

Introduction to the Child In Need of Care Bench Cards

The CINC Bench Cards were created by the Supreme Court Task Force on Permanency Planning to assist judges in assuring all federal and state mandated determinations are completed at each hearing and all hearings are held timely. The information on the cards is taken directly from the Kansas Code for the Care of Children and makes references to the statutes throughout.

Adoption and Safe Families Act of 1997 (H.R. 867, 105th Cong. (1997)).

The Adoption and Safe Families Act (ASFA) establishes the judicial determinations including reasonable efforts and contrary to the welfare findings required to begin and maintain IV-E eligibility for youth in care. The Child In Need of Care Code has implemented and requires the ASFA determinations for all children in care. The bench cards indicate the hearings in which the ASFA findings must be made.

Preventing Sex Trafficking and Strengthening Families Act of 2014 (P.L. 113-183)

The Preventing Sex Trafficking and Strengthening Families Act, Pub. L. 113-183, September 29, 2014, 128 Stat. 1919 to 1950, required changes to the revised code for the care of children. The revisions to the Kansas code that incorporate the Preventing Sex Trafficking and Strengthening Families Act became effective July 1, 2016.

Indian Child Welfare Act

The Indian Child Welfare Act Guidelines were updated in 2015 and Rules and Regulations were implemented June 14, 2016. ICWA was not included in the bench cards. Please refer to the Act if there is any reason to believe ICWA applies. The link to the Act is provided below: <https://www.indianaffairs.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>

Supreme Court Rule 174

Supreme Court Rule 174 mandates the use of the established Judicial Council forms in cases where the Adoption and Safe Families Act (ASFA) is applicable:

- Placing the child in the custody of a person other than the child's parent or legal guardian in a child in need of care, juvenile offender, or divorce proceeding; or

- Ruling on child in need of care and juvenile offender permanency hearings.

The Judicial Council has also created journal entries for every hearing and order within the Child in Need of Care Code. The bench cards, which reference each of the forms, are recommended for use to assure all mandated determinations are documented. You may find the electronic version of the forms at http://www.kansasjudicialcouncil.org/Forms/ChildInNeedOfCare_Forms.shtml.

Human Trafficking

A resource card has been added to provide information on human trafficking and human trafficking victims. The resource card includes facts, definitions, identifiers, and possible judicial response.

Kansas Judicial Center
301 S.W. 10th
Topeka, KS 66612-1507

Copies and updates at:
www.kscourts.org

Kansas Office of Judicial Administration
Domestic Violence Bench Cards

EX PARTE ORDER OF PROTECTIVE CUSTODY (K.S.A. 38-2242 and U.S.C. 671 *et seq.*)

Judicial Council form:

- *Ex Parte* Order of Protective Custody: #106

**Use of form required under Supreme Court Rule No. 174.*

EX PARTE ORDER CHECKLIST

Make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if not, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form 210.
- If applicability is undetermined, request more information.

**If ICWA applies, please refer to the Indian Child Welfare Act Guidelines and Final Rules and Regulations.*

Make a finding whether there is **probable cause** that the allegations in the petition or verified application are true.

- If no, return the child to the parent or custodian.
- If yes, proceed with required findings.

Reasonable efforts

**Reasonable efforts finding and the basis supporting each finding must be stated for each individual child.*

Make the following finding:

- Appropriate public or private agencies have made reasonable efforts but have failed to maintain the family and prevent the removal of the child from the child's home or reasonable efforts are not required to maintain the child in the home because an emergency exists which threatens the safety of the child.

Contrary to the welfare of the child

**Contrary to the welfare of the child finding and the basis supporting each finding must be stated for each individual child.*

Make a finding whether there is **probable cause** to believe the following:

- The child is likely to sustain harm if not immediately removed from the home;

remaining in the home or returning to the home would be contrary to the welfare of the child; and/or, immediate placement is in the best interest of the child.

A grandparent who requests custody shall receive substantial consideration when evaluating the best interests. The court shall state on the record the custody, visitation, or residency arrangements. The evaluation shall include, but not be limited to, the following considerations (K.S.A. 38-2286):

- wishes of parents, child, and grandparent;
- extent grandparent cared for, nurtured, and supported child;
- intent and circumstances under which the child is placed with the grandparent;
- whether domestic violence is a factor;
- whether placement allows a parent to seek work or attend school; and
- the physical and mental health of all individuals.

Protective Custody

Make a finding whether the child shall be placed, or continue to be placed, in protective custody, and placed with:

- a parent or other person having custody of the child;
- a person (i.e. relative or family friend), other than the parent or other person having custody (K.S.A. 38-2255(d) notes that a custodian or placement having close emotional ties shall not be required to be licensed);
- a youth residential facility;
- a shelter facility;
- a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2016 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto; or
- the Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

The court may order that visitation with the parents or others is not in the child's best interests and is prohibited.

The court may issue a restraining order against any alleged perpetrator.

- Judicial Council forms:
 - ◆ Restraining Order: #134

If the child is not already in protective custody, or the child's whereabouts are unknown, the order may provide that law enforcement take the child into custody and deliver the child to the designated custodian.

Set the date and time when the temporary custody hearing will be held.

- A temporary custody hearing **must be held within 72 hours of the time the child comes into protective custody** (excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible) pursuant to K.S.A. 38-2243(b).

**Note:* Time may be accruing prior to the Ex Parte Order of Protective Custody being issued. Time begins accruing immediately upon the child being placed in protective custody.

TEMPORARY CUSTODY ORDER (K.S.A. 38-2243 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Order of Temporary Custody: #132
- Initial Order Removing Indian Child From Custody of Parent and Authorizing Out of Home Placement: #209

**Use of form required under Supreme Court Rule No. 174.*

TEMPORARY CUSTODY ORDER CHECKLIST

Notice requirements:

- Notice shall be given to all parties and interested parties;
 - ◆ “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner,
 - child,
 - parent(s) of child, and
 - includes a guardian and every person who is by law liable to maintain, care for or support the child
 - Indian child’s tribe(s) intervening pursuant to Indian Child Welfare Act (ICWA).
 - ◆ “Interested party” includes the following (K.S.A. 38-2202(m)):
 - grandparent of the child,
 - person with whom child has been living for a significant period of time **when** the petition is filed, and
 - any person made an interested party by the court pursuant to K.S.A. 2016 Supp. 38-2241, or
 - Indian tribe seeking to intervene that is not a tribe.
- Notice shall be given **NOT less than 24 hours** prior to the hearing;
 - ***Note:** An order of temporary custody may be entered even if the parent or other person having custody of the child has not been notified of the hearing. If the parent or other person having custody of the child has not been notified, did not appear or waives appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay. (K.S.A. 38-2243(d))
- Oral notice may be given if there is insufficient time to give written notice.
 - ◆ A certificate of oral notice must be filed.

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if not, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form: (form 210)
- If applicability is undetermined, request more information.

***If ICWA applies, please refer to the Indian Child Welfare Act Guidelines and Final Rules and Regulations.*

Make a finding whether there is **probable cause** that the allegations in the petition or verified application are true.

- If no, return the child to the parent or custodian.
- If yes, proceed with required findings.

