

**SENATE BILL No. 389**

By Committee on Judiciary

2-12

1 AN ACT concerning the Kansas family law code; relating to domestic case  
2 management; amending K.S.A. 2013 Supp. 23-3507, 23-3508, 23-3509  
3 and 38-2223 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 23-3507 is hereby amended to read as  
7 follows: 23-3507. (a) *Domestic case management under this act the*  
8 *Kansas family law code* is the process by which a neutral *domestic case*  
9 *manager* appointed by the court, or by a hearing officer in a proceeding  
10 pursuant to K.S.A. 2013 Supp. 23-3401, and amendments thereto, or  
11 through agreement by the parties, assists the parties by providing a  
12 procedure, other than mediation, which facilitates negotiation of a plan for  
13 child custody, residency or visitation or parenting time. ~~In the event that~~  
14 ~~the parties are unable to reach an agreement, the case manager shall make~~  
15 ~~recommendations to the court.~~

16 (b) *The authority to exercise management and control of a case*  
17 *remains exclusively with the court. The appointment of a domestic case*  
18 *manager does not divest the court of its exclusive jurisdiction to determine*  
19 *fundamental issues of legal custody, residency, parenting time, third-party*  
20 *visitation and child support. A party can request at any time that a*  
21 *domestic case manager provide information to the court for judicial*  
22 *review of the case.*

23 (c) *Nothing in the Kansas family law code shall abrogate either*  
24 *parent's custodial, residential or parenting time rights or any court-*  
25 *ordered visitation given to third parties except as specifically addressed in*  
26 *the court order appointing the domestic case manager.*

27 Sec. 2. K.S.A. 2013 Supp. 23-3508 is hereby amended to read as  
28 follows: 23-3508. (a) The court may order *domestic case management*,  
29 when appropriate, of any contested issue of child custody or parenting  
30 time at any time, upon the motion of a party or on the court's own motion.  
31 A hearing officer in a proceeding pursuant to K.S.A. 2013 Supp. 23-3401,  
32 and amendments thereto, may order *domestic case management*, if  
33 appropriate, of a contested issue of child visitation or parenting time in  
34 such a proceeding.

35 (b) ~~Cases in which case management is appropriate shall include one~~  
36 ~~or more of the following circumstances:~~

1 ~~(1) Private or public neutral dispute resolution services have been~~  
2 ~~tried and failed to resolve the disputes;~~

3 ~~(2) other neutral services have been determined to be inappropriate~~  
4 ~~for the family;~~

5 ~~(3) repetitive conflict occurs within the family, as evidenced by the~~  
6 ~~filing of at least two motions in a six-month period for enforcement,~~  
7 ~~modification or change of residency, visitation, parenting time or custody~~  
8 ~~which are denied by the court; or~~

9 ~~(4) a parent exhibits diminished capacity to parent.~~

10 (b) *The court or hearing officer shall not order domestic case*  
11 *management if any party objects, unless the court makes the following*  
12 *findings of fact:*

13 (1) *The case is high conflict based on a determination by the court*  
14 *identifying the nature of the problems that led the court to make such*  
15 *determination;*

16 (2) *other methods to resolve any identified conflicts have been*  
17 *attempted, but have failed to resolve the disputes identified as creating*  
18 *high conflict in the case;*

19 (3) *the appointment of a domestic case manager is in the best*  
20 *interests of the children; and*

21 (4) *goals may be achieved by appointment of a domestic case*  
22 *manager.*

23 (c) If the court or hearing officer orders *domestic case management*  
24 ~~under subsection (a) this section~~, the court or hearing officer shall appoint  
25 a *domestic case manager*, taking into consideration the following:

26 (1) An agreement by the parties to have a specific *domestic case*  
27 *manager* appointed by the court or hearing officer;

28 (2) the financial circumstances of the parties and the costs assessed  
29 by the *domestic case manager*;

30 (3) the *domestic case manager's* knowledge of (A) the Kansas judicial  
31 system and the procedure used in domestic relations cases, (B) other  
32 resources in the community to which parties can be referred for assistance,  
33 (C) child development, (D) clinical issues relating to children, (E) the  
34 effects of divorce on children and (F) the psychology of families; and

