

**REVISED KANSAS
CODE FOR CARE OF CHILDREN
(Including Committee Comments)**

***DRAFTED BY
JUVENILE OFFENDER/CHILD IN NEED OF CARE
ADVISORY COMMITTEE***

***Approved by Kansas Judicial Council
November 5, 2004***

**TABLE OF CONTENTS
FOR
REVISED KANSAS CODE FOR CARE OF CHILDREN**

<u>New Section</u>	<u>Former K.S.A. Section</u>	<u>Caption</u>	<u>Page</u>
		General Comments to Revised Kansas Code for Care of Children	1
General Provisions			
1	38-1501	Construction of code; Policy of State	7
2	38-1502	Definitions	9
3	38-1503	Jurisdiction	17
4	38-1504	Venue	19
5	38-1505	Right to counsel	21
6	38-1505a	Appointment of special advocate	24
7	38-1812	Citizen Review Boards; members	25
8	38-1813	Citizen Review Boards: duties and powers	26
		Comment regarding confidentiality sections	28
9	38-1510	Duties of county or district attorney	29
10	38-1511	Docket fee and expenses	30
11	38-1512	Expense of care and custody of child	32
12	38-1513	Health services	34
13	38-1513a.	Educational decisions; education advocates for exceptional children; definitions	37
14	38-1514	Evaluation of development or needs	38
15	38-1516	Parentage	41
16	38-1518	Fingerprints and photographs	42
17	38-1521	Reporting of certain abuse or neglect of children; public information and educational program	43
18	38-1522	Reporting of certain abuse or neglect of children; persons reporting; reports, made to whom; penalties for failure to report or interference with making of a report	44
19	38-1525	Same; employer prohibited from imposing sanctions on employee making report or cooperating in investigation	48
20	38-1522b	Same; reporting of certain abuse or neglect of children in institutions operated by the secretary; rules and regulations	49
21	38-1523	Same; investigation of reports; disclosure upon application right to quash	50
22	38-15,101	Child advocacy centers	53
23	38-1523a	Reporting of certain abuse or neglect of children; multidisciplinary team; appointment	55
24	(New)	Same; application for subpoena; request to quash	56
25	38-1524	Same; duties of SRS	59

<u>New Section</u>	<u>Former K.S.A. Section</u>	<u>Caption</u>	<u>Page</u>
26	38-1527	Child under 18, when law enforcement officers or court services officers may take into custody	60
27	38-1528	Child under 18 taken into custody; duties of officers; referral of cases for proceedings under this code and interstate compact on juveniles; custody of shelter facility or other person; application of law enforcement officer; release of child	62
28	38-1529	Filing of petition on referral by SRS or other person; filing by individual	65

Pleadings, Process and Preliminary Matters

		General Comments to Sections 29, 31, 32, 34 and 62	66
29	38-1531	Pleadings	67
30	38-1532	Procedure upon filing of petition	70
31	38-1533	Summons; persons upon whom served; Notice of hearing: form.	71
32	38-1534	Service of process	74
33	38-1535	Proof of service	79
34	38-1536	Service of other pleadings	82
35	38-1537	Subpoenas and witness fees	84
36	38-1541	Additional parties	85
37	38-1542	Ex parte orders of protective custody; application; determination of probable cause; period of time; placement; procedures; orders for removal of child from custody of parent, limitations	90
38	38-1543	Orders of temporary custody; notice; hearing; procedure; findings; placement; orders for removal of child from custody of parent, limitations	93
39	38-1544	Order for informal supervision; restraining orders	99
40	38-1545	Discovery	101

Adjudicatory Procedure

41	38-1551	Continuances	102
42	38-1552	Attendance at proceedings	103
43	38-1553	Stipulations and no contest statements	105
44	38-1554	Rules of evidence	108
45	38-1555	Degree of proof	112
46	38-1556	Adjudication	113
47	38-1559	Predispositional alternative; placement with person other than child's parent; conference, recommendations; immunity	114

<u>New Section</u>	<u>Former K.S.A. Section</u>	<u>Caption</u>	<u>Page</u>
Dispositional Procedure			
48	38-1561	Dispositional hearings; purpose; time.	116
49	38-1562	Dispositional hearing; notice	117
50	38-1563	Authorized dispositional orders	119
51	38-1564	Rehearing	127
52	38-1565	Permanency planning at disposition	128
53	38-1566	Change of placement; removal from home of parent, findings by court	129
54	38-1567	Emergency change of placement; removal from home of parent, findings of court	131
55	38-1568	Placement; order directing child to remain in present or future placement, application for determination that child has violated order; procedure; authorized dispositions; limitations on facilities used for placement; computation of time limitations	132
56	38-1569	Reports made by foster parents; form	137
57	38-1570	Placement; testimony of certain children	140
58	(New)	Planning for permanency	141
59	(New)	Permanency hearings, purpose, procedure, time for hearings	144
60	(New)	Permanency hearings; notice;	147
Termination of Parental Rights			
61	38-1581	Request for termination of parental rights or appointment of permanent custodian	149
62	38-1582	Procedure upon receipt of request	150
63	(New)	Voluntary relinquishment, voluntary permanent custodianship and consent to adoption	152
64	38-1583	Factors to be considered in termination of parental rights; appointment of a permanent custodian	155
65	38-1584	Custody for adoption	160
66	38-1585	Presumption of unfitness, when; burden of proof	162
67	38-1587	Appointment of permanent custodian	166
Appeals			
68	38-1591	Appeals; procedure; verification	171
69	38-1592	Temporary orders pending appeal; status of orders appealed from	172
70	38-1593	Fees and expenses	173

<u>New Section</u>	<u>Former K.S.A. Section</u>	<u>Caption</u>	<u>Page</u>
Detainment or Placement in Jail			
71	38-1594	Prohibiting detainment or placement of child in jail	174
Child Support Ordered Under the Code			
72	38-1595	Determination of child support under code	175
73	38-1596	Journal entry for child support under code	177
74	38-1597	Withholding order for child support under code; filing; service	178
75	38-1598	Remedies supplemental not substitute	181
Miscellaneous			
76	38-1599	Family services and community intervention fund; child in need of care, purpose of expenditure of moneys	182
77	38-15,100	Newborn Infant Protection Act	183

1 **Representative Brenda Landwehr**, Wichita. Representative Landwehr is state representative
2 from Wichita and Vice-Chair of the Joint Committee on Children’s Issues.

3 **Professor Richard E. Levy**, Lawrence. Professor Levy is a professor at the University of
4 Kansas School of Law.

5 **Sue Lockett**, Topeka. Mrs. Lockett has served as Executive Director of C.A.S.A. of Shawnee
6 County for a number of years.

7 **Roberta Sue McKenna**, Topeka. Mrs. McKenna was previously an attorney for Children and
8 Family Policy with Kansas Department of Social and Rehabilitation Services and is now the
9 Assistant Director for Foster Care and Adoption.

10 **Representative Janice L. Pauls**, Hutchinson. Representative Pauls is an attorney, a state
11 representative and is the ranking minority member of the House Judiciary Committee.

12 **Senator Edward W. Pugh**, Wamego. Senator Pugh is an attorney, state senator and vice-chair
13 of the Senate Judiciary Committee. Senator Pugh is the sponsor of the resolution that led to the
14 creation of the committee.

15 **Honorable Steven M. Roth**, Westmoreland. Judge Roth is an attorney and is a district
16 magistrate judge in Pottawatomie County.

17 **Donavon Rutledge**, Topeka. Mr. Rutledge is the recently retired Director of Evaluation and
18 Program Improvement for the Kansas Department of Social and Rehabilitation Services. Previously
19 Mr. Rutledge taught in the School of Social Work at Wichita State University.

20 **Sarah Sargent**, Topeka. Ms. Sargent is an attorney for the Kansas Children’s Service League.

21 **Honorable Jean F. Shepherd**, Lawrence. Judge Shepherd is a member of the Judicial Council
22 and a district judge, and handles juvenile matters in Douglas County.

23
24 The Committee also acknowledges the contributions of Representative Kathe Decker, Michael
25 George, Lisa Mendosa and Helen Pedigo, who served on the Committee but are no longer members.

26 **Overview of Proposals**

27 The Advisory Committee on Juvenile Offender and Child in Need of Care Reform and the
28 Judicial Council propose a substantial revision of the Child in Need of Care Code. The Committee
29 believed that a comprehensive reworking of the code was necessary for a number of reasons. First,
30 while the code was reasonably well organized and accessible as originally drafted, over the years
31 since its adoption in 1982, it has been repeatedly amended. Over time the code has therefore become
32 increasingly disorganized and difficult to use. Second, changes in the background law and standard

1 child welfare practices have made some of the terminology and requirements of the current code
2 outdated and inappropriate. Third, years of experience have revealed some aspects of the code that
3 remain unclear or do not work well and should be changed in order to improve outcomes for children
4 and families.

5 In revising the code, the Committee sought to achieve several interrelated goals. Most important,
6 the committee sought to rework the code so that the state could achieve, to the extent possible, the
7 code's underlying policies, which are articulated in proposed section 1. Of primary concern in this
8 regard is the protection of children against physical and emotional harm and the preservation and
9 strengthening of families. The committee also sought to make the code as "user friendly" as
10 possible. To this end, the committee engaged in extensive reorganization of the code as a whole and
11 of specific code provisions so that code followed a logical progression and related provisions could
12 be found together in one place. In addition, the committee sought to clarify and simplify language
13 whenever possible, use the correct terminology consistently throughout the code, and to resolve
14 ambiguities in current law. These goals have led the committee to propose several types of changes.

- 15 • **Technical Changes:** Most of the changes proposed by the committee are technical in nature.
16 These technical changes are intended to clarify the law without effecting significant changes
17 in it. Technical changes include changes in terminology, phrasing of particular provisions,
18 incorporation of cross references, and similar matters. The specific comments accompanying
19 code provisions do not attempt to identify or explain all of the technical changes.
- 20 • **Organizational Changes:** Many changes proposed by the committee are organizational.
21 They involve moving sections around within the code, moving material from one section to
22 another, or consolidating related provisions in new sections. Like the technical changes,
23 these organizational changes do not, of themselves, alter the content of the current law.
24 Because these changes are less numerous and more significant than the technical changes,
25 whenever possible the comments accompanying the individual sections identify
26 organizational changes and explain the committee's rationale. Many organizational changes
27 are accompanied by substantive and procedural changes in current law, which are discussed
28 separately.
- 29 • **Substantive and Procedural Changes:** Although the committee's proposals do not
30 contemplate fundamental changes in the current CINC system, the proposals do include a
31 number of procedural and substantive changes. These changes range from some that are very
32 minor to others that have more significant policy implications. These changes are
33 highlighted in the comments that accompany individual sections of the code, which also
34 explain the committee's rationale for proposing such changes. The following brief summary
35 of the more significant procedural and substantive changes is offered to facilitate legislative
36 consideration of the committee's proposals.

- 37 1. Adoption and Safe Families Act Compliance: The federal Adoption and Safe Families
38 Act (ASFA) imposes certain requirements on the state as a condition of receiving federal

1 funding. Of particular importance is the ASFA requirement that state must make certain
2 findings before removing a child from the home. These requirements must be met on
3 first removal of the child from the home, which may include very preliminary and
4 temporary removals. In general terms they require a determination that removal is
5 justified either because efforts to preserve the family have failed or because an
6 emergency exists requiring the immediate removal of the child from the home. Although
7 requiring these determinations is not inconsistent with Kansas law, the current code does
8 not specify the findings that need to be made or the circumstances under which they are
9 necessary in a way that ensures compliance with ASFA. The committee has added
10 ASFA compliant language at various places in the code. Some provisions have also been
11 changed in order to comply with other requirements of ASFA

12 Affected Provisions: Sections 37, 38, 46,50,53 and 54.

13 2. Notice and Service of Process: One recurrent problem in CINC proceedings is the delay
14 caused by serving process on absentee parents. While service of process and adequate
15 notice are to permit parents to protect their rights and interests, the committee believes
16 that the current code unnecessarily requires service of process twice: once at the outset
17 of proceedings and a second time if the proceedings move to a termination phase.
18 Because the requirements for service of process on an absentee parent often take some
19 time to complete, delaying the placement of the child in an appropriate and permanent
20 living arrangement. If the absentee parent was not located at the outset of the
21 proceedings and was served by publication notice, requiring a second service of process
22 involving due diligence and eventually publication notice is both lengthy and unlikely
23 to provide any additional notice to the absentee parent. So long as a parent, once found,
24 is given adequate notice of the subsequent phases of the proceeding, further service offers
25 no greater protection of the parent’s right. The committee therefore proposes changes
26 that would allow the state, after service of process at the outset of the proceedings, to
27 provide subsequent notice of further proceedings, including termination proceedings, by
28 first class mail. Because the original service of process would provide full notice of the
29 possibility of termination and of the need for a parent to keep the court informed of his
30 or her mailing address, the committee believes that this approach will more than
31 adequately protect the rights of the parent while facilitating the prompt disposition of the
32 case, which is of vital importance to the child.

33 Affected Provisions: Sections 29, 31, 32, 34 and 62.

34 3. Parties, Interested Parties, and Attendance at Hearings: Currently, the status and role of
35 various interested parties is a source of confusion and uncertainty. Current provisions
36 of the code also restrict the categories of persons who may be made interested parties in
37 a way that prevents some people with important interests from participation in a CINC
38 proceeding. The committee sought to address these concerns by distinguishing between
39 two groups of participants. First, the “parties” are those who are necessarily directly

1 affected by the outcome of the proceeding, including the child, the parents, the petitioner,
2 and the state, whose position is analogous to parties in traditional civil litigation.
3 Second, “interested parties” are those who have a recognized interest in the well-being
4 and potential placement of the child involve in the proceedings, including grandparents,
5 persons with whom the child has been living, and others with a significant relationship
6 to the child. The committee believes that rights, duties, and participatory roles of these
7 two groups are distinct and warrant separate treatment. In most places throughout the
8 code, the committee substituted the phrase “parties or interested parties” for the term
9 “interested parties.” In some instances, the committee used the term “parties,” excluding
10 persons who are interested parties under the new terminology. In addition, the committee
11 believes that there are substantial benefits to be obtained from opening public access to
12 CINC proceedings in the adjudicatory phase, provided that this will not harm the child,
13 and incorporated provisions making that possible.

