others attending:
See attached list.

The Chairman opened the hearing on **H Sub for H 2517 - Domestic violence offenses; special sentencing provision**. Jason Thompson, staff revisor, reviewed the bill.

Bob Stephan testified in support, stating the Domestic Violence Fatality Review Board has found there is no systematic manner to track and report criminal data when it involves domestic violence related crimes. The bill allows for the court to establish if the criminal act resulted from domestic violence and requires the domestic violence offender to receive an assessment. (Attachment 1)

Representative Jan Pauls appeared in support, providing a balloon amendment to change the definition of "household member". As currently written, the definition would remove a protection which exists in current law. (Attachment 2)

Judge Harold Flaigle spoke in support, indicating the intent of this bill is to create a system in Kansas that will track and recognize all domestic related crimes and provide intervention for domestic violence offenders. If enacted, the bill will protect victims of all domestic violence. Judge Flaigle stated support for a proposed amendment by the Kansas Coalition Against Sexual and Domestic Violence and recommended language should that amendment be adopted. (Attachment 3)

Curtis & Christie Brungardt testified in support relating their personal experience regarding the loss of their daughter to domestic violence. If adopted, the bill will ensure that the criminal justice system documents crimes associated with domestic violence and tracks repeat offenders. (Attachment 4)

Sandy Barnett appeared in support. Ms. Barnett proposed two amendments to resolve possible unintended consequences in the bill as currently written. The first amendment replaces the definition of domestic violence, the second amendment adds K.S.A. 21-3218 and K.S.A. 21-3219 to the list of self-defense statutes that officers should consider when making probable cause determinations. (Attachment 5)

Travis Harrod testified in support, stating the bill establishes a good framework for comprehensive domestic

violence prosecution reform. The bill will better reflect the reality that domestic violence does not just occur as a battery, as currently codified, but may take the form of other offenses as well, such as criminal damage, criminal restraint, aggravated battery, rape and murder. **H Sub for HB 2517** will enhance the criminal justice system's ability to track domestic violence and ensure that repeat offenders face the full force of the law. (Attachment 6)

Mark Gleeson appeared in opposition stating the opposition is centered on the court's ability to implement the requirement in Section 1 that a "domestic violence designation be placed on the criminal case" and the potential for increased risk to victims by implementing the domestic violence assessment provisions of Section 4. In addition, the amended implementation date does not give the court adequate time to comply with the provision of the bill. Mr. Gleeson questioned whether offenders are going to pay the cost of completing the recommendations based on the State's experience with 2003 SB 123. (Attachment 7)

Written testimony in support of **HB 2517** was submitted by:

Jennie Marsh, Director of Crime Victim Services, Kansas Dept. of Corrections (Attachment 8)
Ed Klumpp, Kansas Assn. of Chiefs of Police; Kansas Sheriffs Assn.; & Kansas Peace Officers (Attachment 9)
Kari Ann Rinker, National Organization for Women of Kansas (Attachment 10)

There being no further conferees, the hearing on **HB 2517** was closed.

The hearing on **HB 2667 - Recodification of certain domestic relations matters** was opened.

Ron Nelson testified in support as a representative of the Kansas Judicial Family Law Advisory Committee. Mr. Nelson indicted the Advisory Committee was asked to review and make recommendations on **SB 27**. The Committee's overall goal is to update all domestic relations statutes in order to bring them more in line with current trends and practice within domestic relations laws. As originally drafted the bill was intended to only reorganize the domestic relations statutes into a single domestic relations code intentionally avoiding any substantive changes. Mr. Nelson reviewed the revised Kansas Domestic Relation Code and indicated the House amended the bill to include a covenant marriage provision. Mr. Nelson indicated the Advisory Council and the Judicial Council support the bill as originally drafted without substantive changes. (Attachment 11)

Valerie Moore appeared in favor of the bill in its original form. The covenant marriage provision raises several concerns including a new class of marriage to the divorce code. There is little evidence that such a classification will reduce divorces. Parties will be required to prove "fault" for the divorce, creating an environment of hostility and resentment which will be difficult to eradicate as the parties go to Court. Allegations will be made in open court and will be of a sensitive nature and will be detrimental to children by inhibiting the ability of the parents to work together in the future. Ms. Moore also voiced concern of an increase in the filing of Protection from Abuse and/or Stalking petitions if a party is unable to divorce because of an inability to establish good cause. (Attachment 12)

Sandy Barnett spoke in opposition only as it relates to the new Sections 52 through 59 - covenant marriage. The covenant marriage provisions are not acceptable for several reasons. Abuse often begins prior to marriage and pressure could be employed to coerce one party to agree to a covenant marriage. Providers of premarital or pre-dissolution counseling are unlikely to have expertise in domestic violence, sexual abuse, or child abuse and the requirement of counseling prior to termination may cause parties to remain in an abusive situation. Public disclosure of abuse may inflame the situation and pose a greater risk of harm to the victim. Minors are particularly vulnerable to abuse and coercion by the person authorizing the marriage and should be protected. It sets aside the Kansas "no fault" divorce and re-institutes the "fault" divorce. Ms. Barnett urged enactment of the bill as originally introduced. (Attachment 13)

The Chairman announced the hearing will be continued at the next Committee meeting.

The next meeting is scheduled for March 16, 2010.
The meeting was adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 15, 2010

NAME	REPRESENTING
Doug Smith	Pinegar, Smith & Associates
Sandy Barnett	KCSDV
David Pugh	SVFRB
Mark Gleason	Judicial Branch
Kari Ann Rinker	Kansas NOW
Lou Jaax	KDHE
Donna Calabrese	KDHE
Jamie Corkhill	SRS/CSE
Kevin Boone	KPBBA
Chris Joseph	KPBBA
Aaron Gunderson	KPBBA
Carla Woznick	KDOC
Valerie Moore	KBA
Joe Molina	KBA
TRAVIS HARROD	KSAG
~~Dorthy Stucky~~ Halley	KSAG
Michelle McCormick	KSAG
Curt Brungardt	Tom's Campaign

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-15-10

NAME	REPRESENTING
Christie Brungardt	Jana's Campaign
Ed Klumpp	KACP/KPOA/KSA
Helen Pedigo	Sentencing Commission
Shannon Fisher	Jana's Campaign/KU Law student
Elise Higgins	Jana's Campaign/KU student
Liz Stueve	Jana's Campaign/Washburn student
Rep. Virgil Peck	self
Leonard Odell	Arab Temple
Patrick Vogelsberg	Kearney and Assoc.
Lacey Buckwalter	Terry Bruce
Jared McKinney	Terry Bruce
Klayton Beasley	DUmbarger
Belle Cockrell	Umbarger
Bobby Guyon	umbarger
Sean Miller	Capitol Strategies

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GOVERNOR'S DOMESTIC VIOLENCE FATALITY REVIEW BOARD

Testimony of
Robert T. Stephan, Chair
Governor's Domestic Violence Fatality Review Board
Before the Senate Judiciary Committee
Substitute for House Bill 2517
March 15, 2010

Chair Owens and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Governor's Domestic Violence Fatality Review Board (FRB). Former Governor Kathleen Sebelius created the FRB by Executive Order 04-11 in October 2004. It is a 14 member board comprised of professionals working in the field of domestic violence at the community level.

The FRB reviews all deaths of adult domestic violence involving spouse and partner homicides in Kansas and recommends improvements to prevent future fatalities. According to the Kansas Bureau of Investigation, 233 adult domestic violence-related fatalities have occurred in Kansas from 1999 through 2009, with last year being one of the deadliest in recent history with 34 adults and 14 children murdered.

The FRB has two principal goals: (1) to inform the public about the insidious nature of domestic violence and motivate the public to find solutions to end it; and (2) to identify systemic changes within all organizations and agencies that work with domestic violence victims, offenders and families to learn new ways of reducing the number of fatalities by better identification of risk factors and improvement in the coordination of services that our state provides.

Since 2004 the FRB has reviewed, researched and discussed the tragedy of domestic violence crimes. It became very clear that there is not a systematic manner to track and report criminal data when it involves domestic violence related crimes. When I was Attorney General I requested and the 1991 Legislature passed a bill requiring all law enforcement agencies to have written policies regarding domestic violence and when probable cause existed an arrest must be made. However, through the years we have focused more on responding to the crime of domestic battery and not other crimes that domestic violence offenders commit.

The FRB believes that public policy should focus on all criminal violations related to domestic violence and not just battery. This bill is a step in the right direction. It allows for the court to establish if the criminal act resulted from domestic violence and would require the domestic violence offender to receive an assessment. The goal of this process is to require the domestic violence offender to complete the recommendations and hopefully reduce the chances of additional crimes being committed.

Senate Judiciary
3-15-10
Attachment 1

House Bill 2517 was introduced last year and sent to the Kansas Judicial Council and reviewed by the Advisory Committee on Criminal Law last fall for review. Substitute for House Bill 2517 passed the House by a vote of 122-0. This bill will move the state forward in addressing domestic violence related crimes.

You also received written testimony from Steve Howe, Johnson County District Attorney, regarding the process the county has used since 1996 to track domestic violence cases. The FRB believes this is a good process and one that can be adopted statewide.

On behalf of the FRB, we would appreciate the Committee's support of Substitute for House Bill 2517. Thank you for your consideration.

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

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JUDICIARY

MEMBER:
HOUSE RULES AND JOURNAL
COMMERCE AND LABOR COMMITTEE
JOINT HOUSE AND SENATE COMMITTEE ON JUVENILE JUSTICE AND CORRECTIONS OVERSIGHT
JOINT HOUSE AND SENATE COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

MEMBER OF KANSAS SENTENCING COMMISSION

CHAIR:
NATIONAL CONFERENCE OF STATE LEGISLATORS COMMITTEE ON LAW AND CRIMINAL JUSTICE

Before the Senate Judiciary Committee

HB 2517

March 15, 2010

Mr. Chairman, Vice Chairman Schmidt and Ranking Minority Member Hailey, I appreciate the opportunity to appear before you today.

I'm a strong supporter of this bill, but I wanted to draw your attention of page 3 of the bill, line 12. I've attached a balloon to my testimony. When we made amendments on this bill in Corrections and Juvenile Justice we changed the definition of "household member" from what it is in the current criminal law, 21-3412a(c)(1). That law protects persons who are residing together or may have resided in the past whether they are in any type of dating relationship or not. I believe the purpose in protecting people in a "household" and changing this as a domestic battery reflects the value that society puts on allowing people to live peacefully in their residence, regarding of what type of relationship is involved.

I've spoken with Rep. Kinzer who made this amendment, and he is okay with this modification. I hope your committee will pass this amendment. Otherwise we are removing a protection which exists in current law.

I'll be glad to stand for questions.

Rep. Jan Pauls

Attachment

Senate Judiciary
3-15-10
Attachment 2

fender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

(A) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(B) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, siblings, parents or stepparents and children or stepchildren, and who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

persons

(8) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence, a violation of stalking, as defined in K.S.A. 21-3438, and amendments thereto, or a violation determined pursuant to K.S.A. 60-31a09, and amendments thereto, of any order issued pursuant to the protection from stalking act, K.S.A. 60-31a01 et seq., and amendments thereto.

~~(7)~~ *(9)* "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(8)~~ *(10)* "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

~~(9)~~ *(11)* "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(10)~~ *(12)* "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(11)~~ *(13)* "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments

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GOVERNOR'S DOMESTIC VIOLENCE FATALITY REVIEW BOARD

Testimony of
Judge Harold Flaigle
Governor's Domestic Violence Fatality Review Board
Before the Senate Judiciary Committee
Substitute for House Bill 2517
March 15, 2010

Chair Owens and Members of the Committee:

Thank you for the opportunity to testify on behalf of the Governor's Domestic Violence Fatality Review Board (FRB) in support of Substitute for HB 2517. I have been a member of the FRB since its inception in 2004 and serve as the chair of the FRB legislative subcommittee. Addressing domestic violence has been a passionate interest of mine for many years, as a municipal court judge, serving on Attorney General Carla Stovall's Committee on Crimes Against Women and now as a district court judge in the 18th Judicial District. My experiences and continued work in this area have led me to believe that we must advocate for victims by seeking domestic violence law reform and holding all domestic violence offenders accountable.

In 2005 the FRB began searching for a statutory model that would ultimately recognize and better protect victims of all domestic violence crimes, not just victims of domestic battery. The FRB chose Colorado for that statutory model because its domestic violence laws comprehensively track and recognize all domestic violence related crimes and provide early domestic violence offender intervention. Those laws have been in place for more than 16 years. In addition, prior to enacting significant changes to its domestic violence laws, Colorado had a law similar to Kansas' current domestic battery statute.

It is the intent of this bill to create a system in Kansas that will track and recognize all domestic violence related crimes and provide intervention for domestic violence offenders the first time a domestic violence offense is committed. Under the current Kansas domestic battery law, there are many instances in which a domestic violence offender is able to plead a domestic battery down to a disorderly conduct or other similar charges. The unfortunate result allows domestic violence offenders to avoid being identified by the court as a domestic violence offender. There also are incidents when defendants argue that they should only be charged with domestic battery not aggravated battery because the victim is a spouse or household member and the Kansas aggravated battery statute does not make specific reference to domestic violence relationships. These are the types of situations that allow domestic violence offenders to continue to victimize their partners without appropriate legal consequence or intervention. If enacted, the bill will alleviate these unintended and possibly tragic scenarios.

Senate Judiciary
3-15-10
Attachment 3

The FRB decided to focus on relationships that were intimate in nature and were more likely to be susceptible to the power and control characteristics. The current language encompasses relationships that may be strictly friend/roommate situations and not intimate in nature nor display any power and control characteristics. There have been incidents where parties that are just roommates have been arrested under the domestic battery statute, which was never the purpose of the law. It is our intent to eliminate these situations from domestic violence crimes. The FRB also removed all variations of parent/child relationships. In addition, Kansas has child abuse laws that provide consequences for parents that choose to batter their children. If the situation is reversed and the child is the batterer, there is nothing in this bill or current Kansas law that would preclude adult child batterers from being charged with battery or any other crime that may be applicable. The FRB decided not to include juvenile offenders because the juvenile domestic violence offender assessment and treatment is different from that of adults and has yet to be developed at the state level. If this bill is adopted, the juvenile piece is something that the FRB will continue to research.

The FRB supports Substitute for House Bill 2517, however, the FRB proposes a few suggestions and amendments.

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) is proposing an amendment to the domestic violence definition on page 2 of the bill. The FRB believes that the contextual analysis of a domestic violence event is critical to the appropriate person being charged with a crime and therefore, the FRB supports KCSDV's amendment that includes contextual analysis language. Understanding the underlying conduct of why a person committed a crime and putting it into context is critical with a domestic violence situation.

Should the Committee choose to keep the definition of domestic violence on page 2 and 3 of the bill, the FRB proposes the following amendments:

Page 2

(7) "Domestic violence" means ~~*an act or threatened act of violence*~~ ***any crime or attempted crime or any municipal ordinance violation or attempted municipal ordinance violation***
against a person with whom the offender is involved or has been involved
in a dating relationship, or ***against*** ~~*an act or threatened act of violence against*~~ *a family* ~~*or household*~~ *member* ~~*by a family or household member.*~~ *Domestic violence also includes any other crime* ***or attempted crime*** *committed against a person or*
against property, or any municipal ordinance violation or ***attempted municipal ordinance violence*** *against a person*
or against property, when directed against a person with whom the of-

3-2

ffender is involved or has been involved in a dating relationship or when directed against a family ~~or household~~ member ~~by a family or household member.~~ For the purposes of this definition:

(A) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

*(B) "Family ~~or household~~ member" means persons 18 years of age or older who are spouses, former spouses, ~~siblings, parents or stepparents and children or stepchildren, and who are presently residing together or have resided together in the past, and~~ **or** persons who have a child in common regardless of whether they have been married or have lived together at any time. Family ~~or household~~ member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.*

(8) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence. ~~a violation of stalking, as defined in K.S.A. 21-3438, and amendments thereto, or a violation determined pursuant to K.S.A. 60-31a09, and amendments thereto, of any order issued pursuant to the protection from stalking act, K.S.A. 60-31a01 et seq., and amendments thereto.~~

The proposed amendment regarding the domestic violence offense is needed by deleting reference to stalking since stalking can occur outside of a domestic violence relationship and therefore is not an appropriate fit in this context.

The FRB proposes an amendment on Page 16, lines 27 through 34. This amendment would give the prosecutor the opportunity to ensure the recommendations made by an assessor are appropriate and eliminates the court determination since rarely are the courts involved in diversion agreements.

Page 16

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 21-3110, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise ***agreed to with the prosecutor in the diversion agreement*** *~~ordered by the court~~. The defendant shall be required to pay for such as-*

sessment and, ***unless otherwise agreed to with the prosecutor in the diversion agreement*** ~~*ordered by the court,*~~ *for completion of all recommendations.*

The FRB believes the language in K.S.A. 21-3412a, the domestic battery statute, should be changed to reflect the provisions in this bill, particularly the definitions in (a) (1)(2) and (a)(c)(1). In addition, the diversion timeframe in 21-3412a (E) should be the same time period as stated in this bill.

Proposed Amendments to K.S.A. 21-3412a, domestic battery

(a)(1) Intentionally or recklessly causing bodily harm by a family ~~or household~~ member against a family ~~or household~~ member; or
(2) intentionally causing physical contact by a family ~~or household~~ member when done in a rude, insulting or angry manner.
(c)
(1) Family ~~or household~~ member means persons 18 years of age or older who are spouses, former spouses, ~~parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past,~~ **or** ~~and~~ persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family ~~or household~~ member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(2) (E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any **five** ~~three~~-year period.

If this bill is adopted, we will work closely with the domestic violence training efforts currently provided throughout Kansas to ensure that judges, prosecutors, law enforcement, advocates, corrections and others in the criminal justice system are properly trained.

The FRB has dedicated an extensive amount of time and research on domestic violence laws and related issues with one goal in mind, how can domestic violence victims be better served and protected. On behalf of the FRB, we believe this bill, along with the amendments proposed by the FRB and KCSDV, will work to achieve justice for domestic violence victims and hold domestic violence offenders accountable.

We ask for your favorable consideration of Substitute for House Bill 2517 and the suggestions and amendments brought forth by the FRB. I would be willing to answer any questions.

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jana's CAMPAIGN to stop domestic violence

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House Committee on Corrections and Juvenile Justice

HB2517

Curtis L. Brungardt
Christie J. Brungardt
February 1st, 2010

Chairman Colloton, and members of the Committee, thank you for allowing us to speak today and submit this testimony in support of House Bill 2517.

On July 3, 2008, we received news that is every parent's worst nightmare. Our 25-year old daughter Jana Mackey, a KU Law student, had been killed by her ex-boyfriend in Lawrence.

As her parents, we are committed to continuing Jana's work of protecting women. Jana was well known throughout Kansas for her advocacy for women. As a young adult, Jana served as a sexual assault and domestic violence advocate and was one of the youngest lobbyists ever at the Kansas State Capitol working on issues important to Kansas women.

Last March, we stood in front of you and other members of the Kansas House of Representatives to accept a certificate in honor of Jana. In addition, Governor Sebelius proclaimed March 8th, 2009, as "Jana Mackey Day in Kansas."

In honor of Jana, we are now leading a committed group of advocates who have created "Jana's Campaign to Stop Domestic Violence." Our purpose is to encourage and promote a public policy response to domestic violence. We believe it is our responsibility to use the story of Jana's life, and the story of Jana's death, to help reduce violence against women. It is our deep desire to turn this tragedy into something positive. The goal of Jana's Campaign is to support legislation and other government action that promotes safety and justice for victims of domestic violence.

The actions of government bodies – their laws, practices, regulatory measures, and funding priorities – profoundly affect how women and their families experience life and freedom from domestic violence.

We stand here today and ask you to support House Bill 2517, "The Domestic Violence (DV) Tag Bill." If adopted, this new law would ensure that the criminal justice system document crimes associated with domestic violence and track repeat offenders. Originally recommended by the Governor's Domestic Violence Fatality Review Board, and revised by the Judicial Council, this bill is one of the most comprehensive pieces of domestic violence legislation ever proposed in Kansas.

Senate Judiciary
3-15-10
Attachment 4

This legislation requires a domestic violence tag to be placed on all legal documents associated with a criminal act that is based on an intimate relationship thereby holding the offender accountable for committing an act of domestic violence. Having this DV tag is especially important as offenders often repeat their crimes against victims. Therefore, this legislation encourages sanctions be put in place before violence escalates. This bill also requires the courts to order an assessment of the domestic violence offender and recommend interventions and treatments of the offender. Again, the hope is to reduce and eliminate repeat offenses and end the cycle of violence.

In the United States, domestic violence is one of the leading causes of injury to women. Data from the U.S. Department of Justice says that on the average, three women are killed every day by their current or former partners. In a recent report by the Docking Institute, over 100,000 Kansas women become victims of domestic violence each year. On average, 20 Kansas women are killed by their current or former partners each year. In 2009 however, 34 adults and 14 children have died in Kansas as a direct result of domestic violence.

While we recognize that the DV tag legislation alone will not stop domestic violence, we do believe that it is an important step in the right direction. Would this bill have prevented Jana's death? Of course we cannot answer this question. We do know however, that Jana's killer had a previous record of violence with a previous girlfriend and that his record was not known by many both inside and outside the justice system.

(Talk about this bill without changes is still an improvement)

(Put something here about symbolic nature)

"Domestic violence is often a hidden act. Too often it is seen as a private matter between partners. IT IS NOT. Domestic violence is a public issue. Domestic violence is a public crime that demands a public response."

Jana Mackey deeply loved Kansas and she believed that public policy work was the key to building a better Kansas. Join us in our fight to stop domestic violence.

Christie Brungardt
Jana's Mother

Curt Brungardt
Jana's Stepfather

Kansas Coalition Against Sexual and Domestic Violence

UNITED AGAINST VIOLENCE

634 SW Harrison Topeka, Kansas 66603
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

Senate Judiciary Committee
March 15, 2010
Proponent

Chairman Owens and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) works on behalf of the 30 domestic violence and sexual assault advocacy programs and victims across the state of Kansas.

The important goal of Substitute HB 2517 is to create a way for the criminal justice system to readily identify behavior that, over time, indicates a pattern of conduct. Identifying this pattern of conduct is important so that penalties can be crafted with increasing accountability and appropriate intervention services. Currently, there are large gaps in the information readily available for this purpose; those gaps are especially perplexing between municipal and district courts. KCSDV supports the basic goal of this Bill.

Substitute HB 2517 requires the trier of fact to determine if a domestic violence offense has occurred and, if evidence exists, the trier of fact shall place a domestic violence designation on the criminal case. The definition of "domestic violence" being added into K.S.A 21-3110 therefore becomes critical. This definition includes the myriad of crimes that occur in the context of domestic violence, including those committed against a third party but directed at the intimate partner (a new husband or a family member, for example). With this designation, county, district, and municipal prosecutors will be able to quickly identify those who have a domestic violence offense designation. The proper identification of domestic violence offenders is critical to the effective implementation of this bill. Proper identification of domestic violence requires a nuanced analysis – it is a combination of illegal and legal conduct meant to gain compliance from and control over the victim. Defining domestic violence based solely on the existence of certain relationships is incomplete and may also lead to non-batterers being caught in the system and designated as batterers.

KCSDV recognizes that there are often unintended consequences of most, if not all, public policy initiatives. In the case of HB 2517, those unintended consequences may be, at least partially, resolved by amending the definition of domestic violence to include the full context of that violence.

I. The definition of domestic violence needs context:

Domestic violence is a serious and complex issue involving a pattern of many tactics used to control, coerce, punish, and intimidate the victim.

KCSDV requests the following amendment replace the definition of domestic violence on page 2, line 37 – page 3, line 3 with (balloon attached):

"Domestic violence" means any crime or attempted crime committed against a person or against property, or any municipal ordinance violation or attempted municipal ordinance violation against a person or against property when used to coerce, control, punish, intimidate, or to take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family member. For the purposes of this definition, the offender shall be 18 years of age or older.

Similar definitions that recognize this context are accepted across the nation by
The National Council of Juvenile and Family Court Judges
American Bar Association Commission on Domestic Violence
American Prosecutors Research Institute
Colorado statute (16-6-800.3. Definitions)
Advocates

This definition is perhaps best portrayed in the Power and Control wheel (attached).

Much like stalking – domestic violence is a pattern of conduct. A single incident can still be illegal conduct; but when this single incident is part of a bigger pattern of conduct, it is often meant to intimidate, control, coerce, and punish. Much like stalking, domestic violence is defined by a course of conduct. HB 2517 identifies offenders only by the existence of certain relationships – that is not an adequate definition.

The relationship of the offender to the victim is only one part of this equation – it is perhaps the most easily defined piece, but is not sufficient in and of itself to properly identify a batterer. A finding by the trier of fact based solely on whether a relationship exists will create negative consequences for those accused of using illegal violence who are not batterers.

We have to consider whether there is a greater good here--of being able to better address repeat offenders. I do not believe this is an either/or situation – we must find a way to do both; find a way to identify repeat offenders AND eliminate or reduce the likelihood of victims being pulled into the system and tagged as though they were the abuser.

This request on our part is not only an academic question; consider the following:

- Victims who have been arrested often claim they will not call law enforcement again, regardless of the danger they or their children are in. It is only the batterers' interests that are served when victims are too afraid to call for help.
- For a victim, being arrested and booked is a terrifying and re-traumatizing event, without even considering what it must be like to spend the night, or longer, in jail.
- When victims are arrested they often have to leave children in the care of the batterer. In some cases, children are placed in the care of SRS.

- The co-occurrence of domestic violence and child abuse may be as high as 70 percent. Putting children in the care of batterers in these circumstances is dangerous.
- Adolescent girls are 6 times more likely to be sexually abused by a person who is battering their mother than a non-abuser. Putting these children in the care of batterers when the victim is inappropriately arrested is dangerous.

When victims are arrested and charged with a crime, the system becomes a tool for the abuser!

As an illustration of how easily this can happen: in relation to a project we are working on, when we contacted law enforcement about their domestic violence policies, a sheriff told us that he just arrests the women because then the abusers get a taste of having to baby sit when she goes to jail; he believes that is why they have few repeat calls – he apparently believes abusers are no longer abusive because they had to baby sit while mom was in jail. These abusers now have victims who are too scared to call for help.

We have also talked with a prosecutor who believes that arresting and charging a victim, even if she is not a batterer, gets her out of the abusive relationship and "helps" her.

The proper identification of batterers is critical to the effective implementation of HB 2517.

II. Sub. HB 2517 omits two self-defense statutes

In Section 7 (3) on page 13, lines 19 – 25 the list of self-defense statutes that officers should consider when making probable cause determinations is missing two statutes. We believe that adding these statutes will give law enforcement officers more clear direction when considering self-defense and arrest in these cases. The addition of these two statutes are relevant because under these self-defense and immunity statutes: "Criminal prosecution' includes arrest, detention in custody, and charging or prosecution of the defendant" (K.S.A. 21-3219[a]). KCSDV requests the Senate Judiciary Committee amend Sub HB to (balloon attached):

Page 13, line 24 "...provided in K.S.A. 21-3211, 21-3212, 21-3213, ***21-3218, or 21-3219***, and amendments thereto;"

KCSDV requests your consideration of the two amendments when working HB 2517.

KCSDV also requests you report HB 2517 favorably for passage.

Respectfully submitted,

Sandy C. Barnett
Executive Director

Developed by Domestic Abuse Intervention Project, Duluth, MN

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5-4

suant to section 1, and amendments thereto. The chief judge of each judicial district where such fee is imposed shall set the amount of such fee by rules adopted in such judicial district in an amount not to exceed $100 per case.

(b) Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the chief judge under this act. All moneys collected by this section shall be paid into the domestic violence special programs fund in the county where the fee is collected, as established by the judicial district ~~and as authorized by this act~~.

(c) Expenditures made in each judicial district shall be determined by the chief judge and shall be paid to domestic violence programs administered by the court and to local programs within the judicial district that enhance a coordinated community justice response to the issue of domestic violence.

Sec. 5. On and after July 1, 2011, K.S.A. 2009 Supp. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

(6) To "deprive permanently" means to:

(a) Take from the owner the possession, use or benefit of property, without an intent to restore the same; or

(b) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

*(7) ~~"Domestic violence" means an act or threatened act of violence~~ against a person with whom the offender is involved or ~~has been involved~~ in a dating relationship, or an act or ~~threatened act~~ of violence against a family or household member by a ~~family~~ or household member. Domestic violence also includes ~~any~~ other crime committed against a person or against property, or any municipal ordinance violation against a person ~~or against property, when directed against a person with whom the of-~~

"Domestic violence" means any crime or attempted crime committed against a person or against property, or any municipal ordinance violation or attempted municipal ordinance violation against a person or against property when used to coerce, control, punish, intimidate, or to take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family member. For the purposes of this definition, the offender shall be 18 years of age or older.