One of the following findings may be made by the court (K.S.A. 38-2243(f)):

- the child is dangerous to self or to others;
- the child is not likely to be available within the jurisdiction of the court for future proceedings; or
- the health or welfare of the child may be endangered without further care.

**If this is the initial order removing custody of the child from a parent, complete “reasonable efforts” and “contrary to welfare” findings.*

Reasonable efforts

**Reasonable efforts finding and the basis supporting each finding must be stated for each individual child.*

Make one of the following findings:

- Appropriate public or private agencies have made reasonable efforts but have failed to maintain the family and prevent the removal of the child from the child’s home or reasonable efforts are not required to maintain the child in the home because an emergency exists which threatens the safety of the child.

Contrary to the welfare of the child

**Contrary to the welfare of the child finding and the basis supporting each finding must be stated for each individual child.*

Make a finding whether there is **probable cause** to believe the following:

- The child is likely to sustain harm if not immediately removed from the home; remaining in the home or returning to the home would be contrary to the welfare of the child; and/or, immediate placement is in the best interest of the child.

A grandparent who requests custody shall receive **substantial consideration** when evaluating the best interests. The court shall state on the record the custody, visitation, or residency arrangements. The evaluation shall include, but not limited to, the following considerations (K.S.A. 38-2286):

- wishes of parents, child, and grandparent;
- extent grandparent cared for, nurtured, and supported child;
- intent and circumstances under which the child is placed with the grandparent;
- whether domestic violence is a factor;
- whether placement allows a parent to seek work or attend school; and
- the physical and mental health of all individuals.

Custody

Make a finding whether the child shall be placed, or continue to be placed in the temporary custody of:

- a parent or other person having custody of the child;
- a person (i.e. relative or family friend), other than the parent or other person having custody (K.S.A. 38-2255(d) notes that a custodian or placement having close emotional ties shall not be required to be licensed);
- a youth residential facility;
- a shelter facility;
- a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2013 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto; or

- the Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

The court may order that visitation with the parents or others is not in the child's best interest and is prohibited.

Make a finding that the court provided the parents, grandparents and/or interested parties, who were present at this hearing and had not previously received them, with informational materials pertaining to their respective rights and responsibilities in connection with the proceedings.

Include a child support determination if the child is placed with a person other than a parent.

The court may issue a restraining order against any alleged perpetrator.

- ◆ Restraining Order: Judicial Council form #134

Set the date and time when the adjudication hearing will be held.

- The order of temporary custody shall remain in effect until modified or rescinded by the court or an adjudication order is entered but **not exceeding 60 days, unless good cause is shown and stated on the record** pursuant to K.S.A. 38-2243(g)(2).

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.



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INFORMAL SUPERVISION (K.S.A. 38-2244 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Order for Continuance and Informal Supervision: #133

INFORMAL SUPERVISION AND CONTINUANCE ORDER CHECKLIST

Notice requirements:

- Notice shall be given to all parties and interested parties;
 - ◆ “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner,
 - child,
 - parent(s) of child, and
 - Includes a guardian and every person who is by law liable to maintain, care for or support the child.
 - Indian child’s tribe(s) intervening pursuant to Indian Child Welfare Act (ICWA).
 - ◆ “Interested party” includes the following (K.S.A. 38-2202(m)):
 - grandparent of the child,
 - person with whom child has been living for a significant period of time **when** the petition is filed, and
 - any person made an interested party by the court pursuant to K.S.A. 2016 Supp. 38-2241, or
 - Indian tribe seeking to intervene that is not a tribe.
- Notice shall be sent to last known address or provided orally by the court (K.S.A. 38-2239).
 - ***Note:** Lack of service on a parent shall not preclude informal supervision (K.S.A. 38-2244(f)).

An order for continuance and informal supervision may be entered at any time after filing a petition, but prior to an adjudication, if no party objects (K.S.A. 38-2244(a)).

An order for informal supervision may remain in force for a period up to 6 months and may be extended, **upon hearing**, for an additional 6 month period for a total of one year. For a child under an order for informal supervision who remains in the custody of such child’s parent, the one year period may be extended if no

party objects, **upon hearing**, for up to an additional one year, with reviews by the court at least every 6 months (K.S.A. 38-2244 (b)).

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if not, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form 210 Notice
- If applicability is undetermined, request more information.

* If ICWA applies, please refer to the Indian Child Welfare Act Guidelines and Final Rules and Regulations.

State the following:

- that no party objects to the continuance and informal supervision;
- the terms and conditions of informal supervision; and
- name the person with whom the child or children should be placed.

**If this is the initial order removing custody of the child from a parent, Judicial Council form 107, "INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT AND AUTHORIZING OUT OF HOME PLACEMENT" must be completed and "reasonable efforts" and "contrary to welfare" findings must be determined.*

Custody

Make a finding whether the child shall be placed, or continue to be placed in the custody of:

- a parent or other person having custody of the child;
- a person (i.e. relative or family friend), other than the parent or other person having custody (K.S.A. 38-2255(d) notes that a custodian or placement having close emotional ties shall not be required to be licensed);
- a youth residential facility;
- a shelter facility;
- staff secure facility, notwithstanding any other provisions of law, if the child has been subject to human trafficking or aggravated human trafficking, as defined by K.S.A. 2016 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto; or

- the Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

A grandparent who requests custody shall receive **substantial consideration** when evaluating the best interests. The court shall state on the record the custody, visitation, or residency arrangements. The evaluation shall include, but not be limited to, the following considerations (K.S.A. 38-2286):

- wishes of parents, child, and grandparent;
- extent grandparent cared for, nurtured, and supported child;
- intent and circumstances under which the child is placed with the grandparent;
- whether domestic violence is a factor;
- whether placement allows a parent to seek work or attend school; and
- the physical and mental health of all individuals.

The court may order that visitation with the parents or others is not in the child's best interests and is prohibited.

Include a child support determination if the child is placed with a person other than a parent.

The court may issue a restraining order against any alleged perpetrator.

- Judicial Council form:
 - ◆ Restraining Order: #134

*If child is reintegrated with one parent, without the termination of the other parent's rights, see **Domestic Order card**.

Review of Informal Supervision

Custody with a parent¹

Set the date and time when the review hearing will be held.

- A review hearing **must be held within 6 months** of the initial Order for Informal Supervision. (*A review hearing must be held at least every 6 months.)

- The Order for Informal Supervision may be extended for an additional 6 month period, for a **total of 2 years**.

Custody with the Secretary, or someone other than a parent

Set the date and time when the review hearing will be held.

- A review hearing **must be held within 6 months** of the initial Order for Informal Supervision.
- The Order for Informal Supervision may be extended for an additional 6 month period, for a **total of 1 year**.
- A permanency hearing must be held within 12 months of the date the court authorized the child's removal from the home pursuant to K.S.A. 38-2264(e). (*See Permanency Hearing card.)

If informal supervision is revoked, **set the date and time when the adjudication hearing will be held.**

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.

¹ K.S.A. 38-2244(b) "An order of informal supervision may remain in force for a period of up to six months and may be extended, upon hearing, for an additional six-month period for a total of one year. For a child under an order for informal supervision who remains in the custody of such child's parent, such one-year period may be extended if no party objects, upon hearing, for up to an additional one year, with reviews by the court occurring at least every six months."