35 (4) the *domestic case manager's* training and experience in the  
36 process and techniques of alternative dispute resolution and *domestic case*  
37 *management.*

38 (d) To qualify as an appointed *domestic case manager*, an individual  
39 shall:

40 (1) (A) Be currently licensed in Kansas as a licensed psychologist,  
41 licensed masters level psychologist, licensed clinical psychotherapist,  
42 licensed professional counselor, licensed clinical professional counselor,  
43 licensed marriage and family therapist, licensed clinical marriage and

1 family therapist, licensed master social worker or licensed specialist social  
2 worker;

3 (B) be currently licensed to practice law in Kansas and have at least  
4 five years of experience in the field of domestic relations law or family  
5 law; or

6 (C) be a court services officer ~~and~~, have training in domestic relations  
7 cases as prescribed by the district court in which the case is filed *and be*  
8 *appointed by the district court prior to August 28, 2012;*

9 (2) be qualified to conduct mediation;

10 (3) have experience as a mediator;

11 (4) attend one or more workshops, approved and as ordered by the  
12 district court in which the case is filed, on *domestic* case management; and

13 (5) ~~complete a minimum number of~~ *at least six* continuing education  
14 hours *annually* regarding *domestic* case management issues or abuse and  
15 control dynamics issues as established and approved by the supreme court.  
16 *Upon request by an appointing judge or hearing officer, a domestic case*  
17 *manager shall provide documentation demonstrating compliance with the*  
18 *provisions of this subsection.*

19 (e) *If a court or hearing officer appoints a domestic case manager*  
20 *under this section, the domestic case management shall be limited to a*  
21 *specific time period, not to exceed 36 months, which may be renewed by*  
22 *an agreement of the parties or by the court or hearing officer at a hearing*  
23 *where the effectiveness and appropriateness of the domestic case*  
24 *management process is considered by the court with all parties*  
25 *contributing.*

26 (f) *The director of dispute resolution appointed by the judicial*  
27 *administrator pursuant to K.S.A. 5-503, and amendments thereto, shall*  
28 *establish standards and approve all continuing education hours for*  
29 *domestic case managers under this section. Continuing education hours*  
30 *approved by the director of dispute resolution may involve topics*  
31 *including, but not be limited to, domestic case management, domestic*  
32 *relations, mediation and the dynamics of abuse and control. The director*  
33 *of dispute resolution may approve continuing legal education hours*  
34 *approved by the state continuing legal education accrediting organization*  
35 *as continuing education hours for domestic case managers if such*  
36 *continuing legal education hours relate to issues involving domestic case*  
37 *management, domestic relations, mediation or the dynamics of abuse and*  
38 *control.*

39 (e) (g) ~~On and after September 1, 2012~~ *December 31, 2014*, any  
40 *domestic case manager appointed by the court prior to, on or after July 1,*  
41 ~~2012~~ *2014*, shall meet the requirements of subsection (d).

42 Sec. 3. K.S.A. 2013 Supp. 23-3509 is hereby amended to read as  
43 follows: 23-3509. (a) A *domestic case manager* appointed under K.S.A.

1 2013 Supp. 23-3508, and amendments thereto, ~~shall~~ *may*:

2 (1) Meet with the parties, and other individuals deemed appropriate;

3 (2) gather information necessary to assist the parties in reaching an  
4 agreement or making recommendations, including medical, psychological,  
5 education and court records, including child custody investigations and  
6 child custody psychological evaluations, of the parties and children;

7 (3) report to the court as directed by court order;

8 (4) keep a record by date and topic of all contacts with the parties in  
9 the case. When requested, this record shall be made available to the court  
10 in total or summary form without the express consent of the parties and  
11 shall not be considered a medical or psychological record for purposes of  
12 confidentiality;

13 (5) notify the court when a party fails to meet the financial  
14 obligations of the *domestic* case management process;