~~fender is involved or has been involved in a dating relationship or when~~ directed against a family or ~~household member~~ by a family or household ~~member.~~ For the purposes of this definition:

(A) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(B) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, siblings, parents or stepparents and children or stepchildren, and who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(8) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence, a violation of stalking, as defined in K.S.A. 21-3438, and amendments thereto, or a violation determined pursuant to K.S.A. 60-31a09, and amendments thereto, of any order issued pursuant to the protection from stalking act, K.S.A. 60-31a01 et seq., and amendments thereto.

~~(7)~~ *(9)* "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

~~(8)~~ *(10)* "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

~~(9)~~ *(11)* "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(10)~~ *(12)* "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(11)~~ *(13)* "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments

such agency.

(b) Such written policies shall include, but not be limited to, the following:

(1) A statement directing that ~~the officers shall make an arrest when they have probable cause to believe that a crime is being committed or has been committed~~ *when a law enforcement officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in K.S.A. 21-3110, and amendments thereto, has been committed, the officer shall, without undue delay, arrest the person for which the officer has probable cause to believe committed the crime or offense;*

(2) a statement that nothing shall be construed to require a law enforcement officer to:

(A) Arrest either party involved in an alleged act of domestic violence when the law enforcement officer determines there is no probable cause to believe that a crime or offense has been committed; or

(B) arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence;

(3) a statement directing that if a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine if there is probable cause that each accused person committed a crime or offense and their actions were not an act of defense of a person or property as provided in K.S.A. 21-3211, 21-3212, ~~or~~ 21-3213, and amendments thereto; 21-3218, and 21-3219,

~~(2)~~ *(4)* a statement defining domestic violence *in accordance with K.S.A. 21-3110, and amendments thereto*;

~~(3)~~ *(5)* a statement describing the dispatchers' responsibilities;

~~(4)~~ *(6)* a statement describing the responding officers' responsibilities and procedures to follow when responding to a domestic violence call and the suspect is at the scene;

~~(5)~~ *(7)* a statement regarding procedures when the suspect has left the scene of the crime;

~~(6)~~ *(8)* procedures for both misdemeanor and felony cases;

~~(7)~~ *(9)* procedures for law enforcement officers to follow when handling domestic violence calls involving court orders, including protection from abuse orders, restraining orders and a protective order issued by a court of any state or Indian tribe;

~~(8)~~ *(10)* a statement that the law enforcement agency shall provide the following information to victims, in writing:

(A) Availability of emergency and medical telephone numbers, if needed;

(B) the law enforcement agency's report number;

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Senate Judiciary Committee
HB 2517
Assistant Attorney General Travis Harrod
March 15, 2010

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony on behalf of Attorney General Steve Six in support of House Bill 2517. I am the Assistant Attorney General responsible for domestic violence prosecution in the office of Attorney General Six.

HB 2517 would establish a good framework for comprehensive domestic violence prosecution reform. Specifically, the bill would require a "DV Tag" to be placed on an offender's record when sentenced for a domestic violence offense. This will enhance the criminal justice system's ability to track domestic violence and ensure that repeat offenders face the full force of the law. The bill would also better reflect the reality that domestic violence does not just occur as a battery, as currently codified, but may take the form of other offenses as well, such as criminal damage, criminal restraint, aggravated battery, rape and murder.

Attorney General Six would like the following goals to be achieved in the area of domestic violence prevention: (1) provide the justice system with the ability to track repeat offenders and (2) encourage assessment and effective intervention for these offenders. Although HB 2517 is not a perfect bill, it provides a solid foundation for both of these goals.

I look forward to working with interested parties in this area of law to achieve these goals.

Senate Judiciary
3-15-10
Attachment 6

State of Kansas
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Senate Judiciary Committee
Monday, March 15, 2010

Substitute for House Bill 2517
Testimony in Opposition
Mark Gleeson, Director of Trial Court Programs
Office of Judicial Administration

Thank you for the opportunity to testify on House Bill 2517. Although identified as an opponent, my opposition is centered on the court's ability to implement the requirement in Section 1 that a "domestic violence designation be placed on the criminal case" and the potential for increased risk to victims by implementing the domestic violence assessment provisions of Section 4. The substitute bill includes an amended effective date, so that its provisions are effective on and after July 1, 2011. This does allow some time for implementation. However, I think that you should be fully informed of the actions that must be taken in order for the courts to have the information and resources necessary to comply with the provisions of this bill.

Let me begin by pointing out that although the bill includes ordinance violations filed in municipal courts, my testimony applies only to those cases filed in the district courts.

New Section 1 requires that in all criminal cases where the court determines there is evidence the defendant committed a domestic violence offense, the court is required to place a domestic violence designation on the criminal case. The intended use of this designation is not clear in the bill so it is difficult to know how to implement the designation to meet the purpose of the designation. In felony cases, this could be accomplished by modifying the Sentencing Commission felony journal entry form to include a check-box indicating the conviction was for a domestic violence offense. There is not a comparable form for misdemeanor journal entries for cases filed in the district courts. FullCourt, the Judicial Branch accounting and case management system includes a designation for domestic violence. The difficulty lies in how the judge's finding gets from the bench to the clerk or the court services officer and into FullCourt. Journal entry forms or new procedures would have to be created to accomplish this requirement in misdemeanor cases.

The definitions of "intimate relationship" and "dating relationship" in Section 3 are different than the definitions of "intimate partners or household members" and "dating relationship" found in K.S.A. 60-3102. The committee may want consider using the same definition.

Senate Judiciary
3-15-10
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Section 4 amends K.S.A. 2009 Supp. 21-4603d, effective July 1, 2011, by adding new section (p) obligating the court "to require the defendant to undergo a domestic violence assessment, complete all recommendations, and pay for the assessment and the completion of all recommendations. " We continue to have concerns about the availability of resources to accommodate what could be a significant number of domestic violence assessments. Although the Kansas Attorney General's office is developing rules and regulations which will provide guidance as to how this provision will be implemented, we remain very cautious regarding the creation or expansion of domestic violence assessment resources and the recommended services referenced in the bill.

In addition, we continue to question whether offenders are going to pay the cost completing the recommendations. Consider the state's experience with SB 123. Offenders sentenced under SB 123 are required to participate in treatment through providers certified by and accountable to the Department of Corrections. Offenders are typically ordered to pay $350 toward that treatment. The state provided $7.6 million in funding during FY 2009 to pay for SB 123 treatment programs. During that same year, offenders reimbursed the state at total of $74,463.90, less than 1% of the state's share of the treatment program. I believe that assessment, treatment, and sanctions for offenders designated as having committed a domestic violence offense will have a similar track record of paying for their costs.

Please let me know if you have questions.

KANSAS
DEPARTMENT OF CORRECTIONS

Mark Parkinson, Governor
Roger Werholtz, Secretary

www.doc.ks.gov

Testimony on HB 2517
to
The Senate Judiciary Committee

By Jennie Marsh
Director of Crime Victim Services
Kansas Department of Corrections
March 15, 2010

The Department supports Substitute for HB 2517. The provisions of HB 2517 which impact the Department of Corrections and cause it to support this bill are:

1. The designation of the criminal case as involving domestic violence irrespective of how that behavior has manifested itself vis a vis the crime of conviction.

2. A requirement that a defendant engaged in domestic violence undergo a domestic violence offender assessment.

The crimes committed against domestic violence victims can be diverse ranging from homicide, kidnapping, sex offenses, and battery to arson and criminal damage to property. The common element is the motivation to victimize a particular person due to a past or current domestic relationship. The determination and designation that the criminal case involves the dynamics of domestic violence at the trial court level aids the gathering of statistical data for the evaluation of the prevalence of domestic battery locally and statewide and would enhance the allocation of resources. Additionally, the early determination and designation that a criminal case involves domestic violence would enhance the case planning and supervision of the offender by facility and release supervision officers.

The Department also supports the provision of HB 2517 requiring that offenders engaged in domestic violence undergo a domestic violence offender assessment and providing that assessment to any entity responsible for supervising the defendant. This provision would aid criminal justice agencies responsible for the incarceration and release supervision of an offender by providing information that would assist those entities in determining the risks and needs of an offender for programming, release planning and supervision.

The Department urges favorable consideration of Substitute for HB 2517.

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TESTIMONY TO THE SENATE JUDICIARY COMMITTEE REGARDING HB2517 DOMESTIC VIOLENCE AMENDMENTS

March 15, 2010

The Kansas Association of Chiefs of Police and the Kansas Peace Officers Association have been very active in assuring this bill provides clear direction to law enforcement. We have also been acutely aware of other prosecutorial and due process issues the original proposals presented. We have spent a great deal of time working with the other interested parties, including the Judicial Council's Criminal Law Committee, to get to a bill we can all live with.

Domestic violence is a major issue with law enforcement. Domestic violence cases are dangerous for the responding officers. They also are very frustrating when the underlying issues don't get resolved and we must repeatedly deal with the same parties, often in escalating seriousness of the events. We support efforts to be more responsive to treatment of underlying issues and to resolve these cases in a manner to reduce the number of domestic violence events our officers face.

This bill, as passed by the House, addresses key issues to law enforcement:

- It fixed a problem in the original proposals applying a permanent domestic violence tag on a case before the conclusion of a complete investigation.
- It fixes some definition problems in the original proposals.
- It standardizes the non-battery "domestic violence" definitions and application across the state.
- Clarification of the mandatory arrest law.
- Clarification of law enforcement handling of cross allegation cases.

The law enforcement related concerns of our associations have been addressed in the bill as presented. We know there are other concerns with this bill not directly impacting law enforcement. We support the law enforcement related provisions as they exist, we may have to change that position if amendments made to the bill by the committee negatively impacting law enforcement.

Ed Klumpp

Ed Klumpp
Ks Association of Chiefs of Police - Legislative Committee Chair
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Senate Judiciary
3-15-10
Attachment 9

KANSAS NOW
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March 14, 2010

TO: Senate Judiciary Committee
Chairman Tim Owens
FR: Kari Ann Rinker, State Coordinator & Lobbyist
Kansas NOW
RE: Substitute for HB 2517 *Proponent*

In 2009, 34 adults and 14 children were murdered in domestic violence related-homicides in the state of Kansas. This is one of the highest numbers in years. In the "Report on Domestic Violence and Rape Statistics in Kansas", the KBI reports that one domestic violence killing occurred every 19.2 days in 2008, so that number…once statistics are fully compiled, will be even higher in Kansas for 2009.

Is it a situation that simply cannot be altered or influenced? Is our society in a position where we have no choice, but to turn our heads the other way because there will always be violent men and the women who refuse to leave them? In fact, the violence most often occurs when they do leave or attempt to leave. A victim's chances of being killed or seriously injured increases by 75% when leaving a violent relationship. These women are immobilized physically, psychologically and economically.

Many stay out of respect for the traditional family unit and for the sake of the children. Many women believe that if they stick it out, they will be able to change the relationship for the better. Many batterers threaten suicide to place guilt on the woman. The economic situation of the victim cannot be ignored. It costs approximately $1500 to set up household in the first month without housing assistance. Public housing lists are long, sometimes over six months and many do not qualify. Domestic violence is the number one cause of loss of employment to women in the United States.

Batterers ring up a tab of over $5.8 billion per year nationally in their victim's health care costs and lost productivity. The $5.8 billion total does not include the costs incurred by law enforcement agencies as they respond to and investigate domestic violence calls, nor does it factor in the amount of time and money spent in other branches of the civil and criminal court system.

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Will HB 2517 eliminate domestic violence homicides in Kansas? No, but it will serve as a valuable tool for the criminal justice system to be aware or have access to facts that a person has a previous conviction of domestic violence. Judges will be able to see a pattern of abusive behavior even in a conviction that may not immediately appear to be related to domestic violence and allow the courts to direct an abuser into assessment and treatment programs to reduce the likelihood of additional offenses.

Domestic violence is a crime that is difficult to prosecute due to lack of corroborating evidence. And, although some suggest that this bill may unduly target innocent persons convicted of domestic violence, the statistics do not bear this out. The rate of false convictions is no higher than any other crime. Domestic violence is a national epidemic. It has become our responsibility to support efforts like Substitute for HB 2517 that helps promote the basic human right of all of us to live free from harassment, intimidation and violence. To do less than that is to perpetuate conditions which condone it.

KANSAS JUDICIAL COUNCIL

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TO: Senator Tim Owens

From: Ronald Nelson, Kansas Judicial Council

Re: Testimony in support of 2010 House Bill 2667

Date: March 15, 2010

TESTIMONY OF THE JUDICIAL COUNCIL
FAMILY LAW ADVISORY COMMITTEE ON
2010 HOUSE BILL 2667

In March, 2009, the Family Law Advisory Committee (committee) was asked to review and make recommendations on 2009 Senate Bill 27. During discussion on the bill, it became clear that in the near future a comprehensive review and update of the Kansas Parentage Act (KPA) would be advisable. The committee also agreed that many other domestic relations statutes were in need of updating as well. A member of the committee indicated that a report completed by the Kansas Citizens Justice Initiative in 1999 included a recommendation that "the State should publish and distribute to the public a booklet in which all Kansas statutes and court rules relating to family law are reprinted." It was subsequently suggested that rather than try to update all of the domestic relations statutes in a piece-meal fashion, since they are currently

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scattered throughout several chapters of the Kansas statutes, it would be helpful if all the domestic relations statutes could be reorganized into one chapter of the Kansas statutes. Therefore, the committee asked for and received permission from the Judicial Council to draft legislation that would reorganize the domestic relations statutes into one chapter of the Kansas statutes.

The committee began its work by determining which domestic relations statutes and acts should be included in the new domestic relations code and by preparing a list of articles for the statutes that would place the statutes in a logical and organized order. Once the organization was agreed to, the committee worked to break down some of the longer and more confusing statutes (such as K.S.A. 60-1610) into their component parts. This allowed the committee to put the component parts into new sections that could be placed appropriately throughout the new chapter to coincide with the logical flow. The committee believes that this reorganization will result in a more "user-friendly" and better organized domestic relations code that will benefit the general public as well as legal professionals.

While the committee recognized that several statutes and acts, such as the Kansas Parentage Act, could be updated within this reorganization process, it felt that reorganizing the statutes first would better facilitate a comprehensive review and update of the domestic relations statutes in the future. If the committee had tried to update all of the domestic relations statutes as they are now, or while trying to reorganize the statutes, the committee would have been forced to work through several different chapters of the Kansas statutes. Such a piece-meal process has already resulted in overlooked updates and inconsistency between statutes. Reorganizing all of the statutes into one chapter first, prior to a comprehensive review and update of the statutes, will reduce this risk of error and inconsistency.

Conclusion

The committee's overall goal is to update all domestic relations statutes in order to bring them more in line with current trends and practice within domestic relations laws. House Bill 2667 is just the first step in this process. The bill as originally drafted was intended to only reorganize the domestic relations statutes into a single domestic relations code. The bill included what would be new statutes resulting from the moving and breaking down of extensive statutes, such as K.S.A. 60-1610, and other statutes containing statutory reference to K.S.A. 60-1610. The committee intentionally avoided including any substantive changes. However, after discussion on the House floor, the bill was amended to add provisions relating to covenant marriage. The result is the bill you have before you now. The Family Law Advisory Committee and the Judicial Council support the bill as originally drafted, without any substantive changes.

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CHAPTER 23 – KANSAS DOMESTIC RELATIONS CODE – REVISED

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ARTICLE 1 - PREFATORY

SECTION 23-101. *Title.* (new)
This Act shall be known as the Kansas **[Family Law] [Domestic Relations]** Code.

SECTION 23-102. ***Policy.*** (new)
The provisions of this **[Code][Act]** shall be construed to secure the just, speedy, inexpensive and equitable determination of issues in all **[family law][domestic relations]** matters.

SECTION 23-103. ***Civil Procedure.*** (new)
Procedure under this **[Code][Act]** shall be governed by the Kansas Code of Civil Procedure, as that Act may be amended, except as this **[Code][Act]** may otherwise specifically provide.

SECTION 23-104. ***Rules of Evidence.*** (new)
Evidence under this **[Code][Act]** shall be governed by the Kansas Code of Evidence, as that **[Code][Act]** may be amended, except as this Act may otherwise specifically provide.

ARTICLE 2 - PARENTAGE ACT

SECTION 23-201. **Title and application of act.** (a) ~~K.S.A. 38-1110 through 38-1131~~ ***This Act*** and acts amendatory thereto and supplemental thereof shall be known and may be cited as the Kansas parentage act.

(b) Proceedings concerning parentage of a child shall be governed by this act except to the extent otherwise provided by the Indian child welfare act of 1978 (25 U.S.C. §§ 1901 et seq.).

(Formerly K.S.A. 38-1110).

SECTION 23-202. **Definitions.** As used in K.S.A. ~~38-1136~~ through ~~38-1138~~, except where the context otherwise requires:

(a) "Birthing hospital" means a hospital or facility as defined by rules and regulations of the secretary of social and rehabilitation services.

(b) "IV-D program" means a program for providing services pursuant to part D of title IV of the federal social security act (42 U.S.C. Sec. 651 *et seq.*) and acts amendatory thereof or supplemental thereto.

(c) "Unwed mother" means a mother who was not married at the time of conception, at the time of birth or at any time between conception and birth.

(Formerly K.S.A. 38-1136).

SECTION 23-203. **Hospital based program for voluntary acknowledgment of paternity.** (a) There is hereby established in this state a hospital based program for voluntary acknowledgment of paternity pursuant to K.S.A. **65-2409a**, and amendments thereto, for newborn children of unwed mothers. Birthing hospitals shall participate in the program. Other hospitals and persons may participate in the program by agreement with the secretary of social and rehabilitation services.

(b) The secretary of social and rehabilitation services shall provide information and instructions to birthing hospitals for the hospital based program for voluntary acknowledgment of paternity. The secretary of social and rehabilitation services may adopt rules and regulations establishing procedures for birthing hospitals under the program.

(c) Subject to appropriations, the secretary of social and rehabilitation services is authorized to establish in this state a physicians' office-based program for voluntary acknowledgment of paternity pursuant to K.S.A. **65-2409a** and amendments thereto for newborn children of unwed mothers. The secretary shall provide information and instructions to physicians' offices for the program and may adopt rules and regulations establishing procedures for physicians' offices under the program.

(d) The secretary of health and environment shall provide services for the voluntary acknowledgment of paternity, in appropriate circumstances, through the office of the state registrar. The secretary of health and environment may adopt rules and regulations to carry out the requirements of this section.

(Formerly K.S.A. 38-1137).

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SECTION 23-204. **Acknowledgment of paternity forms.** (a) The state registrar of vital statistics, in conjunction with the secretary of social and rehabilitation services, shall review and, as needed, revise acknowledgment of paternity forms for use under K.S.A. **38-1130** and **65-2409a**, and amendments thereto. The acknowledgment of paternity forms shall include or have attached a written description pursuant to subsection (b) of the rights and responsibilities of acknowledging paternity.

(b) A written description of the rights and responsibilities of acknowledging paternity shall state the following:

(1) An acknowledgment of paternity creates a permanent father and child relationship which can only be ended by court order. A person who wants to revoke the acknowledgment of paternity must file the request with the court before the child is one year old, unless the person was under age 18 when the acknowledgment of paternity was signed. A person under age 18 when the acknowledgment was signed has until one year after his or her 18th birthday to file a request, but if the child is more than one year old then, the judge will first consider the child's best interests.

The person will have to show that the acknowledgment was based on fraud, duress (threat) or an important mistake of fact, unless the request is filed within 60 days of signing the acknowledgment or before any court hearing about the child, whichever is earlier;

(2) both the father and the mother are responsible for the care and support of the child. If necessary, this duty may be enforced through legal action such as a child support order, an order to pay birth or other medical expenses of the child or an order to repay government assistance payments for the child's care. A parent's willful failure to support the parent's child is a crime;

(3) both the father and the mother have rights of custody and parenting time with the child unless a court order changes their rights. Custody, residency and parenting time may be spelled out in a court order and enforced;

(4) both the father and the mother have the right to consent to medical treatment for the child unless a court order changes those rights;

(5) the child may inherit from the father and the father's family or from the mother and the mother's family. The child may receive public benefits, including, but not limited to, social security or private benefits, including, but not limited to, insurance or workers compensation because of the father-child or mother-child relationship;

(6) the father or the mother may be entitled to claim the child as a dependent for tax or other purposes. The father or the mother may inherit from the child or the child's descendants; and

(7) each parent has the right to sign or not sign an acknowledgment of paternity. Each parent has the right to talk with an attorney before signing an acknowledgment of paternity. Each parent has the right to be represented by an attorney in any legal action involving paternity or their rights or duties as a parent. Usually each person is responsible for hiring the person's own attorney.

(c) Any duty to disclose rights or responsibilities related to signing an acknowledgment of paternity shall have been met by furnishing the written disclosures of subsection (b). Any duty to disclose orally the rights or responsibilities related to signing an acknowledgment of paternity may be met by means of an audio recording of the disclosures of subsection (b).

(d) An acknowledgment of paternity completed without the written disclosures of subsection (b) is not invalid solely for that reason and may create a presumption of paternity pursuant to K.S.A. **38-1114** and amendments thereto. Nothing in K.S.A. **38-1136** through **38-1138** and amendments thereto shall decrease the validity, force or effect of an acknowledgment of paternity executed in this state prior to the effective date of this act.

(e) Upon request, the state registrar of vital statistics shall provide a certified copy of the acknowledgment of paternity to an office providing IV-D program services.

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(Formerly K.S.A. 38-1138).

SECTION 23-205. **Parent and child relationship defined.** As used in this act, "parent and child relationship" means the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.

(Formerly K.S.A. 38-1111).

SECTION 23-206. **Relationship not dependent on marriage.** The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

(Formerly K.S.A. 38-1112).

SECTION 23-207. **How parent and child relationship is established.** The parent and child relationship between a child and:

(a) The mother may be established by proof of her having given birth to the child or under this act.

(b) The father may be established under this act or, in the absence of a final judgment establishing paternity, by a voluntary acknowledgment of paternity meeting the requirements of K.S.A. **38-1138** and amendments thereto, unless the voluntary acknowledgment has been revoked pursuant to K.S.A. **38-1115** and amendments thereto.

(c) An adoptive parent may be established by proof of adoption.

(Formerly K.S.A. 38-1113).

SECTION 23-208. **Presumption of paternity.** (a) A man is presumed to be the father of a child if:

(1) The man and the child's mother are, or have been, married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death or by the filing of a journal entry of a decree of annulment or divorce.

(2) Before the child's birth, the man and the child's mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) If the attempted marriage is voidable, the child is born during the attempted marriage or within 300 days after its termination by death or by the filing of a journal entry of a decree of annulment or divorce; or

(B) if the attempted marriage is void, the child is born within 300 days after the termination of cohabitation.

(3) After the child's birth, the man and the child's mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) The man has acknowledged paternity of the child in writing;

(B) with the man's consent, the man is named as the child's father on the child's birth certificate; or

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(C) the man is obligated to support the child under a written voluntary promise or by a court order.

(4) The man notoriously or in writing recognizes paternity of the child, including but not limited to a voluntary acknowledgment made in accordance with K.S.A. **38-1130** or **65-2409a**, and amendments thereto.

(5) Genetic test results indicate a probability of 97% or greater that the man is the father of the child.

(6) The man has a duty to support the child under an order of support regardless of whether the man has ever been married to the child's mother.

(b) A presumption under this section may be rebutted only by clear and convincing evidence, by a court decree establishing paternity of the child by another man or as provided in subsection (c). If a presumption is rebutted, the party alleging the existence of a father and child relationship shall have the burden of going forward with the evidence.

(c) If two or more presumptions under this section arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic, including the best interests of the child, shall control.

(d) Full faith and credit shall be given to a determination of paternity made by any other state or jurisdiction, whether the determination is established by judicial or administrative process or by voluntary acknowledgment. As used in this section, "full faith and credit" means that the determination of paternity shall have the same conclusive effect and obligatory force in this state as it has in the state or jurisdiction where made.

(e) If a presumption arises under this section, the presumption shall be sufficient basis for entry of an order requiring the man to support the child without further paternity proceedings.

(f) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the birth father of a child thereby conceived, unless agreed to in writing by the donor and the woman.

(Formerly K.S.A. 38-1114).

SECTION 23-209. **Determination of father and child relationship; who may bring action; when action may be brought; revocation of acknowledgment.** (a) A child or any person on behalf of such a child, may bring an action:

(1) At any time to determine the existence of a father and child relationship presumed under K.S.A. **38-1114** and amendments thereto; or

(2) at any time until three years after the child reaches the age of majority to determine the existence of a father and child relationship which is not presumed under K.S.A. **38-1114** and amendments thereto.

(b) When authorized under K.S.A. **39-755** or **39-756**, and amendments thereto, the secretary of social and rehabilitation services may bring an action at any time during a child's minority to determine the existence of the father and child relationship.

(c) This section does not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to the probate of estates or determination of heirship.

(d) Any agreement between an alleged or presumed father and the mother or child does not bar an action under this section.

(e) Except as otherwise provided in this subsection, if an acknowledgment of paternity pursuant to K.S.A. **38-1138**, and amendments thereto, has been completed the man named as the father, the mother or the child may bring an action to revoke the acknowledgment of paternity at any time until one year after the child's date of birth. The legal responsibilities, including any child support obligation, of any signatory arising from the acknowledgment of

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paternity shall not be suspended during the action, except for good cause shown. If the person bringing the action was a minor at the time the acknowledgment of paternity was completed, the action to revoke the acknowledgment of paternity may be brought at any time until one year after that person attains age 18, unless the court finds that the child is more than one year of age and that revocation of the acknowledgment of paternity is not in the child's best interest.

The person requesting revocation must show, and shall have the burden of proving, that the acknowledgment of paternity was based upon fraud, duress or material mistake of fact unless the action to revoke the acknowledgment of paternity is filed before the earlier of 60 days after completion of the acknowledgment of paternity or the date of a proceeding relating to the child in which the signatory is a party, including but not limited to a proceeding to establish a support order.

If a court of this state has assumed jurisdiction over the matter of the child's paternity or the duty of a man to support the child, that court shall have exclusive jurisdiction to determine whether an acknowledgment of paternity may be revoked under this subsection.

If an acknowledgment of paternity has been revoked under this subsection, it shall not give rise to a presumption of paternity pursuant to K.S.A. **38-1114** and amendments thereto. Nothing in this subsection shall prevent a court from admitting a revoked acknowledgment of paternity into evidence for any other purpose.

If there has been an assignment of the child's support rights pursuant to K.S.A. **39-709** and amendments thereto, the secretary of social and rehabilitation services shall be a necessary party to any action under this subsection.

(Formerly K.S.A. 38-1115).

SECTION 23-210. **Jurisdiction; venue.** (a) The district court has jurisdiction of an action brought under the Kansas parentage act. The action may be joined with an action for divorce, annulment, separate maintenance, support or adoption.

(b) If any determination is sought in any action under the Kansas parentage act for custody, residency or parenting time, the initial pleading seeking that determination shall include that information required by K.S.A. **38-1356**, and amendments thereto;

(c) The action may be brought in the county in which the child, the mother or the presumed or alleged father resides or is found. If a parent or an alleged or presumed parent is deceased, an action may be brought in the county in which proceedings for probate of the estate of the parent or alleged or presumed parent have been or could be commenced.

(Formerly K.S.A. 38-1116).

SECTION 23-211. **Parties.** (a) Except as otherwise provided in subsection (b), the child, the mother, each man presumed to be the father under K.S.A. **38-1114** and amendments thereto and each man alleged to be the father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and shall be afforded the opportunity to be heard. If a man alleged or presumed to be the father is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the parents or guardian of the minor and shall appoint a guardian ad litem who shall be an attorney to represent the minor in the proceedings. If the parents or guardian of the minor cannot be found, notice shall be served in the manner directed by the court.

(b) In an action to establish an order for support of the child, failure to join any person as a party shall not deprive the court of jurisdiction to determine whether a party to the action has a duty to support the child and, if so, to enter an order for support.

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(Formerly K.S.A. 38-1117).

SECTION 23-212. **Genetic tests to determine paternity; order of court; refusal to submit to tests; expert witnesses.** (a) Whenever the paternity of a child is in issue in any action or judicial proceeding in which the child, mother and alleged father are parties, the court, upon its own motion or upon motion of any party to the action or proceeding, shall order the mother, child and alleged father to submit to genetic tests. If an action is filed by the secretary of social and rehabilitation services under K.S.A. **39-755** or **39-756**, and amendments thereto, the court shall order genetic tests on the motion of the secretary of social and rehabilitation services or any party to the action if paternity of the child is in issue. If any party refuses to submit to the tests, the court may resolve the question of paternity against the party or enforce its order if the rights of others and the interests of justice so require. The tests shall be made by experts qualified as genetic examiners who shall be appointed by the court.

(b) Parties to an action may agree to conduct genetic tests prior to or during the pendency of an action for support of a child. The verified written report of the experts shall be admitted into evidence as provided in subsection (c) unless the court finds that paternity of the child is not in issue.