ADJUDICATION (K.S.A. 38-2251 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Journal Entry and Order of Adjudication: #140.1
- Journal Entry and Order of Adjudication and Disposition: #141.1
- Indian Child Welfare Act Journal Entry and Order of Adjudication: #215.1
- Indian Child Welfare Act Journal Entry and Orders of Adjudication and Disposition: #216.1

ADJUDICATION ORDER CHECKLIST

Notice requirements:

- Notice shall be given to all parties and interested parties;
 - ◆ “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner,
 - child,
 - parent(s) of child, and
 - includes a guardian and every person who is by law liable to maintain, care for, or support the child
 - Indian child’s tribe(s) intervening pursuant to Indian Child Welfare Act (ICWA).
 - ◆ “Interested party” includes the following (K.S.A. 38-2202(m)):
 - grandparent of the child,
 - person with whom child has been living for a significant period of time **when the petition is filed**, and
 - any person made an interested party by the court pursuant to K.S.A. Supp. 38-2241, or
 - Indian tribe seeking to intervene that is not a tribe.
- Summons, Petition, and Notice of Hearing shall be served by the following process:
 - ◆ Method of service is not specified (see K.S.A. 38-2237)
 - child through service on GAL
 - parent(s)
 - parent having legal custody
 - person obligated by court order to pay child support
 - person with whom child is residing
 - other person designated by the county or district attorney

- Petition and Notice of Hearing shall be served by the following process (K.S.A. 60-303 and K.S.A. 60-308):
 - ◆ FIRST CLASS MAIL
 - child's grandparent(s) with whom child does not reside.
- Oral notice of hearing is sufficient if announced at the temporary custody hearing for any party and interested party in attendance.
- Process shall be served on any party or interested party not at the temporary custody hearing.

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if not, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form 210
- If applicability is undetermined, request more information.

*If ICWA applies, please refer to the Indian Child Welfare Act Guidelines and Final Rules and Regulations.

Make the following finding:

- that the GAL and parents submitted a stipulation or statement of no contest, which is knowingly and voluntarily given; that there is a factual basis for it; and that the court accepts it (K.S.A. 38-2248 and Judicial Council Form 142); **or**
- that the court received evidence and considered statements from parties.
 - ◆ If the court finds the evidence **clear and convincing**, state in the order that the court finds the child is in need of care, due to the applicable statutory elements.
 - ◆ If the court finds that the evidence is **not clear and convincing**, state in the order that the court finds there is not sufficient evidence to support the petition, dismiss the case, and discharge the parties.

***Note:** If the CINC case was originally referred pursuant to K.S.A. 23-2215(e), the county or district attorney shall notify the court in writing; and the court, after a hearing, shall enter appropriate custody orders. If the same judge presides over both proceedings, the notice is not required.

If the child is adjudicated to be in need of care, make the following finding:

- that the court finds that its previous findings and orders remain in effect; **or**
- determine with whom custody shall be placed:
 - a parent or other person having custody of the child;
 - a person (*i.e.* relative or family friend), other than the parent or other person having custody (K.S.A. 38-2255(d) notes that a custodian or placement having close emotional ties shall not be required to be licensed);
 - a youth residential facility;
 - a shelter facility;
 - a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2016 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto; or
 - the Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

A grandparent who requests custody shall receive **substantial consideration** when evaluating the best interests. The court shall state on the record the custody, visitation, or residency arrangements. The evaluation shall include, but not be limited to, the following considerations (K.S.A. 38-2286):

- wishes of parents, child, and grandparent;
- extent grandparent cared for, nurtured, and supported child;
- intent and circumstances under which the child is placed with the grandparent;
- whether domestic violence is a factor;
- whether placement allows a parent to seek work or attend school; and
- the physical and mental health of all individuals.

If this is the initial order removing custody of the child from a parent, **Judicial Council form 107, "INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT AND AUTHORIZING OUT OF HOME PLACEMENT" must be completed and "reasonable efforts" and "contrary to welfare" findings must be determined.*



A permanency plan (Judicial Council form 169) must be developed pursuant to K.S.A. 38-2263.

The court must make one of the following findings:

- the court approves and adopts the proposed permanency plan as the plan for permanency in the present matter **or**
- the court does not approve the proposed permanency plan and orders a new permanency plan submitted to the court within 30 days.

If the court does not move to disposition, state that prior orders remain in effect or make other orders pending disposition.

The court may order that visitation with the parents or others is not in the child’s best interest and is prohibited.

Include a child support determination if the child is placed with a person other than a parent.

The court may issue a restraining order against any alleged perpetrator.

- Restraining Order: Judicial Council form #134

Set the date and time when the disposition hearing will be held, unless disposition will occur immediately following adjudication.

- A disposition hearing **must be held within 30 days** following adjudication, unless delayed for good cause shown.

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.

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Child in Need of Care Bench Cards

DISPOSITION (K.S.A. 38-2253, 38-2254, 38-2255 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Journal Entry and Orders of Adjudication and Disposition: #141.1
- Journal Entry and Order of Disposition: #151.1
- Indian Child Welfare Act Journal Entry and Order of Disposition: #217.1

DISPOSITION ORDER CHECKLIST:

Notice requirements¹:

- Notice is not required if waived.
- Notice shall be given to the parties (K.S.A. 38-2254(a))
 - ◆ “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner,
 - child,
 - parent(s) of child, and
 - includes a guardian and every person who is by law liable to maintain, care for, or support the child
 - Indian child’s tribe(s) intervening pursuant to Indian Child Welfare Act (ICWA).
- Notice shall be given to (K.S.A. 38-2254(b)):
 - ◆ child’s foster parent(s);
 - ◆ permanent custodian providing care for the child;
 - ◆ preadoptive parent(s) for the child;
 - ◆ child’s grandparent(s), or if unknown, to the closest relative of each of the child’s parent(s) whose address is known;
 - ◆ person having custody of the child; and
 - ◆ any person having close emotional ties with the child and is deemed by the court to be essential.
- Notice shall be sent via FIRST CLASS MAIL, **not less than 10 business days before the hearing.**
- Notice is not required if otherwise receiving notice of hearing pursuant to K.S.A. 38-2239.

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if not, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form 210
- If applicability is undetermined, request more information.

**If ICWA applies, please refer to the Indian Child Welfare Act Guidelines and Final Rules and Regulations.*

¹The Supreme Court Task Force on Permanency Planning recommends that K.S.A. 38-2254(a) reference to parties be interpreted to include the legal definitions of Party and Interested Party.

Consider the following evidence received at the hearing, including, but not limited to:

- the child's physical, mental and emotional condition;
- the child's need for assistance;
- the manner in which the parent participated in the abuse, neglect or abandonment of the child; and
- any relevant information from the intake and assessment process.

State whether:

- the court finds that its previous findings and orders remain in effect; **or**
- determine with whom custody shall be placed:
 - ◆ a parent or other person having custody of the child;
 - ◆ a person with whom the child has close emotional ties who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;
 - ◆ any other suitable person;
 - ◆ a shelter facility;
 - ◆ a youth residential facility;
 - ◆ staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2016 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2016 Supp. 21-6422, and amendments thereto, or the child committed by an adult, would constitute a violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto; or
 - ◆ the Secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse.