14 Affected Provisions: Sections 36 and 42.

- 15 4. Dispositional Hearings and Termination of Parental Rights: The committee believes that
16 the current process for dispositional hearings, determinations of fitness, and termination
17 of parental rights is unnecessarily confusing and unclear, with the result being needless
18 delays and, at times, improper orders. The committee sought to clarify and improve the
19 delineation of factors to be considered in dispositional hearings, clarify the relationship
20 between disposition and termination, and make the transition from one phase of the
21 process to another clearer.

22 Affected Provisions: Sections 48, 50 and 62.

- 23 5. Permanency Planning: The committee added several new provisions related to
24 permanency planning and procedures to assess progress on those plans. When a child
25 has been removed from the home, time is of the essence. Whether the goal is
26 reintegration or it becomes necessary to terminate parental rights, the uncertainty of
27 temporary placements, the impediment to developing healthy emotional relationships to
28 parents or other caregivers, and the dislocations that comes with changes of placement
29 are all harmful to the child. These concerns are magnified because children experience
30 time differently than adults. Thus, unnecessary delays must be avoided at all costs. The
31 provisions on case and permanency planning have therefore been reworked to expedite
32 this process.

33 Affected Provisions: 52, 58, 59 and 60.

- 34 6. Permanent Custodian: The committee proposes a new kind of permanent caregiver for
35 a child, replacing the current “permanent guardian,” which the committee has called a
36 “permanent custodian” to avoid confusion. The critical feature of this relationship is that
37 appointment of a permanent custodian does not always require termination of parental

1
2
3
4
5
6
7
8
9
10
11

rights. While a permanent custodian would have virtually all the rights of a parent concerning the child, if parental rights have not been terminated the parent may retain some rights, such as the right to consent to an adoption. This feature is designed to permit a parent to preserve some relationship with the child, to the extent that the custodian deems it to be in the child's best interest. The committee believed that this possibility might induce some parents to consent to the appointment of a permanent custodian without the need for a full termination hearing. The committee also believes that it is often in a child's best interest to maintain some relationship with a parent even though that parent is not capable of taking care of the child.

Affected Provisions: Sections 61, 62, 63, 64 and 67.

1 **REVISED KANSAS CODE FOR CARE OF CHILDREN**

2 **New Section 1. Construction of Code; Policy of State.** Section 1 through Section 77 of this
3 act and K. S.A. 2004 Supp. 38-1505b, 2004 Supp. 38-1505c, 2004 Supp. 38-1506, 2004 Supp. 38-
4 1507, 2004 Supp. 38-1507b, and 2004 Supp. 28-1508 shall be known as and may be cited as the
5 Revised Kansas Code for Care of Children. Proceedings pursuant to this code shall be civil in nature
6 and all proceedings, orders, judgements and decrees shall be deemed to be pursuant to the parental
7 power of the state. The code shall be liberally construed to carry out the policies of the state which
8 are to:

- 9 1. Consider the safety and welfare of a child to be paramount in all proceedings under
10 the code;
- 11 2. Provide that each child who comes within the provisions of the code shall receive
12 the care, custody, guidance control and discipline that will best serve the child’s
13 welfare and the interests of the state, preferably in the child’s home and recognizing
14 that the child’s relationship with his or her family is important to the child’s well
15 being;
- 16 3. Make the ongoing physical, mental and emotional needs of the child decisive
17 considerations in proceedings under this code;
- 18 4. Acknowledge that the time perception of a child differs from that of an adult and to
19 dispose of all proceedings under this code without unnecessary delay;
- 20 5. Encourage the reporting of suspected child abuse and neglect;
- 21 6. Investigate reports of suspected child abuse and neglect thoroughly and promptly;

- 1 7. Provide for the protection of children who have been subject to physical, mental or
- 2 emotional abuse and neglect or sexual abuse;
- 3 8. Provide preventative and rehabilitative services, when appropriate, to abused and
- 4 neglected children and their families so, if possible, the families can remain together
- 5 without further threat to the children;
- 6 9. Provide stability in the life of a child who must be removed from the home of a
- 7 parent; and
- 8 10. Place children in permanent family settings, in absence of compelling reasons to the
- 9 contrary.

COMMENT

11 Section 1 has been rewritten to provide a more comprehensive and systematic statement of
12 the policies of the code and to consolidate that statement in a single provision. It also includes the
13 first paragraph of current K.S.A. 38-1521, concerning the state’s policy relating to reporting of
14 abuse, and language from current K.S.A. 38-1584(a), which relates to the termination of parental
15 rights. The policies reflected in all three of the provisions have been retained. Policy statement
16 number 2 has been expanded to include language about recognition of the importance of the child’s
17 relationship with his or her family. See In the Matter of T.S., 276 Kan. 282, 74 P.3d 1009 (2003).

1 **New Sec. 2. Definitions.** As used in this code, unless the context otherwise indicates:

2 (a) "Abandon" means to forsake, desert or, without making appropriate provision for
3 substitute care, cease providing care for the child.

4 (b) "Adult correction facility" means any public or private facility, secure or nonsecure,
5 which is used for the lawful custody of accused or convicted adult criminal offenders.

6 (c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse
7 or chronic, life threatening neglect of a child.

8 (d) "Child in need of care" means a person less than 18 years of age who:

9 (1) Is without adequate parental care, control or subsistence and the condition is not
10 due solely to the lack of financial means of the child's parents or other custodian;

11 (2) is without the care or control necessary for the child's physical, mental or
12 emotional health;

13 (3) has been physically, mentally or emotionally abused or neglected or sexually
14 abused;

15 (4) has been placed for care or adoption in violation of law;

16 (5) has been abandoned or does not have a known living parent;

17 (6) is not attending school as required by K.S.A. 72-977 or 72-1111, and amendments
18 thereto;

19 (7) except in the case of a violation of K.S.A. 41-727, subsection (j) of K.S.A. 74-
20 8810 or subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto, or, except as provided
21 in subsection (a)(12) of K.S.A. 21-4204a and amendments thereto, does an act which, when

1 committed by a person under 18 years of age, is prohibited by state law, city ordinance or county
2 resolution but which is not prohibited when done by an adult;

3 (8) while less than 10 years of age, commits any act which if done by an adult would
4 constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105 and
5 amendments thereto;

6 (9) is willfully and voluntarily absent from the child's home without the consent of
7 the child's parent or other custodian;

8 (10) is willfully and voluntarily absent at least a second time from a court ordered or
9 designated placement, or a placement pursuant to court order, if the absence is without the consent
10 of the person with whom the child is placed or, if the child is placed in a facility, without the consent
11 of the person in charge of such facility or such person's designee;

12 (11) has been residing in the same residence with a sibling or another person under
13 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually
14 abused; or

15 (12) while less than 10 years of age commits the offense defined in K.S.A. 21-4204a
16 and amendments thereto.

17 (13) has had a permanent custodian appointed and the permanent custodian is no
18 longer able or willing to serve.

19 (e) "Citizen review board" is a group of community volunteers appointed by the court and
20 whose duties are prescribed by sections 7 and 8, and amendments thereto.

1 (f) "Court-appointed special advocate" means a responsible adult other than an attorney
2 guardian *ad litem* who is appointed by the court to represent the best interests of a child, as provided
3 in section 6 and amendments thereto, in a proceeding pursuant to this code.

4 (g) "Custody," whether temporary, protective or legal, means the status created by court order
5 or statute which vests in a custodian, whether an individual or an agency, the right to physical
6 possession of the child and the right to determine placement of the child, subject to restrictions
7 placed by the court.

8 (h) "Extended out of home placement" means a child has been in the custody of the secretary
9 and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date
10 at which a child in the custody of the secretary was removed from the home.

11 (i) "Educational institution" means all schools at the elementary and secondary levels.

12 (j) "Educator" means any administrator, teacher or other professional or paraprofessional
13 employee of an educational institution who has exposure to a pupil specified in subsection (a) of
14 K.S.A. 72-89b03 and amendments thereto.

15 (k) "Harm" means physical or psychological injury or damage.

16 (l) "Interested party" means the grandparent of the child, a person with whom the child has
17 been living for a significant period of time when the child in need of care petition is filed, and any
18 person made an interested party by the court pursuant to section 36 and amendments thereto.

19 (m) "Jail" means:

20 (1) An adult jail or lockup; or

21 (2) a facility in the same building or on the same grounds as an adult jail or lockup,
22 unless the facility meets all applicable standards and licensure requirements under law and there is

1 (A) total separation of the juvenile and adult facility spatial areas such that there could be no
2 haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B)
3 total separation in all juvenile and adult program activities within the facilities, including recreation,
4 education, counseling, health care, dining, sleeping, and general living activities; and (C) separate
5 juvenile and adult staff, including management, security staff and direct care staff such as
6 recreational, educational and counseling.

7 (n) "Juvenile detention facility" means any secure public or private facility used for the lawful
8 custody of accused or adjudicated juvenile offenders which must not be a jail.

9 (o) "Juvenile intake and assessment worker" means a responsible adult authorized to perform
10 intake and assessment services as part of the intake and assessment system established pursuant to
11 K.S.A. 75-7023, and amendments thereto.

12 (p) "Kinship care" means the placement of a child in the home of the child's relative or in the
13 home of another adult with whom the child or the child's parent already has a close emotional
14 attachment

15 (q) "Law enforcement officer" means any person who by virtue of office or public
16 employment is vested by law with a duty to maintain public order or to make arrests for crimes,
17 whether that duty extends to all crimes or is limited to specific crimes.

18 (r) "Multidisciplinary team" means a group of persons, appointed by the court or by the
19 secretary under section 23 and amendments thereto, which has knowledge of the circumstances of
20 a child in need of care.

21 (s) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care
22 of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions

1 are not due solely to the lack of financial means of the child's parents or other custodian. Neglect
2 may include but shall not be limited to:

3 (1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or
4 health of the child;

5 (2) failure to provide adequate supervision of a child or to remove a child from a situation
6 which requires judgment or actions beyond the child's level of maturity, physical condition or mental
7 abilities and that results in bodily injury or a likelihood of harm to the child; or

8 (3) failure to use resources available to treat a diagnosed medical condition if such treatment
9 will make a child substantially more comfortable, reduce pain and suffering, or correct or
10 substantially diminish a crippling condition from worsening. A parent legitimately practicing
11 religious beliefs who does not provide specified medical treatment for a child because of religious
12 beliefs shall not for that reason be considered a negligent parent; however, this exception shall not
13 preclude a court from entering an order pursuant to subsection (a)(2) of section 12, and amendments
14 thereto.

15 (t) "Parent," when used in relation to a child or children, includes a guardian, conservator and
16 every person who is by law liable to maintain, care for or support the child.

17 (u) "Party" means the state, the petitioner, the child and any parent of the child.

18 (v) "Permanency goal" mean the outcome of the permanency planning process which may
19 be reintegration, adoption, appointment of a permanent custodian or another planned permanent
20 living arrangement

21 (w) "Permanent custodian" means a judicially approved permanent guardian of a child
22 pursuant to section 67 and amendments thereto. When the term permanent custodian is used in this

1 code, it shall include any permanent guardian appointed pursuant to the Kansas Code for Care of
2 Children.

3 (x) "Physical, mental, or emotional abuse" means the infliction of physical, mental or
4 emotional harm or the causing of a deterioration of a child and may include, but shall not be limited
5 to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is
6 endangered.

7 (y) "Placement" means the designation by the individual or agency having custody of where
8 and with whom the child will live.

9 (z) "Relative" means a person related by blood, marriage or adoption but, when referring to
10 a relative of a child's parent, does not include the child's other parent.

11 (aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's
12 designee.

13 (bb) "Secure facility" means a facility which is operated or structured so as to ensure that all
14 entrances and exits from the facility are under the exclusive control of the staff of the facility,
15 whether or not the person being detained has freedom of movement within the perimeters of the
16 facility, or which relies on locked rooms and buildings, fences or physical restraint in order to control
17 behavior of its residents. No secure facility shall be in a city or county jail.

18 (cc) "Sexual abuse" means any contact or interaction with a child in which the child is being
19 used for the sexual stimulation of the perpetrator, the child, or another person. Sexual abuse shall
20 include allowing, permitting or encouraging a child to engage in prostitution or to be photographed,
21 filmed or depicted in pornographic material.

1 (dd) "Shelter facility" means any public or private facility or home other than a juvenile
2 detention facility that may be used in accordance with this code for the purpose of providing either
3 temporary placement for children in need of care prior to the issuance of a dispositional order or
4 longer term care under a dispositional order.

5 (ee) "Youth residential facility" means any home, foster home or structure which provides
6 24-hour-a-day care for children and which is licensed pursuant to article 5 of chapter 65 of the
7 Kansas Statutes Annotated.

8 COMMENT

9 Section 2 which contains the CINC Code definitions has been reorganized by placing the
10 definitions in alphabetical order. The committee made some technical and stylistic changes to
11 existing definitions that will not be discussed separately. Except as described below, the substance
12 of the definitions remains unchanged.

13 Additions

14 Subsection (d)(13) has been added to the definition of a "child in need of care" to clarify that
15 when a permanent custodianship fails a new CINC case is filed.

16 Subsection (e), defining a citizen review board by cross referencing relevant statutes, has
17 been added.

18 Subsection (k) has been added to define the term "harm," which is now used in the definition
19 of the term physical, mental, or emotional abuse in new subsection (x). (See comment on subsection
20 (x), below.)

21 Subsection (u) has been added to define the term "party," in keeping with the committee's
22 proposal to distinguish between parties (which include the state, the petitioner, the child, and the
23 parents) and "interested parties" which include other persons with a significant interest in a child in
24 need of care proceeding. The status of parties and interested parties is further specified in proposed
25 section 36.