(c) The verified written report of the experts shall be considered to be stipulated to by all parties unless written notice of intent to challenge the validity of the report is given to all parties not more than 20 days after receipt of a copy of the report but in no event less than 10 days before any hearing at which the genetic test results may be introduced into evidence. If such notice is given, the experts shall be called by the court as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may demand that other experts, qualified as genetic examiners, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualification of the other experts shall be determined by the court. If no challenge is made, the genetic test results shall be admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

(Formerly K.S.A. 38-1118).

SECTION 23-213. **Evidence.** (a) Evidence relating to paternity may include any of the following:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.

(3) Genetic test results of the statistical probability of the alleged father's paternity.

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. The court may, and upon request of a party shall, require the child, the mother and the alleged father to submit to appropriate tests.

(5) Testimony, records and notes of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth. Such testimony, records and notes are not privileged.

(6) Any other evidence relevant to the issue of paternity of the child, including but not limited to voluntary acknowledgment of paternity made in accordance with K.S.A. **38-1138** and amendments thereto.

(b) Testimony relating to sexual access to the mother by a man at a time other than the probable time of the conception of the child is inadmissible in evidence.

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(c) For any child whose weight at birth is equal to or greater than five pounds 12 ounces, or 2,608.2 grams, it shall be presumed that the child was conceived between 300 and 230 days prior to the date of the child's birth. A presumption under this section may be rebutted by clear and convincing evidence.

(d) Evidence consisting of the results of any genetic test that is of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of social and rehabilitation services shall not be inadmissible solely on the basis of being performed by a laboratory approved by such an accreditation body.

(e) Evidence of expenses incurred for pregnancy, childbirth and genetic tests may be admitted as evidence without requiring third-party foundation testimony and shall constitute *prima facie* evidence of amounts incurred for such goods and services.

(Formerly K.S.A. 38-1119).

SECTION 23-214. **Civil action; trial to court.** (a) An action under this act is a civil action governed by the rules of civil procedure.

(b) Trial of all issues in actions under this act shall be to the court.

(Formerly K.S.A. 38-1120).

SECTION 23-215. **Judgment or order.** (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child including the necessary medical expenses incident to the birth of the child. The court may order the support and education expenses to be paid by either or both parents for the minor child. When the child reaches 18 years of age, the support shall terminate unless: (1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time; (2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such

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agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). The judgment may require the party to provide a bond with sureties to secure payment. The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. **60-2202**, and amendments thereto.

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) In entering an original order for support of a child under this section, the court may award an additional judgment to reimburse the expenses of support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. **38-1114** and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(f) In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

(1) The needs of the child.
(2) The standards of living and circumstances of the parents.
(3) The relative financial means of the parents.
(4) The earning ability of the parents.
(5) The need and capacity of the child for education.
(6) The age of the child.
(7) The financial resources and the earning ability of the child.
(8) The responsibility of the parents for the support of others.
(9) The value of services contributed by both parents.

(g) The provisions of K.S.A. **23-4,107**, and amendments thereto, shall apply to all orders of support issued under this section.

(h) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. **23-701**, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.

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(Formerly K.S.A. 38-1121).

SECTION 23-216. **Costs.** The court may order reasonable fees of counsel and the child's guardian *ad litem* and other expenses of the action, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid from the general fund of the county. After payment, the court may tax all, part or none of the expenses as costs in the action. No fee shall be allowed for representation of the petitioner by the county or district attorney. The fee of an expert witness qualified as an examiner of blood types, but not appointed by the court, shall be paid by the party calling the expert witness but shall not be taxed as costs in the action.

(Formerly K.S.A. 38-1122).

SECTION 23-217. **Enforcement of judgment or order.** (a) If existence of the father and child relationship has been determined and payment of support is ordered under prior law, the court may order support and any related expenses to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. **23-4,118**, and amendments thereto. If payment of support is ordered under this act, the court shall require such support and any related expense to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. **23-4,118**, and amendments thereto.

(b) The provisions of the Kansas income withholding act, K.S.A. **23-4,105** through K.S.A. **23-4,123**, and amendments thereto, shall apply to orders of support issued under this act or under the predecessor to this act.

(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(Formerly K.S.A. 38-1123).

SECTION 23-218. **Modification of judgment or order.** The court has continuing jurisdiction to modify or vacate a judgment or order made under this act.

(Formerly K.S.A. 38-1124).

SECTION 23-219. **Counsel for parties; free transcript for indigent on appeal.** (a) If the petitioner is not represented by counsel, the petitioner in an action to determine paternity may apply for services from: (1) The court trustee of the judicial district in which the action is brought, if the office of court trustee has been established in the county; or (2) the department of social and rehabilitation services or its contractor, if the action is brought pursuant to part D of title IV of the federal social security act (42 USC § 651 *et seq.*), as amended. At the request of a petitioner in an action to determine paternity, the county or district attorney of the county in which the action is brought shall proceed on the petitioner's behalf if the petitioner is not represented by counsel, the action is not brought pursuant to part D of title IV of the federal social security act (42 USC §651 *et seq.*), as amended, and there is no court trustee in the county.

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(b) The court shall appoint a guardian *ad litem* to represent the minor child if the court finds that the interests of the child and the interests of the petitioner differ. In any other case, the court may appoint such a guardian *ad litem*.

(c) The court shall appoint counsel for any other party to the action who is financially unable to obtain counsel.

(d) If a party is financially unable to pay the costs of a transcript, the court shall furnish on request a transcript for purposes of appeal.

(Formerly K.S.A. 38-1125).

SECTION 23-220. **Action to determine mother and child relationship.** Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

(Formerly K.S.A. 38-1126).

SECTION 23-221. **Promise to render support.** It shall be presumed that there is consideration for any written promise to furnish support for a child, growing out of a presumed or alleged father and child relationship. Such a promise shall be enforceable according to its terms, subject to subsection (d) of K.S.A. **38-1115**.

(Formerly K.S.A. 38-1127).

SECTION 23-222. **Paternity orders; birth certificates.** (a) Upon receipt of a certified order from a court of this state or an authenticated order of a court of another state, the state registrar of vital statistics shall prepare a new birth registration consistent with the findings of the court.

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new birth registration, but the actual place and date of birth shall be shown.

(c) The findings upon which the new birth registration was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only in exceptional cases upon order of the court for good cause shown or as otherwise provided in K.S.A. **38-1138**.

(Formerly K.S.A. 38-1128).

SECTION 23-223. **Amendment of birth certificate to change name of parent or child; procedure.** (a) Whenever the parents of a minor child desire that the child's birth certificate be amended to add the name of a parent, correct the name of either parent or of the child or change the child's last name to that of either parent, both parents shall appear before a judge of the district court or a hearing officer authorized by rule of the supreme court to accept voluntary acknowledgments of parentage. The parents shall execute affidavits in the presence of the judge or hearing officer, attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child. If both parents are not residents of this state and are outside this state, both parents shall forward to such judge or hearing officer affidavits,

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sworn to before a judicial officer of the state in which they reside and attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child.

(b) The judge or hearing officer shall require the parents to exhibit or to forward to the judge or hearing officer evidence of the birth of the child. If the judge or hearing officer finds that the birth certificate of the child fails to name either the father or mother of the child, that the name of either parent or the child is incorrect or that the child's name should be changed to that of either parent, the judge or hearing officer shall forward both parents' affidavits to the state registrar of vital statistics, together with a certified order to prepare a new birth registration in the manner provided by K.S.A. **38-1128** and amendments thereto and to seal the affidavits, court order and original birth certificate and allow inspection of them only as provided therein.

(c) The judge or hearing officer shall return all evidence and other exhibits to the parents of the child. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

(d) This statute shall be part of and supplemental to the Kansas parentage act.

(Formerly K.S.A. 38-1130).

SECTION 23-224. **Court orders; interlocutory orders; ex parte, when; notice and hearing; temporary support.** (a) The court, without requiring bond, may make and enforce orders which:

(1) Restrain the parties from molesting or interfering with the privacy or rights of each other;

(2) confirm the existing de facto custody of the child subject to further order of the court;

(3) appoint an expert to conduct genetic tests for determination of paternity as provided in K.S.A. **38-1118** and amendments thereto;

(4) order the mother and child and alleged father to contact the court appointed expert and provide tissue samples for testing within 30 days after service of the order;

(5) order the payment of temporary child support pursuant to subsection (c); or

(6) the court deems necessary to carry the provisions of the Kansas parentage act.

(b) (1) Interlocutory orders authorized by this section that relate to genetic testing may be issued ex parte, if:

(A) The appointed expert is a paternity laboratory accredited by the American association of blood banks; and

(B) the order does not require an adverse party to make advance payment toward the cost of the test.

(2) If such ex parte orders are issued, and if an adverse party requests modification thereof, the court will conduct a hearing within 10 days of such request.

(c) After notice and hearing, the court shall enter an order for child support during the pendency of the action as provided in this subsection. The order shall be entered if the pleadings and the motion for temporary support, if separate from the pleadings, indicate there is only one presumed father and if probable paternity by the presumed father is indicated by clear and convincing evidence. For purposes of this subsection, "clear and convincing evidence" may be presented in any form, including, but not limited to, an uncontested allegation in the pleadings, an uncontested affidavit or an agreement between the parties. For purposes of this subsection, "clear and convincing evidence" means:

(1) The presumed father does not deny paternity;

(2) the mother and the presumed father were married to each other, regardless of whether the marriage was void or voidable, at any time between 300 days before the child's birth and the child's birth;

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(3) a voluntary acknowledgment of paternity was completed by the mother and the presumed father more than 60 days before the motion was filed and no request to revoke the voluntary acknowledgment has been filed; or

(4) results of genetic tests show the probability of paternity by the presumed father is equal to or greater than 97% and the report was received more than 20 days before the motion was filed, unless written notice of intent to challenge the validity of the report has been timely given.

(d) The provisions of this section are part of and supplemental to the Kansas parentage act.

(Formerly K.S.A. 38-1131).

SECTION 23-225. **Change in child's residence; notice; effect; exception.** (a) Except as provided in subsection (d), a parent granted rights pursuant to subsection (d) of K.S.A. **38-1121**, and amendments thereto, shall give written notice to the other parent who has been granted rights pursuant to subsection (d) of K.S.A. **38-1121**, and amendments thereto, not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child from this state as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of child support, custody or parenting time. In determining any such motion, the court shall consider all factors the court deems appropriate including, but not limited to:

(1) The effect of the move on the best interests of the child;

(2) the effect of the move on any party having rights granted pursuant to subsection (d) of K.S.A. **38-1121**, and amendments thereto; and

(3) the increased cost the move will impose on any party seeking to exercise rights granted under subsection (d) of K.S.A. **38-1121**, and amendments thereto.

(d) A parent who has ~~**ben**~~ ***been*** granted rights pursuant to subsection (d) of K.S.A. **38-1121**, and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, in which the child is the victim of such crime.

(e) This section shall be part of and supplemental to the Kansas parentage act.

(Formerly K.S.A. 38-1132).

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ARTICLE 3 - ASSISTED CONCEPTION, REPRODUCTIVE TECHNOLOGY

SECTION 23-301. **Artificial insemination; performance; consent.** The technique of heterologous artificial insemination may be performed in this state at the request and with the consent in writing of the husband and wife desiring the utilization of such technique for the purpose of conceiving a child or children.

(Formerly K.S.A. 23-128).

SECTION 23-302. **Same; child is natural child at law.** Any child or children heretofore or hereafter born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived child of the husband and wife so requesting and consenting to the use of such technique.

(Formerly K.S.A. 23-129).

SECTION 23-303. **Artificial insemination; consent executed and filed; file not open to public.** The consent provided for in this act shall be executed and acknowledged by both the husband and wife and the person who is to perform the technique, and an original thereof may be filed under the same rules as adoption papers in the district court of the county in which such husband and wife reside. The written consent so filed shall not be open to the general public, and the information contained therein may be released only to the persons executing such consent, or to persons having a legitimate interest therein as evidenced by a specific court order.

(Formerly K.S.A. 23-130).

ARTICLE 4 - RESERVED

ARTICLE 5 - PREMARITAL AGREEMENTS

SECTION 23-501. **Title of act.** This act may be cited as the "uniform premarital agreement act."

(Formerly K.S.A. 23-801)(UPAA 10).

SECTION 23-502. **Definitions.** As used in this act:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage; and

(b) "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

(Formerly K.S.A. 23-802)(UPAA 1).

SECTION 23-503. **Premarital agreement; writing required.** A premarital agreement shall be in writing and signed by both parties. It is enforceable without consideration.

(Formerly K.S.A. 23-803)(UPAA 2).

SECTION 23-504. **Same; areas with respect to which parties may contract; right of child to support not to be adversely affected.** (a) Parties to a premarital agreement may contract with respect to all of the following:

(1) The rights and obligations of each of the parties in any of the property of either, or both, whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of or otherwise manage and control property;

(3) the disposition of property upon separation, marital dissolution, death or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

(Formerly K.S.A. 23-804)(UPAA 3).

SECTION 23-505. **Same; effective, when.** A premarital agreement becomes effective upon marriage.

(Formerly K.S.A. 23-805)(UPAA 4).

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SECTION 23-506. **Same; amendment or revocation after marriage.** After marriage, a premarital agreement may be amended or revoked only by a written agreement, signed by the parties. The amended agreement or the revocation is enforceable without consideration.

(Formerly K.S.A. 23-806)(UPAA 5).

SECTION 23-507. **Same; enforceability.** (a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following:

(1) That party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when such agreement was executed and, before execution of the agreement, all of the following applied to that party:

(A) Such party was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) such party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) such party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(Formerly K.S.A. 23-807)(UPAA 6).

SECTION 23-508. **Same; effect when marriage determined to be void.** If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

(Formerly K.S.A. 23-808)(UPAA 7).

SECTION 23-509. **Same; statute of limitations tolled during marriage; equitable defenses available.** Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

(Formerly K.S.A. 23-809)(UPAA 8).

SECTION 23-510. **Uniformity of act.** This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting such act.

(Formerly K.S.A. 23-810)(UPAA 9).

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SECTION 23-511. **Application of act.** This act shall apply to premarital agreements executed on or after the effective date of this act.

(Formerly K.S.A. 23-811)(UPAA 12).

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ARTICLE 6 - MARRIAGE

SECTION 23-601. **Nature of marriage relation.** The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law.

(Formerly K.S.A. 23-101(a)).

SECTION 23-602. ***Common law marriage.*** The state of Kansas shall not recognize a common-law marriage contract if either party to the marriage contract is under 18 years of age.

(Formerly K.S.A. 23-101(b)).

SECTION 23-603. **Incestuous marriages void.** All marriages between parents and children, including grandparents and grandchildren of any degree, between brothers and sisters of the one half as well as the whole blood, and between uncles and nieces, aunts and nephews, and first cousins, are declared to be incestuous and absolutely void.

(Formerly K.S.A. 23-102).

SECTION 23-604. **Solemnizing marriage; persons authorized to officiate.** (a) Marriage may be validly solemnized and contracted in this state, after a license has been issued for the marriage, in the following manner: By the mutual declarations of the two parties to be joined in marriage, made before an authorized officiating person and in the presence of at least two competent witnesses over 18 years of age, other than the officiating person, that they take each other as husband and wife.

(b) The following are authorized to be officiating persons:

(1) Any currently ordained clergyman or religious authority of any religious denomination or society;

(2) any licentiate of a denominational body or an appointee of any bishop serving as the regular clergyman of any church of the denomination to which the licentiate or appointee belongs, if not restrained from so doing by the discipline of that church or denomination;

(3) any judge or justice of a court of record;

(4) any municipal judge of a city of this state; and

(5) any retired judge or justice of a court of record.

(c) The two parties themselves, by mutual declarations that they take each other as husband and wife, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties belong, may be married without an authorized officiating person.

(Formerly K.S.A. 23-104a).

SECTION 23-605. **Issuance of marriage license; form; waiting period; emergency; lawful age; consent, when; unlawful acts, penalty; duties of person issuing license; expiration of license.** (a) The clerks of the district courts or judges thereof, when applied to for a marriage license by any person who is one of the parties to the proposed marriage and who is legally entitled to a marriage license, shall issue a marriage license in substance as follows:

MARRIAGE LICENSE (Name of place where office located, month, day and year.)

TO ANY PERSON authorized by law to perform the marriage ceremony,

Greeting:

You are hereby authorized to join in marriage A B of _____, date of birth _____, and C D of _____, date of birth _____, (and name of parent or guardian consenting), and of this license, duly endorsed, you will make due return to this office immediately after performing the ceremony.

E F, (title of person issuing the license).

(b) No clerk or judge of the district court shall issue a marriage license before the third calendar day (Sunday and holidays included) following the date of the filing of the application therefor in such clerk's or judge's office except that in cases of emergency or extraordinary circumstances, a judge of the district court may upon proper showing being made, permit by order of the court the issuance of such marriage license without waiting three days. Each district court shall keep a record of all marriages resulting from licenses issued by the court, which record shall show the names of the persons who were married and the date of the marriage.

(c) No clerk or judge shall issue a license authorizing the marriage of any person:

(1) Under the age of 16 years, except that a judge of the district court may, after due investigation, give consent and issue the license authorizing the marriage of a person 15 years of age when the marriage is in the best interest of the person 15 years of age; or

(2) who is 16 or 17 years of age without the express consent of such person's father, mother or legal guardian and the consent of the judge unless consent of both the mother and father and any legal guardian or all then living parents and any legal guardian is given in which case the consent of the judge shall not be required. If not given in person at the time of the application, the consent shall be evidenced by a written certificate subscribed thereto and duly attested. Where the applicants or either of them are 16 or 17 years of age and their parents are dead and there is no legal guardian then a judge of the district court may after due investigation give consent and issue the license authorizing the marriage.

(d) The judge or clerk may issue a license upon the affidavit of the party personally appearing and applying therefor, to the effect that the parties to whom such license is to be issued are of lawful age, as required by this section, and the judge or clerk is hereby authorized to administer oaths for that purpose.

(e) Every person swearing falsely in such affidavit shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500. A clerk or judge of the district court shall state in every license the birth dates of the parties applying for the same, and if either or both are 16 or 17 years of age, the name of the father, mother, or guardian consenting to such marriage.

(f) Every marriage license shall expire at the end of six months from the date of issuance if the marriage for which the license was issued does not take place within the six-month period of time.

(Formerly K.S.A. 23-106.)

SECTION 23-606. **Designation of new legal name, procedure; certified copy of marriage license and certificate of marriage proof of identity.** (a) At the time of marriage, a person may designate a new legal name, by which such person shall subsequently be known. Such

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name may include a combination of the person's prior existing name and the prior existing name of such person's spouse, or derivative versions thereof.

(b) A person's name, as designated pursuant to subsection (a), shall be recorded on the marriage license issued to such person, along with such person's name at the time of the person's application for such license, which shall be described thereon as the person's former name.

(c) The change to the person's new legal name shall be effective upon the endorsement of the person's marriage license with the certificate of marriage of the person who performed the marriage ceremony pursuant to K.S.A. **23-109**, and amendments thereto.

(d) A certified copy of a person's marriage license endorsed with a certificate of marriage pursuant to K.S.A. **23-109**, and amendments thereto, shall constitute proof of identity for the purposes of issuance of any Kansas driver's license or nondriver's identification card.

(Formerly K.S.A. 23-133).

SECTION 23-607. **Registration.** All marriages occurring within the state shall be registered under the supervision of the secretary of health and environment as provided in K.S.A. **65-102**.

(Formerly K.S.A. 23-105.)

SECTION 23-608. **Validity of marriages contracted without state.** All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state. It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman.

(Formerly K.S.A. 23-115).

SECTION 23-609. **Forms for licenses, issuance; photocopy to applicant; computer generated licenses.** Forms for license shall be furnished by the secretary of health and environment and shall be photocopied and issued with the photocopy to the applicant therefor for delivery to the person who performs the marriage ceremony after the judge or clerk or the district court has recorded the required personal information as provided by K.S.A. **23-106** and amendments thereto for the original marriage license being issued. Such photocopy shall clearly be marked as "DUPLICATE." The secretary may approve the use of an automated system whereby the marriage license form is computer generated. In such instances, the court shall comply with prescribed specifications as set out by the secretary to ensure uniformity across the state.

(Formerly K.S.A. 23-107).

SECTION 23-610. **License fee; authorized only by legislative enactment; disposition.** (a) The judge or clerk of the district court shall collect from the applicant for a marriage license a fee of $59.

(b) The clerk of the court shall remit all fees prescribed by this section to the state treasurer in accordance with the provisions of K.S.A. **75-4215**, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury.

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Of each remittance, the state treasurer shall credit 38.98% to the protection from abuse fund, 15.19% to the family and children trust account of the family and children investment fund created by K.S.A. **38-1808**, and amendments thereto, 16.95% to the crime victims assistance fund created by K.S.A. **74-7334**, and amendments thereto, 15.25% to the judicial branch nonjudicial salary adjustment fund created by K.S.A. 2008 Supp. **20-1a15**, and amendments thereto, and the remainder to the state general fund.

(c) Except as provided further, the marriage license fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for a marriage license. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2009 through June 30, 2010, the supreme court may impose an additional charge, not to exceed $10 per marriage license fee, to fund the costs of non-judicial personnel.

(Formerly K.S.A. 23-108a).

SECTION 23-611. **Marriage certificate; recording marriages.** (a) Every person who performs a marriage ceremony under the provisions of this act shall endorse the person's certificate of the marriage on the license, give the duplicate copy of the license to the parties to the marriage and return the license, within 10 days after the marriage, to the judge or clerk of the district court who issued it. The judge or clerk shall record the marriage on the marriage record in the office of the judge or clerk and shall forward, not later than the third day of the following month, to the secretary of health and environment the license and certificate of marriage, together with a statement of the names of the parties and the name and address of the person who performed the marriage ceremony.

(b) If no marriage license has been issued by the judge or clerk of the district court during a month, the judge or clerk shall promptly notify the secretary of health and environment to that effect on a form provided for that purpose.

(Formerly K.S.A. 23-109).

SECTION 23-612. **Records of marriages; indexing; certified copies or abstracts.** The secretary of health and environment shall index all records received pursuant to K.S.A. **23-109** and amendments thereto and, upon request, shall issue a certified copy or abstract of them which in all courts and for all purposes shall be prima facie evidence of the facts stated in them. For each certified copy or abstract a fee shall be paid to the secretary in an amount prescribed in accordance with, and disposed of in the manner provided by, K.S.A. **65-2418** and amendments thereto.

(Formerly K.S.A. 23-110).

SECTION 23-613. **Penalty for not complying with statutory requirements.** Any judge or clerk of the district court or person authorized by law to perform the marriage ceremony in this state who shall fail to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars, and the county or district attorney of any county when presented with a statement of facts and circumstances shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violation of the law.

(Formerly K.S.A. 23-111).

SECTION 23-614. **Copy of licenses returned kept by court personnel.** The judge or clerk of the district court shall keep a correct copy of all marriage licenses returned with the endorsement on the license by the person performing the marriage ceremony.

(Formerly K.S.A. 23-112).

SECTION 23-615. **Proof of relationship of parties; penalty for granting license to parties not entitled without examination.** In all cases, before granting a marriage license the judge or clerk of the district court shall require the applicant for such license to take and subscribe to an oath to the effect that none of the reasons set forth in K.S.A. **23-102** exist why such applicant should not be granted a marriage license; and the judge or clerk may in his or her discretion examine witnesses under oath concerning the matters referred to in K.S.A. **23-102**, as applied to the applicant for such marriage license, and for the purpose of this act shall have power to administer oaths. If the judge or clerk fails to examine such applicant for license as provided in this section, he or she shall be liable to fine for granting license to parties not legally entitled thereto, in any sum not exceeding one thousand dollars ($1,000), to be recovered by indictment or information, with cost.

(Formerly K.S.A. 23-114).

SECTION 23-616. **Validation of certain marriages; performance of marriage by Baha'is assembly.** (a) All marriages solemnized among the society called Friends, or Quakers, in the form previously practiced and in use in their meetings shall be good and valid and shall not be construed as affected by any of the foregoing provisions of this act. All marriages previously solemnized in this state by that society, in accordance with its forms and usage, are hereby declared legal and valid.

(b) A local spiritual assembly of the Baha'is or representative members of that assembly, according to the usage of their religious community, as defined in the declaration of trust and bylaws of the national spiritual assembly of the Baha'is of the United States and bylaws of a local spiritual assembly may perform and witness the marriage ceremony in this state and certify on the back of the license the facts of the marriage and its date.

(c) Any marriage ceremony performed prior to the effective date of this act and certified by any person who had been issued a certificate of election as justice of the peace and the resulting marriage are hereby declared legal and valid.

(Formerly K.S.A. 23-116).

SECTION 23-617. **Solemnizing marriage; persons not authorized; penalty.** It shall be unlawful for any person not a duly authorized officiating person as provided by K.S.A. **23-104a** to perform the marriage ceremony in this state. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment.

(Formerly K.S.A. 23-116a).

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SECTION 23-618. **Records or copies as evidence.** The books of record of marriage licenses issued, to be kept by the judges of the district court of the several counties, and copies of entries therein, certified by such judge under his or her official seal, shall be evidence in all courts.

(Formerly K.S.A. 23-117).

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ARTICLE 7 - MARITAL PROPERTY RIGHTS

SECTION 23-701. **Married persons; separate property; marital property.** (a) The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person except the person's spouse, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts.

(Formerly K.S.A. 23-201(a)).

SECTION 23-702. **Conveyances and contracts concerning property.** A married person, while the marriage relation subsists, may bargain, sell and convey his or her real and personal property and enter into any contract.

(Formerly K.S.A. 23-202).

SECTION 23-703. **Sue and be sued.** A person may, while married, sue and be sued in the same manner as if he or she were unmarried.

(Formerly K.S.A. 23-203).

SECTION 23-704. **Married person may carry on trade or business; earnings.** Any married person may carry on any trade or business, and perform any labor or services, on his or her sole and separate account; and the earnings of any married person from his or her trade, business, labor or services shall be his or her sole and separate property, and may be used and invested by him or her in his or her own name.

(Formerly K.S.A. 23-204).

SECTION 23-705. **Loss or impairment of services; right of action.** Where, through the wrong of another, a married person shall sustain personal injuries causing the loss or impairment of his or her ability to perform services, the right of action to recover damages for such loss or impairment shall vest solely in such person, and any recovery therefor, so far as it is based upon the loss or impairment of his or her ability to perform services in the household and in the discharge of his or her domestic duties, shall be for the benefit of such person's spouse so far as he or she shall be entitled thereto. Nothing herein shall in any way affect the right of the spouse to recover damages for the wrongful death of his or her spouse.

(Formerly K.S.A. 23-205).

SECTION 23-706. **Rights of persons married out of state.** Any person who shall have been married out of this state, shall, if the spouse afterward becomes a resident of this state, enjoy all

the rights as to property which he or she may have acquired by the laws of any other state, territory or country, or which he or she may have acquired by virture of any marriage contract or settlement made out of this state.

(Formerly K.S.A. 23-206).

SECTION 23-707. **Marriage settlements or contracts.** Nothing in this act contained shall invalidate any marriage settlement or contract now made or to be hereafter made.

(Formerly K.S.A. 23-207).

SECTION 23-708. **Alienation of affections actions abolished.** There shall be no right to bring an action in this state to recover damages for alienation of affections based on any act done on or after July 1, 1982.

(Formerly K.S.A. 23-208).

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ARTICLE 8 - RESERVED

ARTICLE 9 - FAMILY SUPPORT JURISDICTION (UFISA)

SECTION 23-901 **International reciprocity for enforcement of support orders.** (a) If the attorney general finds that reciprocal provisions are available in a foreign nation or a state of a foreign nation for the enforcement of support orders issued in this state, the attorney general may declare the foreign nation or state of a foreign nation to be a reciprocating state for the purpose of establishing or enforcing any duty of support. A declaration made pursuant to this subsection may be revoked by the attorney general.

(b) The attorney general shall review any declaration made pursuant to subsection (a) to determine whether the declaration should be revoked if all or part of the same jurisdiction was declared a foreign reciprocating country by the United States secretary of state and the declaration by the United States secretary of state has been revoked.

(Formerly K.S.A. 23-4,101).

SINCE THE UIFSA PROVISIONS WILL NOT BE CHANGED OR MOVED, AND SINCE MOST OF THE STATUTORY REFERENCES THEREIN ARE INTERNAL TO THE ACT, ONLY THOSE STATUTES THAT HAVE AN EXTERNAL STATUTORY REFERENCE REMAIN IN THIS FINAL DRAFT. THEY ARE INCLUDED ONLY TO BE AN ALERT TO THE REVISOR THAT A STATUTORY REFERENCE WILL NEED TO BE UPDATED.

K.S.A. 23-9,101 **Definitions.** In this act:

(a) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(b) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(c) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

(d) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(e) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(f) "Income withholding order" means an order or other legal process directed to an obligor's employer, or other debtor, as defined by the income withholding act, K.S.A. **23-4,105** and amendments thereto, to withhold support from the income of the obligor.

(g) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this act or a law or procedure substantially similar to this act, the uniform reciprocal enforcement of support act or the revised uniform reciprocal enforcement of support act.