Custody with a parent

If the court places the child with a parent, the court may order the following:

- supervision of child and parent by court services officer;
- participation by child and parent in available programs;
- special treatment or care, which the child needs for the child's physical, mental or emotional health and safety; and
- terms and conditions to assure the child's safety and proper care.

If child is reintegrated with one parent, without the termination of the other parent's rights, see **Domestic Order card.*

Removal of child from the custody of a parent

If this is the initial order removing custody of the child from a parent, **Judicial Council form 107, "INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT AND AUTHORIZING OUT OF HOME PLACEMENT" must be completed and "reasonable efforts" and "contrary to welfare" findings must be determined.*

Custody with the Secretary

If the court awards custody to the Secretary, the court may make a recommendation as to the placement of the child.

- The Secretary shall notify the court of the placement within **10 days** of the order awarding custody.
- The designated custodian must notify the court **10 days in advance** of any planned placement with a parent(s) stating in the written notice the custodian's belief that placement with a parent is no longer contrary to the welfare of the child.

The Secretary shall give a grandparent requesting placement **substantial consideration**. The evaluation shall include, but not be limited to, the following considerations (K.S.A. 38-2286(c)):

- wishes of parents, child, and grandparent;
- extent grandparent cared for, nurtured, and supported child;
- intent and circumstances under which the child is placed with the grandparent;
- whether domestic violence is a factor;
- whether placement allows a parent to seek work or attend school; and
- the physical and mental health of all individuals.

If the Secretary does not place the child with a grandparent, the Secretary shall maintain a written report citing the specific reasons.

If the court awards custody to any person other than a parent, order that a permanency plan be provided or prepared. If a permanency plan is presented one of the following findings must be made:

- court approves and adopts the proposed permanency plan as the plan for permanency in the present matter **or**
- the court does not approve the proposed permanency plan and orders a new permanency plan submitted to the Court within 30 days.

If a permanency plan is provided at the dispositional hearing, determine the following:

- that reintegration is a viable alternative; or
- that reintegration is not a viable alternative.
 - ◆ Consider the following:
 - whether a parent has been found by a court to have committed either a homicide, or a felony battery resulting in bodily harm; or
 - whether a parent has subjected the child, or another child to aggravated circumstances [K.S.A. 38-2202(c)]; or
 - whether a parent has been previously found to be unfit under Kansas law, or in comparable proceedings under the laws of another state or the federal government; or
 - whether the child has been in extended out-of-home placement²; or
 - whether the parents have failed to work diligently toward reintegration; or
 - whether the Secretary has provided the family with services necessary for the safe return of the child to the home; or

²K.S.A. 38-2202(i) defines extended out of home placement means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

- whether it is reasonable to expect reintegration to occur within a time frame consistent with the child's developmental needs.

If the court determines that reintegration is not a viable alternative, determine whether the child should be placed:

- for adoption; or
- with a permanent custodian.

If the court determines that reintegration is not a viable alternative, a permanency hearing **must be held within 30 days**, unless the court finds that all permanency hearing requirements have been met.

Proceedings if reintegration is not a viable alternative

If the court determines that reintegration is not a viable alternative, the court shall order that proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian be initiated, unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child.

If compelling reasons have not been documented, the court shall order that the county or district attorney file a motion to terminate parental rights, or a motion to appoint a permanent custodian **within 30 days**. The court shall hold a hearing on the motion **within 90 days of its filing**, unless the court finds it is in the best interests of the child that a continuance be granted, (K.S.A. 38-2255(f)). No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

Additional orders

The court may order, including, but not limited to the following:

- that the child and the parents attend counseling sessions;
- that the child, a parent of the child, or another person responsible for the care of the child, submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations;
- that one or both parents pay child support (K.S.A. 38-2255(g)(3) notes that if the child is placed in the custody of the Secretary, the court shall order one or both parents to pay child support); and
- enter a restraining order against any alleged perpetrator.
 - ◆ Restraining Order: Judicial Council form #134

Set the date when the review and/or permanency hearing will be held and whether the hearing will take place before the court or the Citizen Review Board.

- A review hearing may be held at any time.
- A permanency hearing **must be held within 12 months from the date the court authorized the child's removal from the home** and not less frequently than every 12 months thereafter.

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.

CHANGE IN PLACEMENT (K.S.A. 38-2258 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Change In Placement Findings Order: #164

CHANGE IN PLACEMENT FINDINGS ORDER CHECKLIST

Notice requirements:

- The Secretary shall give written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption.
 - ◆ Notice shall be given to:
 - Court having jurisdiction over the child;
 - petitioner;
 - attorney(s) for the parent(s), if any;
 - parent(s) whose address is available;
 - child's foster parent(s), or custodian whose home or shelter facility is proposed to remove the child;
 - child, if 12 or more years of age;
 - child's GAL;
 - any other party or interested party; and
 - child's CASA.
 - ◆ Notice shall state the placement to which the Secretary plans to transfer the child and the reason for the proposed action.
 - ◆ Notice shall be sent via FIRST CLASS MAIL **30 days in advance** of the planned transfer, except that the Secretary shall not be required to wait 30 days to transfer the child if all persons required to receive notice consent in writing to the transfer.
 - ◆ **Within 14 days after receipt of the notice**, a request either orally or in writing, by anyone receiving required notice, can be made of the court to conduct a hearing on the matter.
 - The court shall schedule a hearing and immediately notify the Secretary of the request and the time and date of the hearing.
 - Notice of the hearing shall also be given to:
 - petitioner;
 - attorney(s) for the parent(s);
 - parent(s) whose address is available;
 - child's foster parent(s), or custodian whose home or shelter facility is proposed to remove the child;

- child, if 12 or more years of age;
 - child's GAL;
 - any other party or interested party; and
 - child's CASA.
- If a request for hearing is NOT made **within the 14 days** after receipt of the notice, the change in placement may occur prior to the expiration of the **30 days**.

Indicate whether the court finds that the proposed change in placement is in the best interest of the child. If the court finds that it is not in the child's best interest, the court may recommend an alternative placement.

If this is the initial order removing custody of the child from a parent, **Judicial Council form 107, "INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT AND AUTHORIZING OUT OF HOME PLACEMENT" must be completed and "reasonable efforts" and "contrary to welfare" findings must be determined.*

If a hearing is NOT requested, and the change of placement is the removal of the child from the home, after having been placed in the home for six months or longer, the Secretary shall request findings from the court as set out in Judicial Council form #107. The court may rely on documentation submitted to the court in making the findings. The court shall provide the Secretary with a copy of the findings **within 45 days of the request**.

EMERGENCY CHANGE IN PLACEMENT; REMOVAL FROM HOME OF PARENT (K.S.A. 38-2259 and 42 U.S.C. § 671)

Judicial Council forms:

- Emergency Change of Placement Findings Order: #166

EMERGENCY CHANGE IN PLACEMENT CHECKLIST

Notice requirements:

- When an emergency exists within a foster home or shelter facility, a change in placement may occur without prior court approval or notice. The Secretary shall notify the court of the action at the earliest practical time.