26 Changes

27 New subsection (l), which defines "interested parties," has been changed by eliminating
28 references to persons having the status of parties under proposed subsection (u) and adding a cross
29 reference to proposed section 36, which further specifies their status. Interested parties include

1 grandparents, persons with whom the child has resided for a significant time within six months of
2 the filing of the CINC petition, and other persons made interested parties by the court.

3 In new subsection (w), the term “permanent guardianship” was replaced with the term
4 “permanent custodian,” in keeping with the committee’s proposal to rename and specify this
5 relationship and to avoid confusion with other forms of guardianship. *See* proposed section 67 and
6 comments thereto. The phrase “without ongoing state oversight or intervention by the secretary” was
7 stricken because there is such oversight by some courts for a period of time and they would not
8 appoint a permanent custodian if this were not the case. The last three sentences were stricken
9 because they contain matters that should be in the substantive provisions of the statute. These
10 matters are now specified in proposed section 67.

11 In new subsection (x), the definition of “physical, mental or emotional abuse” has been
12 altered to reference the infliction of physical, mental, or emotional “harm” rather than “injury.” It
13 was the opinion of the committee that the term “injury” was sometimes misinterpreted to impose an
14 excessively high threshold of damage, leaving too many children unprotected.

15 In new subsection (cc), the definition of “sexual abuse” has been rewritten by replacing
16 references to specific criminal acts in the current law with a general definition. It is the opinion of
17 the committee that sexual abuse for purposes of CINC proceedings should not be limited to
18 criminally defined sexual abuse.

19 **Deletions**

20 Old subsection (l), which defined “ward of the court,” has been stricken. It is the opinion of
21 the committee that the phrase is confusing because it implies a status for the child but is defined in
22 terms of jurisdiction. Where that phrase appears in the code the phrase “child subject to jurisdiction
23 of the court” will replace it.

24 Old subsection (y), which defined “Permanency hearing” was stricken because the nature
25 and content of such hearings is specified in new section 58 and a definition is unnecessary. Most
26 of the language in old subsection (y) was a statement of substantive matters which should be
27 addressed in the substantive provisions of the statute.

28 Old subsection (dd), which defined “community services team” was deleted because the term
29 is not used elsewhere in the proposed code. It was the committee’s understanding that in practice
30 such teams are not used and their functions are performed by “multidisciplinary teams.”

1 **New Sec 3. Jurisdiction.** (a) Proceedings concerning any child who may be a child in need
2 of care shall be governed by this code, except in those instances when the Indian child welfare act
3 of 1978 (25 U.S.C. §1901 *et seq.*) applies.

4 (b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 38-1336
5 through 38-1377, and amendments thereto, the district court shall have original jurisdiction of
6 proceedings pursuant to this code.

7 (c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code
8 or upon issuance of an *ex parte* order pursuant to section 37, and amendments thereto. When the
9 court acquires jurisdiction over a child in need of care jurisdiction may continue until the child:
10 (1) has attained the age of 21 years; (2) has been adopted; or (3) has been discharged by the court.
11 Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the
12 court cease. The court shall give notice of the request to all parties and interested parties and 30
13 days after receipt of the request, jurisdiction will cease.

14 (d) When it is no longer appropriate for the court to exercise jurisdiction over a child the
15 court, upon its own motion or the motion of a party or interested party at a hearing or upon
16 agreement of all parties or interested parties, shall enter an order discharging the child. Except upon
17 request of the child pursuant to subsection (c), the court shall not enter an order discharging a child
18 until June 1 of the school year during which the child becomes 18 years of age if the child is in out
19 of home placement, is still attending high school and has not completed the child's high school
20 education.

1 (e) When a petition is filed under this code, a person who is alleged to be under 18 years
2 of age shall be presumed to be under that age for the purposes of this code, unless the contrary is
3 proved.

4 **COMMENT**

5 In subsections (a), (b), and (c) some language has been rewritten for clarity.

6 Subsection (c) also has been reworked to specify that a child's request for jurisdiction to
7 terminate shall be in writing, to require that the court give notice of the request to all parties and
8 interested parties, and to provide for automatic termination of jurisdiction 30 days after receipt of
9 the request, rather than requiring a court to enter an order discharging the child from further
10 jurisdiction.

11 Subsection (d) has been amended to require that, before the court discharges the child from
12 jurisdiction, it must hold a hearing or all the parties must agree. The agreement of interested parties
13 is not required. Subsection (d) has also been amended to specify more clearly the circumstances
14 under which a court may not enter an order discharging a child without the child's consent.

15 Old subsection (e) has been stricken because it speaks to the transitional period when this
16 code took effect and is no longer necessary. New subsection (e) was previously K.S.A. 38-1515.
17 It is the opinion of the committee it is more logically a part of this section.

1 **New Sec. 4. Venue.** (a) Venue of any case involving a child in need of care shall be in the
2 county of the child's residence or in the county where the child is found.

3 (b) Upon application of any party or interested party and after notice to all other parties or
4 interested parties, the court in which the petition was originally filed alleging that a child is a child
5 in need of care may order the proceedings transferred to the court of the county where; (1) the child
6 is physically present, (2) the parent or parents reside, or (3) other proceedings are pending in this
7 state concerning custody of the child. The judge of the court in which the case is pending shall
8 consult with the judge of the proposed receiving court prior to transfer of the case. If the judges
9 do not agree that the case should be transferred or if a hearing is requested, a hearing shall be held
10 on the desirability of the transfer, with notice to parties or interested parties, the secretary and the
11 proposed receiving court. If the judge of the transferring court orders the case transferred, the order
12 of transfer shall include findings stating why the case is being transferred and, if available, the names
13 and addresses of all interested parties to whom the receiving court should provide notice of any
14 further proceedings. The receiving court shall accept the case. Any judge transferring any case to
15 another court shall transmit a complete record thereof and, upon receipt of the record, the receiving
16 court shall assume jurisdiction as if the proceedings were originally filed in that court. The
17 transferring judge, if an adjudicatory hearing has been held, shall also transmit recommendations as
18 to disposition. The court may return the case to the court where it originated if the child is not
19 present in the receiving county or, the receiving county is not the residence of the child's parent or
20 parents.

1

COMMENT

2

3

4

Subsection (b) has been amended by using the phrase “any party or interested party” to describe who may make the application for a change of venue. The other changes to this provision are technical and for purposes of clarification.

1 **New Sec. 5. Right to counsel.** (a) *Appointment of guardian ad litem and attorney for child;*
2 *duties.* Upon the filing of a petition the court shall appoint an attorney to serve as guardian *ad litem*
3 for a child who is the subject of proceedings under this code. The guardian *ad litem* shall make an
4 independent investigation of the facts upon which the petition is based and shall appear for and
5 represent the best interests of the child. When the child's position is not consistent with the
6 determination of the guardian *ad litem* as to the child's best interests, the guardian *ad litem* shall
7 inform the court of the disagreement. The guardian *ad litem* or the child may request the court to
8 appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may
9 appoint such second attorney. The attorney for the child shall allow the child and the guardian ad
10 litem to communicate with one another but may require such communications to occur in the
11 attorney's presence.

12 (b) *Attorney for parent or custodian.* A parent or custodian of a child alleged or adjudged
13 to be a child in need of care may be represented by an attorney, in connection with all proceedings
14 under this code.

15 (1) If at any stage of the proceedings a parent desires but is financially unable to employ an
16 attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an
17 attorney to represent a parent who fails or refuses to attend the hearing after having been properly
18 served with process in accordance with section 32 and amendments thereto. A parent or custodian
19 who is not a minor, a mentally ill person as defined in K.S.A. 2004 Supp. 59-2946 and amendments
20 thereto or a disabled person as defined in K.S.A. 77-201 and amendments thereto may waive counsel
21 either in writing or on the record.
22

1 (2) The court shall appoint an attorney for a parent who is a minor, a mentally ill person as
2 defined in K.S.A. 2004 Supp. 59-2946 and amendments thereto or a disabled person as defined in
3 K.S.A. 77-201 and amendments thereto, unless the court determines that there is an attorney retained
4 who will appear and represent the interests of the person in the proceedings under this code.

5 (c) *Attorney for Interested Parties.* A person who, pursuant to section 36 and amendments
6 thereto, is an interested party in a proceeding involving a child alleged to be a child in need of care
7 may be represented by an attorney in connection with all proceedings under this code. If at any
8 stage of the proceedings a person who is an interested party under section 36(c) and amendments
9 thereto desires but is financially unable to employ an attorney, the court may appoint an attorney for
10 the interested party. It shall not be necessary to appoint an attorney to represent an interested party
11 who fails or refuses to attend the hearing after having been properly served with process in
12 accordance with section 32 and amendments thereto.

13 (d) *Continuation of representation.* A guardian *ad litem* appointed to represent the best
14 interests of a child or a second attorney appointed for a child as provided in subsection (a), or an
15 attorney appointed for a parent or custodian shall continue to represent the client at all subsequent
16 hearings in proceedings under this code, including any appellate proceedings, unless relieved by the
17 court upon a showing of good cause or upon transfer of venue.

18 (e) *Fees for counsel.* An attorney appointed pursuant to this section shall be allowed a
19 reasonable fee for services, which may be assessed as an expense in the proceedings as provided in
20 section 10 and amendments thereto.

1 **COMMENT**

2 Former subsections (b) and (c) have been combined into proposed subsection (b) and new
3 subsection (c) was added to specify the right of interested parties to be represented by counsel at their
4 own expense. A court is authorized but not required to provide counsel at state expense for
5 interested parties with whom the child was living for a significant period of time in the six month
6 period before the filing of the petition. It was the opinion of the committee that such persons, which
7 may include grandparents and other close relatives, often have a particularly strong relationship with
8 the child, the continuation of which should receive particular attention.

9 Other changes made in this section are for either simplification of language or structure or
10 clarification.

1 **New Sec. 8.** (a) The local citizen review board shall have the duty, authority and power to:

2 (1) Review each case of a child who is the subject of a child in need of care petition or who has been
3 adjudicated a child in need of care, receive verbal information from all persons with pertinent
4 knowledge of the case and have access to materials contained in the court's files on the case;

5 (2) determine the progress which has been made to acquire a permanent home for the child in need
6 of care;

7 (3) suggest an alternative case goal if progress has been insufficient; and

8 (4) make recommendations to the judge regarding further actions on the case.

9 (b) The initial review by the local citizen review board may take place any time after a petition is
10 filed for a child in need of care. A review must occur within six months after the initial disposition
11 hearing.

12 (c) The local citizen review board will review each referred case at least once each year.

13 (d) The judge shall consider the local citizen review board recommendations in making an
14 authorized orders pursuant to section 50, and amendments thereto, and may incorporate the citizen
15 review board's recommendations into an order in lieu of the six-month review hearing.

16 (e) Three members of the local citizen review board must be present to review a case.

17 (f) The court shall provide a place for the reviews to be held. The local citizen review board
18 members shall travel to the county of the family residence of the child being reviewed to hold the
19 review.

COMMENT

1
2
3
4
5
6
7

Section 8, relating to citizen review boards, previously appeared at K.S.A. 38-1813 and was not a part of the Kansas code for care of children. The Committee was of the opinion that the statutes relating to citizen review boards should be a part of the revised Kansas code for care of children. A similar statute will be included in the revised Kansas juvenile offender code. The only changes from the current statute were made to remove reference to juvenile offenders or are technical.

Comment Regarding Confidentiality Sections

1
2 K.S.A. 2004 Supp. 38-1505b and 38-1505c were enacted and K.S.A. 2004 supp. 38-1506,
3 38-1507 and 38-1508 were amended by the Legislature in 2004 HB 2742. These sections are not
4 amended or repealed by this bill. The sections are a part of the proposed Revised Kansas Code for
5 Care of Children and when the code is enacted, the Revisor of Statutes will transfer the sections to
6 the appropriate places in the revised code.

1 **New Sec. 9. Duties of county or district attorney.** It shall be the duty of the county or
2 district attorney to prepare and file the petition alleging a child to be a child in need of care, and to
3 appear at the hearing on the petition and to present evidence as necessary, at all stages of the
4 proceedings, that will aid the court in making appropriate decisions. The county or district attorney
5 shall also have the other duties required by this code.

6 **COMMENT**

7 The language of this provision has been amended to reflect current practice, in which a
8 county or district attorney participates at all stages of a CINC proceeding.

1 **New Sec. 10. Docket fee and expenses.** (a) *Docket fee.* The docket fee for proceedings
2 under this code, if one is assessed as provided in this section, shall be \$25. Only one docket fee shall
3 be assessed in each case.

4 (b) *Expenses.* The expenses for proceedings under this code, including fees and mileage
5 allowed witnesses and fees and expenses approved by the court for appointed attorneys, shall be paid
6 by the board of county commissioners from the general fund of the county.

7 (c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed
8 or waived by the court conducting the initial dispositional hearing and the docket fee may be
9 assessed against the complaining witness or person initiating the proceedings or a party or interested
10 party other than the state, a political subdivision of the state, an agency of the state or of a political
11 subdivision of the state, or a person acting in the capacity of an employee of the state or of a political
12 subdivision of the state. Any docket fee received shall be remitted to the state treasurer pursuant to
13 K.S.A. 20-362, and amendments thereto.

14 (2) *Expenses.* Expenses may be assessed against the complaining witness or person initiating
15 the proceedings or an interested party, other than the state, a political subdivision of the state, an
16 agency of the state or of a political subdivision of the state or a person acting in the capacity of an
17 employee of the state or of a political subdivision of the state. When expenses are recovered from
18 a party against whom they have been assessed the general fund of the county shall be reimbursed in
19 the amount of the recovery. If it appears to the court in any proceedings under this code that
20 expenses were unreasonably incurred at the request of any party the court may assess that portion
21 of the expenses against the party.