(h) "Initiating tribunal" means the authorized tribunal in an initiating state.

(i) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(j) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(k) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(l) "Obligee" means:

(1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(2) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(3) an individual seeking a judgment determining parentage of the individual's child.

(m) "Obligor" means an individual, or the estate of a decedent:

(1) Who owes or is alleged to owe a duty of support;

(2) who is alleged, but has not been, adjudicated to be a parent of a child; or

(3) who is liable under a support order.

(n) "Register" means to file a support order or judgment determining parentage in the responding court.

(o) "Registering tribunal" means a tribunal in which a support order is registered.

(p) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this act or a law or procedure substantially similar to this act, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(q) "Responding tribunal" means the authorized tribunal in a responding state.

(r) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(s) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes:

(1) An Indian tribe; and

(2) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this act, the uniform reciprocal enforcement of support act or the revised uniform reciprocal enforcement of support act.

(t) "Support enforcement agency" means a public official or agency authorized to seek:

(1) Enforcement of support orders or laws relating to the duty of support;

(2) establishment or modification of child support;

(3) determination of parentage; or

(4) to locate obligors or their assets.

(u) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees and other relief.

(v) "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

K.S.A. 23-9,501 **Employer's receipt of income withholding order of another state.** An income withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income withholding act, K.S.A. **23-4,105** *et seq.* and amendments thereto without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

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K.S.A. 23-9,605 **Notice of registration of order.** (a) When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice shall be only by personal service or registered mail, return receipt requested. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearages.

(c) Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income withholding act, K.S.A. **23-4,105** *et seq.* and amendments thereto.

K.S.A. 23-9,613 **Jurisdiction to modify child support order of another state when individual parties reside in this state.** (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of K.S.A. **23-4,106**, **23-4,107**, 23-9,101, 23-9,102, 23-9,103, 23-9,201 through 23-9,209, 23-9,601 through 23-9,611 and amendments thereto, and the procedural and substantive law of this state to the proceeding for enforcement or modification. K.S.A. 23-9,301 *et seq.*, 23-9,401, 23-9,501, 23-9,502, 23-9,701 and 23-9,801, 23-9,802 and amendments thereto do not apply.

K.S.A. 23-9,701 **Proceeding to determine parentage.** (a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this act or a law substantially similar to this act, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply the Kansas parentage act, K.S.A. **38-1110** *et seq.* and amendments thereto, and the rules of this state on choice of law.

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ARTICLE 10 - CHILD CUSTODY JURISDICTION (UCCJEA)

SECTION 23-1001. **Short title.** (UCCJEA 101). The provisions of K.S.A. **38-1336** through **38-1377** may be cited as the uniform child-custody jurisdiction and enforcement act.

(Formerly K.S.A. 38-1336).

SECTION 23-1002. **Definitions.** (UCCJEA 102). As used in K.S.A. **38-1336** through **38-1377**:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Act" means the uniform child-custody jurisdiction and enforcement act.

(3) "Child" means an individual who has not attained 18 years of age.

(4) "Child-custody determination" means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(5) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under K.S.A. **38-1358** through **38-1374** and amendments thereto.

(6) "Commencement" means the filing of the first pleading in a proceeding.

(7) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(8) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(9) "Initial determination" means the first child-custody determination concerning a particular child.

(10) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this act.

(11) "Issuing state" means the state in which a child-custody determination is made.

(12) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(14) "Person acting as a parent" means a person, other than a parent, who:

(A) Has physical custody of the child or has had physical custody for [a] period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(15) "Physical custody" means the physical care and supervision of a child.

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(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(18) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

(Formerly K.S.A. 38-1337).

SECTION 23-1003. **Proceeding governed by other law.** (UCCJEA 103). This act does not govern a proceeding pertaining to the authorization of emergency medical care for a child.

(Formerly K.S.A. 38-1338).

SECTION 23-1004. **Application to Indian tribes.** (UCCJEA 104). (a) A child-custody proceeding that pertains to an Indian child as defined in the Indian child welfare act, 25 U.S.C. § 1901 *et seq.*, is not subject to this act to the extent that it is governed by the Indian child welfare act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying K.S.A. **38-1336** through **38-1357** and amendments thereto.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under K.S.A. **38-1358** through **38-1374** and amendments thereto.

(Formerly K.S.A. 38-1339).

SECTION 23-1005. **International application of act.** (UCCJEA 105). (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying K.S.A. **38-1336** through **38-1357** and amendments thereto.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under K.S.A. **38-1358** through **38-1374** and amendments thereto.

(c) A court of this state need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights.

(Formerly K.S.A. 38-1340).

SECTION 23-1006. **Effect of child-custody determination.** (UCCJEA 106). A child-custody determination made by a court of this state that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this state or notified in accordance with K.S.A. **38-1343** and amendments thereto, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

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(Formerly K.S.A. 38-1341).

SECTION 23-1007. **Priority.** (UCCJEA 107). If a question of existence or exercise of jurisdiction under this act is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

(Formerly K.S.A. 38-1342).

SECTION 23-1008. **Notice to persons outside state.** (UCCJEA 108). (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

(Formerly K.S.A. 38-1343).

SECTION 23-1009. **Appearance and limited immunity.** (UCCJEA 109). (a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this state.

(Formerly K.S.A. 38-1344).

SECTION 23-1010. **Communication between courts.** (UCCJEA 110). (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this act.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

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(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Formerly K.S.A. 38-1345).

SECTION 23-1011. **Taking testimony in another state.** (UCCJEA 111). (a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

(Formerly K.S.A. 38-1346).

SECTION 23-1012. **Cooperation between courts; preservation of records.** (UCCJEA 112). (a) A court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

(Formerly K.S.A. 38-1347).

SECTION 23-1013. **Initial child-custody jurisdiction.** (UCCJEA 201). (a) Except as otherwise provided in K.S.A. **38-1351** and amendments thereto, a court of this state has jurisdiction to make an initial child-custody determination only if:

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(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under K.S.A. **38-1354** or **38-1355** and amendments thereto, and:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under K.S.A. **38-1354** or **38-1355** and amendments thereto; or

(4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

(Formerly K.S.A. 38-1348).

SECTION 23-1014. **Exclusive, continuing jurisdiction.** (UCCJEA 202). (a) Except as otherwise provided in K.S.A. **38-1351** and amendments thereto, a court of this state which has made a child-custody determination consistent with K.S.A. **38-1348** or **38-1350** and amendments thereto, has exclusive, continuing jurisdiction over the determination until:

(1) A court of this state determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under K.S.A. **38-1348** and amendments thereto.

(Formerly K.S.A. 38-1349).

SECTION 23-1015. **Jurisdiction to modify determination.** (UCCJEA 203). Except as otherwise provided in K.S.A. **38-1351** and amendments thereto, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subsection (a)(1) or (2) of K.S.A. **38-1348** and amendments thereto, and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under K.S.A. **38-1349** and amendments thereto, or that a court of this state would be a more convenient forum under K.S.A. **38-1354** and amendments thereto; or

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(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

(Formerly K.S.A. 38-1350).

SECTION 23-1016. **Temporary emergency jurisdiction.** (UCCJEA 204). (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this act and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this act, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to K.S.A. **38-1348** through **38-1350** and amendments thereto, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

(Formerly K.S.A. 38-1351).

SECTION 23-1017. **Notice; opportunity to be heard; joinder.** (UCCJEA 205). (a) Before a child-custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of K.S.A. **38-1343** and amendments thereto, must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This act does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

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(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this act are governed by the law of this state as in child-custody proceedings between residents of this state.

(Formerly K.S.A. 38-1352).

SECTION 23-1018. **Simultaneous proceedings.** (UCCJEA 206). (a) Except as otherwise provided in K.S.A. **38-1351** and amendments thereto, a court of this state may not exercise its jurisdiction under K.S.A. **38-1348** through **38-1357** and amendments thereto if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under K.S.A. **38-1354** and amendments thereto.

(b) Except as otherwise provided in K.S.A. **38-1351** and amendments thereto, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to K.S.A. **38-1356** and amendments thereto. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

(Formerly K.S.A. 38-1353).

SECTION 23-1019. **Inconvenient forum.** (UCCJEA 207). (a) A court of this state which has jurisdiction under this act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

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(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this act if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

(Formerly K.S.A. 38-1354).

SECTION 23-1020. **Jurisdiction declines by reason of conduct.** (UCCJEA 208). (a) Except as otherwise provided in K.S.A. **38-1351** and amendments thereto or by other law of this state, if a court of this state has jurisdiction under this act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto, determines that this state is a more appropriate forum under K.S.A. **38-1354** and amendments thereto; or

(3) no court of any other state would have jurisdiction under the criteria specified in K.S.A. **38-1348** through **38-1350** and amendments thereto.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under K.S.A. **38-1348** through **38-1350** and amendments thereto.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this act.

(Formerly K.S.A. 38-1355).

SECTION 23-1021. **Information to be submitted to court.** (UCCJEA 209). (a) Subject to subsection (e), in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the

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names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsection (a)(1) through (3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

(Formerly K.S.A. 38-1356).

SECTION 23-1022. **Appearance to parties and child.** (UCCJEA 210). (a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to K.S.A. **38-1343** and amendments thereto include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

(Formerly K.S.A. 38-1357).

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SECTION 23-1023. **Definitions; enforcement.** (UCCJEA 301). In K.S.A. **38-1358** through **38-1374** and amendments thereto:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the civil aspects of international child abduction or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the civil aspects of international child abduction or enforcement of a child-custody determination.

(Formerly K.S.A. 38-1358).

SECTION 23-1024. **Enforcement under Hague Convention.** (UCCJEA 302). Under K.S.A. **38-1358** through **38-1374** and amendments thereto, a court of this state may enforce an order for the return of the child made under the Hague Convention on the civil aspects of international child abduction as if it were a child-custody determination.

(Formerly K.S.A. 38-1359).

SECTION 23-1025. **Duty to enforce.** (UCCJEA 303). (a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this act or the determination was made under factual circumstances meeting the jurisdictional standards of this act and the determination has not been modified in accordance with this act.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in K.S.A. **38-1358** through **38-1374** and amendments thereto, are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

(Formerly K.S.A. 38-1360).

SECTION 23-1026. **Temporary visitation.** (UCCJEA 304). (a) A court of this state which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) the visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subsection (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in K.S.A. **38-1348** through **38-1357** and amendments thereto. The order remains in effect until an order is obtained from the other court or the period expires.

(Formerly K.S.A. 38-1361).

SECTION 23-1027. **Registration of child-custody determination.** (UCCJEA 305). (a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:

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(1) A letter or other document requesting registration;

(2) two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) except as otherwise provided in K.S.A. **38-1356** and amendments thereto, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) serve notice upon the persons named pursuant to subsection (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under K.S.A. **38-1348** through **38-1357** and amendments thereto;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under K.S.A. **38-1348** through **38-1357** and amendments thereto; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of K.S.A. **38-1343** and amendments thereto, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

(g) There shall be no fee for registering a child-custody determination issued by a court of another state pursuant to this section. The fee for enforcement or modification of any child custody determination shall be as prescribed in K.S.A. 2000 Supp. **60-1621**, and amendments thereto.

(Formerly K.S.A. 38-1362).

SECTION 23-1028. **Enforcement of registered determination.** (UCCJEA 306). (a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

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(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with K.S.A. **38-1348** through **38-1357** and amendments thereto, a registered child-custody determination of a court of another state.

(Formerly K.S.A. 38-1363).

SECTION 23-1029. **Simultaneous proceedings.** (UCCJEA 307). If a proceeding for enforcement under K.S.A. **38-1358** through **38-1374** and amendments thereto is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under K.S.A. **38-1348** through **38-1357** and amendments thereto, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

(Formerly K.S.A. 38-1364).

SECTION 23-1030. **Expedited enforcement of child-custody determination.** (UCCJEA 308). (a) A petition under K.S.A. **38-1358** through **38-1374** and amendments thereto, must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under K.S.A. **38-1362** and amendments thereto, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under K.S.A. **38-1369** and amendments thereto, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

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(1) The child-custody determination has not been registered and confirmed under K.S.A. **38-1362** and amendments thereto and that:

(A) The issuing court did not have jurisdiction under K.S.A. **38-1348** through **38-1357** and amendments thereto;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under K.S.A. **38-1348** through **38-1357** and amendments thereto;

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of K.S.A. **38-1343** and amendments thereto, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under K.S.A. **38-1361** and amendments thereto, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under K.S.A. **38-1348** through **38-1357** and amendments thereto.

(Formerly K.S.A. 38-1365).

SECTION 23-1031. **Service of petition and order.** (UCCJEA 309). Except as otherwise provided in K.S.A. **38-1368** and amendments thereto, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

(Formerly K.S.A. 38-1366).

SECTION 23-1032. **Hearing and order.** (UCCJEA 310). (a) Unless the court issues a temporary emergency order pursuant to K.S.A. **38-1351** and amendments thereto, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under K.S.A. **38-1362** and amendments thereto, and that:

(A) The issuing court did not have jurisdiction under K.S.A. **38-1348** through **38-1357** and amendments thereto;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under K.S.A. **38-1348** through **38-1357** and amendments thereto; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of K.S.A. **38-1343** and amendments thereto, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under K.S.A. **38-1362** and amendments thereto, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under K.S.A. **38-1348** through **38-1357** and amendments thereto.

(b) The court shall award the fees, costs, and expenses authorized under K.S.A. **38-1369** and amendments thereto and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

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(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under K.S.A. **38-1358** through **38-1374** and amendments thereto.

(Formerly K.S.A. 38-1367).

SECTION 23-1033. **Warrant to take physical custody of child.** (UCCJEA 311). (a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection (b) of K.S.A. **38-1365** and amendments thereto.

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

(Formerly K.S.A. 38-1368).

SECTION 23-1034. **Costs, fees, and expenses.** (UCCJEA 312). (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this act.

(Formerly K.S.A. 38-1369.)

SECTION 23-1035. **Recognition and enforcement.** (UCCJEA 313). A court of this state shall accord full faith and credit to an order issued by another state and consistent with this act which enforces a child-custody determination by a court of another state unless the order has been

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vacated, stayed, or modified by a court having jurisdiction to do so under K.S.A. **38-1348** through **38-1357** and amendments thereto.

(Formerly K.S.A. 38-1370).

SECTION 23-1036. **Appeals.** (UCCJEA 314). An appeal may be taken from a final order in a proceeding under K.S.A. **38-1358** through **38-1374** and amendments thereto, in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under K.S.A. **38-1351** and amendments thereto, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

(Formerly K.S.A. 38-1371).

SECTION 23-1037. **Role of prosecutor.** (UCCJEA 315). (a) In a case arising under this act or involving the Hague Convention on the civil aspects of international child abduction, the prosecutor may take any lawful action, including resort to a proceeding under K.S.A. **38-1358** through **38-1574** and amendments thereto or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) An existing child-custody determination;

(2) a request to do so from a court in a pending child-custody proceeding;

(3) a reasonable belief that a criminal statute has been violated; or

(4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the civil aspects of international child abduction.

(b) A prosecutor acting under this section acts on behalf of the court and may not represent any party.

(Formerly K.S.A. 38-1372).

SECTION 23-1038. **Role of law enforcement.** (UCCJEA 316). At the request of a prosecutor acting under K.S.A. **38-1372** and amendments thereto, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor with responsibilities under K.S.A. **38-1372** and amendments thereto.

(Formerly K.S.A. 38-1373).

SECTION 23-1039. **Costs and expenses.** (UCCJEA 317). If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under K.S.A. **38-1372** or **38-1373** and amendments thereto.

(Formerly K.S.A. 38-1374).

SECTION 23-1040. **Application and construction.** (UCCJEA 401). In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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(Formerly K.S.A. 38-1375).

SECTION 23-1041. **Severability clause.** (UCCJEA 402). If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(Formerly K.S.A. 38-1376).

SECTION 23-1042. **Transitional provision.** (UCCJEA 405). A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

(Formerly K.S.A. 38-1377).

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ARTICLE 11 - UNIFORM CHILD ABDUCTION PREVENTION ACT (UCAPA)

SECTION 23-1101. **Short title.** This act may be cited as the uniform child abduction prevention act.

(Formerly K.S.A. 38-13a01)(UCAPA 1).

SECTION 23-1102. **Definitions.** In this act:

(1) "Abduction" means the wrongful removal or wrongful retention of a child.

(2) "Child" means an unemancipated individual who is less than 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order.

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence.

(5) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(6) "Petition" includes a motion or its equivalent.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

(9) "Travel document" means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or visa.

(10) "Wrongful removal" means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state.

(11) "Wrongful retention" means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

(Formerly K.S.A. 38-13a02)(UCAPA 2).

SECTION 23-1103. **Cooperation and communication among courts.** K.S.A. **38-1345**, **38-1346** and **38-1347**, and amendments thereto, apply to cooperation and communications among courts in proceedings under this act.

(Formerly K.S.A. 38-13a03)(UCAPA 3).

SECTION 23-1104. **Actions for abduction prevention measures.** (a) A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

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(b) A party to a child-custody determination or another individual or entity having a right under the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this act.

(c) A prosecutor or public authority designated under K.S.A. **38-1372** may seek a warrant to take physical custody of a child under K.S.A. 2008 Supp. **38-13a09**, and amendments thereto, or other appropriate prevention measures.

(Formerly K.S.A. 38-13a04)(UCAPA 4).

SECTION 23-1105. **Jurisdiction.** (a) A petition under this act may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under the uniform child custody jurisdiction and enforcement act, K.S.A. **38-1336** et seq., and amendments thereto.

(b) A court of this state has temporary emergency jurisdiction under K.S.A. **38-1351**, and amendments thereto, if the court finds a credible risk of abduction.

(Formerly K.S.A. 38-13a05)(UCAPA 5).

SECTION 23-1106. **Contents of petition.** A petition under this act must be verified and include a copy of any existing child-custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in K.S.A. 2008 Supp. **38-13a07**, and amendments thereto. Subject to K.S.A. **38-1356**, and amendments thereto, if reasonably ascertainable, the petition must contain:

(1) the name, date of birth, and gender of the child;

(2) the customary address and current physical location of the child;

(3) the identity, customary address, and current physical location of the respondent;

(4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;

(5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and

(6) any other information required to be submitted to the court for a child-custody determination under K.S.A. **38-1356**, and amendments thereto.

(Formerly K.S.A. 38-13a06)(UCAPA 6).

SECTION 23-1107. **Factors to determine risk of abduction.** (a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

(1) has previously abducted or attempted to abduct the child;

(2) has threatened to abduct the child;

(3) has recently engaged in activities that may indicate a planned abduction, including:

(A) abandoning employment;

(B) selling a primary residence;

(C) terminating a lease;

(D) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;

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(E) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(F) seeking to obtain the child's birth certificate or school or medical records;

(4) has engaged in domestic violence, stalking, or child abuse or neglect;

(5) has refused to follow a child-custody determination;

(6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;

(7) has strong familial, financial, emotional, or cultural ties to another state or country;

(8) is likely to take the child to a country that:

(A) is not a party to the Hague Convention on the civil aspects of international child abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(B) is a party to the Hague Convention on the civil aspects of international child abduction but:

(i) the Hague Convention on the civil aspects of international child abduction is not in force between the United States and that country;

(ii) is noncompliant according to the most recent compliance report issued by the United States department of state; or

(iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the civil aspects of international child abduction;

(C) poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(D) has laws or practices that would:

(i) enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(ii) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or

(iii) restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(E) is included by the United States department of state on a current list of state sponsors of terrorism;

(F) does not have an official United States diplomatic presence in the country; or

(G) is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(10) has had an application for United States citizenship denied;

(11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a social security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;

(12) has used multiple names to attempt to mislead or defraud; or

(13) has engaged in any other conduct the court considers relevant to the risk of abduction.

(b) In the hearing on a petition under this act, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

(Formerly K.S.A. 38-13a07)(UCAPA 7).

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SECTION 23-1108. **Provisions and measures to prevent abduction.** (a) If a petition is filed under this act, the court may enter an order that must include:

(1) the basis for the court's exercise of jurisdiction;

(2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(3) a detailed description of each party's custody and visitation rights and residential arrangements for the child;

(4) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(5) identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, at a hearing on a petition under this act or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (a) and measures and conditions, including those in subsections (c), (d), and (e), that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(c) An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(A) the travel itinerary of the child;

(B) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(C) copies of all travel documents;

(2) a prohibition of the respondent directly or indirectly:

(A) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(B) removing or retaining the child in violation of a child-custody determination;

(C) removing the child from school or a child-care or similar facility; or

(D) approaching the child at any location other than a site designated for supervised visitation;

(3) a requirement that a party to register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child's passport:

(A) a direction that the petitioner to place the child's name in the United States department of state's child passport issuance alert program;

(B) a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(C) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(A) to the United States department of state office of children's issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) to the court:

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(i) proof that the respondent has provided the information in subparagraph (A); and

(ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(C) to the petitioner, proof of registration with the United States embassy or other United States diplomatic presence in the destination country and with the central authority for the Hague Convention on the civil aspects of international child abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) a written waiver under the Privacy Act, 5 U.S.C. Section 552a, as amended, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child under K.S.A. 2008 Supp. **38-13a09**, and amendments thereto, or the law of this state other than this act;

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this act or the law of this state other than this act; or

(3) grant any other relief allowed under the law of this state other than this act.

(f) The remedies provided in this act are cumulative and do not affect the availability of other remedies to prevent abduction.

(Formerly K.S.A. 38-13a08)(UCAPA 8).

SECTION 23-1109. **Warrant to take physical custody of child.** (a) If a petition under this act contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an *ex parte* warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) must be afforded an opportunity to be heard at the earliest possible time after the *ex parte* warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An *ex parte* warrant under subsection (a) to take physical custody of a child must:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date and time for the hearing on the petition; and

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(4) provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the national crime information center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) If the court finds, after a hearing, that a petitioner sought an *ex parte* warrant under subsection (a) for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

(h) This act does not affect the availability of relief allowed under the law of this state other than this act.

(Formerly K.S.A. 38-13a09)(UCAPA 9).

SECTION 23-1110. **Duration of abduction prevention order.** An abduction prevention order remains in effect until the earliest of:

(1) the time stated in the order;

(2) the emancipation of the child;

(3) the child's attaining 18 years of age; or

(4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under K.S.A. **38-1348**, **38-1349** and **38-1350**, and amendments thereto.

(Formerly K.S.A. 38-13a10)(UCAPA 10).

SECTION 23-1111. **Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Formerly K.S.A. 38-13a11)(UCAPA 11).

SECTION 23-1112. **Relation to electronic signatures in global and national commerce act.** This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of the act, 15 U.S.C. Section 7001(c), of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

(Formerly K.S.A. 38-13a12)(UCAPA 12).

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ARTICLE 12 - RESERVED

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ARTICLE 13 - RESERVED

ARTICLE 14 - DISSOLUTION OF MARRIAGE

SECTION 23-1401. **Grounds for divorce or separate maintenance.** (a) The district court shall grant a decree of divorce or separate maintenance for any of the following grounds: (1) Incompatibility; (2) failure to perform a material marital duty or obligation; or (3) incompatibility by reason of mental illness or mental incapacity of one or both spouses.

(b) The ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall require a finding of either: (1) Confinement of the spouse in an institution by reason of mental illness for a period of two years, which confinement need not be continuous; or (2) an adjudication of mental illness or mental incapacity of the spouse by a court of competent jurisdiction while the spouse is confined in an institution by reason of mental illness. In either case, there must be a finding by at least two of three physicians, appointed by the court before which the action is pending, that the mentally ill or mentally incapacitated spouse has a poor prognosis for recovery from the mental illness or mental incapacity, based upon general knowledge available at the time. A decree granted on the ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall not relieve a party from contributing to the support and maintenance of the mentally ill or mentally incapacitated spouse. If both spouses are confined to institutions because of mental illness or mental incapacity, the guardian of either spouse may file a petition for divorce and the court may grant the divorce on the ground of incompatibility by reason of mental illness or mental incapacity.

(Formerly K.S.A. 60-1601).

SECTION 23-1402. **Grounds for annulment.** (a) The district court shall grant a decree of annulment of any marriage for either of the following grounds: (1) The marriage is void for any reason; or (2) the contract of marriage is voidable because it was induced by fraud.

(b) The district court may grant a decree of annulment of any marriage if the contract of marriage was induced by mistake of fact, lack of knowledge of a material fact or any other reason justifying recission of a contract of marriage.

(Formerly K.S.A. 60-1602).

SECTION 23-1403. **Residence.** (a) *State*. The petitioner or respondent in an action for divorce must have been an actual resident of the state for 60 days immediately preceding the filing of the petition.

(b) *Military residence*. Any person who has been a resident of or stationed at a United States post or military reservation within the state for 60 days immediately preceding the filing of the petition may file an action for divorce in any county adjacent to the post or reservation.

(c) *Residence of spouse*. For the purposes of this article, a spouse may have a residence in this state separate and apart from the residence of the other spouse.

(Formerly K.S.A. 60-1603).

SECTION 23-1404. **Petition and summons.** (a) *Verification of petition.* The truth of the allegations of any petition under this article must be verified by the petitioner in person or by the guardian of an incapacitated person.

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(b) *Captions.* All pleadings shall be captioned, "In the matter of the marriage of _____ and _____." In the caption, the name of the petitioner shall appear first and the name of the respondent shall appear second, but the respective parties shall not be designated as such.

(c) *Contents of petition.* The grounds for divorce, annulment or separate maintenance shall be alleged as nearly as possible in the general language of the statute, without detailed statement of facts. If there are minor children of the marriage, the petition shall state their names and dates of birth and shall contain, or be accompanied by an affidavit which contains, the information required by K.S.A. **38-1356** and amendments thereto.

(d) *Bill of particulars.* The opposing party may demand a statement of the facts which shall be furnished in the form of a bill of particulars. The facts stated in the bill of particulars shall be the specific facts upon which the action shall be tried. If interrogatories have been served on or a deposition taken of the party from whom the bill of particulars is demanded, the court in its discretion may refuse to grant the demand for a bill of particulars. A copy of the bill of particulars shall be delivered to the judge. The bill of particulars shall not be filed with the clerk of the court or become a part of the record except on appeal, and then only when the issue to be reviewed relates to the facts stated in the bill of particulars. The bill of particulars shall be destroyed by the district judge unless an appeal is taken, in which case the bill of particulars shall be destroyed upon receipt of the final order from the appellate court.

(e) *Service of process.* Service of process shall be made in the manner provided in article 3 of this chapter.

(Formerly K.S.A. 60-1604).

SECTION 23-1405. **Answer and counterclaim.** The respondent may answer and may also file a counterclaim for divorce, annulment or separate maintenance. If new matter is set up in the answer, it shall be verified by the respondent in person or by the guardian of an incapacitated person. If a counterclaim is filed, it shall be subject to the provisions of subsections (a), (b) and (c) of K.S.A. **60-1604** and amendments thereto. When there are minor children of the marriage, the answer shall contain, or be accompanied by an affidavit which contains, the information required by K.S.A. **38-1356**, and amendments thereto.

(Formerly K.S.A. 60-1605).

SECTION 23-1406. **Granting of ~~degree~~ *decree* mandatory; exceptions; denial of relief; orders authorized.** The court shall grant a requested decree of divorce, separate maintenance or annulment unless the granting of the decree is discretionary under this act or unless the court finds that there are no grounds for the requested alteration of marital status. If a decree of divorce, separate maintenance or annulment is denied for lack of grounds, the court shall nevertheless, if application is made by one of the parties, make the orders authorized by subsections (a) and (b) of K.S.A. **60-1610** and amendments thereto.

(Formerly K.S.A. 60-1606).

SECTION 23-1407. **Interlocutory orders.** (a) *Permissible orders.* After a petition for divorce, annulment or separate maintenance has been filed, and during the pendency of the action prior to final judgment the judge assigned to hear the action may, without requiring bond, make and enforce by attachment, orders which:

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(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the legal custody and residency of and parenting time with the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;

(4) require mediation between the parties on issues, including, but not limited to, child custody, residency, division of property, parenting time and development of a parenting plan;

(5) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case;

(6) require an investigation by court service officers into any issue arising in the action; or

(7) require that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(b) *Ex parte orders.* Orders authorized by subsections (a)(1), (2), (3), (4) and (7) may be entered after *ex parte* hearing upon compliance with rules of the supreme court, except that no *ex parte* order shall have the effect of changing the residency of a minor child from the parent who has had the sole *de facto* residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued *ex parte*, the court shall hear a motion to vacate or modify the order within 15 days of the date on which a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the action, any other judge of the district court may make any order authorized by this section, including vacation or modification or any order issued by the judge assigned to hear the action.

(c) *Support orders.* (1) An order of support obtained pursuant to this section may be enforced by an order of garnishment as provided in this section.

(2) No order of garnishment shall be issued under this section unless: (A) Ten or more days have elapsed since the order of support was served upon the party required to pay the support, and (B) the order of support contained a notice that the order of support may be enforced by garnishment and that the party has a right to request an opportunity for a hearing to contest the issuance of an order of garnishment, if the hearing is requested by motion filed within five days after service of the order of support upon the party. If a hearing is requested, the court shall hold the hearing within five days after the motion requesting the hearing is filed with the court or at a later date agreed to by the parties.