If child has been placed with a parent for six months or longer and the Secretary notifies the court that an emergency exists the court must determine the following:

- whether or not it is contrary to the welfare of the child to remain in the home; and
- whether or not an emergency existed;

If this is the initial order removing custody of the child from a parent, **Judicial Council form 107, "INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT AND AUTHORIZING OUT OF HOME PLACEMENT" must be completed and "reasonable efforts" and "contrary to welfare" findings must be determined.*

The court may rely on documentation submitted by the Secretary or may set the date for a hearing on the matter.

If removing a child from the custody of a parent, make a finding that there is **probable cause** for the following:

- that the child is likely to sustain harm if not immediately removed;
- that allowing the child to remain in home is contrary to the welfare of the child; **OR**
- that immediate placement of the child is in the best interest of the child; **AND**
- that reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child, or that an emergency exists which threatens the safety of the child.

REHEARING (K.S.A. 38-2256)

**After the entry of the dispositional order, the court may rehear the matter on its own motion or the motion of a party or interested party.*

Judicial Council forms:

- Journal Entry and Order of Rehearing of Disposition #162
- Indian Child Welfare Act Combined Journal Entry and Order of Rehearing of Disposition: #218

REVIEW OF DISPOSITION ORDER CHECKLIST:

Notice requirements (38-2254)¹:

- Notice is not required if waived.
- Notice shall be given to the parties (K.S.A. 38-2254(a))
 - ◆ “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner;
 - child,
 - parent(s) of child, and
 - includes a guardian and every person who is by law liable to maintain, care for, or support the child
 - tribe(s) intervening pursuant to Indian Child Welfare Act ICWA).
- Notice shall be given to:
 - ◆ all parties and interested parties;
 - ◆ child’s foster parent(s);
 - ◆ permanent custodian providing care for the child;
 - ◆ preadoptive parent(s) for the child;
 - ◆ child’s grandparent(s), or if unknown, to the closest relative of each of the child’s parent(s) whose address is known;
 - ◆ person having custody of the child; and
 - ◆ any person having close emotional ties with the child and is deemed by the court to be essential.
- Notice is not required if waived.
- Notice shall be sent via **FIRST CLASS MAIL, not less than 10 business days before the hearing.**

¹ The Supreme Court Task Force on Permanency Planning recommends that K.S.A. 38-2254(a) reference to parties be interpreted to include the legal definitions of Party and Interested Party.

- Notice is not required if otherwise receiving notice of hearing pursuant to K.S.A. 38-2239.

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if it is not applicable, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form 210 Notice
- If applicability is undetermined, request more information.

The court may enter any dispositional order (K.S.A. 38-2255) authorized by this code, except a child support order which has been registered under K.S.A. 2016 Supp. 38-2279 and amendments thereto.

Set the date and time when the rehearing and/or permanency hearing will be held and whether the hearing will take place before the court or the citizen review board.

- A rehearing may be held at any time.
- A permanency hearing **must be held within 12 months from the date the court authorized the child's removal from the home** and not less frequently than every 12 months thereafter.

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.

**If this is the initial order removing custody of the child from a parent, Judicial Council form 107, "INITIAL ORDER REMOVING CHILD FROM CUSTODY OF PARENT AND AUTHORIZING OUT OF HOME PLACEMENT" must be completed and "reasonable efforts" and "contrary to welfare" findings must be determined.*

**If child is reintegrated with one parent, without the termination of the other parent's rights, see Domestic Order card.*

PERMANENCY (K.S.A. 38-2264, 38-2265 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Permanency Hearing Journal Entry and Order: #170.1
- Permanency Hearing Order Based on the CRB Recommendations Hearing: #170.2
- Permanency Hearing Journal Entry and Order Journal Entry and Order for APPLA: #170.3
- Permanency Hearing Order Based on the CRB Hearing for APPLA: #170.4
- Journal Entry of Permanency Hearing For Child In Need of Care Post-Termination: #188.1
- Permanency Hearing Order After CRB Hearing Post-Termination: #188.2
- Journal Entry of Permanency Hearing for Child in Need of Care Post-Termination for APPLA: #188.3
- Permanency Hearing Order Post-Termination Based on CRB Hearing for APPLA: #188.4
- ICWA Permanency Hearing Journal Entry and Order: #219.1
- ICWA Permanency Hearing Order After CRB Hearing: # 219.2
- ICWA Permanency Hearing Journal Entry and Order for APPLA: #219.3
- ICWA Permanency Hearing Order Based on the CRB Hearing for APPLA: #219.4
- ICWA Permanency Hearing Order for Child In Need of Care Post-Termination: #221.1
- ICWA Permanency Hearing Order Based on the CRB Recommendations Hearing Post-Termination: #221.2
- ICWA Permanency Hearing Order for Child in Need of Care Post-Termination for APPLA: #221.3
- ICWA Journal Entry of Permanency Hearing for Child In Need of Care Post-Termination for APPLA: #221.4

PERMANENCY HEARING ORDER CHECKLIST

Notice requirements (K.S.A. 38-2265):

- Notice shall state that the person receiving notice shall have the right to be heard at the hearing.
- Notice shall be given to:
 - ◆ all parties and interested parties;



- “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner,
 - child,
 - parent(s) of child, and
 - ◆ includes a guardian and every person who is by law liable to maintain, care for or support the child
 - Indian tribe(s) intervening pursuant to Indian Child Welfare Act (ICWA).
- “Interested party” includes the following (K.S.A. 38-2202(m)):
 - grandparent of the child,
 - person with whom child has been living with for a significant period of time **when** the petition is filed, and
 - any person made an interested party by the court pursuant to K.S.A. 2016 Supp. 38-2241, or
 - Indian tribe seeking to intervene that is not a tribe.
- the child is 14 years of age or older (notice shall request the child’s participation in the hearing by attendance or by report to the court);
- child’s foster parent(s);
- permanent custodian providing care for the child;
- preadoptive parent(s) for the child;
- child’s grandparent(s), or if unknown, to the closest relative of each of the child’s parent(s) whose address is known;
- person having custody of the child; and
- any person having close emotional ties with the child and is deemed by the court to be essential.
- Notice shall be sent via FIRST CLASS MAIL, **not less than 10 business days before the hearing.**
- Notice is not required if otherwise receiving notice of hearing pursuant to K.S.A. 38-2239.
- Oral notice at previous held Permanency Hearing will serve as notice.

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if not, order petitioner to give notice to the tribe(s).
 - ◆ ICWA form (forms 210-223)
- If applicability is undetermined, request more information.

