

HOUSE BILL No. 2039

By Committee on Judiciary

I-16

Proposed Amendment to HB 2039  
For Committee on Judiciary  
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February 23, 2015 10:22

1 AN ACT concerning the Kansas family law code; relating to domestic case  
2 management; amending K.S.A. 2014 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. 2014 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. 2014 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 decision-making, parenting time  
14 or third-party visitation. In the event that the parties are unable to reach an  
15 agreement, the case manager shall make 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 decision-making, 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 third-party  
25 visitation, except as specifically addressed in the court order appointing  
26 the domestic case manager.

27 Sec. 2. K.S.A. 2014 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 decision-  
30 making, parenting time or third-party visitation at any time, upon the  
31 motion of a party or on the court's own motion. A hearing officer in a  
32 proceeding pursuant to K.S.A. 2014 Supp. 23-3401, and amendments  
33 thereto, may order domestic case management, if appropriate, of a  
34 contested issue of child custody, decision-making, or parenting time or  
35 third-party visitation in such a proceeding.

36 (b) Cases in which case management is appropriate shall include one

parental

Strike in lines 20-22; insert "Any party to the case may request a hearing by filing a motion with the court."

parental

parental

or more of the following circumstances:

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

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

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

(4) a parent exhibits diminished capacity to parent.

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

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

(2) other methods to resolve any identified conflicts have been attempted, but have failed to resolve the disputes identified as creating high conflict in the case; \_\_\_\_\_ and \_\_\_\_\_

(3) the appointment of a domestic case manager is in the best interest of the children; and \_\_\_\_\_

(4) goals may be achieved by appointment of a domestic case manager; \_\_\_\_\_

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

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

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

(3) the domestic case manager's knowledge of:

(A) The Kansas judicial system and the procedure used in domestic relations cases; (B) other resources in the community to which parties can be referred for assistance; (C) child development; (D) clinical issues relating to children; (E) the effects of divorce on children; and (F) the psychology of families; and

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

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

(1) (A) Be currently licensed in Kansas as a licensed psychologist, licensed masters level psychologist, licensed clinical psychologist,

Strike in lines 14-17, 20-23

(2)

and

1 licensed professional counselor, licensed clinical professional counselor,  
2 licensed marriage and family therapist, licensed clinical marriage and  
3 family therapist, licensed master social worker or licensed specialist social  
4 worker;

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

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

11 (2) be qualified to conduct mediation;

12 (3) have experience as a mediator;

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

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

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

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

41 (g) On and after September 1, 2012 December 31, 2015, any  
42 domestic case manager appointed by the court prior to, on or after July 1,  
43 2012 2015, shall meet the requirements of subsection (d).

as a domestic case manager

, including a minimum of 1 continuing education hour on  
domestic violence and dynamics of abuse and control

; and

(6) have completed a minimum of 4 hours of  
training, approved by the director of dispute  
resolution, on domestic violence, including  
domestic violence within a relationship,  
dynamics of abuse and control and safety  
measures for use during the process of  
domestic case management

procedures for reviewing and  
approving

Strike in lines 34-40

Change date from December 31, 2015 to July 1, 2016

1 Sec. 3. K.S.A. 2014 Supp. 23-3509 is hereby amended to read as  
 2 follows: 23-3509. (a) A *domestic* case manager appointed under K.S.A.  
 3 2014 Supp. 23-3508, and amendments thereto, ~~shall~~ *may*:

4 (1) Meet with the parties, and other individuals deemed appropriate;  
 5 (2) gather information necessary *regarding the parties and the*  
 6 *children* to assist the parties in reaching an agreement or making  
 7 recommendations, including medical, psychological, education and court  
 8 records, including child custody investigations ~~and~~, child custody  
 9 psychological evaluations ~~of the parties and children or parenting plan~~  
 10 *evaluations*;

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

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

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

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

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

28 (8) directly contact the court with any other information the *domestic*  
 29 case manager determines that the court should know. *Any information*  
 30 *provided to the court pursuant to this paragraph shall also be distributed*  
 31 *to the parties.*

32 (b) A *domestic* case manager appointed under K.S.A. 2014 Supp. 23-  
 33 3508, and amendments thereto, may withdraw at any time following the  
 34 initial order. Sufficient reasons for withdrawal may include, but not be  
 35 limited to, the following:

36 (A) Loss of neutrality which prevents objectivity;

37 (B) nonpayment by a party;

38 (C) lack of cooperation by a party;

39 (D) threat to a party;

40 (E) retirement or case load reduction by a *domestic* case manager; or

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

43 (c) A disputant party may request reassignment of a *domestic* case

(3) gather information necessary regarding the parties and  
 the children to assist the parties in assessing for previous  
 or ongoing domestic violence;  
 [renumbering paragraphs accordingly]

(A); and by relettering remaining paragraphs

(1)

(2) The court or hearing officer may remove a domestic case  
 manager at its discretion.  
 (3) Upon good cause shown, the court or hearing officer may  
 remove a domestic case manager by the request or agreement of  
 the parties.

1 manager by filing a motion with the court. The court shall consider such  
2 requests upon review. Repeated requests may raise a presumption of lack  
3 of parental cooperation and the court may consider sanctions against the  
4 uncooperative parent or parents.