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) ten or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the five days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

(d) If an interlocutory order for legal custody, residency, or parenting time is sought, the party seeking such order shall file a proposed temporary parenting plan as provided by K.S.A.

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60-1623, and amendments thereto, at the time such order is sought. If any motion is filed to modify any such interlocutory orders, or in opposition to a request for issuance of interlocutory orders, that party shall attach to such motion or opposition a proposed alternative parenting plan.

(e) *Service of process.* Service of process served under subsection (a)(1) and (2) shall be by personal service and not by certified mail return receipt requested.

(Formerly K.S.A. 60-1607).

New Section 4

SECTION 23-1408. **Time for hearing; pretrial conferences; counseling, when.** ~~(a)~~ *Time.* An action for divorce shall not be heard until 60 days after the filing of the petition unless the judge enters an order declaring the existence of an emergency, stating the precise nature of the emergency, the substance of the evidence material to the emergency and the names of the witnesses who gave the evidence. A request for an order declaring the existence of an emergency may be contained in a pleading or made by motion. Unless otherwise agreed by the parties, a request for the declaration of an emergency shall not be heard prior to the expiration of the time permitted for the filing of an answer. Unless waived, notice of the hearing requesting the declaration of an emergency shall be given to all parties not in default not less than seven days prior to the date of the hearing. Upon a finding that an emergency exists, the divorce and all issues pertaining thereto may be heard immediately.

(Formerly K.S.A. 60-1608(a)).

New Section 5

SECTION 23-1409. ~~(b)~~ *Pretrial conferences.* The court shall conduct a pretrial conference or conferences in accordance with K.S.A. **60-216**, and amendments thereto, upon request of either party or on the court's own motion. Any pretrial conference shall be set on a date other than the date of trial and the parties shall be present or available within the courthouse.

(Formerly K.S.A. 60-1608(b)).

New Section 6

SECTION 23-1410. ~~(c)~~ *(a) Marriage counseling.* After the filing of the answer or other responsive pleading by the respondent, the court, on its own motion or upon motion of either of the parties, may require both parties to the action to seek marriage counseling if marriage counseling services are available within the judicial district of venue of the action. Neither party shall be required to submit to marriage counseling provided by any religious organization of any particular denomination.

~~(d)~~ *(b) Cost of counseling.* The cost of any counseling authorized by this section may be assessed as costs in the case.

(Formerly K.S.A. 60-1608(c) and (d)).

inadvertently left out of bill.

SECTION 23-1411. **Decree; authorized orders.** ***A decree in an action under this article may include orders on the following matters:***

(a) an order changing or terminating the parties' marital status by dissolution, annulment or separate maintenance.

(b) an order making an equitable division of the parties' property as authorized by Article ____.

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(c) an order regarding spousal support as authorized by Article _____.
(d) an order changing one or both parties' names as authorized by K.S.A. 23-1615.
(e) an order allocating parental decision-making and entering a parenting plan as authorized by Article _____.
(f) an order for child support as authorized by Article _____.
(g) an order awarding costs and attorneys fees to either party under K.S.A. 23-1614.

(Formerly K.S.A. 60-1610).

SECTION 23-1412. ~~(b)(3)~~ *Separation agreement.* ***(a)*** If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions **of this article**.

(b) Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: ~~(A)~~ ***(1)*** As prescribed by the agreement or ~~(B)~~ ***(2)*** as subsequently consented to by the parties.

* New Section 7

(Formerly K.S.A. 60-1610(b)(3)).

SECTION 23-1413. ~~(c)(2)~~ ***(a)*** *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

(b) **Effect of a decree in another state.** A judgment or decree of divorce rendered in any other state or territory of the United States, in conformity with the laws thereof, shall be given full faith and credit in this state, except that, if the respondent in the action, at the time of the judgment or decree, was a resident of this state and did not personally appear or defend the action in the court of that state or territory and that court did not have jurisdiction over the respondent's person, all matters relating to maintenance, property rights of the parties and support of the minor children of the parties shall be subject to inquiry and determination in any proper action or proceeding brought in the courts of this state within two years after the date of the foreign judgment or decree, to the same extent as though the foreign judgment or decree had not been rendered. Nothing in this section shall authorize a court of this state to enter a child custody determination, as defined in K.S.A. **38-1337** and amendments thereto contrary to the provisions of the uniform child custody jurisdiction and enforcement act.

* New Section 8

(Formerly K.S.A. 60-1610(c)(2) and 60-1611).

SECTION 23-1414. **Evidence.** (a) *Admissions.* Upon the trial of the action, the court may admit proof of the admissions of the parties to be received in evidence, excluding such as shall appear to have been obtained by connivance, fraud, coercion, or other improper means.

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(b) *Marriage.* Testimony admissible to prove a common-law marriage may be received as evidence of the marriage of the parties.

(c) *Husband and wife as witness.* Either party to the action shall be competent to testify upon all material matters involved in the controversy.

(d) *Corroborating testimony.* A decree of divorce, separate maintenance or annulment may be granted upon the uncorroborated testimony of either party or both of them.

(Formerly K.S.A. 60-1609).

New section 9

SECTION 23-1415. ~~(b)(4)~~ *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(Formerly K.S.A. 60-1610(b)(4)).

New Section 10

SECTION 23-1416. ~~(c)(1)~~ *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to restore the spouse's maiden or former name at or after the time the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph.

(Formerly K.S.A. 60-1610(c)(1)).

New Section 11

SECTION 23-1417. **Obligation to comply with orders not suspended by other party's failure to comply; nature of certain motions to modify orders.** ~~(a)~~ If a party fails to comply with a provision of a decree, temporary order or injunction issued under K.S.A. **60-1601** *et seq.*, the obligation of the other party to make payments for support or maintenance or to permit visitation or parenting time is not suspended, but the other party may request by motion that the court grant an appropriate order.

(Formerly K.S.A. 60-1612(a)).

SECTION 23-1418. **Interspousal tort.** (a) An action for interspousal tort shall not be consolidated with an action under K.S.A. **60-1601**, *et seq.*, and amendments thereto, unless the parties agree to consolidation and consolidation is approved by the court.

(b) A decree of divorce or separate maintenance granted under subsections (a)(1) or (3) of K.S.A. **60-1601**, and amendments thereto, shall not preclude an action for interspousal tort.

(c) A decree of divorce or separate maintenance granted under subsection (a)(2) of K.S.A. **60-1601**, and amendments thereto, shall preclude an action for interspousal tort based upon the same factual allegations. An action for interspousal tort which has been finally determined shall preclude an action under subsection (a)(2) of K.S.A. **60-1601**, and amendments thereto, based upon the same factual allegations.

(Formerly K.S.A. 60-1627).

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ARTICLE 15 - DIVISION OF PROPERTY

SECTION 23-1501. **Married persons; separate property; marital property.** ~~(b)~~ *(a)* All property owned by married persons, including the present value of any vested or unvested military retirement pay, or, for divorce or separate maintenance actions ~~commenced on or after July 1, 1998~~, professional goodwill to the extent that it is marketable for that particular professional, whether described in ~~subsection (a)~~ ***K.S.A. 23-????*** or acquired by either spouse after marriage, and whether held individually or by the spouses in some form of co-ownership, such as joint tenancy or tenancy in common, shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment.

* New Section 12

(b) Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. **60-1610** and amendments thereto.

(Formerly K.S.A. 23-201(b)).

SECTION 23-1502. ~~(b)(1)~~ *Division of property.* *(a)* The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: ~~(A)~~ *(1)* A division of the property in kind; ~~(B)~~ *(2)* awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or ~~(C)~~ *(3)* ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale.

A New Section 13

(b) Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution to that nonparticipant.

(c) In making the division of property the court shall consider: *(A)* the age of the parties; *(B)* the duration of the marriage; *(C)* the property owned by the parties; *(D)* their present and future earning capacities; *(E)* the time, source and manner of acquisition of property; *(F)* family ties and obligations; *(G)* the allowance of maintenance or lack thereof; *(H)* dissipation of assets; *(I)* the tax consequences of the property division upon the respective economic circumstances of the parties; and *(J)* such other factors as the court considers necessary to make a just and reasonable division of property.

(d) The decree shall provide for any changes in beneficiary designation on: ~~(A)~~ *(1)* Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; ~~(B)~~ *(2)* any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or ~~(C)~~ *(3)* any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries.

Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

(Formerly K.S.A. 60-1610(b)(1)).

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ARTICLE 16 - ESTABLISHMENT & MODIFICATION OF SPOUSAL SUPPORT

SECTION 23-1601. **Interpretation of terms.** For purposes of interpretation, the terms "alimony" and "maintenance" are synonymous.

(Formerly K.S.A. 60-1618).

SECTION 23-1602. *Maintenance.* ***(a)*** ~~**The decree**~~ ***Any decree of divorce or separate maintenance*** may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances.

(b) Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis.

(c) The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree.

(Formerly K.S.A. 60-1610(b)(2) in part).

* New Section 14

SECTION 23-1603. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree.

(Formerly K.S.A. 60-1610(b)(2) in part).

* New Section 15

SECTION 23-1604. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months.

(Formerly K.S.A. 60-1610(b)(2) in part).

* New Section 16

SECTION 23-1605. ***(a)*** Except for good cause shown, every order requiring payment of maintenance under this section shall require that the maintenance be paid through the central

* New Section 6717 11-~~16~~

unit for collection and disbursement of support payments designated pursuant to K.S.A. **23-4,118**, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause.

(b) If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.

(Formerly K.S.A. 60-1610(b)(2) in part).

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ARTICLE 17 – PARENTAL DECISION MAKING AND PARENTING PLANS or CUSTODY, RESIDENCY AND PARENTING PLANS

SECTION 23-1701. ~~(a)(3)~~ *Child custody or residency criteria.* The court shall determine custody or residency of a child in accordance with the best interests of the child.

(Formerly K.S.A. 60-1610(a)(3)).

* New Section 18

SECTION 23-1702. ~~(A)~~ If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(Formerly K.S.A. 60-1610(a)(3)(A)).

* New Section 19

SECTION 23-1703. ~~(B)~~ In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

~~(i)~~ *(1)* The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

~~(ii)~~ *(2)* the desires of the child's parents as to custody or residency;

~~(iii)~~ *(3)* the desires of the child as to the child's custody or residency;

~~(iv)~~ *(4)* the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

~~(v)~~ *(5)* the child's adjustment to the child's home, school and community;

~~(vi)~~ *(6)* the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

~~(vii)~~ *(7)* evidence of spousal abuse;

~~(viii)~~ *(8)* whether a parent is subject to the registration requirements of the Kansas offender registration act, K.S.A. **22-4901**, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law;

~~(ix)~~ *(9)* whether a parent has been convicted of abuse of a child, K.S.A. **21-3609**, and amendments thereto;

~~(x)~~ *(10)* whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, K.S.A. **22-4901**, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; and

~~(xi)~~ *(11)* whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. **21-3609**, and amendments thereto.

(Formerly K.S.A. 60-1610(a)(3)(B)).

* New Section 20

SECTION 23-1704. ~~(C)~~ Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

* New Section 21

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(Formerly K.S.A. 60-1610(a)(3)(C)).

* New Section 22

SECTION 23-1705. ~~(D)~~ There shall be a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent who:

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

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

(Formerly K.S.A. 60-1610(a)(3)(D)).

* New Section 23

SECTION 23-1706. ~~(a)(4)~~ *Types of legal custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference: ~~(A)~~ *(a) Joint legal custody.* The court may order the joint legal custody of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

~~(B)~~ *(b) Sole legal custody.* The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.

(Formerly K.S.A. 60-1610(a)(4)).

* New Section 24

SECTION 23-1707. ~~(a)(5)~~ *Types of residential arrangements.* After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

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

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

~~(C)~~ *(c) Nonparental residency.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2008 Supp. **38-2202**, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds by written order that: ~~(i) (a)~~ *(1)(A)* The child is likely to sustain harm if not immediately removed from the home;

~~(b)~~ *(B)* allowing the child to remain in home is contrary to the welfare of the child; or

~~(c)~~ *(C)* immediate placement of the child is in the best interest of the child; and

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~~(ii)~~ *(2)* 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 to the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2008 Supp. **38-2243** and **38-2244**, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2008 Supp. **38-2234**, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2008 Supp. **38-2266**, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the revised Kansas code for care of children shall be binding and shall supersede any order under this section.

(Formerly K.S.A. 60-1610(a)(5)).

SECTION 23-1708. **Parenting time; visitation orders; enforcement.** (a) *Parents.* A parent is entitled to reasonable parenting time unless the court finds, after a hearing, that the exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health.

~~(d)~~ *(b) Enforcement of rights.* An order granting visitation rights or parenting time pursuant to this section may be enforced in accordance with the uniform child custody jurisdiction and enforcement act, or K.S.A. **23-701**, and amendments thereto.

~~(f)~~ *(c) Court ordered exchange or visitation at a child exchange and visitation center.* ~~(1)~~ The court may order exchange or visitation to take place at a child exchange and visitation center, as established in K.S.A. **75-720** and amendments thereto.

(Formerly K.S.A. 60-1616(a), (d) and (f)(1)).

SECTION 23-1709. **Interviews; court; minors.** The court may interview the minor children in chambers to assist the court in determining legal custody, residency, visitation rights and parenting time. The court may permit counsel to be present at the interviews. Upon request of any party, the court shall cause a record of the interview to be made as part of the record in the case.

(Formerly K.S.A. 60-1614).

SECTION 23-1710. **Information relating to custody or residency of children; visitation or parenting time with children.** (a) *Investigation and report.* In any proceeding in which legal custody, residency, visitation rights or parenting time are contested, the court may order an

investigation and report concerning the appropriate legal custody, residency, visitation rights and parenting time to be granted to the parties. The investigation and report may be made by court services officers or any consenting person or agency employed by the court for that purpose. The court may use the department of social and rehabilitation services to make the investigation and report if no other source is available for that purpose. The costs for making the investigation and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(b) *Consultation.* In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential legal custodial arrangements. Upon order of the court, the investigator may refer the child to other professionals for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past. If the requirements of subsection (c) are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) *Use of report and investigator's testimony.* The court shall make the investigator's report available prior to the hearing to counsel or to any party not represented by counsel. Upon motion of either party, the report may be made available to a party represented by counsel, unless the court finds that such distribution would be harmful to either party, the child or other witnesses. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. In consideration of the mental health or best interests of the child, the court may approve a stipulation that the interview records not be divulged to the parties.

(Formerly K.S.A. 60-1615).

SECTION 23-1711. **Parenting plan; definitions.** (a) "Temporary parenting plan" means an agreement or order issued defining the legal custody, residency and parenting time to be exercised by parents with regard to a child between the time of filing of a matter in which a parenting plan may be entered, and any other provisions regarding the child's care which may be in the best interest of the child, until a final order is issued.

(b) "Permanent parenting plan" means an agreement between parents which is incorporated into an order at a final hearing or an order or decree issued at a final hearing without agreement that establishes legal custody, residency, parenting time and other matters regarding a child custody arrangement in a matter in which a parenting plan may be entered.

(c) "Legal custody" means the allocation of parenting responsibilities between parents, or any person acting as a parent, including decision making rights and responsibilities pertaining to matters of child health, education and welfare.

(Formerly K.S.A. 60-1623).

SECTION 23-1712. **Same; temporary orders.** (a) The court may enter a temporary parenting plan in any case in which temporary orders relating to child custody is authorized.

(b) If the court deems it appropriate, a temporary parenting plan approved by the court may include one or more of the following provisions regarding children involved in the matter before the court:

(1) Designation of the temporary legal custody of the child;

(2) designation of a temporary residence for the child;

(3) allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;

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(4) a schedule for the child's time with each parent, when appropriate.

(c) A parent seeking a temporary order in which matters of child custody, residency, or parenting time are included shall file a proposed temporary parenting plan contemporaneous with any request for issuance of such temporary orders, which plan shall be served with any such temporary orders.

(d) If the parent who has not filed a proposed temporary parenting plan disputes the allocation of parenting responsibilities, residency, parenting time or other matters included in the proposed temporary parenting plan, that parent shall file and serve a responsive proposed temporary parenting plan.

(e) Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order.

(f) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment is in the best interest of the child.

(g) If a proceeding for divorce, separate maintenance, annulment or determination of parentage is dismissed, any temporary parenting plan is vacated.

(Formerly K.S.A. 60-1624).

SECTION 23-1713. **Same; permanent; objectives; general outline, provisions.** (a) The objectives of the permanent parenting plan are to:

(1) Establish a proper allocation of parental rights and responsibilities;

(2) establish an appropriate working relationship between the parents such that matters regarding the health, education and welfare of their child is best determined;

(3) provide for the child's physical care;

(4) set forth an appropriate schedule of parenting time;

(5) maintain the child's emotional stability;

(6) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications to the permanent parenting plan;

(7) minimize the child's exposure to harmful parental conflict;

(8) encourage the parents, where appropriate, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(9) otherwise protect the best interests of the child.

(b) A permanent parenting plan may consist of a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis; however, a permanent parenting plan must set forth the following minimum provisions:

(1) Designation of the legal custodial relationship of the child;

(2) a schedule for the child's time with each parent, when appropriate;

(3) a provision for a procedure by which disputes between the parents may be resolved without need for court intervention; and

(4) if either parent is a service member, as defined in K.S.A. 2008 Supp. **60-1630**, and amendments thereto, provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour of such service member.

(c) A detailed permanent parenting plan shall include those provisions required by subsection (b), and may include, but need not be limited to, provisions relating to:

(1) Residential schedule;

(2) holiday, birthday and vacation planning;

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(3) weekends, including holidays and school inservice days preceding or following weekends;

(4) allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;

(5) sharing of and access to information regarding the child;

(6) relocation of parents;

(7) telephone access;

(8) transportation; and

(9) methods for resolving disputes.

(d) The court shall develop a permanent parenting plan, which may include such detailed provisions as the court deems appropriate, when:

(1) So requested by either parent; or

(2) the parent or parents are unable to develop a parenting plan.

(Formerly K.S.A. 60-1625).

SECTION 23-1714. **Same; court information; classes; mediation; forms.** (a) The court shall inform the parents, or require them to be informed, about:

(1) How to prepare a parenting plan;

(2) the impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed;

(3) the impact of domestic abuse on children, and resources for addressing domestic abuse; and

(4) mediation or other nonjudicial procedures designed to help them achieve an agreement.

(b) The court may require the parents to attend parent education classes.

(c) If parents are unable to resolve issues and agree to a parenting plan, the court may require mediation, unless mediation is determined inappropriate in the particular case.

(d) The clerk of the district court shall supply forms and information prescribed by the supreme court which may be used for submission of temporary and permanent parenting plans.

(Formerly K.S.A. 60-1626).

SECTION 23-1715. **Notification of other parent of certain events; failure, indirect civil contempt; material change in circumstances.** (a) A parent entitled to legal custody of, or residency of, or parenting time with a child pursuant to K.S.A. **60-1610**, and amendments thereto, shall give written notice to the other parent of one or more of the following events when such parent: (1) Is subject to the registration requirements of the Kansas offender registration act, K.S.A. **22-4901**, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; (2) has been convicted of abuse of a child, K.S.A. **21-3609**, and amendments thereto; (3) is residing with an individual who is known by the parent to be subject to the registration requirements of the Kansas offender registration act, K.S.A. **22-4901**, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or (4) is residing with an individual who is known by the parent to have been convicted of abuse of a child, K.S.A. **21-3609**, and amendments thereto. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent within 10 days following such event.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to

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give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) An event described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time.

(Formerly K.S.A. 60-1629).

SECTION 23-1716. **Child custody and parenting time for parents deployed by the military; modification of orders; hearing.** (a) As used in this section:

(1) "Deployment" means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.

(2) "Mobilization" means the call-up of a national guard or reserve service member to extended active-duty status. "Mobilization" does not include national guard or reserve annual training.

(3) "Service member" means any member serving in an active-duty status in the armed forces of the United States, the national guard or the armed forces reserves.

(4) "Temporary duty" means the transfer of a service member from one military base to a different location for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(5) "Unaccompanied tour" means a permanent change of station for a service member where dependent travel is not authorized.

(6) "Nondeploying parent" means the parent not subject to deployment, mobilization, temporary duty or unaccompanied tour orders from the military.

(b) The absence, relocation or failure to comply with a custody or parenting time order by a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or parenting time order.

(c) Any court order limiting previously ordered custodial or parenting time rights of a parent due to the parent's deployment, mobilization, temporary duty or unaccompanied tour shall specify the deployment, mobilization, temporary duty or unaccompanied tour as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

(d) The court, on motion of the parent returning from deployment, mobilization, temporary duty or unaccompanied tour, seeking to amend or review the custody or parenting time order based upon such deployment, mobilization, temporary duty or unaccompanied tour, shall set a hearing on the matter that shall take precedence on the court's docket and shall be set within 30 days of the filing of the motion. Service on the nondeploying parent shall be at such nondeploying parent's last address provided to the court in writing. Such service, if otherwise sufficient, shall be deemed sufficient for the purposes of notice for this subsection. For purposes of this hearing, such nondeploying parent shall bear the burden of showing that reentry of the custody or parenting time order in effect prior to deployment, mobilization, temporary duty or unaccompanied tour is no longer in the best interests of the child.

(e) If the parties in a custody or parenting time matter concerning a parent who receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military have entered into a parenting plan pursuant to K.S.A. **60-1625**, and amendments thereto, that includes provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different

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order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(f) If a parent with parenting time rights receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting time rights, the court may delegate the parent's parenting time rights, or a portion thereof, to a member or members of the service member's family with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time rights is in the best interests of the child.

(g) Upon motion of a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, the court shall, for good cause shown, hold an expedited hearing in custody and parenting time matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(h) Nothing in this section shall preclude a parent from petitioning for a modification of a custody or parenting time order based upon a material change in circumstances.

(i) Any order entered pursuant to this section shall provide that:

(1) The nondeploying parent shall reasonably accommodate the leave schedule of the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders;

(2) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders and the child during the period of such deployment, mobilization, temporary duty or unaccompanied tour; and

(3) the parent subject to deployment, mobilization, temporary duty or unaccompanied tour shall provide timely information regarding such parent's leave schedule to the nondeploying parent. Willful violation of such order shall constitute contempt of court.

(j) Nothing in this section shall alter the duty of the court to determine custody or parenting time matters in accordance with the best interests of the child.

(Formerly K.S.A. 60-1630).

New section 26

SECTION 23-1717. ~~(a)(2)~~ ***Modification of*** *Child custody and residency.* ~~(A)~~ ***(a)*** *Changes in custody.* Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. **38-1336** through **38-1377**, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

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

(Formerly K.S.A. 60-1610(a)(2)(A) and (B)).

SECTION 23-1718. **Modification of final order; specify factual allegations.** (a) A party filing a motion to modify a final order pertaining to child custody or residential placement pursuant to K.S.A. ~~**38-1101**~~ ***38-1110*** *et seq.* or K.S.A. **60-1601** *et seq.*, and amendments thereto, shall

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include with specificity in the verified motion, or in an accompanying affidavit, all known factual allegations which constitute the basis for the change of custody or residential placement. If the court finds that the allegations set forth in the motion or the accompanying affidavit fail to establish a *prima facie* case, the court shall deny the motion. If the court finds that the motion establishes a *prima facie* case, the matter may be tried on factual issues.

(b) In the event the court is asked to issue an *ex parte* order modifying a final child custody or residential placement order based on alleged emergency circumstances, the court shall:

(1) Attempt to have the nonmoving party's counsel, if any, present before taking up the matter.

(2) Set the matter for review hearing at the earliest possible court setting after issuance of the *ex parte* order, but in no case later than 15 days after issuance.

(3) Require personal service of the order and notice of review hearing on the nonmoving party.

No *ex parte* order modifying a final custody or residential placement order shall be entered without sworn testimony to support a showing of the alleged emergency.

(Formerly K.S.A. 60-1628).

SECTION 23-1719 ~~(b)~~ Motions to modify legal custody, residency, visitation rights or parenting time in proceedings where support obligations are enforced under part D of title IV of the federal social security act (42 USC § 651 *et seq.*), as amended, shall be considered proceedings in connection with the administration of the title IV-D program for the sole purpose of disclosing information necessary to obtain service of process on the parent with physical custody of the child.

* New Section 27

(Formerly K.S.A. 60-1612(b)).

SECTION 23-1720. **Parenting time; visitation orders; ~~enforcement~~ *modification*. ~~(c)~~ *(a) Modification.*** The court may modify an order granting or denying parenting time or visitation rights whenever modification would serve the best interests of the child.

* New Section 28

~~(e)~~ ***(b)*** *Repeated denial of rights, effect.* Repeated unreasonable denial of or interference with visitation rights or parenting time granted pursuant to this section may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, visitation or parenting time.

~~(f)(2)~~ ***(c)*** Any party may petition the court to modify an order granting visitation rights or parenting time to require that the exchange or transfer of children for visitation or parenting time take place at a child exchange and visitation center, as established in K.S.A. **75-720** and amendments thereto. The court may modify an order granting visitation whenever modification would serve the best interests of the child.

(Formerly K.S.A. 60-1616(c), (e) and (f)(2)).

SECTION 23-1721. **Change in child's residence; notice; effect; exceptions.** (a) Except as provided in subsection (d), a parent entitled to legal custody or residency of or parenting time with a child pursuant to K.S.A. **60-1610** and amendments thereto shall give written notice to the other parent not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

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(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time. In determining any motion seeking a modification of a prior order based on change of residence or removal as described in (a), the court shall consider all factors the court deems appropriate including, but not limited to: (1) The effect of the move on the best interests of the child; (2) the effect of the move on any party having rights granted pursuant to K.S.A. **60-1610**, and amendments thereto; and (3) the increased cost the move will impose on any party seeking to exercise rights granted under K.S.A. **60-1610**, and amendments thereto.

(d) A parent entitled to the legal custody or residency of a child pursuant to K.S.A. **60-1610** and amendments thereto shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated in which the child is the victim of such crime.

(Formerly K.S.A. 60-1620).

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ARTICLE 18 - RESERVED

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ARTICLE 19 - THIRD PARTY VISITATION

SECTION 23-1901. **Parenting time; visitation orders; enforcement.** ~~(b)~~ *(a) Grandparents and stepparents.* Grandparents and stepparents may be granted visitation rights.

~~(c)~~ *(b) Modification.* The court may modify an order granting or denying parenting time or visitation rights whenever modification would serve the best interests of the child.

~~(e)~~ *(c) Repeated denial of rights, effect.* Repeated unreasonable denial of or interference with visitation rights or parenting time granted pursuant to this section may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, visitation or parenting time.

~~(f)~~ *(d) Court ordered exchange or visitation at a child exchange and visitation center.* (1) The court may order exchange or visitation to take place at a child exchange and visitation center, as established in K.S.A. **75-720** and amendments thereto.

(2) Any party may petition the court to modify an order granting visitation rights or parenting time to require that the exchange or transfer of children for visitation or parenting time take place at a child exchange and visitation center, as established in K.S.A. **75-720** and amendments thereto. The court may modify an order granting visitation whenever modification would serve the best interests of the child.

(Formerly K.S.A. 60-1616(b), (c), (e) and (f)).

SECTION 23-1902. **Visitation rights of grandparents.** (a) The district court may grant the grandparents of an unmarried minor child reasonable visitation rights to the child during the child's minority upon a finding that the visitation rights would be in the child's best interests and when a substantial relationship between the child and the grandparent has been established.

(b) The district court may grant the parents of a deceased person visitation rights, or may enforce visitation rights previously granted, pursuant to this section, even if the surviving parent has remarried and the surviving parent's spouse has adopted the child. Visitation rights may be granted pursuant to this subsection without regard to whether the adoption of the child occurred before or after the effective date of this act.

(Formerly K.S.A. 38-129).

SECTION 23-1903. **Same; action to enforce rights.** An action for reasonable visitation rights of grandparents as provided by this act shall be brought in the county in which the child resides with the child's parent, guardian or other person having lawful custody. The court shall fix the time and date for a hearing on the petition and shall prescribe the manner of giving notice thereof to interested persons.

(Formerly K.S.A. 38-130).

SECTION 23-1904. **Same; costs and attorney fees.** Costs and reasonable attorney fees shall be awarded to the respondent in an action filed pursuant to K.S.A. **38-129** *et seq.* unless the court determines that justice and equity otherwise require.

(Formerly K.S.A. 38-131).

ARTICLE 20 - RESERVED

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ARTICLE 21 - RESERVED

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ARTICLE 22 - ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

SECTION 23-2201. ~~(a)~~ *Minor children.* ~~*(1)*~~ *Child support and education.* ***(a) In any action for divorce or separate maintenance,*** *t*he court shall make provisions for the support and education of the minor children.