1 (d) *Cases in which venue is transferred.* If venue is transferred from one county to another,
2 the court from which the case is transferred shall send to the receiving court a statement of expenses
3 paid from the general fund of the sending county. If the receiving court collects any of the expenses
4 owed in the case, the receiving court shall pay to the sending court an amount proportional to the
5 sending court's share of the total expenses owed to both counties. The expenses of the sending
6 county shall not be an obligation of the receiving county except to the extent that the sending
7 county's proportion of the expenses is collected by the receiving court. All amounts collected shall
8 first be applied toward payment of the docket fee.

9 **COMMENT**

10 This provision remains substantially unchanged, except for a minor change in subsection (c)
11 for purposes of clarity.

1 **New Sec. 11. Expense of care and custody of child** (a) *How paid.* (1) If a child alleged
2 or adjudged to be a child in need of care is not eligible for assistance under K.S.A. 39-709 and
3 amendments thereto, expenses for the care and custody of the child shall be paid out of the general
4 fund of the county in which the proceedings are brought. For the purpose of this section, a child who
5 is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the
6 county where the proceedings are instituted.

7 (2) When a law enforcement officer has taken a child into custody as authorized by
8 subsection (b) of section 26 and amendments thereto and delivered the child to a person or facility
9 designated by the secretary or when custody of a child is awarded to the secretary, the expenses of
10 the care and custody of the child may be paid by the secretary, even though the child does not meet
11 the eligibility standards of K.S.A. 39-709 and amendments thereto.

12 (3) When the custody of a child is awarded to the secretary, the expenses of the care and
13 custody of the child shall not be paid out of the county general fund.

14 (4) Nothing in this section shall be construed to mean that any person shall be relieved of
15 legal responsibility to support a child.

16 (b) *Reimbursement to county general fund.* (1) When expenses for the care and custody of
17 a child alleged or adjudged to be a child in need of care have been paid out of the county general
18 fund, the court may fix a time and place for hearing on the question of requiring payment or
19 reimbursement of all or part of the expenses by a person who by law is liable to maintain, care for
20 or support the child.

21 (2) The court, after notice to the person who by law is liable to maintain, care for or support
22 the child, may hear and dispose of the matter and may enter an order relating to payment of expenses

1 for care and custody of the child. If the person willfully fails or refuses to pay the sum, the person
2 may be adjudged in contempt of court and punished accordingly.

3 (3) The county may bring a separate action against a person who by law is liable to maintain,
4 care for or support a child alleged or adjudged to be a child in need of care for the reimbursement
5 of expenses paid out of the county general fund for the care and custody of the child.

6 (c) *Reimbursement to secretary.* When expenses for the care and custody of a child alleged
7 or adjudged to be a child in need of care have been paid by the secretary, the secretary may recover
8 the expenses pursuant to K.S.A. 39-709 or 39-755, and amendments thereto, or K.S.A. 39-718b, and
9 amendments thereto, or as otherwise provided by law, from any person who by law is liable to
10 maintain, care for or support the child.

11 The secretary shall have the power to compromise and settle any claim due or any amount
12 claimed to be due to the secretary from any person who by law is liable to maintain, care for or
13 support the child.

14 **COMMENT**

15 References to the state social welfare fund have been removed from subsections (a)(2) and
16 (c) because the language is outdated and the reference to the secretary is sufficient. The reference
17 in subsection (c) to K.S.A. 39-718a has been removed because that section has been repealed.

1 **New Sec. 12. Health services.** (a) *Physical or mental care and treatment.* (1) When a child
2 less than 18 years of age is alleged to have been physically, mentally or emotionally abused or
3 neglected or sexually abused, no consent shall be required to medically examine the child to
4 determine whether the child has been abused or neglected.

5 (2) When the health or condition of a child who is subject to jurisdiction of the court requires
6 it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental
7 treatment or procedures, including the release and inspection of medical or dental records. A child,
8 or parent of any child, who is opposed to certain medical procedures authorized by this subsection
9 may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the
10 court may limit the performance of matters provided for in this subsection or may authorize the
11 performance of those matters subject to terms and conditions the court considers proper.

12 (3) The custodian is the personal representative for the purpose of consenting to disclosure
13 of otherwise protected health information and may give consent to the following:

14 (A) Dental treatment for the child by a licensed dentist;

15 (B) diagnostic examinations of the child, including but not limited to the withdrawal of blood
16 or other body fluids, x-rays and other laboratory examinations;

17 (C) releases and inspections of the child's medical history records;

18 (D) immunizations for the child;

19 (E) administration of lawfully prescribed drugs to the child; and

20 (F) examinations of the child including, but not limited to, the withdrawal of blood or other
21 body fluids or tissues, for the purpose of determining the child's parentage.

1 (4) When the court has granted legal custody of a child in a dispositional hearing to any
2 agency, association or individual, the custodian or an agent designated by the custodian is the
3 personal representative for the purpose of consenting to disclosure of otherwise protected health
4 information and shall have authority to consent to the performance and furnishing of hospital,
5 medical, surgical or dental treatment or procedures or mental care or treatment other than inpatient
6 treatment at a state psychiatric hospital, including the release and inspection of medical or hospital
7 records, subject to terms and conditions the court considers proper.

8 (5) Any health care provider who in good faith renders hospital, medical, surgical, mental
9 or dental care or treatment to any child or discloses protected health information as authorized by
10 this section shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

11 (6) Nothing in this section shall be construed to mean that any person shall be relieved of
12 legal responsibility to provide care and support for a child.

13 (b) *Care and treatment requiring court action.* If it is brought to the court's attention, while
14 the court is exercising jurisdiction over the person of a child under this code, that the child may be
15 a mentally ill person as defined in K.S.A. 2004 Supp. 59-2946 and amendments thereto, or K.S.A.
16 2004 Supp.59-29b46 and amendments thereto, the court may:

17 (1) Direct or authorize the county or district attorney or the person supplying the information
18 to file the petition provided for in K.S.A. 2004 Supp. 59-2957 and amendments thereto and proceed
19 to hear and determine the issues raised by the application as provided in the care and treatment act
20 for mentally ill persons or the petition provided for in K.S.A. 2004 Supp. 59-29b57 and amendments
21 thereto and proceed to hear and determine the issues raised by the application as provided in the care
22 and treatment act for persons with an alcohol or substance abuse problem; or

1 (2) authorize that the child seek voluntary admission to a treatment facility as provided in
2 K.S.A. 2004 Supp. 59-2949 and amendments thereto or K.S.A 2004 Supp 59-29b49 and
3 amendments thereto.

4 The application to determine whether the child is a mentally ill person may be filed in the
5 same proceedings as the petition alleging the child to be a child in need of care, or may be brought
6 in separate proceedings. In either event the court may enter an order staying any further proceedings
7 under this code until all proceedings have been concluded under the care and treatment act for
8 mentally ill persons or the care and treatment act for persons with an alcohol or substance abuse
9 problem.

10 **COMMENT**

11 This provision was reworked somewhat to clarify the authority of child's custodian to
12 consent to medical care and treatment and to consent to the disclosure of medical records:
13 Subsection (a)(3) has been reworded to give the custodian legal authority at any time, whereas
14 former section (a)(3) applied only prior to disposition. Language concerning disclosure of medical
15 records has been added to both subsections (a)(3) and (a)(4) so as to comply with the requirements
16 of the federal Health Insurance Portability and Accountability Act of 1996. Subsection (a)(5) was
17 deleted as unnecessary in light of other provisions in subsection (a).

18 Subsection (b) was amended to add references and citations to the Care and Treatment Act
19 for Persons with an Alcohol or Substance Abuse Problem to the existing language, which refers only
20 to the Care and Treatment Act for Mentally Ill Persons.

21 Additional changes are for purposes of clarity. Subsection (a) (1) was amended to replace
22 the word "maltreated" with the phrase "abused or neglected" because the term maltreated is not
23 defined in the code. Subsection (a)(2) was amended by changing the phrase "a ward of the court"
24 to "child who is subject to jurisdiction of the court." *See* Comment to proposed section 2.

1 **New Sec. 13. Educational decisions; education advocates for exceptional children;**

2 **definitions.** (a) When the court has granted legal custody of a child in a hearing under the Revised
3 Kansas code for care of children to an agency, association or individual, the custodian or an agent
4 designated by the custodian shall have authority to make educational decisions for the child if the
5 parents of the child are unknown or unavailable. When the custodian of the child is the secretary,
6 and the parents of the child are unknown or unavailable, and the child appears to be an exceptional
7 child who requires special education, the secretary shall immediately notify the state board of
8 education, or a designee of the state board, and the school district in which the child is residing that
9 the child is in need of an education advocate. As soon as possible after notification, the state board
10 of education, or its designee, shall appoint an education advocate for the child.

11 (b) As used in this section, the terms exceptional child, special education, and education
12 advocate have the meanings respectively ascribed thereto in the special education for exceptional
13 children act.

14 **COMMENT**

15 This provision has been amended for purposes of clarity by striking unnecessary language.

1 **New Sec. 14. Evaluation of development or needs.** (a) *Of child.* (1) *Psychological or*
2 *emotional.* During proceedings under this code, the court, on its own motion or the motion of the
3 guardian *ad litem* for the child, a party or interested party, may order an evaluation and written report
4 of the psychological or emotional development or needs of a child who is the subject of the
5 proceedings. The court may refer the child to a state institution for the evaluation if the secretary
6 advises the court that the facility is a suitable place to care for, treat or evaluate the child and that
7 space is available. The expenses of transportation to and from the state facility may be paid as a part
8 of the expenses of temporary care and custody. The child may be referred to a mental health center
9 or qualified professional for evaluation and the expenses of the evaluation may be considered as
10 expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation
11 as provided in this section, a parent of the child shall have the right to obtain an independent
12 evaluation at the expense of the parent.

13 (2) *Medical.* During proceedings under this code, the court may order an examination and
14 report of the medical condition and needs of a child who is the subject of the proceedings. The court
15 may also order a report from any physician who has been attending the child stating the diagnosis,
16 condition and treatment afforded the child.

17 (3) *Educational.* The court may order the chief administrative officer of the school which
18 the child attends or attended to provide to the court information that is readily available which the
19 school officials believe would properly indicate the educational needs of the child. The order may
20 direct that the school conduct an educational needs assessment of the child and send a report of the
21 assessment to the court. The educational needs assessment may include a meeting involving any of
22 the following: the child's parents; the child's teachers; the school psychologist; a school special

1 services representative; a representative of the secretary; the child's C.A.S.A.; the child's foster
2 parents legal guardian, and permanent custodian; a court services officer and other persons that the
3 chief administrative officer of the school or the officer's designee considers appropriate.

4 (b) *Physical, psychological or emotional of parent or custodian.* During proceedings under
5 this code, the court may order an examination, evaluation and report of the physical, mental or
6 emotional status or needs of a parent, a person residing with a parent or any person being considered
7 as one to whom the court may grant custody.

8 (c) During proceedings under this code the court may order written reports from any
9 qualified person concerning the parenting skills or ability to provide for the physical, mental or
10 emotional needs and future development of a child by a parent or other person being considered for
11 custody.

12 (d) Written reports and other materials relating to the examinations and evaluations under
13 subsections (a),(b) and (c) may be considered by the court after an adjudication or entry of an order
14 of informal supervision, if introduced as evidence. If requested by any party or interested party in
15 attendance, the court shall require the person preparing the report or other material to appear and
16 testify.

17 (e) *Confidentiality of reports.* (1) *Reports of court ordered examination or evaluation.* No
18 confidential relationship of physician and patient, psychologist and client or social worker and client
19 shall arise from an examination or evaluation ordered by the court.

20 (2) *Report from private physician, psychologist or therapist.* When any interested party or
21 party to proceedings under this code wishes the court to have the benefit of information or opinion
22 from a physician, psychologist, registered marriage and family therapist or social worker with whom

1 there is a confidential relationship, the party or interested party may waive the confidential
2 relationship but restrict the information to be furnished or testimony to be given to those matters
3 material to the issues before the court. If requested, the court may make an *in camera* examination
4 of the proposed witness or the file of the proposed witness and excise any matters that are not
5 material to the issues before the court.

6 **COMMENT**

7 This section has been reorganized to clarify the kinds of reports and evaluations that may be
8 ordered by the court and the manner in which they may be considered. Subsection (a) deals with
9 evaluations of the child, subsection (b) deals with physical, psychological, and emotional evaluations
10 of the parent or custodian, and subsection (c) deals with evaluation of the parent's or custodian's
11 parenting skills.

12 Subsection (a)(1) was amended to allow any party or interested party to make a motion to the
13 court for an evaluation and written report of the psychological or emotional development or needs
14 of the child. It was the committee's view that parties and interested parties may have information
15 warranting an evaluation that might not otherwise come before the court. The decision whether to
16 order an evaluation remains with the court.

17 Subsection (a) (3) has been amended to add a permanent custodian to the list of persons who
18 may attend a child's educational assessment meeting.

19 Existing subsection (b) has been amended to allow the judge to order an evaluation of any
20 person residing with a parent and of any person being considered for custody. The committee
21 believes that because such persons may be living with the child, their psychological and emotional
22 status may be highly relevant to the disposition of the case. Subsection (b)(1) has been further
23 amended by striking the last sentence and reinserting it as new subsection (d). Existing subsection
24 (b)(2) has been moved to subsection (c) and expanded to permit a report on parenting skills at any
25 time during proceedings.

26 Subsection (d) Clarifies that all evaluations (including those of the child) will be considered.

27 Subsection (e), concerning confidentiality of reports, carries forward current subsection (c)
28 with minor technical changes.

1 **New Sec. 16. Fingerprints and photographs.** (a) Fingerprints or photographs of a person
2 alleged or adjudicated to be a child in need of care may be taken:

3 (1) By a person authorized to investigate an allegation or suspicion of child abuse or neglect
4 to obtain and preserve evidence or to determine the identity of a child;

5 (2) as authorized by K.S.A. 38-1611 and amendments thereto; or

6 (3) if authorized by a judge of the district court having jurisdiction.