15 (6) file for collection of costs as necessary. The court shall assist in  
16 such filing or collection efforts, or both;

17 (7) be authorized by the court to report threats, imminent danger,  
18 suspected child abuse, fear of abduction and suspected or actual harm to  
19 any party or child involved in *domestic* case management either directly to  
20 the court and to other authorities, or both. Such action shall be followed by  
21 a written summary within five business days of the initial filing of such  
22 report which shall be sent to the judge or the judge's designee and included  
23 in the court file; and

24 (8) directly contact the court with any other information the *domestic*  
25 case manager determines that the court should know. *Any information*  
26 *provided to the court pursuant to this paragraph shall also be distributed*  
27 *to the parties.*

28 (b) A *domestic* case manager appointed under K.S.A. 2013 Supp. 23-  
29 3508, and amendments thereto, may withdraw at any time following the  
30 initial order. Sufficient reasons for withdrawal may include, but not be  
31 limited to, the following:

32 (1) Loss of neutrality which prevents objectivity;

33 (2) nonpayment by a party;

34 (3) lack of cooperation by a party;

35 (4) threat to a party;

36 (5) retirement or case load reduction by a *domestic* case manager; or

37 (6) any other reason which shall be stated to the court in writing and  
38 considered adequate and sufficient reason by the court.

39 (c) A disputant party may request reassignment of a *domestic* case  
40 manager by filing a motion with the court. The court shall consider such  
41 requests upon review. Repeated requests may raise a presumption of lack  
42 of parental cooperation and the court may consider sanctions against the  
43 uncooperative parent or parents.

1       ~~(d) (1) If parties have been ordered by the court to attempt to settle~~  
2 ~~the party's disputes with the assistance of a case manager, and are unable~~  
3 ~~to settle such disputes, the parties are to follow the recommendation or~~  
4 ~~recommendations of the case manager as ordered by the court.~~

5       ~~(2) When a case manager is forced to make recommendations for the~~  
6 ~~parties, such recommendations shall be noted in writing as soon as~~  
7 ~~possible and may be accompanied by supporting information. Such~~  
8 ~~recommendation shall be reported to the court with copies to the attorneys~~  
9 ~~of record for each party within 10 working days.~~

10       ~~(3) Agreements of the parties and recommendations of the case~~  
11 ~~manager which may concern temporary arrangements need not be entered~~  
12 ~~into the court record by the attorneys of record.~~

13       ~~(4) Case managers shall be furnished a form for orders to recommend~~  
14 ~~such agreements to the court for the court's final order.~~

15       ~~(5) Permanent issues such as designation of custody, primary~~  
16 ~~residence or child support which are recommended by the case manager~~  
17 ~~shall be entered into the court record within 10 working days of receipt of~~  
18 ~~the recommendation. Should there be differing opinions as to the language~~  
19 ~~of the journal entry, the case manager shall review the proposed journal~~  
20 ~~entry and may recommend appropriate language to the court.~~

21       ~~(6) If a disputant party disagrees with a recommendation such party~~  
22 ~~may file a motion before the court for a review at which time an order~~  
23 ~~shall be made by the court. The case manager shall explain to the court~~  
24 ~~either by report or testimony the reasons for such recommendation or~~  
25 ~~recommendations.~~

26       ~~(7) (d) Costs of the procedure and professional time may be assessed~~  
27 ~~to the party who objected to the recommendations in the journal entry or~~  
28 ~~may be otherwise assessed by the court as costs of the action. The court~~  
29 ~~may require that a retainer be paid to the domestic case manager before~~  
30 ~~services are provided by the domestic case manager.~~

31       ~~(e) The meetings between a domestic case manager and the parties~~  
32 ~~may be informal. Any communications made between a domestic case~~  
33 ~~manager and the parties, or between a domestic case manager and any~~  
34 ~~person with information relating to the parties or best interest of a child,~~  
35 ~~shall not be confidential.~~

36       ~~(f) A domestic case manager may allow the parties to make minor~~  
37 ~~temporary departures from an existing parenting plan, upon agreement by~~  
38 ~~the parties. In addition, a domestic case manager may make minor~~  
39 ~~temporary departures from an existing parenting plan if authorized by the~~  
40 ~~court or hearing officer.~~

41       ~~(g) Any order by a court or hearing officer appointing a domestic~~  
42 ~~case manager shall specify the matters of legal custody, parenting time~~  
43 ~~and aspects of the parenting plan that the domestic case manager is~~

1 authorized to address.