(b) Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless: ~~(A)~~ ***(1)*** The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; ~~(B)~~ ***(2)*** the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or ~~(C)~~ ***(3)*** the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to ~~(a)(1)(C)~~ ***(b)(3)***, may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 12-year through 18-year old children. ***For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).***

(c) Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection ~~(a)(1)(C)~~ ***(b)(3),*** the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection ~~(a)(1)(C)~~ ***(b)(3)***. ~~**For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).**~~

(Formerly K.S.A. 60-1610(a)(1) in part).

SECTION 23-2202. In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child.

(Formerly K.S.A. 60-1610(a)(1) in part).

SECTION 23-2203. ~~(a)(6)~~ *Child health insurance coverage.* The court may order that each parent execute any and all documents, including any releases, necessary so that both parents

may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(Formerly K.S.A. 60-1610(a)(6)).

* New section 33

SECTION 23-2204. Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. **23-4,118**, and amendments thereto. A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee.

(Formerly K.S.A. 60-1610(a)(1) in part).

* New Section 34

SECTION 23-2205. ***Modification of child support.*** ***(a)*** The court may modify or change any prior ***child support*** order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown.

(b) The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. **60-2202** and amendments thereto.

(Formerly K.S.A. 60-1610(a)(1) in part).

* New Section 35

SECTION 23-2206. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(Formerly K.S.A. 60-1610(a)(1) in part).

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ARTICLE 23 - ENFORCEMENT OF SUPPORT ORDERS

SECTION 23-2301. **Title and purpose of act; severability.** (a) K.S.A. **23-4,105** through **23-4,123**, and amendments thereto, shall be known and may be cited as the income withholding act.

(b) The purpose of the income withholding act is to enhance the enforcement of all support obligations by providing a quick and effective procedure for withholding income to enforce orders of support and to provide children access to health coverage under their parents' health benefit plans.

(c) If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(Formerly K.S.A. 23-4,105).

SECTION 23-2302. **Definitions.** As used in the income withholding act:

(a) "Arrearage" means the total amount of unpaid support which is due and unpaid under an order for support, based upon the due date specified in the order for support or, if no specific date is stated in the order, the last day of the month in which the payment is to be made. If the order for support includes a judgment for reimbursement, an arrearage equal to or greater than the amount of support payable for one month exists on the date the order for support is entered.

(b) "Business day" means a day on which state offices in Kansas are open for regular business.

(c) "Health benefit plan" means any benefit plan, other than public assistance, which is able to provide hospital, surgical, medical, dental or any other health care or benefits for a child, whether through insurance or otherwise, and which is available through a parent's employment or other group plan.

(d) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, workers compensation and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof. "Income" does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including but not limited to federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply. Workers compensation shall be considered income only for the purposes of child support and not for the purposes of maintenance.

(e) "Income withholding order" means an order issued under this act which requires a payor to withhold income to satisfy an order for support or to defray an arrearage.

(f) "Medical child support order" means an order requiring a parent to provide coverage for a child under a health benefit plan and, where the context requires, may include an order requiring a payor to enroll a child in a health benefit plan.

(g) "Medical withholding order" means an income withholding order which requires an employer, sponsor or other administrator of a health benefit plan to enroll a child under the health coverage of a parent.

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(h) "Nonparticipating parent" means, if one parent is a participating parent as defined in this section, the other parent.

(i) "Obligee" means the person or entity to whom a duty of support is owed.

(j) "Obligor" means any person who owes a duty to make payments or provide health benefit coverage under an order for support.

(k) "Order for support" means any order of a court, or of an administrative agency authorized by law to issue such an order, which provides for payment of funds for the support of a child, or for maintenance of a spouse or ex-spouse, and includes an order which provides for modification or resumption of a previously existing order; payment of uninsured medical expenses; payment of an arrearage accrued under a previously existing order; a reimbursement order, including but not limited to an order established pursuant to K.S.A. **39-718a** or **39-718b**, and amendments thereto; an order established pursuant to K.S.A. **23-451** *et seq.* and amendments thereto; or a medical child support order.

(l) "Participating parent" means a parent who is eligible for single coverage under a health benefit plan as defined in this section, regardless of the type of coverage actually in effect, if any.

(m) "Payor" means any person or entity owing income to an obligor or any self-employed obligor and includes, with respect to a medical child support order, the sponsor or administrator of a health benefit plan.

(n) "Public office" means any elected or appointed official of the state or any political subdivision or agency of the state, or any subcontractor thereof, who is or may become responsible by law for enforcement of, or who is or may become authorized to enforce, an order for support, including but not limited to the department of social and rehabilitation services, court trustees, county or district attorneys and other subcontractors.

(o) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.) and amendments thereto, as in effect on December 31, 1999. "Title IV-D cases" means those cases required by title IV-D to be processed by the department of social and rehabilitation services under the state's plan for providing title IV-D services.

(Formerly K.S.A. 23-4,106).

SECTION 23-2303. **Income withholding order; service of notice; order not issued, when; agreements or alternative arrangements; ex parte interlocutory orders; medical support orders.** (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or (l), all new or modified orders for support shall provide for immediate issuance of an income withholding order. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.

(c) Except as otherwise provided in this subsection or subsections (j) or (l), if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

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(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. **39-7,147**, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, any income withholding order prepared in a standard format prescribed by the secretary of social and rehabilitation services shall be deemed to be in compliance with this act.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. **23-4,108** and **23-4,109**, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. **23-4,121** and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. **23-4,108**, **23-4,109**, **23-4,119** and **23-4,122** and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor only by personal service or registered mail, return receipt requested.

(2) Without the requirement of further notice to the obligor, the IV-D agency may cause a copy of any income withholding order to be served on the payor only by personal service or registered mail, return receipt requested or by any alternate method acceptable to the payor. No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, "copy of the income withholding order" means any document or notice, regardless of format, that advises the payor of the same general duties, requires the

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same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or (l), at any time following entry of an order for support the obligee or public office may serve upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor only by personal service or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (B) a written agreement among all interested parties provides for an alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's

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previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

(A) The agreement was not in writing;

(B) the agreement was not approved by all interested parties;

(C) the terms of the agreement or alternative arrangement are not being met;

(D) the agreement or alternative arrangement is not in the best interests of the child; or

(E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. **23-4,110** and amendments thereto apply to any motion pursuant to paragraph (3) or (4) of this subsection (j).

(k) (1) An ex parte interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

(2) An ex parte interlocutory order for support may be enforced pursuant to subsection (c) only if 10 or more days have elapsed since the order for support was served on the obligor.

(3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.

(4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.

(l) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

(Formerly K.S.A. 23-4,107).

SECTION 23-2304. **Payor's duties; cost recovery fee authorized; limit on amount withheld; violations by payor; penalties.** (a) It shall be the affirmative duty of any payor to respond within 10 days to written or electronic requests for information presented by the public office concerning: (1) The full name of the obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; (10) the obligor's health insurance coverage; and (11) whether or not income owed the obligor is being withheld pursuant to this act. This is an exclusive list of the information that the payor is required to provide under this section.

(b) It shall be the duty of any payor who has been served a copy of an income withholding order for payment of an order for cash support that meets the requirements of subsection (h) to deduct and pay over income as provided in this section. The payor shall begin the required

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deductions no later than the next payment of income due the obligor after 14 days following service of the order on the payor.

(c) Within seven business days of the time the obligor is normally paid, the payor shall pay the amount withheld as directed by the income withholding agency pursuant to K.S.A. **23-4,109** and amendments thereto, as directed by the income withholding order or by a rule of the Kansas supreme court. The payor shall identify each payment with the name of the obligor, the county and case number of the income withholding order, and the date the income was withheld from the obligor. The payor shall pay the amounts withheld and identify each payment in the same business day. A payor subject to more than one income withholding order payable to the same payee may combine the amounts withheld into a single payment, but only if the amount attributable to each income withholding order is clearly identified. Premiums required for a child's coverage under a health benefit plan shall be remitted as provided in the health benefit plan and shall not be combined with any other support payment required by the income withholding order.

(d) The payor shall continue to withhold income as required by the income withholding order until further order of the court or agency.

(e) From income due the obligor, the payor may withhold and retain to defray the payor's costs a cost recovery fee of $5 for each pay period for which income is withheld or $10 for each month for which income is withheld, whichever is less. Such cost recovery fee shall be in addition to the amount withheld as support.

(f) The entire sum withheld by the payor, including the cost recovery fee and premiums due from the obligor which are incurred solely because of a medical withholding order, shall not exceed the limits provided for under section 303(b) of the consumer credit protection act (15 U.S.C. § 1673(b)). If amounts of earnings required to be withheld exceed the maximum amount of earnings which may be withheld according to the consumer credit protection act, priority shall be given to payment of current and past due support, and the payor shall promptly notify the holder of the limited power of attorney of any nonpayment of premium for a health benefit plan on the child's behalf. An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. **60-2310** and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to the consumer credit protection act, the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.

(g) The payor shall promptly notify the court or agency that issued the income withholding order of the termination of the obligor's employment or other source of income, or the layoff of the obligor from employment, and provide the obligor's last known address and the name and address of the individual's current employer, if known.

(h) A payor who complies with a copy of an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the income withholding order. As used in this section, "regular on its face" means a completed document in the standard format for any income withholding notice that has been adopted by the United States secretary of health and human services in a final rule or a certified copy of the income withholding order.

(i) Except as provided further, if any payor violates the provisions of this act, the court may enter a judgment against the payor for the total amount which should have been withheld and paid over. If the payor, without just cause or excuse, fails to pay over income within the time established in subsection (c) and the obligee files a motion to have such income paid over, the court shall enter a judgment against the payor and in favor of the obligee for three times the amount of the income owed and reasonable attorney fees. If the payor, without good cause, fails to pay over the income and identify each payment in the same business day, the court shall

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enter a judgment against the payor and in favor of the obligee for twice the amount of the cost recovery fee, as established in subsection (e), per obligor.

(j) In addition to any judgment authorized by subsection (i), a payor shall be subject to a civil penalty not exceeding $500 and other equitable relief as the court considers proper if the payor: (1) Discharges, refuses to employ or takes disciplinary action against an obligor subject to an income withholding order because of such withholding and the obligations or additional obligations which it imposes upon the payor; or (2) fails to withhold support from income or to pay such amounts in the manner required by this act.

(Formerly K.S.A. 23-4,108).

SECTION 23-2305. **Priority of withholding order; application of limitations imposed by other laws; multiple withholding orders, single obligor.** (a) An income withholding order shall have priority over any other legal process under state law against the same income. Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or other claims of creditors.

(b) Except as provided by K.S.A. **60-2310**, and amendments thereto, any state law which limits or exempts income from legal process or the amount or percentage of income that can be withheld shall not apply to withholding income under this act.

(c) Subject to the provisions of K.S.A. **23-9,503** and amendments thereto, if more than one income withholding order requires withholding from the same source of income of a single obligor, the payor shall withhold and disburse as ordered the total amount required by all income withholding orders if such amount does not exceed the limits of subsection (f) of K.S.A. **23-4,108** and amendments thereto, as shown in the withholding order which specifies the highest percentage of income allowed to be withheld. If the total amount required by all income withholding orders, including premiums due from the obligor which are incurred solely because of a medical withholding order, exceeds such limits, the payor shall withhold the amount permitted to be withheld under such limits and from the amount withheld the payor shall retain any cost recovery fee charged by the payor. The remaining funds shall first be prorated by the payor among all income withholding orders for the obligor that require payment of current support. When all current support for the month has been satisfied, any remaining funds shall be prorated among all income withholding orders for the obligor that require payment of an amount for arrearages. With respect to a medical withholding order, the payor shall promptly notify the affected holder of the limited power of attorney of any nonpayment of premium. The payor may request assistance from the income withholding agency in determining the amount to be disbursed for each income withholding order, but such assistance shall not relieve the payor from any responsibility under this act. Upon request of a public office or of any obligee whose income withholding order is affected by this subsection, the payor shall provide the county, case number and terms of all the obligor's income withholding orders.

(d) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, 1992, regardless of when the applicable income withholding order was entered or modified.

(Formerly K.S.A. 23-4,109).

SECTION 23-2306. **Contest and stay of withholding order; when; grounds; hearing; disposition; immediate issuance of order; continuance; additional circumstances warranting issuance of order.** This section shall not apply if the notice of intent to initiate

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income withholding was issued by the IV-D agency pursuant to K.S.A. **39-7,147** and amendments thereto.

(a) A motion to stay issuance of the income withholding order must be filed with the court and a copy served on the obligee or public office within seven days after service on the obligor of a notice pursuant to subsection (h) of K.S.A. **23-4,107** and amendments thereto. Except as provided in subsection (j) of K.S.A. **23-4,107** and amendments thereto, the grounds for obtaining the stay shall be limited to a mistake of fact in the notice concerning the amount of the order for support, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor. The motion shall specify the mistake of fact alleged to be the basis for the motion. If the amount of the order for support or the amount of the arrearage is challenged, the motion shall specify the amount of the order for support or the arrearage which is uncontested. In addition to any other penalty provided by law, filing a motion to stay with knowledge of the falsity of any material declaration or without specifying the uncontested amount of the order for support or the arrearage, when required, is punishable as a contempt.

(b) The court, upon notice of the date, time and place of hearing to the obligor and the obligee or public office, shall hear the matter within 14 days after the motion to stay issuance of the income withholding order is filed with the court.

(c) (1) If a motion to stay has been filed and the identity of the obligor is not contested, the obligee, obligor or public office may apply for immediate issuance of an income withholding order pursuant to subsection (d) of K.S.A. **23-4,107** and amendments thereto pending resolution of the contested issues. The affidavit shall specify an amount sufficient to satisfy the order for support or the arrearage only to the extent that the amount of the order for support or the arrearage is not contested. A copy of the affidavit shall be served on the obligor.

(2) Whenever an affidavit has been filed as provided in this subsection, the court shall immediately issue the income withholding order.

(d) If the court cannot promptly resolve all issues, the court may continue the hearing on the unresolved issues, provided that within 45 days of the date the notice was served on the obligor the court notifies the obligor and the obligee or public office of whether or not the withholding is to occur. If the court upholds the issuance of an income withholding order in a contested case, the court must include in its order notice of the time within which the withholding will begin and the information given to the payor as required in K.S.A. **23-4,108** and **23-4,109**, and amendments thereto.

(e) In addition to any other circumstances warranting issuance of an income withholding order, if the court finds that a notice of intent to initiate income withholding was served on the obligor and that there was an arrearage, as of the date the notice was prepared, in an amount equal to or greater than the amount of support payable for one month, the court shall issue an income withholding order. The provisions of this subsection shall only apply to an order for support of a spouse or ex-spouse if the spouse or ex-spouse is living with a child for whom an order of support is also being enforced.

(Formerly K.S.A. 23-4,110).

SECTION 23-2307. **Modification or termination of withholding order, when; notice; medical withholding order.** This section shall not apply if the income withholding order was issued by the IV-D agency pursuant to K.S.A. **39-7,147** or **39-7,148** and amendments thereto, unless IV-D services are no longer being provided with respect to either current support or arrearages.

(a) At any time upon motion the court shall: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying order for support; (2) modify the amount of income withheld to reflect payment in full of the arrearage by income withholding or

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otherwise; or (3) modify, or when appropriate terminate, an income withholding order consisting in whole or in part of a medical withholding order because of a modification or termination of the underlying medical child support order.

(b) On request of the obligee or public office, the court shall issue an order which modifies the amount of income withheld, subject to the limitations of subsection (f) of K.S.A. **23-4,108** and amendments thereto.

(c) The obligor may file a motion to terminate an income order for cash support if: (1) The withholding order has not previously been terminated under this subsection and subsequently initiated; and (2) there is a written agreement among all interested parties which provides for an alternative arrangement. Under this subsection, the court may terminate the income withholding order unless it finds good cause for denying the motion because of the obligor's payment history or otherwise. If an income withholding order is terminated for any reason and the obligor subsequently becomes delinquent in the payment of the order for support, the obligee or public office may obtain another income withholding order by complying with all requirements for notice and service pursuant to this act.

(d) If the income withholding order includes both a medical withholding order and an income withholding order for cash support, modification or termination of one portion of the income withholding order shall not modify or terminate any other portion of the income withholding order except as expressly provided by the court.

(e) If support payments are undeliverable to the obligee, any such payments shall be held in trust by the court until the payments can be delivered.

(f) The clerk of court shall cause to be served on the payor a copy of any order entered pursuant to this section that affects the duties of the payor.

(Formerly K.S.A. 23-4,111).

SECTION 23-2308. **Improper withholding; refund or credit.** If the court determines that income has been improperly withheld, the court may order the person or public office who has possession of the income or who ultimately received it, to promptly refund the improperly withheld amount to the obligor or, in the case of the obligee, to credit the amount against the next regular support payment.

(Formerly K.S.A. 23-4,112).

SECTION 23-2309. **Duty of obligee and public office to provide certain notices; records of support payments.** (a) If an obligee is receiving income withholding payments under this act, the obligee shall give written notice of any change of address, within seven days after the change to the public office, clerk of the district court or court trustee through which the obligee receives the payments.

(b) If any support rights are assigned to the secretary of social and rehabilitation services, the obligee shall serve on the secretary of social and rehabilitation services a copy of any order for support providing for immediate income withholding or any notice of intent to apply for issuance of an income withholding order. If any support rights are assigned to the secretary of social and rehabilitation services, payments pursuant to an income withholding order shall be disbursed as the notice of assignment directs.

(c) The obligee or public office shall provide written notice to the court trustee or clerk of the court of any other support payments made, including but not limited to a setoff under federal or state law, a collection of unemployment compensation pursuant to K.S.A. **44-718** and

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amendments thereto or a direct payment from the obligor. The clerk of the court issuing the order for support or other designated person shall record the amounts reported in such notices.

(d) Any public office and clerk of court which collects, disburses or receives payments pursuant to income withholding orders shall maintain complete, accurate and clear records of all payments and their disbursement. Certified copies of payment records maintained by a public office or clerk of court shall, without further proof, be admitted into evidence in any legal proceedings which concern the issue of support.

(Formerly K.S.A. 23-4,113).

SECTION 23-2310. **Change of obligor's payor or address and employment; related health benefits coverage, notice required.** An obligor whose income is being withheld or who has been served with a notice of intent to apply for issuance of an income withholding order shall provide written notice to the obligee, the public office, or the clerk of court of any new payor or change of address, within seven days of the change. The obligor shall keep the obligee or public office informed of any employment-related health benefits coverage for dependents to which the obligor has access. Upon request, the obligor shall provide, or shall assist the obligee or public office in obtaining, information about the health benefits coverage.

(Formerly K.S.A. 23-4,114).

SECTION 23-2311. **Bond requirement when obligor self-employed or withholding otherwise impracticable.** If an obligor derives income from self-employment, receives income from some source not subject to the jurisdiction of the court or receives income by any other method which makes the application of this act impracticable, the court may require the obligor to post security or bond or give some other guarantee to secure the payment of current and overdue support. If the obligor fails to pay support as ordered, the court may collect on the bond or may declare a forfeiture of all or a portion of the security or other guarantee and apply the amounts collected as payment on the support arrearage. An obligor who derives income from self-employment shall be subject to the provisions of this act as a payor of income to the obligor's self.

(Formerly K.S.A. 23-4,115).

SECTION 23-2312. **Act not limitation on other remedies.** (a) Nothing in this act shall limit the authority of an obligee or public office to use any and all civil and criminal remedies in addition to withholding to enforce an order for support including but not limited to the setoff provisions of K.S.A. **75-6201** *et seq.*, and amendments thereto, and section 464 of part D of title IV of the federal social security act.

(b) Nothing in this act shall limit the filing of any action to modify the support order by the obligor.

(c) The rights, remedies, duties and penalties created by this act are in addition to and not in substitution for any other rights, remedies, duties and penalties created by any other law.

(d) Nothing in this act shall be construed as invalidating any assignment of income executed prior to January 1, 1986, despite the priority status given to withholding orders under this act.

(Formerly K.S.A. 23-4,116).

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SECTION 23-2313. **Forms and informational materials; system to monitor payments; subcontractors.** (a) The judicial administrator and the secretary of social and rehabilitation services shall cooperate to design suggested legal forms and informational materials which describe procedures and remedies under this act for distribution to all parties in support actions.

(b) The judicial administrator of the courts and the secretary of social and rehabilitation services shall enter into a contract to develop and maintain an automated management information system which will monitor support payments, maintain accurate records of support payments and permit prompt notice of arrearages in support payments. District courts, including court trustees, shall be subcontractors in the management information system and payments for their services shall be disbursed as directed by the judicial administrator. Unless good cause is shown, the secretary of social and rehabilitation services shall contract with court trustees for enforcement services. Subcontractor employees determined necessary to the performance of the contract by the judicial administrator shall be state employees paid by county general funds. The provisions of K.S.A. **20-358** and **20-359**, and amendments thereto, shall apply. County expenditures for compensation of subcontractor employees may be paid during any budget year even though the expenditures were not included in the budget for that year. County general funds shall be promptly reimbursed for subcontractor employee compensation cost from the subcontractor's payment plus a reasonable administrative fee for the county for acting as fiscal and reporting agent as determined necessary by the judicial administrator. The provisions of the Kansas court personnel rules, except for pay and classification plans, shall apply to subcontractor employees.

(Formerly K.S.A. 23-4,117).

SECTION 23-2314. **Medical child support; order; coverage under health benefit plan; limited power of attorney; enrollment by employer, sponsor or administrator of health benefit plan; disenrollment.** (a) Whether or not a medical child support order has previously been entered, the court shall address the medical needs of the child, and if necessary, enter a medical child support order. Subject to any requirements in child support guidelines adopted by the supreme court pursuant to K.S.A. **20-165**, and amendments thereto, the medical child support order may require either parent or both parents to furnish coverage under any health benefit plan as provided in this section, allocate between the parents responsibility for deductibles and copayments, allocate between the parents responsibility for medical costs not covered by any health benefit plan, include costs of coverage under a health benefit plan in the calculation of a current child support order, require cash medical support as an adjustment to a current support order, and make any other provision that justice may require. Before requiring either parent to provide coverage under any health benefit plan, the court shall consider whether the benefits of the plan are accessible to the child and the cost of coverage, including deductibles and copayments, in relation to the overall financial circumstances. In no event shall the court consider as a factor the availability of medical assistance to any person. Nothing in this section shall prevent the court from prospectively ordering a parent to provide coverage under any health benefit plan which may become available to the parent.

(b) Except for good cause shown, if more than one health benefit plan is available for and accessible to a child, the court shall give preference to the plan: (1) Designated by court order or agreement of the parties, or, if none, then (2) in which the child already has benefits, or, if none, then (3) with terms closest to those designated by court order or agreement of the parties, or, if none, then (4) in which the parent or members of the parent's household have benefits, or, if none, then (5) in which the child will receive the greatest benefits.

(c) When a medical child support order has been entered, the obligor shall be deemed to have granted by operation of law a limited power of attorney to submit claims to a health benefit

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plan on the child's behalf and to endorse and negotiate any check or other negotiable instrument issued in full or partial payment of the child's claim. Except as otherwise provided in this subsection, the limited power of attorney shall be held by the obligee. If the child is receiving medical assistance from the secretary of social and rehabilitation services, the secretary of social and rehabilitation services shall be deemed the sole holder of the limited power of attorney with respect to payments subject to the secretary's claim for reimbursement. Upon termination of medical assistance in this state for the child, the secretary of social and rehabilitation services shall retain the limited power of attorney with respect to medical assistance already provided until the claim of the secretary for reimbursement is satisfied. If the child is receiving medical assistance under Title XIX of the federal social security act in another state or jurisdiction, the agency or official responsible for administering the Title XIX program in that state or jurisdiction shall be deemed the sole holder of the limited power of attorney with respect to payments subject to the claim of that agency or official for reimbursement. Upon termination of medical assistance in that state or jurisdiction for the child the agency or official administering the Title XIX program shall retain the limited power of attorney with respect to medical assistance already provided until the claim of that agency or official for reimbursement is satisfied.

(d) In any case in which a participating parent is required by a court or administrative order to provide health coverage for a child, the participating parent is eligible for family health coverage, and the child is otherwise eligible for family health coverage, without regard to any enrollment season restrictions the employer, sponsor or other administrator of a health benefit plan: (1) Shall permit the participating parent to enroll the child for coverage; or (2) if the participating parent is enrolled but has not applied for coverage for the child, shall permit the holder of a limited power of attorney pursuant to subsection (c) to enroll the child. A child enrolled under this subsection shall be treated, with regard to any preexisting condition, as though enrollment occurred during the normal open enrollment period.

(e) When a child has been enrolled for coverage pursuant to subsection (d), the employer, sponsor or other administrator of a health benefit plan shall not disenroll or eliminate coverage of the child unless the employer, sponsor or administrator is provided: (1) Satisfactory written evidence that the court or administrative order requiring the parent to provide health coverage is no longer in effect for the child and either the participating parent has requested a change or discontinuance of the child's coverage, or the child is otherwise ineligible for continued coverage; or (2) satisfactory written evidence, signed by all holders of a limited power of attorney pursuant to subsection (c), that the child is or will be enrolled in comparable health coverage through another insurer or health benefit plan which will take effect no later than the effective date of the disenrollment. An employer may also disenroll or eliminate coverage for the child if the employer has eliminated family health coverage for all of its employees.

(f) The provisions of this section and the income withholding act and amendments thereto shall apply to all orders for support, including all medical child support orders, entered in this state regardless of the date the order was entered.

(Formerly K.S.A. 23-4,119).

SECTION 23-2315. **Same; withholding order; issuance.** (a) If, at the time a medical child support order requiring enrollment of a child in a health benefit plan is entered, the participating parent is also subject to a new or existing income withholding order, the court upon request and without further notice or hearing, shall include in the income withholding order a medical withholding order.

(b) If, at the time a medical child support order requiring enrollment of a child in a health benefit plan is entered, the participating parent is not otherwise subject to an income withholding

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order, the court upon request and without further notice or hearing shall enter a medical withholding order for the participating parent, except for good cause shown pursuant to subsection (j) of K.S.A. **23-4,107** and amendments thereto.

(c) Except as otherwise provided in this subsection, at any time after a medical child support order requiring enrollment of a child in a health benefit plan is entered, the court upon motion shall enter an income withholding order consisting in whole or in part of a medical withholding order. In Title IV-D cases, the court may deny the motion only if: (1) The participating parent is not otherwise subject to an income withholding order, and (2) the provisions of subsection (j) of K.S.A. **23-4,107** and amendments thereto have been met. In all other cases the court may grant or deny the motion after considering the following factors: (1) The medical needs of the child; (2) whether the participating parent has attempted to promptly comply with the medical child support order; and (3) any other relevant factor. Nothing in this subsection shall prevent or delay entry of an income withholding order pursuant to subsection (c) of K.S.A. **23-4,107** and amendments thereto.

(Formerly K.S.A. 23-4,120).

SECTION 23-2316. **Same; requirements of withholding order.** (a) A medical withholding order shall not require a health benefit plan to provide any type or form of benefit, or any option, not otherwise provided under the plan or required by federal law.

(b) A medical withholding order shall clearly specify: (1) The name, last known mailing address and, if known, social security number of the parent required to enroll a child in a health benefit plan; (2) for each child covered by the medical child support order, the child's name, date of birth, social security number and mailing address. The child's mailing address need not be the child's home address. In addition to the child's mailing address, the order may designate a representative to receive copies of notices to the child. If the holder of the limited power of attorney pursuant to subsection (c) of K.S.A. **23-4,119** is someone other than the nonparticipating parent, the holder of the limited power of attorney shall be designated a representative entitled to receive copies of notices to the child; (3) the address where payments are to be sent, if different from the mailing address of the child or representative; (4) the type of coverage required for each child or how the type of coverage is to be determined; (5) the period to which the order applies; and (6) each plan to which the order applies. Except as otherwise specified in the order the order is presumed to apply to all plans whose applicable eligibility requirements have been met. The requirement of provision (5) may be met by providing the child's date of birth and the jurisdiction whose law governs the duration of the duty of support under the order.

(c) A medical withholding order meeting the requirements of subsections (a) and (b) shall be treated for all purposes as a qualified medical child support order under the federal employee retirement income security act (29 U.S.C. §1161 et seq.).

(Formerly K.S.A. 23-4,121).

SECTION 23-2317. **Same; duties of payor with respect to withholding order.** (a) For purposes of the income withholding act and amendments thereto, service of a medical withholding order on an employer shall constitute service of the medical withholding order on the sponsor or administrator of the employer's health benefit plan. It shall be the duty of the employer to provide to the sponsor or administrator of the health benefit plan any information in the medical withholding order needed by the sponsor or administrator to carry out duties pursuant to the income withholding act and amendments thereto.

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(b) An employer, sponsor or other administrator of a health benefit plan shall not unreasonably delay a child's enrollment pursuant to a medical withholding order. If there is a defect in the form or documentation, the employer, sponsor or other administrator of a health benefit plan shall process the enrollment to the extent possible and promptly inform the requesting person of any additional documents or information needed to complete enrollment.