7 (b) Fingerprints and photographs taken under subsection (a) (3) shall be kept separate from those
8 of persons of the age of majority.

9 (c) Fingerprints and photographs taken under subsection (a) (3) may be sent to a state or federal
10 repository only if authorized by a judge of the district court having jurisdiction.

11 (d) Nothing in this section shall preclude the custodian of the child from authorizing photographs
12 or fingerprints of the child :

13 (1) to be used in any action under the Kansas parentage act.

14 (2) to assist in the apprehension of a runaway child;

15 (3) to assist in the adoption or other permanent placement of a child; or

16 (4) to provide the child or the child's parents or guardians with a history of the child's
17 life and development.

18 (e) For purposes of this section, the term photograph means an image or likeness of a child made
19 or reproduced by any medium or means.

20 **COMMENT**

21 This subsection has been amended to reflect sound child welfare practices by allowing
22 fingerprints and photographs to be used for the benefit of the child. A definition of photograph has
23 also been added to ensure that the provision applies as new technology develops.

1 **New Sec. 17. Reporting of certain abuse or neglect of children; public information and**
2 **educational program.** The secretary shall conduct a continuing public information and educational
3 program for local staff of the department of social and rehabilitation services, for persons required
4 to report under this code and for other appropriate persons.

5 **COMMENT**

6 The first paragraph was moved to Section 1 and rewritten. It is the opinion of the Committee
7 that there should be a single comprehensive statement of policy at the beginning of the code. (*See*
8 comment to section 1). The second paragraph was rewritten to give SRS the duty to conduct a public
9 information and educational program, but to leave discretion with the Secretary as to how such
10 program should be conducted.

1 **New Sec. 18. Reporting of certain abuse or neglect of children; persons reporting;**
2 **reports, made to whom; penalties for failure to report or interference with making of a report.**

3 *(a) Persons Making Reports.*

4 (1) When any of the following persons has reason to suspect that a child has been
5 harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse,
6 the person shall report the matter promptly as provided in subsections (b) and (c);

7 A. The following persons providing medical care or treatment: persons licensed
8 to practice the healing arts, dentistry, and optometry; persons engaged in
9 postgraduate training programs approved by the state board of healing arts;
10 licensed professional or practical nurses; and chief administrative officers of
11 medical care facilities;

12 B. The following persons licensed by the state to provide mental health services;
13 licensed psychologists, licensed masters level psychologists, licensed clinical
14 psychotherapists, licensed social workers, licensed marriage and family
15 therapists, licensed clinical marriage and family therapists, licensed
16 professional counselors, licensed clinical professional counselors, and
17 registered alcohol and drug abuse counselors;

18 C. Teachers, school administrators or other employees of a school which the
19 child is attending and persons licensed by the secretary of health and
20 environment to provide child care services or the employees of persons so
21 licensed at the place where the child care services are being provided to the
22 child: and

1 D. Firefighters, emergency medical services personnel, law enforcement
2 officers, juvenile intake and assessment workers, court services officers and
3 community corrections officers, domestic case managers appointed under
4 K.S.A. 23-1001 et. seq. and amendments thereto and mediators appointed
5 under K.S.A. 23-602 and amendments thereto.

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

9 (b) *Form of Report.* (1) The report may be made orally and shall be followed by a written report if
10 requested. Every report shall contain, if known: the names and addresses of the child and the child's
11 parents or other persons responsible for the child's care; the location of the child if not at the child's
12 residence; the child's gender, race and age; the reasons why the reporter suspects the child may be
13 a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the
14 harm to the child (including any evidence of previous harm); and any other information that the
15 maker of the report believes might be helpful in establishing the cause of the harm and the identity
16 of the persons responsible for the harm.

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

20 (c) *To Whom Made.* Reports made pursuant to this section shall be made to the secretary, except as
21 follows:

1 (1) When the state department of social and rehabilitation services is not open for
2 business, reports shall be made to the appropriate law enforcement agency. On the
3 next day that the department is open for business, the law enforcement agency shall
4 report to the department any report received and any investigation initiated pursuant
5 to subsection (a) of section 25 and amendments thereto. The reports may be made
6 orally or, on request of the secretary, in writing.

7 (2) Reports of child abuse or neglect occurring in an institution operated by the secretary
8 of social and rehabilitation services or the commissioner of juvenile justice shall be
9 made to the attorney general. All other reports of child abuse or neglect by persons
10 employed by or of children of persons employed by the state department of social and
11 rehabilitation services shall be made to the appropriate law enforcement agency.

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

15 (e) *Violations:*

16 (1) Willful and knowing failure to make a report required by this section is a class B
17 misdemeanor. It is not a defense that another mandatory reporter made a report.

18 (2) Intentionally preventing or interfering with the making of a report required by this
19 section is a class B misdemeanor.(f) Anyone who, without malice, participates in the
20 making of a report to the secretary or a law enforcement agency relating to a
21 suspicion a child may be a child in need of care or who participates in any activity or
22 investigation relating to the report or who participates in any judicial proceeding

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

3 COMMENT

4 In reworking this section, an overriding concern for the committee was that too many cases
5 of child abuse remain unreported. In the absence of reports, the Department of Social and
6 Rehabilitation Services and law enforcement agencies cannot fulfill their duty to protect children.
7 Thus, the committee made organizational and substantive changes designed to promote compliance
8 with reporting obligations.

9 The committee considered a clear understanding of reporting obligations to be an essential
10 prerequisite, and therefore reorganized this section for purposes of clarity. Existing provisions have
11 been rearranged into four subsections, each of which addresses a distinct aspect of reporting
12 obligations. Subsection (a) addresses who reports; subsection (b) addresses the form and content
13 of the reports; subsection (c) addresses to whom the report should be made; subsection (d) addresses
14 reporting of information concerning the death of a child; subsection (e) addresses the penalties for
15 violation; and subsection (f) provides immunity for good faith reporting. To provide further clarity,
16 in subsection (a), the various categories of individuals required to make reports have been grouped
17 thematically in separate subparagraphs of paragraph (a)(1).

18 The committee also proposes several modest substantive changes. First, the term injury or
19 injured has been replaced throughout this provision with the term “harm.” This change corresponds
20 to the definition of abuse (*see* comment to section 2) and reflects the concern that the terms “injury”
21 or “injured” are too often misinterpreted to require serious physical harm before abuse is to be
22 reported. Second, several additional categories of personnel involved with law enforcement and the
23 juvenile justice system were added to the list of required reporters in (a)(1)(D). The committee
24 believed that these individuals may often be in position to become aware of child abuse, and that,
25 given their official duties, they should be required to report it when they do. Third, the committee
26 deleted a provision directing staff members at medical facilities to report through the superintendent,
27 manager, or other person in charge of the institution. The committee believes that medical staff
28 personnel have an obligation to report directly to the Secretary or law enforcement and that adding
29 an intermediate step increases the likelihood that a report of child abuse will not be made.

30 Subsection (f) is a rewritten version of current K.S.A. 38-1526. It is the opinion of the
31 committee that this provision belongs in the same section as other provisions dealing with reporting
32 of child abuse and neglect.
33

1 **New Sec. 19. Same; employer prohibited from imposing sanctions on employee making**
2 **report or cooperating in investigation.** (a) No employer shall terminate the employment of,
3 prevent or impair the practice or occupation of, or impose any other sanction on, any employee
4 because the employee made an oral or written report to, or cooperated with an investigation by, a law
5 enforcement agency or the secretary relating to harm inflicted upon a child which was suspected by
6 the employee of having resulted from the physical, mental or emotional abuse or neglect or sexual
7 abuse of the child.

8 (b) Violation of this section is a class B misdemeanor.

9 **COMMENT**

10 This section currently appears at K.S.A. 38-1525 and has been moved because it is closely
11 related to the surrounding provisions. As has been done throughout the code, the word "injury" has
12 been replaced by the word "harm" to clarify that damage to a child may be other than a visible
13 physical injury. The remedy provided in this provision is not intended to be an exclusive remedy.

1 **New Sec. 21. Same; investigation of reports; disclosure upon application; right to**
2 **quash.** (a) *Investigation for child abuse or neglect.* The secretary and law enforcement officers
3 shall have the duty to receive and investigate reports of child abuse or neglect for the purpose of
4 determining whether the report is valid and whether action is required to protect a child. Any person
5 or agency which maintains records relating to the involved child which are relevant to any
6 investigation conducted by the secretary or law enforcement agency under this act shall provide the
7 secretary or law enforcement agency with the necessary records to assist in investigations. In order
8 to provide such records, the person or agency maintaining the records shall receive from the secretary
9 or law enforcement: (1) A written request for information and (2) A written notice that the
10 investigation is being conducted by the secretary or law enforcement. If the secretary and such
11 officers determine that no action is necessary to protect the child but that a criminal prosecution
12 should be considered, such law enforcement officers shall make a report of the case to the
13 appropriate law enforcement agency.

14 (b) *Joint investigations.* When a report of child abuse or neglect indicates (1) that there is
15 serious physical injury to or serious deterioration or sexual abuse of the child and (2) that action may
16 be required to protect the child, the investigation shall be conducted as a joint effort between the
17 secretary and the appropriate law enforcement agency or agencies, with a free exchange of
18 information between them pursuant to K.S.A 2004 Supp. 38-1505c. If a statement of a suspect is
19 obtained by either agency, a copy of the statement shall be provided to the other.

20 (c) *Investigation of certain cases.* Suspected child abuse or neglect which occurs in an
21 institution operated by the secretary shall be investigated by the attorney general. Any other

1 suspected child abuse or neglect by persons employed by the state department of social and
2 rehabilitation services shall be investigated by the appropriate law enforcement agency.

3 (d) *Coordination of investigations by county or district attorney.* If a dispute develops
4 between agencies investigating a reported case of child abuse or neglect, the appropriate county or
5 district attorney shall take charge of, direct and coordinate the investigation.

6 (e) *Investigations concerning certain facilities.* Any investigation involving a facility subject
7 to licensing or regulation by the secretary of health and environment shall be promptly reported to
8 the state secretary of health and environment.

9 (f) *Cooperation between agencies.* Law enforcement agencies and the secretary shall assist
10 each other in taking action which is necessary to protect a child regardless of which
11 agency conducted the initial investigation.

12 (g) *Cooperation between school personnel and investigative agencies.*

13 (1) Elementary and secondary schools, the secretary and law enforcement agencies shall
14 cooperate with each other in the investigation of reports of suspected child abuse or neglect. The
15 secretary and law enforcement agencies shall have access to a child in a setting designated by
16 school personnel on school premises Attendance at an interview conducted on school premises shall
17 be at the discretion of the agency conducting the interview, giving consideration to the best interests
18 of the child. To the extent that safety and practical considerations allow, law enforcement officers
19 on school premises for the purpose of investigating a report of suspected child abuse or neglect shall
20 not be in uniform.

1 (2) The secretary or a law enforcement officer may request the presence of school personnel
2 during an interview if the secretary or officer determines that the presence of such person might
3 provide comfort to the child or facilitate the investigation.

4 COMMENT

5 Subsection (a) of this section has been amended to facilitate the secretary's role in
6 investigating allegations of abuse and in protecting children. The secretary is authorized to
7 investigate and take action whenever necessary to protect not only the child who is subject of the
8 report, but other children who may be in the home or otherwise subject to abuse and neglect by
9 adults who are the subject of the report. For the same reason, the committee has stricken language
10 precluding an investigation after the alleged victim has turned 23. In some instances, evidence of
11 abuse and neglect concerning a victim who is now over the age of 23 may indicate that another child
12 is in danger of abuse or neglect, and the committee believed that the secretary and law enforcement
13 agencies should not be precluded from investigating in such cases. Finally, new language has been
14 inserted into subsection (a) to require persons or agencies, upon proper notification, to provide
15 records relevant to the investigation of a report of child abuse or neglect.

16 Subsection (b) has been amended to provide for free sharing of information between the
17 secretary and law enforcement agencies when they are engaged in a joint investigation and to
18 explicitly cross reference the provision on free sharing of information, K.S.A. 2004 Supp. 38-1505c.

19 Subsection (c) has been amended to read that investigations in cases involving alleged abuse
20 or neglect occurring in SRS institutions are conducted by attorney general (removing "an agent under
21 the direction of the") and that investigations of alleged abuse or neglect by SRS personnel should
22 be conducted by the appropriate law enforcement agency (removing "under the direction of the
23 appropriate county or district attorney"). The committee considered the stricken language
24 unnecessary because investigations by the attorney general are in practice conducted by agents and
25 investigations by law enforcement agencies are always subject to supervision by the local county or
26 district attorney.

27 Subsection (g) has been amended to clarify that the secretary or law enforcement personnel
28 have responsibility for determining who may attend an interview on school grounds with a child
29 concerning alleged abuse and neglect. Language has also been added to confirm that the
30 investigating agency may request the presence of school personnel to comfort the child and facilitate
31 the interview.

32 Subsections (h), (i), and (j) have been moved to new section 24 and combined with nearly
33 identical subsections (d), (e), and (f) of current K.S.A. 38-1523a.

1 **New Sec. 22. Child advocacy centers.** (a) A child advocacy center in this state shall:

2 (1) Be a private, nonprofit incorporated agency or a governmental entity.

3 (2) Have a neutral, child-focused facility where forensic interviews take place with children
4 in appropriate cases of suspected or alleged sexual abuse or physical, mental or emotional abuse.
5 All multidisciplinary agencies shall have a place to interact with the child as investigative or
6 treatment needs require.

7 (3) Have a minimum designated staff that is supervised and approved by the local board of
8 directors or governmental entity.

9 (4) Have a multidisciplinary case review team that meets on a regularly scheduled basis or
10 as the caseload of the community requires. The team shall include, but not be limited to,
11 representatives from the state or local office prosecuting such case, law enforcement, child protective
12 services, mental health services, a victim's advocate, child advocacy center staff and medical
13 personnel.