**If ICWA applies please review the National Council for Juvenile and Family Court Judge ICWA Bench Cards.*

Kansas Judicial Center
301 S.W. 10th
Topeka, KS 66612-1507



Kansas Office of Judicial Administration

Child in Need of Care Bench Cards

State the following:

- Appropriate public or private agencies **have** made reasonable efforts to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan. **OR** Appropriate public or private agencies **have not** made reasonable efforts to assist and support the family to accomplish the current permanency goal(s) set out in the permanency plan.
- The progress of the parent or child to achieve the permanency plan goal(s) is or is not adequate as to each child (***This is not the same as the “Reasonable Efforts” finding as to the State.**)
- The child’s needs **are** or **are not** being adequately met.
- The reasonable and prudent parenting standard **has** or **has not** been met.
- The child **has had** or **has not** had regular, on-going opportunities to engage in age or developmentally appropriate activities
- The court has considered in-state and out-of state permanent placement options. The child **is** or **is not** in out-of-state placement;
 - ◆ if so, whether or not out-of-state placement **continues** or **does not continue** to be appropriate and in the child’s best interest
- Reintegration **continues to be a viable** option for the child. **If reintegration continues to be a viable alternative, state for each child the following:**
 - ◆ whether reintegration should not occur until further order of the court; or
 - ◆ whether the child should be returned home immediately;
 - If child is reintegrated with one parent, without the termination of the other parent’s rights, see Domestic Order card.
 - ◆ the target date for the return of the child and the conditions under which the child can return home;
 - ◆ whether services set out in the case plan, which are necessary for a safe return of the child, have not been made available to the parent with whom reintegration was planned (outline specifically in the Order);
 - whether a new plan for reintegration should be submitted **within 30 days**, with measurable goals, objectives and time frames.
 - the permanency goal for each child;
 - reintegration,
 - adoption,
 - permanent custodianship, or
 - other planned permanent living arrangement (OPPLA).
- **Reintegration is no longer a viable goal, state for each child the following:**
 - ◆ whether the child is in a stable placement with a relative;

**Remember to specifically identify the plan.*

- ◆ whether services set out in the case plan necessary for a safe return of the child have been made available to the parent with whom reintegration was planned; and
- ◆ whether adoption or permanent custodianship might be in the best interest of the child and the County/District Attorney or designee should file a pleading to terminate parental rights or a pleading to establish a permanent custodianship **within 30 days**; or
- ◆ permanent custodianship and adoption have been considered, but are not in the child’s best interest at this time, and a new plan should be prepared and submitted to the Court with measurable goals, objectives, and time frames to achieve another planned permanent living arrangement (identify).

If the child is 14 years of age or older, document the efforts made by the Secretary to help the child prepare for the transition from custody to a successful adulthood.

Children with Another Planned Permanent Living Arrangement as a Permanency Plan

- Ask the child, if the child is able, by attendance at the hearing or by report to the court, about the desired permanency outcome for the child.
- Document the intensive, on-going and unsuccessful permanency efforts made by the Secretary to return the child home or with a relative or legal guardian or an adoptive parent.

Indicate whether the previous orders of the court:

- shall continue in full force and effect;
- are modified; or
- are rescinded and new orders are issued.

Set the date and time when the next review and/or permanency hearing will be held and whether the hearing will take place before the court or the citizen review board.

- A review hearing may be held at any time.
- A permanency hearing **must be held within 12 months from the date the court authorized the child’s removal from the home** and not less frequently than every 12 months thereafter.

***Note:** While a case is on appeal, the district or magistrate court shall continue to have jurisdiction over all issues not specifically appealed and shall conduct timely permanency hearings (K.S.A. 38-2273(f)).

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.

Kansas Judicial Center
301 S.W. 10th
Topeka, KS 66612-1507

Kansas Office of Judicial Administration
Child in Need of Care Bench Cards

FINDING OF UNFITNESS/ORDER TERMINATING PARENTAL RIGHTS/ APPOINTING PERMANENT CUSTODIAN (K.S.A. 38-2267, 38-2269, 38- 2270, 38-2272 and 42 U.S.C. § 671 *et seq.*)

Judicial Council forms:

- Finding of Unfitness and Order Terminating Parental Rights or Appointing Permanent Custodian: #185
- Indian Child Welfare Act Finding of Unfitness and Order Terminating Parental Rights or Appointing Permanent Custodian: #220

FINDING OF UNFITNESS/ORDER TERMINATING PARENTAL RIGHTS/ APPOINTING PERMANENT CUSTODIAN CHECKLIST

Notice requirements (38-2267(b)(1)):

- Notice shall state that the person receiving notice shall have the right to be heard at the hearing.
- Notice shall be given to:
 - ◆ all parties and interested parties;
 - “Party” means the following (K.S.A. 38-2202(v)):
 - State,
 - petitioner,
 - child,
 - parent(s) of child, and
 - includes a guardian and every person who is by law liable to maintain, care for or support the child
 - tribe(s) intervening pursuant to Indian Child Welfare Act (ICWA).
 - “Interested party” includes the following (K.S.A. 38-2202(m)):
 - grandparent of the child,
 - person with whom child has been living for a significant period of time **when** the petition is filed, and
 - any person made an interested party by the court pursuant to K.S.A. 2016 Supp. 38-2241.
 - ◆ child’s grandparent(s), or if unknown, to the closest relative of each of the child’s parent(s) whose address is known;
 - ◆ in any case in which a parent of a child cannot be located by the exercise of due diligence, to the parent(s)’ nearest relative who can be located;
 - ◆ child’s foster parent(s);
 - ◆ preadoptive parent(s); and
 - ◆ relatives providing care.
 - Notice shall be sent via RETURN RECEIPT DELIVERY, **not less than 10 business days before the hearing.**
 - Make the finding that due diligence has been used in determining the identity and location of the person(s) required to receive notice and in accomplishing service of process.

Representation

The court shall appoint an attorney to any parent that fails to appear and may award a reasonable fee to services. K.S.A. 38-2267(d).

If finding has not already been made, make a finding whether the Indian Child Welfare Act (ICWA) applies.

- If applicable, determine whether the petitioner has notified the tribe(s), and if it is not applicable, order petitioner to give notice to the tribe(s);
 - ◆ ICWA form 210 Notice
 - ◆ ICWA form 220 Termination
- If applicability is undetermined, request more information.

*If ICWA applies, please refer to the Indian Child Welfare Act Guidelines and Final Rules and Regulations.

For each individual child, make the following finding:

- that the evidence is clear and convincing that the mother, the father, or the putative father is unfit by reason of conduct or condition which renders that person unable to care properly for the child and that the conduct or condition is unlikely to change in the foreseeable future.
 - ◆ List the facts on which the finding is based.
 - When a child is in the physical custody of a parent, the court shall consider, but not be limited to, the following:
 - emotional illness, mental illness, mental deficiency or physical disability of the parent of such a duration as to render parent unable to care for child;
 - physical, emotional, or sexually cruel conduct or abusive nature towards a child;
 - use of intoxicating liquors, narcotic or dangerous drugs of such duration or nature as to render parent unable to care for child;
 - physical, mental or emotional abuse or neglect or sexual abuse of a child;
 - conviction of a felony and imprisonment;
 - unexplained injury or death of another child or stepchild of the parent or any child in the care of the parent at time of injury or death;
 - failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
 - lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child; and
 - whether the child has been in extended out of home¹ placement as a result of actions or inactions attributable to the parent and one or more of the listed considerations when the child is not in the physical custody of the parent

*Note: The court may disregard incidental visitations, contacts, communications or contributions.

- When a child is not in the physical custody of a parent, the court shall consider, but not be limited to, the following:
 - ◆ failure to assure care of the child in the parental home when able to do so;
 - ◆ failure to maintain regular visitation, contact or communication with the child or with the custodian;
 - ◆ failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home;
 - ◆ failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.
 - ◆ parents abandoned the child;
 - ◆ custody of the child was surrendered;
 - ◆ child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward within 3 months after the child is found; and

¹“Extended out of home placement” means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home. K.S.A. 38-2202(i).