(c) If a medical withholding order has been served and the payor has determined that the child will not be enrolled immediately because the parent required to provide health coverage for the child is not eligible for family coverage, it shall be the duty of the payor to promptly reconsider the determination not to enroll the child if the parent subsequently becomes eligible for family coverage.

(d) The payor shall deduct and remit premiums or other payments required by the health benefit plan as provided in the plan.

(Formerly K.S.A. 23-4,122).

SECTION 23-2318. **Same; failure to maintain coverage.** (a) Except for good cause shown, the obligee shall be granted judgment against the obligor if: (1) The obligor was subject to a medical support order for a child; (2) under the Kansas child support guidelines the obligor received credit toward a cash child support obligation based upon health benefit premiums to be paid by the obligor; and (3) the anticipated premiums were not paid in full by the obligor because of the obligor's delay or failure in obtaining health benefit coverage for the child or the obligor's failure to maintain health benefit coverage for the child.

(b) The amount of the judgment shall include the lesser of: (1) Actual costs incurred by the obligee for substantially similar health benefits; or (2) the difference between the actual amount of the cash child support order and the amount the cash child support order would have been without the credit for unpaid premiums and with any premiums paid by the obligee for substantially similar health benefit coverage.

(c) Failure to obtain or maintain health benefit coverage as ordered, for whatever reason, shall be a material change of circumstances justifying modification of the order for support if credit has been given for health benefit premiums which were not paid timely.

(Formerly K.S.A. 23-4,123).

SECTION 23-2319. **Support enforcement proceeding; failure to comply; penalties.** (a) If the court in any support enforcement proceeding finds that an obligor has failed to comply with an outstanding warrant or subpoena issued by a court of competent jurisdiction of this state or any other state and such obligor has or may have an occupational, professional or driver's license, the court may impose such sanctions under this section as the court deems appropriate until the person has complied with the warrant or subpoena. As used in this section, "support enforcement proceeding" means any civil proceeding to:

(1) Establish paternity; or

(2) establish, modify or enforce the duty to provide child support or maintenance.

(b) If the obligor is or may be authorized to practice a profession by a licensing body as defined in K.S.A. **74-146** and amendments thereto, the court may order that a notice pursuant to K.S.A. **74-147** and amendments thereto be served on the licensing body. If the obligor is or may be a licensed attorney, the court may file a complaint with the disciplinary administrator of the Kansas supreme court or with the appropriate official or agency of any state in which the obligor may be licensed.

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(c) The court may restrict the obligor's driving privileges as provided in K.S.A. 2005 Supp. **8-292** and amendments thereto.

(Formerly K.S.A. 60-1622).

SECTION 23-2320. **Reporting of support arrearages to consumer credit reporting agencies.** (a) As used in this section, "consumer reporting agency" means any person which, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) The secretary of social and rehabilitation services shall develop procedures for making information concerning support arrearages owed or assigned to the secretary or owed to any person who has applied for services pursuant to K.S.A. **39-756** and amendments thereto available to consumer reporting agencies upon their request. The procedures shall provide for the information to be made available to such agencies in any case in which the support arrearage is $1,000 or more unless the secretary determines that providing the information is not appropriate in a particular case. The procedures may additionally provide for the information to be available to such agencies if the amount of the support arrearage is less than $1,000.

(c) The secretary may charge a consumer reporting agency requesting support arrearage information a fee not to exceed the actual cost to the secretary in providing such information.

(d) Prior to providing any information concerning an obligor's arrearage to a consumer reporting agency, the secretary shall provide advance notice to the obligor who owes support by first-class mail to the obligor's last known address, concerning the proposed release of information to a consumer reporting agency and of the methods available for contesting the accuracy of the information as provided for in K.S.A. **50-710** and amendments thereto.

(Formerly K.S.A. 23-4,145).

SECTION 23-2321. **Lien upon vehicles, vessels, aircraft.** (a) Whenever there is an arrearage in payment of an order of support in an amount equal to or greater than the amount of support payable for one month, a lien shall arise by operation of law upon certain personal property of the obligor. The lien may be perfected as follows:

(1) In the case of a vehicle, the secretary may perfect a lien on the vehicle by filing a notice of lien with the division of vehicles of the department of revenue. The perfection of the lien shall not be in effect until the notation of the lien is actually placed upon the certificate of title for the vehicle. The notice shall be in a form prescribed by the division, or on a federal form as required by title IV-D, and shall contain a description of the vehicle, the name and address of the obligee or secretary, the name and last known address of the obligor and any other information required by the division. The notice shall state the amount of the arrearage and that the arrearage is equal to or greater than the amount of support payable for one month. A copy of the notice of lien shall be sent by first-class mail to the obligor at the obligor's last known address.

Upon the filing of the notice of lien in accordance with this subsection (a)(1) and payment to the division of a fee of $5, the division shall be authorized to demand in writing the surrender of the title certificate from the owner of the vehicle for the purpose of recording the lien on the title certificate. Once the lien is properly recorded and perfected by actually noting it on the certificate of title, a transfer of title is not valid unless the lien has been released in the manner provided by K.S.A. **8-135** and amendments thereto or the transfer has been consented to in

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writing by the lienholder. If the obligor fails to surrender the title certificate within 15 days after the written demand by the division of vehicles, the division shall notify the obligee seeking to perfect the lien. The obligee may obtain an order of the court which issued the support order requiring the obligor to surrender the title certificate so that the lien may be properly recorded. Notwithstanding any provision of this section authorizing a lien on a vehicle of an obligor, no lien shall attach to any vehicle which the obligor has transferred to another person who has purchased the vehicle or accepted it by trade in exchange for other property or services in good faith, for value, prior to the time that the lien on the vehicle has been noted and perfected in the manner provided by this subsection (a)(1).

(2) In the case of a vessel or aircraft, the obligee may perfect a lien on the vessel or aircraft by filing a notice of lien with the office where filing is required by K.S.A. **84-9-401** and amendments thereto to perfect a security interest in the vessel or aircraft. The perfection of the lien shall not be in effect until the notation of the lien is actually placed upon the appropriate documentation of title for the vessel or aircraft. The notice shall contain a description of the make, model designation and serial number of the vessel or aircraft, including its identification or registration number, if any; the name and address of the obligee; and the name and last known address of the obligor. The notice shall state the arrearage and that the arrearage is equal to or greater than the amount of support payable for one month. A copy of the notice of lien shall be sent simultaneously by first-class mail to the obligor at the obligor's last known address.

Upon the filing of the notice of lien in accordance with this subsection (a)(2) and payment of a fee of $5, the notice of lien shall be retained by the office where filed and may be enforced and foreclosed in the same manner as a security agreement under the provisions of the uniform commercial code. If the notice of lien is filed in the office of the secretary of state, the filing officer shall file, index, amend, maintain, remove and destroy the notice of lien in the same manner as a financing statement filed under part 4 of article 9 of the uniform commercial code. The secretary of state shall charge the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under part 4 of article 9 of the uniform commercial code. Notwithstanding any provision of this section authorizing a lien on a vessel or aircraft of an obligor, no lien shall attach to any vessel or aircraft which the obligor has transferred to another person who has purchased the vessel or aircraft or accepted it by trade in exchange for other property or services in good faith, for value, prior to the time that the lien on the vessel or aircraft has been noted and perfected in the manner provided by this subsection (a)(2).

(3) In any case filed under chapter 60 or 61 of the Kansas Statutes Annotated, the obligee may perfect a lien on the obligor's interest in any judgment or settlement in the case by filing a notice of lien with the clerk of the district court. Copies shall be served on appropriate parties to the action. The notice of lien shall have the effect of attaching the obligor's interest in any judgment or settlement in the case. Any person holding property or funds to satisfy any judgment or settlement in the obligor's favor shall be prohibited from transferring to the obligor any of such property or funds without the written consent of the obligee. At the time that the holder would otherwise be required to transfer property to the obligor, such property shall be transferred to the obligee unless the lien on the property has been released. Nothing in this subsection shall be construed to require the holder to transfer any property to the obligee any sooner than the holder would have been required to transfer property to the obligor. To the extent that an attorney's lien on the obligor's interest in any settlement or judgment is perfected before service of the notice of lien under this section, the attorney's lien shall have priority. If the property or funds are insufficient to satisfy all liens, the court shall conduct a hearing to determine the division of such property or funds for payment on each lien.

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Any person affected by the notice of lien who is or will be a payor as defined in the income withholding act and amendments thereto may request that the obligee proceed under the income withholding act and release the lien perfected pursuant to this section.

(4) If the obligor is or may become entitled to workers compensation benefits, the obligee may perfect a lien on the benefits by serving a notice of lien on the obligor. Copies shall be served on appropriate persons, including but not limited to the director of workers compensation. The notice of lien shall have the effect of attaching the obligor's interest in the workers compensation benefits. Any person holding property or funds to satisfy the obligor's interest shall be prohibited from transferring to the obligor any of such property or funds without the written consent of the obligee. At the time that the holder would otherwise be required to transfer property to the obligor, such property shall be transferred to the obligee unless the lien on the property has been released. Nothing in this subsection shall be construed to require the holder to transfer any property to the obligee any sooner than the holder would have been required to transfer property to the obligor. To the extent that attorney fees are allowed by K.S.A. **44-501** et seq. and amendments thereto, the attorney fees shall have priority subject to the current limitations provided in K.S.A. **44-720**, and amendments thereto.

Any person affected by the notice of lien who is or will be a payor as defined in the income withholding act and amendments thereto may request that the obligee proceed under the income withholding act and release the lien perfected pursuant to this section.

(b) As used in this section:

(1) "Aircraft" has the meaning provided by K.S.A. **3-201** and amendments thereto.

(2) "Vehicle" has the meaning provided by K.S.A. **8-126** and amendments thereto.

(3) "Vessel" has the meaning provided by K.S.A. **82a-801** and amendments thereto.

(4) "Arrearage," "title IV-D," "obligor" and "order for support" have the meanings provided by K.S.A. **23-4,106** and amendments thereto.

(5) "Obligee" means the person or entity to whom a duty of support is owed, including but not limited to any title IV-D agency.

(6) "Workers compensation" has the meaning provided by K.S.A. **44-501** et seq. and amendments thereto.

(7) "Attorney's lien" has the meaning provided by K.S.A. **7-108** and amendments thereto.

(Formerly K.S.A. 23-4,146).

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ARTICLE 24 - RESERVED

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ARTICLE 25 - ENFORCEMENT OF VISITATION AND PARENTING TIME

SECTION 23-2501. **Expedited procedure.** (a) The purpose of this section is to enhance the enforcement of court ordered child visitation rights and parenting time by establishing a simplified, expedited procedure to provide justice without necessitating the assistance of legal counsel.

(b) A party who has been granted visitation rights or parenting time may file with the court a motion alleging denial or interference with those rights and enforcement of those rights. The district court shall provide a form on which such motion may be filed. Such expedited matters shall be heard by a district judge, court trustee, or magistrate, sitting as a hearing officer. The provisions of this section are in addition to those enforcement procedures provided in the uniform child custody jurisdiction and enforcement act, and amendments thereto, and other remedies provided by law.

(c) When a motion seeking expedited enforcement under subsection (b) is filed, the hearing officer shall immediately:

(1) Set a time and place for a hearing on the motion, which shall not be more than 21 days after the date on which the motion was filed; or

(2) if deemed appropriate, issue an ex parte order for mediation in accordance with K.S.A. **23-601** *et seq.*, and amendments thereto.

(d) If mediation ordered pursuant to subsection (c) is completed, the mediator shall submit a summary of the parties' understanding to the hearing officer within five days after it is signed by the parties. Upon receipt of the summary, the hearing officer shall enter an order in accordance with the parties' agreement or set a time and place for a hearing on the matter, which shall be not more than 10 days after the summary is received by the hearing officer.

(e) If mediation ordered pursuant to subsection (c) is terminated pursuant to K.S.A. **23-604** and amendments thereto, the mediator shall report the termination to the hearing officer within five days after the termination. Upon receipt of the report, the matter shall be set for hearing. Any such hearing shall be not more than 10 days after the mediator's report of termination is received by the hearing officer.

(f) Notice of the hearing date set by the hearing officer shall be given to all interested parties by certified mail, return receipt requested, or as the court may order.

(g) If, upon hearing the hearing officer finds that there has been an unreasonable interference with or denial of visitation or parenting time, the hearing officer shall enter an order providing for one or more of the following:

(1) A specific schedule for visitation or parenting time;

(2) compensating visitation or parenting time to the party suffering interference or denial of visitation or parenting time, which time shall be of the same type (e.g., holiday, weekday, weekend, summer) as for which denial or interference was found and which shall be at the convenience of the party suffering the denial or interference of visitation or parenting time;

(3) the posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights or parenting time;

(4) assessment of reasonable attorney fees, mediation costs and costs of the proceedings to enforce visitation rights or parenting time against the person responsible for the unreasonable denial or interference with visitation or parenting time other than the child;

(5) attendance of one or more of the parties to the action at counseling or educational sessions which focus on the impact on children of disputes regarding visitation or parenting time. Expenses shall be assessed to the person responsible for the denial or interference with visitation or parenting time;

(6) supervised visitation or parenting time; or

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(7) any other remedy which the hearing officer considers appropriate, except, if a hearing officer is not a district judge, the hearing officer shall not enter any order which grants a new order, or modifies an existing order for child support, child custody, residency, or maintenance.

(h) Decisions of any hearing officer who is not a district judge shall be subject to review by a district judge on the motion of any party filed within 10 days after the order was entered.

(i) In no case shall final disposition of a motion filed pursuant to this section take place more than 45 days after the filing of such motion.

(Formerly K.S.A. 23-701).

SECTION 23-2502. **Information relating to custody or residency of children; visitation or parenting time with children.** (a) *Investigation and report.* In any proceeding in which legal custody, residency, visitation rights or parenting time are contested, the court may order an investigation and report concerning the appropriate legal custody, residency, visitation rights and parenting time to be granted to the parties. The investigation and report may be made by court services officers or any consenting person or agency employed by the court for that purpose. The court may use the department of social and rehabilitation services to make the investigation and report if no other source is available for that purpose. The costs for making the investigation and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(b) *Consultation.* In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential legal custodial arrangements. Upon order of the court, the investigator may refer the child to other professionals for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past. If the requirements of subsection (c) are fulfilled, the investigator's report may be received in evidence at the hearing.

(c) *Use of report and investigator's testimony.* The court shall make the investigator's report available prior to the hearing to counsel or to any party not represented by counsel. Upon motion of either party, the report may be made available to a party represented by counsel, unless the court finds that such distribution would be harmful to either party, the child or other witnesses. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. In consideration of the mental health or best interests of the child, the court may approve a stipulation that the interview records not be divulged to the parties.

(Formerly K.S.A. 60-1615).

New section 36

SECTION 23-2503. **Parenting time; visitation orders; enforcement.** ~~(d)~~ *Enforcement of rights.* An order granting visitation rights or parenting time pursuant to this section may be enforced in accordance with the uniform child custody jurisdiction and enforcement act, or K.S.A. **23-701**, and amendments thereto.

(Formerly K.S.A. 60-1616(d)).

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ARTICLE 26 - ALTERNATIVE DISPUTE RESOLUTION

SECTION 23-2601. **Mediation; defined.** Mediation under this section is the process by which a neutral mediator appointed by the court, or by a hearing officer, assists the parties in reaching a mutually acceptable agreement as to issues of child custody, residency, visitation, parenting time, division of property or other issues. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties and not the decisions of the mediator.

(Formerly K.S.A. 23-601).

SECTION 23-2602. **Same; when ordered; appointment and qualifications of mediator.** (a) The court or hearing officer may order mediation of any contested issue of child custody, residency, visitation, parenting time, division of property or other issues, at any time, upon motion of a party or on the court's own motion.

(b) If the court or hearing officer orders mediation under subsection (a), the court or hearing officer shall appoint a mediator, taking into consideration the following:

(1) An agreement by the parties to have a specific mediator appointed by the court or hearing officer;

(2) the nature and extent of any relationships the mediator may have with the parties and any personal, financial or other interests the mediator may have which could result in bias or a conflict of interest;

(3) the mediator's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and

(4) the mediator's training and experience in the process and techniques of mediation.

(Formerly K.S.A. 23-602).

SECTION 23-2603. **Duties of mediator.** (a) A mediator appointed under K.S.A. **23-602** and amendments thereto shall:

(1) Inform the parties of the costs of mediation;

(2) advise the parties that the mediator does not represent either or both of the parties;

(3) define and describe the process of mediation to the parties;

(4) disclose the nature and extent of any relationships with the parties and any personal, financial or other interests which could result in bias or a conflict of interest;

(5) advise each of the parties to obtain independent legal advice;

(6) allow only the parties to attend the mediation sessions;

(7) disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;

(8) ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children; and

(9) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure.

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(b) The mediator may meet with the children of any party and, with the consent of the parties, may meet with other persons.

(c) The mediator shall make a written summary of any understanding reached by the parties. A copy of the summary shall be provided to the parties and their attorneys, if any. The mediator shall advise each party in writing to obtain legal assistance in drafting any agreement or for reviewing any agreement drafted by the other party. Any understanding reached by the parties as a result of mediation shall not be binding upon the parties nor admissible in court until it is reduced to writing, signed by the parties and their attorneys, if any, and approved by the court. If the parties are not represented by attorneys, the mediator shall provide to the court or hearing officer the written summary of any understanding signed by the parties, which, if approved by the court or hearing officer, shall be incorporated in the order of the court or hearing officer.

(d) The mediator may act as a mediator in subsequent disputes between the parties. However, the mediator shall decline to act as attorney, counselor or psychotherapist for either party during or after the mediation or divorce proceedings unless the subsequent representation, counseling or treatment is clearly distinct from the mediation issues.

(Formerly K.S.A. 23-603).

SECTION 23-2604. **Termination of mediation.** (a) At any time after the second mediation session, either party may terminate mediation ordered under K.S.A. **23-602**.

(b) The mediator shall terminate mediation whenever the mediator believes that: (1) Continuation of the process would harm or prejudice one or more of the parties or the children or (2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

(c) The mediator shall report the termination of mediation to the court. The mediator shall not state the reason for termination except when the termination is due to a conflict of interest or bias on the part of the mediator.

(Formerly K.S.A. 23-604).

SECTION 23-2605. **Confidentiality.** (a) A mediator appointed under K.S.A. **23-602** and amendments thereto shall treat all verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. **5-501** *et seq.* and amendments thereto as confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party and the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the neutral person or anyone the party or the neutral person authorizes to claim the privilege. A neutral person conducting the proceeding shall not be subject to process requiring the disclosure of any matter discussed within the proceedings unless all parties consent to a waiver.

(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to allow investigation of or action for ethical violations against the neutral person conducting the proceeding or for the defense of the neutral

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person or staff of an approved program conducting the proceeding in an action against the neutral person or staff of an approved program if the action is filed by a party to the proceeding;

(2) any information that the mediator is required to report under K.S.A. 2007 Supp. **38-2223**, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court; or

(5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the mediator or an officer or employee of the court with the apparent intention of carrying out such threat.

(Formerly K.S.A. 23-605).

SECTION 23-2606. **Costs.** The costs of any mediation ordered under K.S.A. **23-602** shall be taxed to either or both parties as equity and justice require, unless the parties have reached a reasonable agreement as to payment of the costs.

(Formerly K.S.A. 23-607).

SECTION 23-2607. **Case management; process.** Case management under this act is the process by which a neutral case manager appointed by the court, or by a hearing officer in a proceeding pursuant to K.S.A. **23-701**, and amendments thereto, or through agreement by the parties, assists the parties by providing a procedure, other than mediation, which facilitates negotiation of a plan for child custody, residency or visitation or parenting time. In the event that the parties are unable to reach an agreement, the case manager shall make recommendations to the court.

(Formerly K.S.A. 23-1001).

SECTION 23-2608. **Same; when ordered; appointment of case manager; qualifications.** (a) The court may order case management, when appropriate, of any contested issue of child custody or parenting time at any time, upon the motion of a party or on the court's own motion. A hearing officer in a proceeding pursuant to K.S.A. **23-701**, and amendments thereto, may order case management, if appropriate, of a contested issue of child visitation or parenting time in such a proceeding.

(b) Cases in which case management is appropriate shall include one or more of the following circumstances:

(1) Private or public neutral dispute resolution services have been tried and failed to resolve the disputes;

(2) other neutral services have been determined to be inappropriate for the family;

(3) repetitive conflict occurs within the family, as evidenced by the filing of at least two motions in a six-month period for enforcement, modification or change of residency, visitation, parenting time or custody which are denied by the court; or

(4) a parent exhibits diminished capacity to parent.

(c) If the court or hearing officer orders case management under subsection (a), the court or hearing officer shall appoint a case manager, taking into consideration the following:

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(1) An agreement by the parties to have a specific case manager appointed by the court or hearing officer;

(2) the financial circumstances of the parties and the costs assessed by the case manager;

(3) the case manager's knowledge of (A) the Kansas judicial system and the procedure used in domestic relations cases, (B) other resources in the community to which parties can be referred for assistance, (C) child development, (D) clinical issues relating to children, (E) the effects of divorce on children and (F) the psychology of families; and

(4) the case manager's training and experience in the process and techniques of alternative dispute resolution and case management.

(d) To qualify as an appointed case manager, an individual shall:

(1) Be qualified to conduct mediation;

(2) have experience as a mediator;

(3) attend a workshop, approved by the district court in which the case is filed, on case management; and

(4) participate in continuing education regarding management issues.

(Formerly K.S.A. 23-1002).

SECTION 23-2609. **Case manager; duties; withdrawal; reassignment; recommendations.** (a) A case manager appointed under K.S.A. **23-1002**, and amendments thereto, shall:

(1) Meet with the parties, and other individuals deemed appropriate;

(2) gather information necessary to assist the parties in reaching an agreement or making recommendations, including medical, psychological, education and court records, including child custody investigations and child custody psychological evaluations, of the parties and children;

(3) report to the court as directed by court order;

(4) keep a record by date and topic of all contacts with the parties in the case. When requested, this record shall be made available to the court in total or summary form without the express consent of the parties and shall not be considered a medical or psychological record for purposes of confidentiality;

(5) notify the court when a party fails to meet the financial obligations of the case management process;

(6) file for collection of costs as necessary. The court shall assist in such filing or collection efforts, or both;

(7) be authorized by the court to report threats, imminent danger, suspected child abuse, fear of abduction and suspected or actual harm to any party or child involved in case management either directly to the court and to other authorities, or both. Such action shall be followed by a written summary within five business days of the initial filing of such report which shall be sent to the judge or the judge's designee and included in the court file; and

(8) directly contact the court with any other information the case manager determines that the court should know.

(b) A case manager appointed under K.S.A. **23-1002**, and amendments thereto, may withdraw at any time following the initial order. Sufficient reasons for withdrawal may include, but not be limited to, the following:

(1) Loss of neutrality which prevents objectivity;

(2) nonpayment by a party;

(3) lack of cooperation by a party;

(4) threat to a party;

(5) retirement or case load reduction by a case manager; or

(6) any other reason which shall be stated to the court in writing and considered adequate and sufficient reason by the court.

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(c) A disputant party may request reassignment of a case manager by filing a motion with the court. The court shall consider such requests upon review. Repeated requests may raise a presumption of lack of parental cooperation and the court may consider sanctions against the uncooperative parent or parents.

(d) (1) If parties have been ordered by the court to attempt to settle the party's disputes with the assistance of a case manager, and are unable to settle such disputes, the parties are to follow the recommendation or recommendations of the case manager as ordered by the court.

(2) When a case manager is forced to make recommendations for the parties, such recommendations shall be noted in writing as soon as possible and may be accompanied by supporting information. Such recommendation shall be reported to the court with copies to the attorneys of record for each party within 10 working days.

(3) Agreements of the parties and recommendations of the case manager which may concern temporary arrangements need not be entered into the court record by the attorneys of record.

(4) Case managers shall be furnished a form for orders to recommend such agreements to the court for the court's final order.

(5) Permanent issues such as designation of custody, primary residence or child support which are recommended by the case manager shall be entered into the court record within 10 working days of receipt of the recommendation. Should there be differing opinions as to the language of the journal entry, the case manager shall review the proposed journal entry and may recommend appropriate language to the court.

(6) If a disputant party disagrees with a recommendation such party may file a motion before the court for a review at which time an order shall be made by the court. The case manager shall explain to the court either by report or testimony the reasons for such recommendation or recommendations.

(7) Costs of the procedure and professional time may be assessed to the party who objected to the recommendations in the journal entry or may be otherwise assessed by the court.

(Formerly K.S.A. 23-1003).

SECTION 23-2610. **Counseling.** (a) *Family counseling.* At any time prior or subsequent to the alteration of the parties' marital status the court may order that any party or parties and any of their children be interviewed by a psychiatrist, licensed psychologist or other trained professional in family counseling, approved by the court, for the purpose of determining whether it is in the best interests of any of the parties' children that the parties and any of their children have counseling regarding matters of legal custody, residency, visitation or parenting time. The court shall receive the written opinion of the professional, and the court shall make the opinion available as provided by K.S.A. **60-1615**, and amendments thereto. Any professional consulted by the court under this section may be examined as a witness. If the opinion of the professional is that counseling is in the best interests of any of the children, the court may order the parties and any of the children to obtain counseling. Neither party shall be required to obtain counseling pursuant to this section if the party objects thereto because the counseling conflicts with sincerely held religious tenets and practices to which any party is an adherent.

(b) *Costs.* The costs of the counseling shall be taxed to either party as equity and justice require.

(c) *Insert reference to language in Art 14 and Art 17? It needs to apply to whatever section it applied to before so that there aren't any substantive changes as a result of the reference.*

(Formerly K.S.A. 60-1617).

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OTHER RECOMMENDATIONS

Move to Chapter 20 with the docket fee statutes.

K.S.A. 60-1621. Post-decree motion docket fee. (a) No post-decree motion petitioning for a modification or termination of separate maintenance, for a change in legal custody, residency, visitation rights or parenting time or for a modification of child support shall be filed or docketed in the district court without payment of a docket fee in the amount of $42 on and after July 1, 2009 through June 30, 2013, and $40 on and after July 1, 2013, to the clerk of the district court.

(b) A poverty affidavit may be filed in lieu of a docket fee as established in K.S.A. **60-2001**, and amendments thereto.

(c) The docket fee shall be the only costs assessed in each case for services of the clerk of the district court and the sheriff. The docket fee shall be disbursed in accordance with subsection (f) of K.S.A. **20-362**, and amendments thereto.

(d) Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2009 through June 30, 2010, the supreme court may impose an additional charge, not to exceed $10 per docket fee, to fund the costs of non-judicial personnel.

K.S.A. 23-492. Purpose of act. The purpose of this act is to improve the enforcement of duties of support and restitution.

K.S.A. 23-493. Definitions. (1) "Court" means the district court of this state.

(2) "Duty of support" includes any duty of support imposed by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, separate maintenance or otherwise.

(3) "Support" as used in this section and K.S.A. **23-495** and **23-496**, and amendments thereto, means child support, whether interlocutory or final, and maintenance.

(4) "Obligor" means any person owing a duty of support or restitution.

(5) "Obligee" means any person or entity to whom a duty of support or restitution is owed.

(6) "Duty of restitution" includes any duty of restitution imposed by any agreement, diversion agreement, court order, decree or judgment, whether interlocutory or final, pursuant to a criminal conviction, order of assignment to intensive supervised probation, order of probation or condition of parole.

(7) "Restitution" as used in this section and K.S.A. **23-495** and **23-496**, and amendments thereto, means monetary remuneration owed by an obligor to an obligee as compensation for loss incurred through criminal actions of the obligor which result in loss to the obligee. For the purposes of this act, restitution shall include court costs.

K.S.A. 23-494. Court trustee; appointment. The court may provide by rule adopted by the judge or judges of each of the judicial districts of Kansas for the establishment of the office of court trustee for the judicial district. The court trustee shall be a person licensed to practice law in the state of Kansas and shall be appointed by and serve at the pleasure of the chief judge of the judicial district.

K.S.A. 23-495. Same; duties. The court trustee shall have the responsibility:

(a) For collection of support or restitution from the obligor upon the written request of the obligee or upon the order of the court; and

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(b) to compile a list of individuals who owe arrearages under a support order or have failed, after appropriate notice, to comply with a subpoena issued pursuant to a duty of support. The court trustee shall deliver such list to the secretary of social and rehabilitation services on a quarterly basis or more frequently as requested by the secretary.

K.S.A. 23-496. Same; powers. (a) The court trustee shall be authorized and empowered to pursue all civil remedies which would be available to the obligee or obligor in establishing and enforcing payment of support or restitution.

(b) The court trustee may also file motions for an increase or a decrease of the amount of support on behalf of any child. Any such motion to modify the amount of support shall not be heard until notice has been given to the obligee, the obligor and their attorneys of record, if any.