14 (5) Provide case tracking of child abuse cases seen through the center. A center shall also
15 collect data on the number of child abuse cases seen at the center, by sex, race, age, and other
16 relevant data, the number of cases referred for prosecution, and the number of cases referred for
17 medical services or mental health therapy.

18 (6) Provide medical exam services or mental health therapy, or both, on site at the child
19 advocacy center, or provide referrals for medical exams or mental health therapy, or both, to a
20 facility not on the site of the child advocacy center.

1 (7) Have an interagency commitment, in writing, covering those aspects of agency
2 participation in a multidisciplinary approach to the handling of cases involving physical, mental or
3 emotional abuse.

4 (8) Provide that child advocacy center employees and volunteers at the center are trained and
5 screened in accordance with K.S.A. 65-516, and amendments thereto.

6 (9) Provide training for child advocacy center staff who interview children in forensic
7 children's interview technique.

8 (b) Any child advocacy center within this state that meets the standards prescribed by this
9 section shall be eligible to receive state funds that are appropriated by the legislature.

10 **COMMENT**

11 The section has been moved from former section 38-15,101. The committee believed that
12 this was a more logical placement for the provision, near to provisions concerning multidisciplinary
13 teams. Although the provision is essentially unchanged, the committee struck the last sentence of
14 subsection (a)(5) and all of subsection (c) as unnecessary.

1 **New Sec. 23. Reporting of certain abuse or neglect of children; multidisciplinary team;**
2 **appointment.** The court on its own motion or upon request may, at any time, appoint a
3 multidisciplinary team to assist in gathering information regarding a child who may be or is a child
4 in need of care. The team may be a standing multidisciplinary team or may be appointed for a
5 specific child. Any person appointed as a member of a multidisciplinary team may decline to serve
6 and shall incur no civil liability as the result of declining to serve.

7 **COMMENT**

8 Subsection (a) has been amended to provide the court with the broadest possible discretion
9 to appoint a multidisciplinary team on its own motion or on request of anyone involved in the
10 process. The subsection has been further amended to make explicit the current practice of permitting
11 appointment of an individual or standing team to make recommendations regarding all children
12 alleged or adjudged to be in need of care, not just those who are victims of abuse or neglect.

13 Subsection (b) has been combined with subsection (a).

14 Subsection (c) has been stricken as unnecessary.

15 Subsections (d), (e), and (f) have been stricken in their entirety and moved to a new section
16 24 where they have been combined with nearly identical subsections (h) (i) and (j) of current K.S.A.
17 38-1523.

18

1 Each a child under 18 years of age.

2 WRITTEN APPLICATION FOR DISCLOSURE OF INFORMATION

3 County of _____

4 ss

5 State of Kansas

6 The undersigned applicant being first duly sworn alleges and states as follows:

7 1. The applicant is _____.

8 2. One of the following applies: (a) There is an investigation being made into the report a
9 child who may be a child in need of care;

10 (b) a petition has been filed alleging the above-named child is a child in need of
11 care

12 (c) a child has been adjudicated as a child in need of care.

13 3. The following documents, reports and/or information are requested. (List specifically.)

14 4. The reasons for the request are:

15 Further applicant saith not.

16 _____

17 Applicant

18 Subscribed and sworn to before me this _____ day of _____, 19____.

19 _____

20 Notary Public

21 My commission expires:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

(j) Any parent, child, guardian ad litem, person or entity subpoenaed or subject to an order of production or person or entity who claims a privilege or right of confidentiality may request in writing that the court issuing the subpoena or order of production quash the subpoena, subpoena duces tecum or order for production issued pursuant to subsection (i) The request shall automatically stay the operation of the subpoena, subpoena duces tecum or order for production and the documents, reports or information requested shall not be delivered until the issuing court has held a hearing to determine if the documents, reports or information are subject to the claimed privilege or right of confidentiality, and whether it is in the best interests of the child for the subpoena or order to produce to be honored. The request to quash shall be filed with the district court issuing the subpoena or order at least 24 hours prior to the specified time and date of delivery, excluding Saturdays, Sundays or holidays, and a copy of the written request must be given to the person subpoenaed or subject to the order for production at least 24 hours prior to the specified time and date of delivery.

COMMENT

New section 24 combines subsections (h), (i), and (j) of current K.S.A. 38-1523 with nearly identical subsections (d), (e), and (f) of current K.S.A. 38-1523a. By combining the these provisions into a single new section, the provisions regarding disclosure of information and procedures for requesting or quashing a subpoena are made easier to find in the statute, minor differences in wording between the two previous subsections have been reconciled, and redundancy in the code has been eliminated.

Some minor changes to the wording of the section have been made for purposes of clarity.

1 **New Sec. 26. Child under 18, when law enforcement officers or court services officers**
2 **may take into custody.** (a) A law enforcement officer or court services officer shall take a child
3 under 18 years of age into custody when:

4 (1) The law enforcement officer or court services officer has a court order commanding that
5 the child be taken into custody as a child in need of care; or

6 (2) the law enforcement officer or court services officer has probable cause to believe that
7 a court order commanding that the child be taken into custody as a child in need of care has been
8 issued in this state or in another jurisdiction.

9 (b) A law enforcement officer shall take a child under 18 years of age into custody when:
10 (1) the law enforcement officer reasonably believes the child will be harmed if not immediately
11 removed from the place or residence where the child has been found: or (2) when the officer has
12 probable cause to believe that the child is a missing person and a verified missing person entry for
13 the child can be found in the national crime information center missing person system.

14 (c) (1) If a person provides shelter to a child whom the person knows is a runaway, such
15 person shall promptly report the child's location either to a law enforcement agency or to the child's
16 parent or other custodian. (2) If a person reports a runaway's location to a law enforcement agency
17 pursuant to this section and a law enforcement officer of the agency has reasonable grounds to
18 believe that it is in the child's best interests, the child may be allowed to remain in the place where
19 shelter is being provided, subject to subsection (b) of this section, in the absence of a court order to
20 the contrary. If the child is allowed to so remain, the law enforcement agency shall promptly notify
21 the secretary of the child's location and circumstances.

1 (d) A law enforcement officer may temporarily detain and assume temporary custody of any
2 child subject to compulsory school attendance, pursuant to K.S.A. 72-1111, and amendments thereto,
3 during the hours school is actually in session and shall deliver the child pursuant to section 27(g).

4 **COMMENT**

5 Subsections (a) and (b) have been amended to provide that a law enforcement officer or court
6 services officer “shall” take a child into custody under the specified circumstances. This language
7 reflects the committee’s view that there is a duty to take the child into custody under the specified
8 circumstances and the matter is not properly one for discretionary judgments.

9 Former subsections (b) and (c) have been rewritten and combined under subsection (b)(1)
10 and (2). The language of (b)(1) (formerly (b)) has been substantially reworked. It requires the
11 officer to take a child into custody whenever the officer “reasonably believes” the child will be
12 harmed if not immediately removed. This language eliminates the requirement of the prior law that
13 there must be probable cause to believe the child is a child in need of care, which the committee
14 believes should not be an additional requirement that might in some circumstances prevent the
15 removal of a child from a place of danger. “Reasonably believes” means that the officer in fact
16 believes that the child will be harmed if not immediately removed and that this belief is objectively
17 reasonable in light of the facts known or that should be known to the officer. This language
18 complies with the requirements of ASFA.

19 New subsection (c) is former K.S.A. 38-1530. It was moved to this provision because the
20 committee believes that its subject matter is in keeping with the other provisions of this section.

21 Subsection (d) has been rewritten for clarity and to incorporate a cross reference to the
22 officer’s duty under section 27(g) to deliver the child to school if taken into custody for truancy.

1 **New Sec. 27. Child under 18 taken into custody; duties of officers; referral of cases for**
2 **proceedings under this code and interstate compact on juveniles; custody of shelter facility or**
3 **other person; application of law enforcement officer; release of child.** (a) To the extent possible,
4 when any law enforcement officer takes into custody a child under the age of 18 years without a
5 court order, the child shall forthwith be delivered to the custody of the child's parent or other
6 custodian unless there are reasonable grounds to believe that such action would not be in the best
7 interests of the child. Except as provided in subsection (b), if the child is not delivered to the custody
8 of the child's parent or other custodian, the child shall forthwith be delivered to a facility or person
9 designated by the secretary, a shelter facility designated by the court, court services officer, juvenile
10 intake and assessment worker, licensed attendant care center or other person. If, after delivery of the
11 child to a shelter facility, the person in charge of the shelter facility at that time and the law
12 enforcement officer determine that the child will not remain in the shelter facility, the law
13 enforcement officer shall deliver the child to a juvenile detention facility or other secure facility,
14 designated by the court, where the child shall be detained for not more than 24 hours, excluding
15 Saturdays, Sundays and legal holidays. No child taken into custody pursuant to this code shall be
16 placed in a juvenile detention facility or other secure facility, except as authorized by this section and
17 by section 37, 38 and 55 and amendments thereto. It shall be the duty of the law enforcement officer
18 to furnish to the county or district attorney, without unnecessary delay, all the information in the
19 possession of the officer pertaining to the child, the child's parents or other persons interested in or
20 likely to be interested in the child and all other facts and circumstances which caused the child to be
21 taken into custody.

1 (b) When any law enforcement officer takes into custody any child as provided in subsection
2 (b)(2) of section 26 and amendments thereto, proceedings shall be initiated in accordance with the
3 provisions of the interstate compact on juveniles, K.S.A. 38-1001 *et seq.* and amendments thereto
4 or 2004 SB 183, when effective, and amendments thereto. Any child taken into custody pursuant
5 to the interstate compact on juveniles may be detained in a juvenile detention facility or other secure
6 facility.

7 (c) Whenever a child under the age of 18 years is taken into custody by a law enforcement
8 officer without a court order and is thereafter placed as authorized by subsection (a), the facility or
9 person shall, upon written application of the law enforcement officer, have physical custody and
10 provide care and supervision for the child. The application shall state:

11 (1) The name and address of the child, if known;

12 (2) the names and addresses of the child's parents or nearest relatives and persons with whom
13 the child has been residing, if known; and

14 (3) the officer's belief that the child is a child in need of care and that there are reasonable
15 grounds to believe that the circumstances or condition of the child is such that the child would be
16 harmed unless placed in the immediate custody of the shelter facility or other person.

17 (d) A copy of the application shall be furnished by the facility or person receiving the child
18 to the county or district attorney without unnecessary delay.

19 (e) The shelter facility or other person designated by the court who has custody of the child
20 pursuant to this section shall discharge the child not later than 72 hours following admission,
21 excluding Saturdays, Sundays and legal holidays, unless a court has entered an order pertaining to
22 temporary custody or release.

1 (f) In absence of a court order to the contrary, the county or district attorney or the placing
2 law enforcement agency shall have the authority to direct the release of the child at any time.

3 (g) When any law enforcement officer takes into custody any child as provided in subsection
4 (c) of section 26, and amendments thereto, the child shall forthwith be delivered to the school in
5 which the child is enrolled, any location designated by the school in which the child is enrolled or
6 the child's parent or other custodian.

7 **COMMENT**

8 Most of the changes to this section are technical and for purposes of clarity. New language
9 inserted in subsection (a) was previously found in K.S.A. 38-1517 and was moved to this subsection
10 in order to consolidate provisions relating to custody in one section.

1 **New Sec. 28. Filing of petition on referral by SRS or other person; filing by individual.**

2 (a) Whenever the secretary or any other person refers a case to the county or district attorney
3 for the purpose of filing a petition alleging that a child is a child in need of care, the county or district
4 attorney shall review the facts, recommendations and any other evidence available and determine
5 if the circumstances warrant filing a petition.

6 (b) Any individual may file a petition alleging a child is a child in need of care and the
7 individual may be represented by the individual's own attorney in the presentation of the case.

8 (c) When a petition is filed alleging an infant surrendered pursuant to section 77, and
9 amendments thereto, is a child in need of care, the petition shall include a request that the court find
10 that reintegration is not a viable alternative. Such petition also shall include a request to terminate
11 the parental rights of the parents of such infant. An expedited hearing shall be granted on any
12 petition filed pursuant to this subsection.

13 **COMMENT**

14 The changes to this section are technical and for purposes of clarity and do not change its
15 content or meaning.

1 **General Comment to Sections 29, 31, 32, 34 and 62:**

2 One of the overarching purposes of the code is to “[a]cknowledge that the time perception
3 of a child differs from that of an adult and to dispose of all proceedings under the code without
4 unnecessary delay.” Current K.S.A. 38-1584(a), (proposed section 1, paragraph 4) Obtaining
5 service of process on an absent parent or alleged parent, however, is often a significant cause of
6 delay, particularly when moving to the termination phases of the proceedings. In particular,
7 “publication notice” is generally time consuming and yet ineffective in providing a parent or alleged
8 parent who could not otherwise be served with any actual notice of proceedings. Under the current
9 provisions of the code, service of process is required once at the initiation of the proceedings and a
10 second time if the proceedings move to a termination phase. K.S.A. 38-1582(a). Of course, ensuring
11 that parents receive notice of proceedings in which their rights may be adversely affected is both
12 essential to a fair outcome and constitutionally required, but the committee believed that the focus
13 of the code should be on providing notice, as opposed to requiring service of process. For that
14 reason, these related provisions have been reworked with the intent of creating a system in which
15 process is served on parents only once, at the outset of a child in need of care proceeding, and
16 subsequent notice is provided through first class mail.