- ◆ if a parent is convicted of a felony in which sexual intercourse occurred, or if a juvenile is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is conceived.

The Court may not terminate parental rights without an evidentiary hearing unless there is proffer of evidence pursuant to K.S.A. 38-2248(f).

Presumption of Unfitness

The burden of proof is on the parent to rebut the presumption of unfitness by a **preponderance of evidence** and be presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future.

It is presumed a parent is unfit, if by **clear and convincing evidence**, the following is established:

- parent has previously been found to be an unfit parent in proceedings under K.S.A. 38-2266 et seq., and amendments thereto, or comparable proceedings in another jurisdiction;
- parent has twice before been convicted of a crime specified in article 34, 35, 36 of chapter 21 of the Kansas Statute Annotated, prior to their repeal, or articles 54, 55, or 56 of chapter 21 of the Kansas Statutes Annotated, of K.S.A. 2016 Supp. 21-6104, 21-6325, 21-6326 or 21-2418 through 21-6421, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or comparable offenses in another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under 18;
- on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care under K.S.A. 2016 Supp. 38-2202 (d)(1), (d)(3), (d)(5) or (d)(11), and amendments thereto or comparable proceedings in another jurisdiction;
- parent has been convicted of causing the death of another child, or stepchild of the parent;
- child has been in out-of-home placement, under court order for a cumulative total period of one year or longer and parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;
- (1) child has been in out-of-home placement, under court order for a cumulative total period of two years or longer; (2) parent has failed to carry out a reasonable plan, approved by the court directed toward reintegration of the child into the parental home; and (3) there is a substantial probability that the parent will not carry out such a plan in the near future;
- parent has been convicted of capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2016 Supp 21-5403, and amendments thereto, or voluntary manslaughter K.S.A. 21-3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto, human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, of K.S.A. 2016 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 2016 Supp. 21-6422, and amendments thereto, or comparable proceedings in another jurisdiction, or has been adjudicated a juvenile offender of an act as stated if committed by an adult, and the victim was the other parent of the child;
- parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under K.S.A. 21-3604(b), prior to its repeal, or K.S.A. 2016 Supp. 21-5605(d), amendments thereto;
- parent has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;
- a father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;
- a father abandoned mother after having knowledge of the pregnancy;

- parent has been convicted of rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto, or comparable proceeding under the laws of another jurisdiction resulting in the conception of the child; or
- a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitation, contacts, communications or contributions.

Parental Rights Termination

If the court finds the evidence supports a termination of parental rights and that it is in the best interest of the child, state the following:

- that in considering the physical, mental or emotional health of each child, termination of parental rights is in the best interest of each child and the physical, mental or emotional needs of each child would best be served by termination of parental rights; and
- that the parental rights of the mother, father, or putative father are terminated.

If the court finds the evidence supports a termination of parental rights, but that it is NOT in the best interests of the child to do so, state the following:

- that in considering the physical, mental or emotional health of each child, termination of parental rights is NOT in the best interests of each child; and
- that the parental rights of the mother, father, or putative father are NOT terminated.

If the court terminates parental rights², order the following:

- appoint a permanent custodian; or
- grant custody of the child to one of the following:
 - ◆ to the Secretary, or
 - ◆ to adoption agency, or
 - ◆ to the proposed adoptive parents, thereby consenting to the adoption by the proposed adoptive parents, or
- continued permanency planning.

*When custody has been granted for adoption, appointment of a permanent custodian or continued permanency planning, the custodian shall submit a written plan for permanent placement of the child **within 30 days**. K.S.A. 38-2269(j).

If the court has NOT terminated parental rights, order the following:

- appoint a permanent custodian; or
- continued permanency planning.

Set the date and time when the review and/or permanency hearing will be held and whether the hearing will take place before the court or the citizen review board.

- A review hearing may be held at any time.
- A permanency hearing **must be held within 12 months from the date the court authorized the child's removal from the home and** not less frequently than every 12 months thereafter.

***Note:** While a case is on appeal, the district or magistrate court shall continue to have jurisdiction over all issues not specifically appealed and shall conduct timely permanency hearings (K.S.A. 38-2273(f)).

Set the date when case reports and evaluations are due. Identify those ordered to submit reports by that date.

²K.S.A. 38-2269(g)(2), "...the court may authorize adoption pursuant to K.S.A. 2016 Supp. 38-2270, and amendments thereto, appointment of a permanent custodian pursuant to K.S.A. 2016 Supp. 38-2272, and amendments thereto, or continue permanency planning."

DOMESTIC ORDER (K.S.A. 23-2210, 38-2201, 38-2264, 23-3201 et al., 60-3107 and 42 U.S.C. § 671 et seq.)

**Any orders pursuant to the revised Kansas code for the care of children shall be binding and shall take precedence over any order under K.S.A. Chapter 23 article 22 (determination of paternity), Chapter 59 article 21 (adoption and relinquishment act), Chapter 59 article 30 (guardians and conservators), Chapter 23 article 27 (divorce), Chapter 23 article 32 (custody), and Chapter 60 article 31 (protection from abuse act), until jurisdiction under this code is terminated.*

If child is reintegrated with one parent, without the termination of the other parent's rights, the court MAY, prior to dismissing, do any of the following:

- enter custody orders in the existing civil custody case outlining residency and parenting time;
 - ◆ be specific in its terms,
 - ◆ complete a parenting plan pursuant to K.S.A. 23-3213,
 - ◆ reference any preexisting order and the custody being modified, and
 - ◆ file a certified copy of the order in the civil custody case with the civil custody case number in the caption;
- the court in the civil custody case MAY, after consultation with the CINC court, enter an order declaring the custody order in the CINC case the custody order;
- consolidate the civil custody case and the CINC case; or
- if a civil custody case has not been filed, the court may direct the parties to file a civil custody case and to file the custody orders from the child in need of care case in that case.

**Note:* Pursuant to K.S.A. 38-2202, *civil custody case* includes any case filed under K.S.A. Chapter 23, Chapter 38 article 11, Chapter 59 article 21, or Chapter 59 article 30. A civil custody case does NOT include Chapter 60 article 31 (*protection from abuse act*).

When permanency has been achieved to the satisfaction of the court, the court SHALL enter an order terminating jurisdiction and closing the case. If the case has been consolidated, if necessary, return the civil custody case to the original court having jurisdiction.

Orders SHALL be binding on the parties, unless modified based on a *material change in circumstances*, even if such courts have different venues.

**Note:* Access to confidential information is NOT expanded. Confidentiality shall be preserved in the domestic case.

HUMAN TRAFFICKING RESOURCE CARD FOR COURTS

What is the role of the court?

- **Identification** – awareness of factors that give a court reason to believe a child is being or has been trafficked, or subjected to commercial sexual exploitation.
- **Require DCF assessment** for safety, placement, treatment and service needs.
- **Screening or Assessment** relating to mental health, suicide, drug dependency/withdrawal, sexual reproductive health, pregnancy, dental, SANE/SART as appropriate.
- **Judicial Oversight of Treatment** from social service agencies, social workers, legal guardians and child advocates.
- **Require Trauma-informed Care** – victims have feelings of fear and hopelessness. This results in a hostile child who uses sexual overtures to manipulate; negative language and behavior.
- **Be Aware That Victims Do Not Self-Identify.** Victims do not see themselves as victims and often see themselves as criminals. Court should remain non-judgmental, sympathetic and understanding. Otherwise low self-esteem of the victim and fear for safety will shut off communication.