(c) The court trustee shall have the following additional powers and duties upon approval of the chief judge:

(1) To issue summonses, administrative subpoenas and subpoenas duces tecum to obligors, obligees and other witnesses who possess knowledge or books and records relating to enforcement of support or restitution to appear in the office of the trustee or before the district court for examination;

(2) to administer oaths and take sworn testimony on the record or by affidavit;

(3) to appoint special process servers as required to carry out the court trustee's responsibilities under this section;

(4) to enter into stipulations, acknowledgments, agreements and journal entries, subject to approval of the court; and

(5) to enter into contracts pursuant to K.S.A. **75-719**, and amendments thereto, with the attorney general for the collection of debts owed to courts or restitution owed to obligees.

K.S.A. 23-497. Same; expenses; compensation; court trustee operations fund, purposes and expenditures. (a) Except as provided further, to defray the expenses of operation of the court trustee's office, the court trustee is authorized to charge an amount: (1) Whether fixed or sliding scale, based upon the scope of services provided or upon economic criteria, not to exceed 5% of the support collected from obligors through such office, as determined necessary by the chief judge as provided by this section; (2) based upon the hourly cost of office operations for the provision of services on an hourly or per service basis, with the written agreement of the obligee; or (3) from restitution collected, not to exceed the fee authorized by the attorney general under any contract entered into pursuant to K.S.A. **75-719**, and amendments thereto.

(b) All such amounts shall be paid to the court trustee operations fund of the county where collected. There shall be created a court trustee operations fund in the county treasury of each county or district court of each county, in each judicial district that establishes the office of court trustee for the judicial district. The moneys budgeted to fund the operation of existing court trustee offices and to fund the start-up costs of new court trustee offices established on or after January 1, 1992, whether as a result of a rule adopted pursuant to K.S.A. **23-494**, and amendments thereto, or because this act has created a court trustee operations fund, shall be transferred from the county general fund to the court trustee operations fund. The county commissioners of the county or group of counties, if the judicial district consists of more than one county, by a majority vote, shall decide whether the county or counties will have a court trustee operations fund in the county treasury or the district court of each county. All expenditures from the court trustee operations fund shall be made in accordance with the provisions of K.S.A. **23-492** et seq. and amendments thereto to enforce duties of support. Authorized expenditures from the court trustee operations fund may include repayment of start-up costs, expansions and operations of the court trustee's office to the county general fund. The court trustee shall be paid compensation as determined by the chief judge. The board of county

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commissioners of each county to which this act may apply shall provide suitable quarters for the office of court trustee, furnish stationery and supplies, and such furniture and equipment as shall, in the discretion of the chief judge, be necessary for the use of the court trustee. The chief judge shall fix and determine the annual budget of the office of the court trustee and shall review and determine on an annual basis the amount necessary to be charged to defray the expense of start-up costs, expansions and operations of the office of court trustee. All payments made by the secretary of social and rehabilitation services pursuant to K.S.A. **23-4,117** and amendments thereto or any grants or other monies received which are intended to further child support enforcement goals or restitution goals shall be deposited in the court trustee operations fund.

(c) The court trustee shall not charge or collect a fee for any support payment that is not paid through the central unit for collection and disbursements of support payments pursuant to K.S.A. **23-4,118**, and amendments thereto.

K.S.A. 23-498. Payment of authorized expenditures. (a) All expenditures provided for in this act shall be paid as follows:

(1) In each judicial district consisting of a single county such expenditure shall be paid by the board of county commissioners or chief judge from the court trustees operations fund as provided in K.S.A. **23-497** and amendments thereto.

(2) In each judicial district consisting of more than one county which has a single court trustee operation serving all the counties in that district, such expenditure shall be paid by the:

(A) Board of county commissioners of the county having the greatest amount of support or restitution money collected by the court trustee's office in such district from the court trustees operations fund of such county, and such board of county commissioners shall send a statement to the board of county commissioners of each of the other counties in such district for a proportional amount of such annual expenditures with such proportion to be based upon the respective amounts of support and restitution money collected by the court trustee's office of each county within such judicial district. Each board of county commissioners receiving a statement pursuant to this section shall make payment of the same from the court trustees operations fund of the county; or

(B) chief judge of such judicial district. Such judge shall pay such annual expenditures from the court trustee operations fund in the district court of each county based upon the respective amounts of support and restitution money collected by the court trustee's office of each county within such judicial district. The chief judge shall promptly reimburse the county general fund for expenditures made for salary, compensation and fringe benefits made on behalf of the court trustee's office pursuant to K.S.A. **20-162**, **20-358** and **20-359**, and amendments thereto.

(3) The expenditure for a court trustee office in a multicounty district which does not operate in all counties of the district shall be paid proportionately, as in subsection (2), from the court trustee operations fund of each county served by the court trustee.

(b) The chief judge and the board of county commissioners may agree on a reimbursement amount to the county general fund in an amount less than the total expenses of the court trustee's office, but such reimbursement amount shall not exceed the total expenses of the court trustee's office.

K.S.A. 23-499. Authorized expenditures, when paid. The expenditure for salaries, compensation and necessary expenses of the office of court trustee provided for in this act may be paid during any budget year, even though the same was not included in the budget expenditures for such budget year, until such time as the office shall become self-supporting, as determined by the chief judge.

K.S.A. 23-4,100. Court rules to implement act; review of requests for exemption. (a) The district court shall provide by court rule for such other matters as are necessary to carry out the

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purpose of this act, including, but not limited to, the appointment of deputy trustees and other staff and a procedure to review written requests of the obligee or obligor for exemption from the office of court trustee's responsibility for collection of support or restitution as provided in subsection (b).

(b) (1) In reviewing the written request for exemption provided in subsection (a), the presiding judge shall make a determination on whether the claimant's request is a good cause claim based on all relevant factors.

(2) The presiding judge's determination shall be based upon the totality of the circumstances and no one factor shall be determinative as to the outcome of the claimant's request for such good cause claim for exemption.

Move to Article 7 of Chapter 39.

K.S.A. 23-4,118. Title IV-D agency designated; maintenance of Kansas payment center for collection and disbursement of support payments; contracts for administration and operation; disposition of certain payments under unclaimed property act. (a) The department of social and rehabilitation services, the title IV-D agency for the state, shall maintain a central unit for collection and disbursement of support payments to meet the requirements of title IV-D and this section. Such central unit shall be known as the Kansas payment center. The name "Kansas payment center" shall be reserved for use by the state of Kansas for the functions of the central unit and shall not be used by any entity without the consent of the secretary of social and rehabilitation services.

The department may contract with another entity for development, enhancement or operation, in whole or in part, of such central unit. The Kansas payment center shall be subject to the following conditions and limitations:

(1) The Kansas payment center shall be subject to the Kansas supreme court rule concerning official child support and maintenance records established pursuant to subsection (c).

(2) No contract shall include provisions allowing the contractor to be paid, in whole or in part, on the basis of an amount per phone call received by the center nor allowing the contractor to be paid an amount per check issued for checks that were issued in error by the center. Nothing in this paragraph shall be construed to prevent the secretary of social and rehabilitation services from compensating on the basis of an amount per phone call any contractor that does not process receipts or disbursements under this section.

(3) Any contract for processing receipts or disbursements under this section shall include penalty provisions for noncompliance with federal regulations relating to the timeliness of collections and disbursements and shall include a monetary penalty of $100 for each erroneous transaction, whether related to collection or disbursement. Penalties shall be collected as and when assessed. Of the penalty, $25 shall be allocated to the obligee and $75 shall be allocated to the department of social and rehabilitation services.

(4) Designees of the secretary of social and rehabilitation services and designees of the office of judicial administration shall have full access to all data, subject to the provisions of title IV-D of the federal social security act, 42 U.S.C. § 651 et seq. Designees of the secretary of social and rehabilitation services, all district court clerks and court trustees shall have access to records of the Kansas payment center sufficient to allow them to assist in the process of matching support payments to the correct accounts.

(5) The Kansas payment center shall provide sufficient customer service staff during regular business hours. Obligors and obligees shall be provided 24-hour access to information

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about the status of receipts and disbursements, including, but not limited to, date of receipt by the center, date of processing by the center and date of disbursement to the obligee.

(b) The Kansas payment center shall have, by operation of law, a limited power of attorney to perform the specific act of endorsing and negotiating all drafts, checks, money orders or other negotiable instruments representing support payments received by the center. Nothing in this subsection shall be construed as affecting the property rights or interests of any person in such negotiable instruments. The provisions of this subsection shall apply to any negotiable instrument received by the center on or after October 1, 2000.

(c) The Kansas supreme court, by court rule, shall establish the procedure for the creation, maintenance and correction of official child support and maintenance records for use as official court records.

(d) The department shall collaborate with the Kansas supreme court to maintain the Kansas payment center, which shall include all support payments subject to the requirements of title IV-D of the federal social security act, 42 U.S.C. § 651 et seq., and, except as specifically directed otherwise by the court pursuant to K.S.A. **60-1610**, and amendments thereto, all other support payments due under a court order entered in this state.

(e) Any provision in any support order or income withholding order entered in this state which requires remittance of support payments to the clerk of the district court or district court trustee shall be deemed to require remittance of support payments to the Kansas payment center, regardless of the date the support or income withholding order was entered.

(f) (1) Except as otherwise provided in this subsection, payments received by the Kansas payment center which cannot be matched to any account nor returned to the payor shall be transferred to the state treasurer in accordance with the unclaimed property act.

(2) Except as otherwise provided in this subsection, disbursements which cannot be delivered to the payee after a good faith effort to locate the payee shall be transferred to the state treasurer in accordance with the unclaimed property act.

(3) To the extent that the secretary of social and rehabilitation services would be required to treat as federal program income any amount transferable to the state treasurer pursuant to this subsection or the unclaimed property act, such amount shall not be presumed abandoned but shall be held by the secretary until the amount may be delivered to the true owner. The secretary and the state treasurer shall collaborate on procedures for locating the true owner and confirming claims to amounts so held.

K.S.A. 23-4,147. Establishment of system. The secretary of social and rehabilitation services is hereby directed to establish a system for disseminating information and advice to and making referrals of persons seeking to enforce child support orders, whether or not the person or child is receiving public assistance.

Move to Chapter 75.

23-501. Establishment and maintenance; authority. The secretary of health and environment shall establish and maintain family planning centers in cooperation with the secretary of social and rehabilitation services and county, city-county and multicounty health departments. Such family planning centers, upon request of any person who is over eighteen (18) years of age and who is married or who has been referred to said center by a person licensed to practice medicine and surgery and who resides in this state, may furnish and disseminate information concerning, and means and methods of planned parenthood, including such contraceptive devices as recommended by the secretary of health and environment. Such methods and means shall be consistent with the religious and personal convictions of the individual to whom furnished.

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23-502. Duties of certain agencies. The secretary of social and rehabilitation services and county, city-county and multicounty health departments shall cooperate with and assist the secretary of health and environment in the establishment, maintenance and operation of the family planning centers required to be established and maintained by K.S.A. 23-501.

Repeal – Obsolete.

K.S.A. 23-4,125. Title and purpose of act. (a) The title of K.S.A. **23-4,125** through **23-4,137**, and amendments thereto, shall be the interstate income withholding act.

(b) The purpose of K.S.A. **23-4,125** through **23-4,137**, and amendments thereto, is to enhance the enforcement of support obligations in cases being processed pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, by providing a quick and effective procedure for the withholding of income derived in this jurisdiction to enforce support orders of other jurisdictions and by requiring that income withholding to enforce the support orders of this jurisdiction be sought in other jurisdictions.

K.S.A. 23-4,126. Definitions. As used in K.S.A. **23-4,125** through **23-4,137** and amendments thereto:

(a) "Agency" means the state department of social and rehabilitation services or its contractors and, when the context requires, either the court or agency of any other jurisdiction with functions similar to those defined in K.S.A. **23-4,125** through **23-4,137** and amendments thereto, including the issuance and enforcement of support orders.

(b) "Child" means any child, whether older or younger than the age of majority, with respect to whom a support order exists.

(c) "Court" means the district court of this state and, when the context requires, either the court or agency of any other jurisdiction with functions similar to those defined in K.S.A. **23-4,125** through **23-4,137** and amendments thereto, including the issuance and enforcement of support orders.

(d) "Income" means income as defined in K.S.A. **23-4,106** and amendments thereto.

(e) "Income derived in this jurisdiction" means any income, the payor of which is subject to the jurisdiction of this state for the purpose of imposing and enforcing income withholding under K.S.A. **23-4,105** through **23-4,118** and amendments thereto.

(f) "Jurisdiction" means any state, political subdivision, territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(g) "Obligee" means any person or entity which is entitled to receive support under a support order and shall include an agency of another jurisdiction to which a person has assigned the person's right to support.

(h) "Obligor" means any person required to make payments under the terms of a support order for a child, spouse or former spouse.

(i) "Payor" means payor as defined in K.S.A. **23-4,106** and amendments thereto.

(j) "Support order" means any order, decree or judgment for the support of a child, or for maintenance of a spouse or ex-spouse living with a child for whom an order of support is also being enforced, issued by a court or agency of another jurisdiction, whether interlocutory or final, whether prospectively or retroactively modifiable and whether incidental to a proceeding for divorce, annulment, separate maintenance, paternity, guardianship, protection from abuse or otherwise.

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(k) "Income withholding order" means an order or notice, regardless of how denominated, which requires a payor to withhold income to satisfy an order to support or to defray an arrearage.

K.S.A. 23-4,127. Act not limitation on other remedies. The remedy provided by K.S.A. **23-4,125** through **23-4,137** is in addition to, and not in substitution for, any other remedy otherwise available to enforce a support order of another jurisdiction. Relief under this act shall not be denied, delayed or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy.

K.S.A. 23-4,128. Agency duties; initiation of out-of-state withholding; notice to obligee if obligor contests; out-of-state withholding by obligee not receiving agency services. (a) On behalf of any obligee or other person for whom the agency is already providing services pursuant to the provisions of title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, the agency shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding. The agency shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The agency also shall transmit immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order. If the agency receives notice that the obligor is contesting income withholding in another jurisdiction, it shall immediately notify the obligee of the date, time and place of the hearings and of the obligee's right to attend.

(b) An obligee not receiving services from the agency pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, may request the appropriate agency or official in another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding. The obligee or the obligee's attorney, if any, shall compile and transmit all documentation required by the other jurisdiction for this purpose. The obligee or the obligee's attorney, if any, shall transmit immediately to the other jurisdiction a certified copy of any subsequent modifications of the support order.

K.S.A. 23-4,129. Same; out-of-state support order; documentation required; filing constitutes entry of support order; attorney-client relationship not created; documentation by obligee not receiving agency services. (a) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (b) from an agency of another jurisdiction operating pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, the agency shall proceed under K.S.A. **39-7,147** and amendments thereto or file the documents with the clerk of the court in which withholding is being sought. Upon receipt of the documents the clerk of court, without payment of a filing fee or other costs, shall file them in a registry of foreign support orders. Such filing shall constitute entry of the support order under K.S.A. **23-4,125** through **23-4,137** and amendments thereto. Nothing in this subsection shall be construed to create an attorney-client relationship between an attorney representing the department of social and rehabilitation services and any party other than the department of social and rehabilitation services.

(b) The following documentation is required for the entry of a support order of another jurisdiction under the interstate income withholding act:

(1) A certified copy of the support order with all modifications;

(2) a certified statement of child support owed and paid, including dates of payment and to whom paid;

(3) a certified copy of an income withholding notice or order, if any, still in effect;

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(4) a copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(5) a sworn statement of the obligee or agency of the arrearages and the assignment of support rights, if any; and

(6) a statement of:

(A) The name, address and social security number of the obligor, if known;

(B) the name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought; and

(C) the name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(c) If the documentation received under subsection (a) does not conform to the requirements of subsection (b), the agency shall remedy any defect which it can without the assistance of the requesting agency. If the agency is unable to make such corrections, the requesting agency shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The agency and court shall accept the documentation required by subsections (a) and (b) even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

(d) An obligee not receiving services from any agency operating pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, may file the documents specified in subsection (b) with the clerk of the court in which withholding is being sought. If the documents are filed by an attorney, they shall be filed by an attorney licensed to practice law in the state of Kansas or authorized in accordance with supreme court rule 116.

(e) A support order entered under subsection (a) or (d) shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in the income withholding act and the interstate income withholding act and amendments thereto. Entry of the order shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.

K.S.A. 23-4,130. Notice of intent to apply for issuance of an order; affidavit; contest of withholding; hearing; notice. (a) Except as provided in subsection (b), no later than 10 days after the date a support order is entered pursuant to K.S.A. **23-4,129** and amendments thereto, the agency or obligee shall serve upon the obligor a notice as provided for in subsection (h) of K.S.A. **23-4,107** and amendments thereto. The notice shall also advise the obligor that income withholding was requested on the basis of a support order of another jurisdiction. When appropriate, the agency or obligee shall file the affidavit provided for in subsection (d) of K.S.A. **23-4,107** and amendments thereto. If, in accordance with K.S.A. **23-4,110** and amendments thereto, the obligor contests the issuance of an income withholding order, the court must hold a hearing and render a decision within 45 days of the date of service of the notice on the obligor.

(b) If the documentation received pursuant to subsection (a) of K.S.A. **23-4,129** and amendments thereto indicates that an income withholding order based upon the support order has been issued by another jurisdiction and has not been terminated, the agency shall file an affidavit as provided in this subsection. An obligee entering a support order pursuant to subsection (a) of K.S.A. **23-4,129** and amendments thereto may file an affidavit as provided in this subsection if an income withholding order based upon the support order has been issued by another jurisdiction and has not been terminated. The affidavit shall state: (1) That an income withholding order based upon the support order has been issued by another jurisdiction and has not been terminated; (2) that immediate issuance of an income withholding order is required by this act; and (3) a specified amount to be withheld by the payor to satisfy the order for support and to defray any arrearage. The amount specified in the affidavit shall be as near as possible to the amount specified in the most recent income withholding order issued by the other

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jurisdiction. A copy of the affidavit shall be served by first-class mail upon the obligor. Upon the filing of the affidavit, the income withholding order shall be issued immediately, without further notice to the obligor, except that the court may direct the agency or obligee to serve a notice pursuant to subsection (a) upon the obligor if the court finds that the terms of the income withholding order issued by the other jurisdiction are too vague to be compatible with the amount specified in the affidavit or that the court issuing the income withholding order lacked jurisdiction.

(c) If the obligor seeks a hearing to contest the proposed income withholding in a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, the agency shall immediately notify the requesting agency of the date, time and place of the hearing.

K.S.A. 23-4,131. Hearing on contested withholding; grounds; procedure. (a) At any hearing contesting proposed income withholding based on a support order entered under K.S.A. **23-4,129** and amendments thereto, the entered order, accompanying sworn or certified statement, and a certified copy of the income withholding order or notice, if any, still in effect shall constitute prima facie proof, without further proof or foundation, that the order is valid, that the amount of current support payments and arrearages is as stated, and that the obligee would be entitled to income withholding under the law of the jurisdiction which issued the support order.

(b) Once a prima facie case has been established, the obligor may raise only the following:

(1) A mistake of fact that is not res judicata concerning the amount of current support owed or arrearage that had accrued, mistaken identity of the obligor or the amount of income to be withheld;

(2) that the court or agency which issued the support order entered under K.S.A. **23-4,129** and amendments thereto lacked personal jurisdiction over the obligor.

The burden shall be on the obligor to establish these defenses.

(c) If the obligor presents evidence which constitutes a full or partial defense, the court, on the request of the obligee or agency, shall continue the case to permit further evidence relative to the defense to be adduced by either party, except that, if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, the court shall require income withholding for the payment of current support payments under the support order and of so much of any arrearage as is not in dispute, while continuing the case with respect to those matters still in dispute. The court shall determine those matters still in dispute as soon as possible and, if appropriate, shall modify the withholding order to conform to its resolution of those matters.

(d) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by photographic discovery such as videotaped depositions or by personal appearance before the court by telephone or photographic means. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which, and the terms upon which, the testimony shall be taken.

(e) A court of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state and to forward to the court of this state certified copies of the evidence adduced in compliance with the request.

(f) Upon request of a court or agency of another state the courts of this state which are competent to hear support matters may order a person in this state to appear at a hearing or deposition before the court to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by the clerk of the court to the requesting court or agency.

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(g) A person within this state may voluntarily testify by statement of affidavit in this state for use in a proceeding to obtain income withholding outside this state.

K.S.A. 23-4,132. Issuance of withholding order. If the obligor does not request a hearing in the time provided in subsection (a) of K.S.A. **23-4,110** and amendments thereto or if a hearing is held and it is determined that the obligee has or is entitled to income withholding under the local law of the jurisdiction which issued the support order, the court shall issue an income withholding order under subsection (b) of K.S.A. **23-4,110** and amendments thereto.

K.S.A. 23-4,133. Withholding order; when effective; effect of order; notice; payor's duties. The provisions of K.S.A. **23-4,107** and **23-4,108** and amendments thereto, including the notice to the payor, penalties and sanctions against noncomplying payors, payor fees, protection against payor retaliation, payment directions and ability to issue a single check, apply to income withholding based on a support order of another jurisdiction entered under K.S.A. **23-4,129** and amendments thereto.

K.S.A. 23-4,134. Payments under order, procedure for making; effect of other support orders; crediting of amount collected. (a) The income withholding order shall direct payment to be made to the agency or obligee. The agency shall promptly transmit payments received pursuant to an income withholding order based on a support order of another jurisdiction entered under K.S.A. **23-4,129** to the agency or person designated pursuant to subsection (b)(6)(C) of K.S.A. **23-4,129**.

(b) A support order entered pursuant to K.S.A. **23-4,129** does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state. Any amount collected by any withholding of income shall be credited against the amounts accruing or accrued for any period under any support orders issued either by this state or by a sister state.

K.S.A. 23-4,135. Modification of support and withholding orders; income from other state, notice. (a) In a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, the agency, upon receiving a certified copy of any amendment or modification to a support order entered pursuant to K.S.A. **23-4,129** and amendments thereto, shall initiate, as though it were a support order of this state, necessary procedures to amend or modify the income withholding order of this state which was based upon the entered support order. The court shall amend or modify the income withholding order to conform to the modified support order.

(b) In a case being administered pursuant to title IV, part D, of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended, if the agency determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, it shall notify the agency which requested the income withholding of the changes within five working days of receiving that information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The agency shall include with the notice a certified copy of the income withholding order in effect in this state.

(c) In all other cases the obligee or the obligee's attorney, if any, shall initiate necessary procedures to amend or modify the income withholding order of this state which was based upon the entered support order. The court shall amend or modify the income withholding order to conform to the modified support order.

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K.S.A. 23-4,136. Voluntary withholding. Any person who is the obligor under a support order of another jurisdiction may obtain voluntary income withholding by filing with the court a request for an income withholding order and a certified copy of the support order of the other jurisdiction. The court shall issue an income withholding order, as provided in subsection (i) of K.S.A. **23-4,107** and amendments thereto, which shall be honored by any payor regardless of whether there is an arrearage.

K.S.A. 23-4,137. Application of law of state where absent parent derives income, when. Except with respect to when withholding must be implemented, which is controlled by the law of the state where the support order was originally issued, the law and procedures of the state in which the absent parent derives income shall apply.

K.S.A. 60-1613. Enforcement of support or maintenance order; income withholding; wage assignment. (a) The provisions of K.S.A. **23-4,107** shall apply to all orders of support issued under K.S.A. **60-1610** and amendments thereto.

(b) Any assignment previously ordered under this section remains binding on the employer, trustee or other payor of the earnings or income. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the district court trustee or the person specified in the order. The payor may withhold from the earnings or trust income payable to the person obliged to pay support a cost recovery fee of $5 for each payment made or $10 for each month for which payment is made, whichever is less. An employer shall not discharge or otherwise discipline an employee as a result of an assignment previously ordered under this section.

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KANSAS BAR ASSOCIATION

TO: **The Honorable Tim Owens**
And Members of the Senate Judiciary Committee

FROM: **Valerie Moore**
On Behalf of the Kansas Bar Association

RE: **HB 2667 – Domestic Relations Act and the floor amendment concerning covenant marriages.**

DATE: **March 15, 2010**

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Valerie Moore and I appear before you today on behalf o the Kansas Bar Association to support HB 2667 in its original unamended form. In addition, I wish to oppose the covenant marriage provision that is now contained within House Bill 2667. The floor amendment would add a new class of marriages to the divorce code. The KBA does not support the addition of Covenant marriages for several reasons.

Although the intent of the legislature is to reduce the amount of divorces, there is very little evidence to suggest that such a classification of marriages would, in fact, reduce divorces. Marriage is a serious commitment and should not be taken lightly; however, persons who are in love and want to make a lifetime commitment will do so without thought as to what the ramifications may be should the relationship sour in the future. As any practitioner in the family law arena can attest, when parties are intent on divorce, there will be a divorce. This proposal is concerning in that, the party seeking a divorce will now have to prove "fault" prior to a divorce being granted. A good family law attorney will spend countless hours counseling clients to get past the blame, past the hurt feelings, past the anger, and past the sadness in order to reach a point where they can effectively co-parent with the other parent. A divorce from a Covenant Marriage will make this all the more difficult.

By requiring the parties to prove "fault" for the divorce, the hostility and resentment will be difficult to eradicate as the parties will be required to go to Court to try and convince a Judge that someone is to blame for the dissolution of the marriage. The allegations will be made in open court and will be of a sensitive nature. Having a hearing on these issues, where a party is required to present evidence on the need for a divorce will make settlement more difficult and will lead to more high-conflict divorces. Going to Court slinging mud and making accusations, even accusations grounded in fact, does not accomplish anything but make everyone uncomfortable and inherently causes bad feelings. Regardless of the reasons for the divorce, the parents will need to co-parent successfully in the future and being hyper-focused on who is to blame in the divorce will inhibit the ability of the parents to work together. High-conflict divorces are extremely expensive as well as emotionally and physically draining for all parties involved, especially the children of the parties. Keeping the peace and keeping things peaceful

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in court is the best way to encourage parents to look towards the future instead of focusing on the past

Another concern would be an increase in the filing of Protection from Abuse and/or Stalking petitions. If parties are unable to divorce because of an inability to establish good cause there will undoubtedly be an increase in the number of protection orders filed in an attempt to end run the divorce statutes. The Protection orders would allow for custody, support, and possession of the residence until such time as a divorce court can enter orders. Too many protection orders are already filed to gain an advantage in family court and placing restrictions on the access to courts will increase the misuse of these statutes. Protection odes are a band-aid and should only be used sparingly, not strategically.

Reducing the divorce rate and having parties think about what marriage means prior to entering into marriage are admirable goals; however, adding another class of marriage that requires evidence of the need for a divorce will ultimately cause harm to families. These are families that need support and encouragement to work with one another, not ammunition to blame the other party for the dissolution of their marriage.

On behalf of the Kansas Bar Association, I thank you for your time this morning and would be available to respond to questions.

About the Kansas Bar Association:
The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

Kansas Coalition Against Sexual and Domestic Violence

UNITED AGAINST VIOLENCE

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Senate Judiciary Committee
HB 2667
March 15, 2010
Oppose

Chairman Owens and Members of the Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSDV) opposes HB 2667 ONLY as it relates to new Sections 52 through 59 -- covenant marriage; KCSDV takes no issue with HB 2667 as it was originally proposed in the House.

The covenant marriage provisions are not acceptable for several reasons:

1. Abuse often begins prior to marriage and elements of psychological or emotional pressure could certainly be employed to coerce one party to sign up for a covenant marriage.

2. The list of those who can provide pre-marital or pre-dissolution counseling are unlikely to have expertise in domestic violence, sexual abuse, or child abuse.

3. Although abuse is a factor that allows a party to a covenant marriage to divorce, it first requires counseling prior to terminating the marriage. Marriage counseling when abuse is present may be a very dangerous endeavor. Dangerousness and lethality rise significantly at the point when some abusers realize the relationship is about to end: a realization that is likely to co-occur with the counseling required in HB 2667. In fact, because dangerousness and lethality rise so significantly during this time, the U.S. Justice Department specifically disallows couples counseling and mediation in any grant program addressing domestic violence. Provisions in HB 2667 require that allegations of abuse need to be proved in court. Public disclosure of abuse may serve only to inflame the situation and pose a significantly greater risk of harm to the victim. Many victims prefer not to make public declarations about the abuse and may not have even reported it to any law enforcement entity.

4. Minors may enter into a covenant marriage with the signature of persons required by law to authorize the marriage of minors. The intent of the covenant marriage is to encourage parties to the marriage to stay together for a lifetime; a serious commitment that many, if not most, couples believe is their intent in any marriage. However, minors are particularly vulnerable to abuse and coercion by the other party or by the person authorizing the marriage: it doesn't seem appropriate to allow them to enter into a marriage contract that has additional barriers to terminate, especially if they enter into such a covenant marriage through force or coercion.

Basically, for those who enter into a covenant marriage the provisions of HB 2667 set aside the Kansas "no-fault" divorce and re-institute the "fault" divorce of the 1960's. Couples who wish to commit to a marriage under the provisions set out in New Sections 52 through 59 of HB 2667 may do so without the state being party to their commitment.

Again, KCSDV opposes only New Sections 52 through 59 of HB 2667 – the covenant marriage provisions.

Submitted: Sandy Barnett

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