17 The committee believes that a second service of process is unnecessary to provide fair and
18 adequate notice. The termination of parental rights is the culmination of an ongoing process. It is
19 almost always the result of the same facts supporting a child in need of care adjudication, and arises
20 when there is a failure to complete a reintegration program successfully. Provided that the initial
21 notice makes parents fully aware of the possibility that the proceeding may result in a termination
22 of their parental rights, it is not unreasonable to expect that, if they are properly served at the outset
23 of the proceedings, they will become involved in the proceeding. At a minimum, it is reasonable to
24 require them to keep the court informed of their address if they wish to follow the proceedings and
25 possibly participate at some later phase of the proceedings, such as termination. This system
26 provides parents with sufficient notice to apprise them of the pendency of the action and afford them
27 the opportunity to present their objections. *See In re H.C. and K.S.C.*, 23 Kan App. 2d 955, 958
28 (Kan. Ct. App. 1997) (defining due process in those terms). Other states have dispensed with a
29 second formal service of process when a case moves to the termination phases. *See In re D.P. and*
30 *M.P.*, 488 N.W.2d 133 (Wis. Ct. App. 1992); *In re R.E. and T.E.*, 262 N.W.2d 723 (Ia. Ct. App.
31 1990).

32 To implement this approach, the committee changed existing provisions in several respects.
33 First, the provisions relating to the initial service of process were reworked to ensure that the initial
34 petition, summons, and published notice would make clear: (1) that the proceeding could result in
35 loss of custody, an order of child support, appointment of a permanent custodian or the termination
36 of parental rights; and (2) that subsequent notice would be provided by first class mail. (*See*
37 *proposed sections 29, 31 and 32.*) Second, provisions requiring service of process following the
38 service of the initial summons and petition were revised to permit notice by first class mail or
39 directly by the court.. (*See proposed sections 34 and 62.*)

1 **New Sec. 29. Pleadings.** (a) *Filing and contents of petition.* (1) A petition filed to
2 commence as action pursuant to this code shall be filed with the clerk of the district court and shall
3 state, if known:

4 (A) The name, date of birth and residence address of the child;

5 (B) the name and residence address of the child's parents;

6 (C) the name and address of the child's nearest known relative if no parent can be found.

7 (D) the name and residence address of any persons having custody or control of the child,
8 and

9 (E) plainly and concisely in the language of the statutory definition, the basis for the
10 petition.

11 (2) The petition shall also state the specific facts which are relied upon to support the
12 allegation referred to in the preceding paragraph including any known dates, times and locations.

13 (3) The proceedings shall be entitled: "In the Interest of _____."

14 (4) The petition shall contain a request that the court find the child to be a child in need of
15 care.

16 (5) The petition shall contain a request that the parent or parents be ordered to pay child
17 support. The request for child support may be omitted with respect to a parent already ordered to pay
18 child support for the child and shall be omitted with respect to one or both parents upon written
19 request of the secretary.

20 (6) If the petition requests removal of the child from the child's home, the petition shall
21 specify the efforts known to the petitioner to have been made to maintain the family and prevent the

1 unnecessary removal of the child from the child's home, or shall specify the facts supporting that an
2 emergency exists which threatens the safety of the child.

3 (7) If the petition requests custody of the child to the secretary, the petition shall specify the
4 facts supporting that allowing the child to remain in the home would be contrary to the welfare of
5 the child or that placement is in the best interests of the child and the child is likely to sustain harm
6 if not removed from the home.

7 (8) The petition shall contain the following statement "if you do not appear in court the court
8 will be making decisions without your input which could result in:

9 (A) the permanent or temporary removal of the child from the custody of the parent or
10 present legal guardian.

11 (B) an order requiring one or both parents to pay child support the permanent termination of
12 one or both of the parents parental rights.

13 (C) the permanent termination of one or both of the parents parental rights.

14 (D) the appointment of a permanent custodian for the child.

15 If you cannot attend the hearing you may send a written response to the petition to the clerk
16 of the court."

17 (9) The petition shall contain the following statement: "You may receive further notices of
18 other hearings, proceedings and actions in this case which you may attend. These notices will be
19 sent to you by first class mail to your last known address or an address you provide to the court. It
20 is your responsibility to keep the court informed of your current address."

21 (b) *Motions*. Motions may be made orally or in writing. The motion shall state with
22 particularity the grounds for the motion and shall state the relief or order sought.

1 **COMMENT**

2 This provision has been amended by combining subsections (a) and (b) into a single
3 provision and by adding new paragraphs (8) and (9) to subsection (a) (previously subsection (b)).
4 New paragraphs (8) and (9) implement the committee’s proposal to require service of process to be
5 made once at the outset of the proceedings and permit subsequent notice to be provided by first class
6 mail. See the general comment to Sections 29, 31, 32, 34 and 62. Paragraph (8) provides notice of
7 the adverse consequences that may result from the proceedings and paragraph (9) informs the
8 recipient that further notices of hearings, proceedings and actions will be provided by mail to the
9 recipient’s known address or an address provided by the recipient.

10 The language added to subsection (a)(7) is necessary to comply with ASFA.

11 Other changes are technical and for purposes of clarity.

New Sec. 30. Procedure upon filing of petition. (a) Upon the filing of a petition under this code the court shall proceed by one of the following methods:

(1) The court shall issue summons pursuant to section 31, and amendments thereto, setting the matter for hearing within 30 days of the date the petition is filed. The summons, with a copy of the petition attached, shall be served pursuant to section 32, and amendments thereto.

(2) If the child has been taken into protective custody under the provisions of section 37, and amendments thereto, and a temporary custody hearing is held as required by section 38, and amendments thereto, a copy of the petition shall be served at the hearing on each party and interested party in attendance and a record of service made a part of the proceedings. The court shall announce the time of the next hearing. Process shall be served on any party or interested party not at the temporary custody hearing pursuant to subsection (a)(1) of this section. Upon the written request of the petitioner or the county or district attorney separate or additional summons shall be issued to any party and interested party.

(b) If the petition requests custody to the secretary, the court shall cause a copy of the petition to be provided to the secretary upon filing.

COMMENT

This section has been reorganized for purposes of clarity by combining subsections (a) and (b) into a single subsection (a) and renumbering subsection (c) as (b). In subsection (a)(2) (formerly (b)), the sentence "The court shall attempt to notify both parents, if known" is stricken because the parents will be given notice as parties.

In subsection (b) the last sentence is stricken because notice to the secretary is not jurisdictional.

Other changes were for simplification and clarity of language.

1 **New Sec. 31. Summons; persons upon whom served; Notice of hearing: form.**

2 (a) *Persons to be served.* The summons and a copy of the petition shall be served on:

- 3 (1) the child alleged to be a child in need of care by serving the guardian ad
4 litem appointed for the child;
- 5 (2) the parents or parent having legal custody or who may be ordered to pay child
6 support by the court;
- 7 (3) the person with whom the child is residing; and
- 8 (4) any other person designated by the county or district attorney.

9 (b) A copy of the petition and notice of hearing shall be mailed by first class mail to
10 the child's grandparents with whom the child does not reside.

11 (c) *Form of summons.* The summons shall be issued by the clerk, dated the day it is issued, contain
12 the name of the court and the caption of the case and be in substantially the following form:

13 (Name of Court)

14 In the Interest of _____ Case No. _____

15 (Name[s])

16 Date of birth _____

17 Each a child under 18 years of age

18 **SUMMONS**

19 TO: (Names) (Relationship) (Addresses)
20 _____
21 _____

1 _____
2 _____

3 A child in need of care petition has been filed in this court. A copy of the petition is
4 attached to this summons. On _____, 20__, at _____ o'clock __m., the
5 parent(s), and any other person having legal custody of the child are required to appear before
6 the court at the following address:_____. If
7 you cannot attend this hearing you may send a written response to the petition to the clerk
8 of this court.

9 Be aware that if you do not appear or respond to this summons the court will be
10 making decisions on the petition without your input. Those decisions could result in the
11 following:

- 12 1. Permanent or temporary removal of the child from the custody of the parents
13 or present legal guardian.
- 14 2. An order requiring one or both of the parents to pay child support.
- 15 3. The appointment of a permanent custodian for the child.
- 16 4. The permanent termination of one or both of the parent’s parental rights.

17 You may receive further notices of other hearings, proceedings, and actions in this
18 case, which you may attend. These notices will be sent to you by first class mail to your last
19 known address or to an address you provide the court. It is your responsibility to keep the
20 court informed of your current address.

21 _____, an attorney, has been appointed as guardian ad litem for the child or children.
22 Each parent or legal custodian has the right to appear and be heard personally either with or

1 without an attorney. The court will appoint an attorney for any parent who is financially
2 unable to hire one.

3 Date _____,20 ____ Clerk of the District Court
4 (Seal) by _____

5 **COMMENT**

6 This provision has been amended by separately numbering the persons on whom the
7 summons must be served under subsection (a) and by making changes in the form of the
8 summons specified by subsection (b). The changes to subsection (b) implement the
9 committee’s proposal to require service of process to be made once at the outset of the
10 proceedings and permit subsequent notice to be provided by first class mail. See the general
11 comment to Sections 29, 31, 32, 34 and 62. To ensure adequate notice is provided, the
12 summons would specify that the proceedings may result in removal of custody, an order of
13 child support, appointment of a permanent custodian, or the termination of parental rights.
14 It also informs the recipient that further notices of hearings, proceedings and actions will be
15 provided by mail to the recipient’s last known address or an address provided by the
16 recipient.

1 **New Sec. 32. Service of process.** Summons, notice of hearings and other process
2 may be served by one of the following methods: (a) *Personal and residence service.*
3 Personal and residence service is completed by service in substantial compliance with the
4 provisions of K.S.A. 60-303 and amendments thereto. Personal service upon an individual
5 outside the state shall be made in substantial compliance with the applicable provisions of
6 K.S.A. 60-308 and amendments thereto.

7 (b) *Service by return receipt delivery.* Service by return receipt delivery is completed upon
8 mailing or sending only in accordance with the provisions of K.S.A. 60-303(c) and
9 amendments thereto.

10 (c) *First class mail service.* Service may be made by first class mail, addressed to the
11 individual to be served at the usual place of residence of the person with postage prepaid, and
12 is completed upon the person appearing before the court in response thereto. If the person
13 fails to appear, the summons, notice or other process shall be delivered by personal service,
14 residential service, certified mail service or publication service.

15 (d) *Service upon confined parent.* If a parent of a child who is the subject of proceedings
16 under this code is confined in a state or federal penal institution, state or federal hospital or
17 other institution, service shall be made by return receipt delivery to addressee only to both
18 the confined parent and the person in charge of the institution. It shall be the duty of the
19 person in charge of the institution to confer with the parent, if the parent's mental condition
20 is such that a conference will serve any useful purpose, and advise the court in writing as to
21 the wishes of the parent with regard to the child. Personal service on a confined parent who

1 is present in the courtroom cures any defect in notice to the person in charge of the
2 institution.

3 (e) *Service by publication*. If service cannot be completed after reasonable efforts using any
4 other method provided in this section, service may be made by publication in accordance
5 with this subsection.

6 (1) Before service by publication, the petitioner, or someone on behalf of the
7 petitioner, shall file an affidavit which shall be in substantially the following form:

8 (Name of Court)

9 (Caption of Case)

10 AFFIDAVIT

11 STATE OF KANSAS _____ COUNTY, SS

12 _____, of lawful age, being first duly sworn, states that:

13 (1) Affiant is (state position) and makes this affidavit for the purpose of
14 obtaining service by publication upon the persons named herein.

15 (2) Affiant has made a reasonable, but unsuccessful, effort to ascertain the names
16 and/or residences of the persons named or described herein as follows:

17 (Here describe the reasonable efforts made)

18 (3) The persons on whom service by publication is sought are as follows:
19 (Names or, if names are unknown, description of relationship to alleged child
20 in need of care).

_____ (Signature)

(Jurat)

(2) (A) The notice shall be published once a week for two consecutive weeks in some newspaper authorized to publish legal notices in the county where the petition is filed.

(B) In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after reasonable efforts, the parent is most likely to be found.

(3) The notice shall be in substantially the following form:

(Name of Court)

(Caption of Case)

NOTICE OF HEARING

TO: (Names and/or descriptive relationship of persons to whom notice is given) and all other persons who are or may be concerned:

A child in need of care petition has been filed in this court. On _____, 20__, at _____ o'clock __m., the parent(s), and any other person having legal custody of the child are required to appear before the court at the following address: _____ . If you cannot attend this hearing you may send a written response to the petition to the clerk of this court before that time.

1 Be aware that if you do not appear or respond to this notice the court will be making
2 decisions on the petition without your input. Those decisions could result in the following:

- 3 1. Permanent or temporary removal of the child from the custody of the parents
4 or present legal guardian.
- 5 2. An order requiring one or both of the parents to pay child support.
- 6 3. The appointment of a permanent custodian for the child.
- 7 4. The permanent termination of one or both of the parent's parental rights.

8 There may be other hearings, proceedings, and actions in this case which you may
9 attend. Notices of these hearings, proceedings, or actions will be provided by first class mail, which
10 only can be sent to you if you inform the court of your address. It is your responsibility to keep the
11 court informed of your current address.

12 _____, an attorney, has been appointed as guardian ad litem for the child or
13 children. Each party or interested party has the right to appear and be heard personally either with
14 or without an attorney. The court will appoint an attorney for a parent who is financially unable to
15 hire one.

16 Clerk of the District Court

17 by _____

18 **COMMENT**

19 Several amendments to this provision were made for purposes of clarity and simplification.
20 Personal and residential service were combined into a single section, as were two separate sections
21 dealing with service by publication. The committee has replaced the phrase "registered mail" with
22 the phrase "return receipt delivery" because that is the current term used by the postal service. This

1 change has been applied throughout the code. Similarly, in this provision and throughout the code,
2 the committee has replaced the term “regular mail” with the term “first class mail.” This term is
3 more precise and clear.

4 The form of published notice, as specified in paragraph (e)(2), has also been amended to
5 implement the committee’s proposal to require service of process to be made once at the outset of
6 the proceedings and permit subsequent notice to be provided by first class mail. See the general
7 comment to Sections 29, 31, 32, 34 and 72. The published notice now specifies that the proceedings
8 may result in removal of custody, an order of child support, appointment of a permanent custodian,
9 or the termination of parental rights. It also informs the recipient that further notices of hearings,
10 proceedings and actions will be provided by mail to the recipient’s known address or an address
11 provided by the recipient.