2 (h) By written agreement, the parties may agree to have the domestic  
3 case manager address and provide recommendations on additional issues  
4 so long as addressing such additional issues are not inconsistent with any  
5 orders of the court.

6 (i) If the parties are unable to come to an agreement upon all issues  
7 in dispute, the domestic case manager shall make written  
8 recommendations to the court within 14 days of an impasse, as determined  
9 by the domestic case manager. Any determination of an impasse made by a  
10 domestic case manager under this subsection shall be supported with facts  
11 and information.

12 (1) A domestic case manager's recommendations regarding  
13 resolution of a dispute or permanent changes to a parenting plan shall be  
14 in writing to the court or hearing officer within 14 days of impasse, with  
15 copies served to the parties.

16 (2) The domestic case manager's reporting of recommendations  
17 under this subsection shall explain the reasoning for the domestic case  
18 manager's recommendations, including specific factual references relevant  
19 to the recommendations.

20 (3) The parties upon whom a domestic case manager's report is  
21 served shall serve the court or hearing officer, domestic case manager and  
22 all other parties with a motion containing any objections to such report  
23 within 14 days after service is made.

24 (4) Upon a party's motion objecting to a domestic case manager's  
25 report, the court or hearing officer may order the domestic case manager  
26 to explain to the court in writing or by testimony any additional reasons  
27 for the recommendations in the domestic case manager's report.

28 (5) Upon expiration of the 14-day period to move for objection to a  
29 domestic case manager's report under this section, the court or hearing  
30 officer shall make and resolve any objections to a domestic case  
31 manager's report in a manner the court or hearing officer deems  
32 appropriate, necessary and consistent.

33 (6) If a hearing is not requested by either party under this subsection,  
34 the court or hearing officer may set the matter for hearing or rule on a  
35 disputed issue without a hearing.

36 (j) The court or hearing officer shall conduct an evidentiary hearing  
37 prior to ruling on a domestic case manager's recommendations when a  
38 domestic case manager's recommendations:

39 (1) Materially affect custody or parenting time;

40 (2) materially affect the implementation of other provisions of the  
41 parenting plan;

42 (3) rely upon material facts unsupported by specific factual  
43 references; or

- 1       (4) *rely upon material facts specifically disputed by a party.*  
2       (k) *The court or hearing officer may remove a domestic case*  
3 *manager at its discretion. Upon good cause shown, the court may also*  
4 *remove a domestic case manager by the request or agreement of the*  
5 *parties.*

6       Sec. 4. K.S.A. 2013 Supp. 38-2223 is hereby amended to read as  
7 follows: 38-2223. (a) *Persons making reports.* (1) When any of the  
8 following persons has reason to suspect that a child has been harmed as a  
9 result of physical, mental or emotional abuse or neglect or sexual abuse,  
10 the person shall report the matter promptly as provided in subsections (b)  
11 and (c);

12       (A) The following persons providing medical care or treatment:  
13 Persons licensed to practice the healing arts, dentistry and optometry,  
14 persons engaged in postgraduate training programs approved by the state  
15 board of healing arts, licensed professional or practical nurses and chief  
16 administrative officers of medical care facilities;

17       (B) the following persons licensed by the state to provide mental  
18 health services: Licensed psychologists, licensed masters level  
19 psychologists, licensed clinical psychotherapists, licensed social workers,  
20 licensed marriage and family therapists, licensed clinical marriage and  
21 family therapists, licensed professional counselors, licensed clinical  
22 professional counselors and registered alcohol and drug abuse counselors;