POSSIBLE JUDICIAL ACTION (RESPONDING AND ASSESSING)

- A court may require a change in status hearing when a child runs away or goes missing. When a runaway returns, an assessment of the facility or home safety may be considered.
- Possible orders could relate to drug treatment, trauma counseling, case management, safety placement, educational needs.
- Whenever the child is in state custody and the court finds that it has “...reason to believe such child has been subjected to an act which would constitute human trafficking or aggravated trafficking...” the court shall refer the child to the Secretary of DCF for an assessment to determine safety, placement and treatment and service needs for the child, K.S.A. 2016 Supp. 38-2287.
- Review the assessment reports and confirm the assessment was completed with a validated, evidence-based assessment tool or instrument.
- Victims of trafficking often have a deep trauma bond with their trafficker. Their trauma is different than that of other sexually abused children.
- When asking questions, consider that the trafficker may be in the courtroom.
- Always get an independent interpreter; don't rely on a family member.
- A multidisciplinary team at a child advocacy center per K.S.A. 2016 Supp. 38-2227 can help implement and report to the court the appropriate steps for care.
- Pursuant to K.S.A. 38-2228, a court may on its own motion appoint a multidisciplinary team to assist in gathering information regarding a child who may be a child in need of care. It may be a standing multidisciplinary or may be appointed for a specific child.

- If the court finds probable cause to believe the child is a victim of trafficking, it may enter a temporary custody order and may place the child with a parent or other person having custody of the child and may enter a restraining order; a person other than the parent or other person having custody; a youth residential facility; a shelter facility; a staff secure facility; the secretary, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parent, resource, or shows signs of physical, mental, emotional, or sexual abuse, K.S.A. 38-2242.

What is Human Trafficking?

Actions: Recruiting, harboring, transporting, providing, inducing, obtaining, soliciting, hiring, patronizing

Purpose: Exploitation for labor or sex – commercial sex, forced labor or involuntary servitude.

Means: for adults – coercion, deception, physical force, fraud or abuse of power; for children – the same means to exert control of the child are often present but are not legally required – the exploitation of the child by the proscribed actions listed above is trafficking. K.S.A. 2016 Supp. 21-5426.

In 2015, the Revised Kansas Code for Care of Children was amended to specifically include all trafficked children. Subjection to any criminal act of human trafficking, aggravated human trafficking, commercial exploitation of a child or selling sexual relations renders the child a CINC. K.S.A. 2016 Supp. 38-2202(d)(14). See also, K.S.A. 2016 Supp. 21-5426, 21-6422 or 21-6419.

Dispelling Common Misconceptions – The Facts:

- Trafficking does not have to involve transportation.
- Smuggling is not the same as trafficking. Smuggling involves an illegal border crossing; trafficking is exploitation of a human.
- Victims do not have to be held against their will.
- Initial consent does not cancel out the trafficking.
- All ethnic groups and genders, and transgender youth can be trafficked.

Who are the victims of trafficking?

In the United States a majority of human trafficking victims are domestic citizens. Many of these domestic victims are children (under 18 years of age). Most trafficked children are recruited at age 13-16. In Kansas, the top forms of trafficking reported in 2016 to the National Human Trafficking Hotline were sex trafficking (73%), labor trafficking (14%), sex and labor (6%) and unspecified (7%). Less than 1% of trafficking victims in the US are identified.

RUNAWAYS

“Youth who run away from foster care are particularly vulnerable to sex trafficking.”

“Runaway” means a child who is willfully and voluntarily absent from the child’s home without the consent of the child’s parent or other custodian.” K.S.A. 2016 Supp. 38-2202 (cc).

- A 2015 amendment to the CINC code requires a law enforcement officer to take a child into police protective custody when he or she has “probable cause to believe the child is a runaway, or a missing person or a verified missing person” K.S.A. 2016 Supp. 38-2231(b)(2).
- “Missing child” includes abducted children.
- “Verified missing child” is one who is reported and law enforcement has entered this into the FBI’s National Crime Information Center. K.S.A. 2016 Supp. 38-2231(b)(2).

Dangers for runaway/missing children include:

- physical violence
- drugs/alcohol abuse
- sexual violence
- gangs
- untreated mental health issues
- untreated medical issues
- malnutrition
- unwanted pregnancy
- engage in illegal activity
- sex trafficking

Exploiters manipulate the needs for love, stability, food, clothing, money, and shelter. They often position themselves as romantic partners or caregivers.

When do juvenile victims come before the court?

- Child in Need of Care proceedings
- Criminal Actions
- Masking Crimes – (like shop lifting, to avoid the trafficker withholding food, drugs, beatings, love, etc. if money doesn’t meet requirements.)
- Probation Violations
- Witnesses/Participants in Divorce or Criminal Proceedings

“Sex trafficking survivors often receive varying labels, such as sexual abuse victims, rape victims, substance abusers, chronic runaways, child prostitutes, delinquents, etc. As a consequence, victims often are misidentified and referred for various types of services that do not specifically or comprehensively address their unique needs.”

IDENTIFYING TRAFFICKED MINORS

Common social and medical indicators of possible trafficking:

- frequent runaway – more than three times in a year;
- homeless;

- gang-involved youth;
- chronic truant;
- branded - being marked with a tattoo as property of trafficker;
- duplicate social media sites (two Facebook pages, twitter accounts etc. one personal, the other for sex work);
- multiple cell phones;
- unexplained cash, clothes, jewelry;
- involved in the child welfare system;
- pregnancy, abortions, sexually transmitted diseases, urinary tract infections;
- untreated past injuries (concussions, burns, vagina/anal tearing), injuries in unusual places;
- drug/alcohol addiction (meth very common);
- signs of physical or sexual violence; and
- Lesbian, Gay, Bisexual, Transgender, Questioning (LGBTQ) youth.

Who Are Possible Traffickers?

- pimp or other third-party trafficker (of any gender)
- gang-based
- family-based
- survival sex
- “independent” or “self-managed”
- peer to peer
- exploitation through other forms of the sex trades (pornography, strip clubs, webcam, private parties)

“In each of these types, much of the exploitation is facilitated through the Internet using commercial sex websites, social media, or dating websites”.

Places Where Human Trafficking Occurs Include:

- Motel/hotel;
- Truck stop/ travel plaza;
- Massage parlor;
- Residence;
- School/school activities; and
- Adult escort sites like Backpage.com

RESOURCES FOR INFORMATION:

- National Center for Missing and Exploited Children, NCMEC, www.missingkids.com
- National Human Trafficking Training and Technical Assistance Center (NHTTAC), HHS, Office on Trafficking in Persons, www.acf.hhs.gov 844-648-8822
- Child Welfare Capacity Building Collaborative, Center for States, Courts and Tribes, <https://capacity.childwelfare.gov>
- National Human Trafficking Hotline, www.humantraffickinghotline.org; for victim services and reports of trafficking, 1-888-373-7888 or TEXT “BEFREE” toll free, 24/7.