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

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

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

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

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

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

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

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

40 ~~(f) A domestic case manager may allow the parties to make minor,~~  
41 ~~temporary departures from an existing parenting plan, upon agreement by~~  
42 ~~the parties. In addition, a domestic case manager may make minor,~~  
43 ~~temporary departures from an existing parenting plan if authorized by the~~

Strike in lines 35-36



1 court or hearing officer:

2 (g) Any order by a court or hearing officer appointing a domestic  
3 case manager shall specify the matters of decision-making, parenting time,  
4 third-party visitation and aspects of the parenting plan that the domestic  
5 case manager is authorized to address.

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

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

16 (j) ~~A domestic case manager's recommendations regarding~~  
17 ~~resolution of a dispute or permanent changes to a parenting plan shall be~~  
18 ~~in writing to the court or hearing officer within 14 days of impasse, with~~  
19 ~~copies served to the parties.~~

20 (k) ~~The domestic case manager's reporting of recommendations~~  
21 ~~under this subsection shall explain the reasoning for the domestic case~~  
22 ~~manager's recommendations, including specific factual references relevant~~  
23 ~~to the recommendations.~~

24 (l) ~~The parties upon whom a domestic case manager's report is~~  
25 ~~served shall serve the court or hearing officer domestic case manager and~~  
26 ~~all other parties with a motion containing any objections to such report~~  
27 ~~within 14 days after service is made.~~

28 (m) ~~Upon a party's motion objecting to a domestic case manager's~~  
29 ~~report, the court or hearing officer may order the domestic case manager~~  
30 ~~to explain to the court in writing or by testimony any additional reasons~~  
31 ~~for the recommendations in the domestic case manager's report.~~

32 (n) ~~Upon expiration of the 14 day period to move for objection to a~~  
33 ~~domestic case manager's report under this section, the court or hearing~~  
34 ~~officer shall make and resolve any objections to a domestic case~~  
35 ~~manager's report in a manner the court or hearing officer deems~~  
36 ~~appropriate, necessary and consistent.~~

37 (o) ~~If a hearing is not requested by either party under this subsection,~~  
38 ~~the court or hearing officer may set the matter for hearing or rule on a~~  
39 ~~disputed issue without a hearing.~~

40 (p) ~~The court or hearing officer shall conduct an evidentiary hearing~~  
41 ~~prior to ruling on a domestic case manager's recommendations when a~~  
42 ~~domestic case manager's recommendations~~

43 (q) ~~Materially affect decision-making, parenting time or third party~~

Proposed Amendments to HB 2039  
For Committee on Judiciary  
Prepared By: Katherine Goyette, Office of  
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Strike all in lines 10-43; insert "(1) If the domestic case manager determines the parties are unable to come to an agreement upon any issue in dispute, the domestic case manager shall submit a written report to the court or hearing officer and to each party within 14 days after the domestic case manager makes such determination. The written report shall include the factual basis for the parties' disagreement and provide recommendations by the domestic case manager on the parties' disputed issues.  
(2) Within 14 days after receiving the domestic case manager's written report, any party may object to the report by filing a motion with the court.

1 ~~viation;~~  
2 ~~(2) materially affect the implementation of other provisions of the~~  
3 ~~parenting plan;~~

4 ~~(3) rely upon material facts unsupported by specific factual~~  
5 ~~references; or~~

6 ~~(4) rely upon material facts specifically disputed by a party;~~

7 ~~(4) The court or hearing officer may remove a domestic case~~  
8 ~~manager at its discretion. Upon good cause shown, the court may also~~  
9 ~~remove a domestic case manager by the request or agreement of the~~  
10 ~~parties.~~

11 Sec. 4. K.S.A. 2014 Supp. 38-2223 is hereby amended to read as  
12 follows: 38-2223. (a) *Persons making reports.* (1) When any of the  
13 following persons has reason to suspect that a child has been harmed as a  
14 result of physical, mental or emotional abuse or neglect or sexual abuse,  
15 the person shall report the matter promptly as provided in subsections (b)  
16 and (c);

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

22 (B) the following persons licensed by the state to provide mental  
23 health services: Licensed psychologists, licensed masters level  
24 psychologists, licensed clinical psychotherapists, licensed social workers,  
25 licensed marriage and family therapists, licensed clinical marriage and  
26 family therapists, licensed professional counselors, licensed clinical  
27 professional counselors and registered alcohol and drug abuse counselors;  
28 (C) teachers, school administrators or other employees of an  
29 educational institution which the child is attending and persons licensed by  
30 the secretary of health and environment to provide child care services or  
31 the employees of persons so licensed at the place where the child care  
32 services are being provided to the child;

33 (D) firefighters, emergency medical services personnel, law  
34 enforcement officers, juvenile intake and assessment workers, court  
35 services officers, community corrections officers, *domestic case managers*  
36 appointed under K.S.A. 2014 Supp. 23-3508, and amendments thereto, and  
37 mediators appointed under K.S.A. 2014 Supp. 23-3502, and amendments  
38 thereto; and

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

43 (2) In addition to the reports required under subsection (a)(1), any

Strike all in lines 1-10