23       (C) teachers, school administrators or other employees of an  
24 educational institution which the child is attending and persons licensed by  
25 the secretary of health and environment to provide child care services or  
26 the employees of persons so licensed at the place where the child care  
27 services are being provided to the child;

28       (D) firefighters, emergency medical services personnel, law  
29 enforcement officers, juvenile intake and assessment workers, court  
30 services officers, community corrections officers, *domestic* case managers  
31 appointed under K.S.A. 2013 Supp. 23-3508, and amendments thereto, and  
32 mediators appointed under K.S.A. 2013 Supp. 23-3502, and amendments  
33 thereto; and

34       (E) any person employed by or who works as a volunteer for any  
35 organization, whether for profit or not-for-profit, that provides social  
36 services to pregnant teenagers, including, but not limited to, counseling,  
37 adoption services and pregnancy education and maintenance.

38       (2) In addition to the reports required under subsection (a)(1), any  
39 person who has reason to suspect that a child may be a child in need of  
40 care may report the matter as provided in subsection (b) and (c).

41       (b) *Form of report.* (1) The report may be made orally and shall be  
42 followed by a written report if requested. Every report shall contain, if  
43 known: The names and addresses of the child and the child's parents or

1 other persons responsible for the child's care; the location of the child if  
2 not at the child's residence; the child's gender, race and age; the reasons  
3 why the reporter suspects the child may be a child in need of care; if abuse  
4 or neglect or sexual abuse is suspected, the nature and extent of the harm  
5 to the child, including any evidence of previous harm; and any other  
6 information that the reporter believes might be helpful in establishing the  
7 cause of the harm and the identity of the persons responsible for the harm.

8 (2) When reporting a suspicion that a child may be in need of care,  
9 the reporter shall disclose protected health information freely and  
10 cooperate fully with the secretary and law enforcement throughout the  
11 investigation and any subsequent legal process.

12 (c) *To whom made.* Reports made pursuant to this section shall be  
13 made to the secretary, except as follows:

14 (1) When the department of social and rehabilitation services is not  
15 open for business, reports shall be made to the appropriate law  
16 enforcement agency. On the next day that the department is open for  
17 business, the law enforcement agency shall report to the department any  
18 report received and any investigation initiated pursuant to K.S.A. 2013  
19 Supp. 38-2226, and amendments thereto. The reports may be made orally  
20 or, on request of the secretary, in writing.

21 (2) Reports of child abuse or neglect occurring in an institution  
22 operated by the secretary of social and rehabilitation services or the  
23 commissioner of juvenile justice shall be made to the attorney general. All  
24 other reports of child abuse or neglect by persons employed by or of  
25 children of persons employed by the department of social and  
26 rehabilitation services shall be made to the appropriate law enforcement  
27 agency.

28 (d) *Death of child.* Any person who is required by this section to  
29 report a suspicion that a child is in need of care and who knows of  
30 information relating to the death of a child shall immediately notify the  
31 coroner as provided by K.S.A. 22a-242, and amendments thereto.

32 (e) *Violations.* (1) Willful and knowing failure to make a report  
33 required by this section is a class B misdemeanor. It is not a defense that  
34 another mandatory reporter made a report.

35 (2) Intentionally preventing or interfering with the making of a report  
36 required by this section is a class B misdemeanor.

37 (3) Any person who willfully and knowingly makes a false report  
38 pursuant to this section or makes a report that such person knows lacks  
39 factual foundation is guilty of a class B misdemeanor.

40 (f) *Immunity from liability.* Anyone who, without malice, participates  
41 in the making of a report to the secretary or a law enforcement agency  
42 relating to a suspicion a child may be a child in need of care or who  
43 participates in any activity or investigation relating to the report or who



1 participates in any judicial proceeding resulting from the report shall have  
2 immunity from any civil liability that might otherwise be incurred or  
3 imposed.

4 Sec. 5. K.S.A. 2013 Supp. 23-3507, 23-3508, 23-3509 and 38-2223  
5 are hereby repealed.

6 Sec. 6. This act shall take effect and be in force from and after its  
7 publication in the statute book.