12 Subsection (e)(2)(B) has been amended to require publication in a newspaper in the locality
13 where the court determines, after reasonable efforts, that an absent parent is most likely to be found.
14 This new language addresses a potential constitutional problem with the current provisions, which
15 provide for publication in a "local" official newspaper. In *Board of County Commissioners v. Akins*,
16 271 Kan. 192, 21 P.3d 535 (2001), the Kansas Supreme Court held that it is constitutionally
17 insufficient to publish notice in a local paper when reasonable efforts were not made to locate an
18 absentee landowner whose last known address was out of state. See also *Mullane v. Central*
19 *Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). The rights of parents are, if anything, stronger than
20 those of landowners and the *Akins* holding would presumably apply in CINC proceedings when an
21 absent parent was last known to be located in a different geographical area.

1 **New Sec. 33. Proof of service.** Proof of service shall be made as follows:

2 (a) *Personal or residential service.* (1) Every officer to whom summons or other process is
3 delivered for service within the state shall make written report of the place, manner and date of
4 service of the process in substantially the following form:

5 **REPORT OF SERVICE**

6 I certify that a true copy of the above summons and a copy of the petition was served on the
7 persons above named in the manner and on the dates indicated below:

Name	Location	Manner	Date
	of Service	of Service	of Service
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

14 Date Returned: _____, 20__ Sheriff of _____ County, Kansas

15 by _____

16 _____

17 (Title)

18 (2) Every officer to whom summons or other process shall be delivered for service outside
19 this state shall make written report of the place, manner and time of service in substantially the
20 following form:

21 **REPORT OF SERVICE**

22 STATE OF _____ COUNTY OF _____, SS

1 _____ being first duly sworn upon oath, states that the undersigned served the attached
2 summons or other process upon _____ at _____ on the ___ day of _____, 20___,
3 in the above county and state by delivering to the person a copy of the attached summons or other
4 process together with a copy of the pleading therein described.

5 _____
6 Sheriff of _____ County
7 State of _____

8 (Jurat)

9 (3) If the process is, by order of the court, delivered to a person other than an officer for
10 service that person shall report the place, manner and time of service by affidavit.

11 (b) *Service by mail.* The clerk or a deputy clerk shall make a written report of service by mail
12 in substantially the following form:

13 CERTIFICATE OF MAILING

14 On _____, 20___, I mailed a copy of the (summons or other process) and a copy of the
15 (petition or other pleading) described therein to each of the persons named therein at the address
16 indicated on the process:

17 * []By placing in an envelope properly addressed and delivering it to the United States Postal
18 Service for delivery with postage prepaid.

19 * []By return receipt delivery mail of the United States Postal Service endorsed "return
20 receipt requested showing address where delivered" and "deliver to addressee only" with all
21 appropriate fees paid.

1 Date_____, 20__ _____

2 (Deputy) Clerk of the District Court

3 * Check [X] paragraph to indicate method used.

4 The return receipt for delivery of the item shall be attached to the certificate.

5 (c) *Publication service.* Service by publication shall be reported by an affidavit showing the
6 dates upon and the newspaper in which the notice was published. A copy of the published notice
7 shall be attached to the affidavit.

8 (d) *Amendment of report.* The judge may allow an amendment of a report of service at any
9 time and upon terms as are deemed just to correctly reflect the true manner of service.

10 **COMMENT**

11 The only amendments to this section are minor technical changes that do not alter its meaning
12 or effect.

1 **New Sec. 34. Service of other pleadings.** (a) *Proceedings upon filing.* Upon the filing of
2 a subsequent pleading, other than a petition, indicating the necessity for a hearing, the court shall fix
3 the time and place for the hearing.

4 (b) *Form of notice.* The notice of hearing shall be given by the clerk, unless otherwise ordered by
5 the court. The notice shall be dated the day it is issued, contain the name of the court and the caption
6 in the case and be substantially in the following form:

7 (Name of Court)

8 (Caption of Case)

9 NOTICE OF HEARING

10 TO:

(Names)	(Relationship)	(Addresses)
_____	_____	_____
_____	_____	_____
_____	_____	_____

15 A (describe pleading) has been received by the court and filed in the above
16 entitled case, a copy of which is attached, and will require a hearing before the court.

17 On _____, 20__, at ____ o'clock __m. the parents, any other person
18 having legal custody of the above named child(ren) or any interested party are
19 required to appear before this court at (describe location). Your failure to either
20 appear or respond will not prevent the court from entering judgment granting the

1 request contained in the pleading served with this notice if the court finds that the
2 judgment should be granted.

3 Date _____, 20__ Clerk of the District Court

4 by _____

5 (Seal)

6 (c) *Notification by First Class Mail.* Unless other provisions of this code expressly require service
7 of process, notice of motions and other pleadings filed subsequent to the petition in connection with
8 the case and any hearings to be held on such motions or other pleadings may be provided by first
9 class mail, postage prepaid, to any party or interested party who has been served in accordance with
10 section 32 and amendments thereto. Such notice shall be sent to the last address provided to the
11 court by the party or interested party in question. Failure to appear shall not invalidate notice by first
12 class mail. Notice by mail is not required if the court orally notifies a party or interested party of the
13 time and place of the hearing.

14 **COMMENT**

15 Subsection (c) of this section has been amended to implement the committee's proposal to
16 require service of process to be made once at the outset of the proceedings and permit subsequent
17 notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 62.
18 Under current subsections (c) and (d), notification of motions, pleadings, and hearings must be
19 served on an interested party, except that new service is not required for parties in default for failure
20 to appear unless new claims are asserted. As amended by the committee, subsection (c) would
21 permit notification of motions, pleadings, and hearings to be made by first class mail or oral
22 notification by the court. With the amendments to subsection (c), subsection (d) became
23 unnecessary.

1 **New Sec. 35. Subpoenas and witness fees.** (a) Subject to section 36 and amendments
2 thereto, a party or interested party shall be entitled to the use of subpoenas and other compulsory
3 process to obtain the attendance of witnesses. Except as otherwise provided by this code, subpoenas
4 and other compulsory process shall be issued and served in the same manner and the disobedience
5 thereof punished the same as in other civil cases.

6 (b) The court shall have the power to compel the attendance of witnesses from any county
7 in the state for proceedings under this code.

8 (c) Only witnesses who have been subpoenaed shall be allowed witness fees and mileage.
9 No witness shall be entitled to be paid fees or mileage before the witness' actual appearance at court.

10 **COMMENT**

11 This section was amended by adding a reference to new section 36, which permits the Court
12 in some instances to restrict the rights of some interested parties.

1 **New Sec. 36. Parties and Interested Parties.** (a) *Jurisdiction of the Court.* Parties and
2 interested parties in a child in need of care proceeding are subject to the jurisdiction of the court.

3 (b) *Rights of Parties.* Subject to the authority of the court to rule on the admissibility of evidence
4 and provide for the orderly conduct of the proceedings, the rights of parties to participate in a child
5 in need of care proceeding include, but not are limited to,

6 (1) the right to notice in accordance with sections 31 and 34 and amendments thereto.

7 (2) the right to present oral or written evidence and argument, to call and cross-examine
8 witnesses; and

9 (3) the right to be represented by counsel in accordance with section 5 and amendments
10 thereto.

11 (c) *Grandparents as Interested Parties.*

12 (1) A grandparent of the child shall be made an interested party to a child in need of care
13 proceeding if the grandparent notifies the court of his or her desire to become an interested
14 party. Notification may be made in writing, orally, or by appearance at the initial or a
15 subsequent hearing on the child in need of care petition.

16 (2) Grandparents with interested party status shall have the participatory rights of parties
17 pursuant to subsection (b) of the this section, except that the court may restrict those rights
18 if the court finds that it would be in the best interests of the child. Provided, however, a
19 grandparent may not be prevented under this paragraph from attending the proceedings,
20 having access to the child's official file in the court records, or making a statement to the
21 court.

22 (d) *Persons with whom the Child has been Residing as Interested Parties.*

1 (1) Any person with whom the child has resided for a significant period of time within six
2 months of the date the child in need of care petition is filed shall be made an interested party,
3 if he or she notifies the court of his or her desire to become an interested party. Notification
4 may be made in writing, orally, or by appearance at the initial or a subsequent hearing on the
5 child in need of care petition.

6 (2) Persons with interested party status under this subsection shall have the participatory
7 rights of parties pursuant to subsection (b) of the this section, except that the court may
8 restrict those rights if the court finds that it would be in the best interests of the child.

9 *(e) Other Interested Parties*

10 (1) Any person with whom the child has resided at any time, who is within the fourth degree
11 of relationship to the child, or to whom the child has close emotional ties may, upon motion,
12 be made an interested party if the court determines that it is in the best interests of the child.

13 (2) Any other person may, upon motion, be made an interested party if the court determines
14 that the person has a sufficient relationship with the child to warrant interested party status
15 or that the person's participation would be beneficial to the proceedings.

16 (3) The court may, upon its own motion, make any person an interested party if the court
17 determines that interested party status would be in the best interests of the child.

18 *(f) Procedure for Determining, Denying, or Terminating Interested Party Status.*

19 (1) Upon the request of the court, the secretary shall investigate the advisability of granting
20 interested party status under this section and report findings and recommendations to the
21 court.

1 (2) The court may deny or terminate interested party status under this subsection if the court
2 determines, after notice and a hearing, that a person does not does not qualify for interested
3 party status or that there is good cause to deny or terminate interested party status.

4 (3) A person who is denied interested party status or whose status as an interested party has
5 been terminated may petition for review of the denial or termination by the chief judge of the
6 district in which the court having jurisdiction over the child in need of care proceeding is
7 located, or a judge designated by the chief judge. The chief judge or the chief judge's
8 designee shall review the denial or termination within 30 days of receiving the petition. The
9 child in need of care proceeding shall not be stayed pending resolution of the petition for
10 review.

11 COMMENT

12 Proposed section 36 has been substantially amended and reworked to clarify the participatory
13 rights of parties and interested parties. As defined in proposed section 2(u) parties include the state,
14 the petitioner, the child, and any parent of the child. As defined in proposed section 2(l), "interested
15 parties" include other persons who have a significant relationship to the child, including
16 grandparents, persons with whom a child was residing for a significant time in the period before the
17 filing of the petition, relatives, and other persons with whom the child has lived.

18
19 Current law distinguishes between mandatory interested parties and optional interested
20 parties, but does not specify their participatory rights or differentiate between various classes of
21 mandatory and optional interested parties. In addition, current law limits optional interested parties
22 to certain relatives and other individuals with whom the child has been residing. The committee
23 proposals would provide broader discretion to the court to recognize additional interested parties and
24 to impose limits on participation by interested parties (but not on participation by the parties). These
25 changes reflect the committee's view that current law may prevent persons from participating whose
26 participation would be desirable, either to further the interests of children or to improve the conduct
27 of proceedings. At the same time, the committee believed that, to control the orderly conduct of the
28 proceedings and protect the interests of the child, a judge must have discretion to limit participatory
29 rights in appropriate circumstances.

30 The section has also been reworked to provide clarity regarding participatory rights and
31 procedures for determining interested party status. These provisions also are intended to provide an
32 appropriate compromise of the competing interests involved.

1 Proposed subsection (a) is new language specifying that all parties and interested parties are
2 subject to the jurisdiction of the court. This language makes explicit what is assumed in current
3 practice.

4 Proposed subsection (b) is also new language that specifies the participatory rights of parties,
5 with cross references to relevant provisions of the code. This language is intended to reflect current
6 understandings but to make them more explicit. The rights of parties are subject to the court's
7 inherent power to provide for the orderly conduct of the proceedings.

8 Proposed subsection (c) deals with grandparents as interested parties. The current code
9 provides that grandparents are mandatory interested parties, but does not specify the extent of their
10 participatory rights or provide procedural safeguards for those rights. Nor does the current code
11 appear to permit grandparents the right to decline interested party status. Under the proposed
12 subsection (c), grandparents would be made interested parties upon notifying the court of their desire
13 to be interested parties. Grandparents who are interested parties would have full participatory rights
14 of parties (subject to the court's inherent power to provide for the orderly conduct of the
15 proceedings) unless the court restricts those rights based on a finding that doing so is in the best
16 interests of the child. The court could not, however, prevent grandparents who are interested parties
17 from attending the proceedings, having access to the child's official file in the court records, or
18 making a statement to the court. The court could restrict or deny those rights only by denying or
19 terminating interested party status for grandparents, which can be done only for good cause after
20 notice and a hearing. (*See* proposed subsection (f).)

21 Proposed subsection (d) contains new language concerning a new class of interested parties:
22 persons with whom the child has resided for a significant period of time in the six month period
23 immediately preceding the filing of the CINC petition. The committee believes that such persons,
24 which may include grandparents, other relatives, or other individuals with a substantial relationship
25 to the child, are often the persons with whom the best chance of a successful placement lies in the
26 event that reintegration of a family is not possible. (A court could order court-appointed counsel for
27 a grandparent who is also an interested party under this subsection.) These individuals also often
28 care deeply about the child and may have important information about the child's circumstances or
29 needs. The committee also believes that the presence of such persons in the proceedings is likely
30 to be of comfort to the child. The participatory rights of these interested parties are handled in much
31 the same way as grandparents.

32 Proposed subsection (e) permits the court to make other persons having a relationship with
33 the child interested parties. Subsection (e)(1) covers persons who would be optional interested
34 parties under current law. Subsection (e)(2) permits the court to accord other persons interested
35 party status, provided the court finds that the person has a sufficient relationship with the child to
36 warrant interested party status or that the person's participation would be beneficial to the
37 proceedings. Subsection (e)(3) permits the court to make a person an interested party on its own
38 motion if it finds that it is in the best interest of the child to do so. This may be necessary, for
39 example, in the case of a parent's boyfriend or girlfriend who is living in the home. The expansion
40 of persons who may be made interested parties beyond those covered under current law is intended

1 to account for the admittedly unusual case where a person who does not otherwise qualify is
2 sufficiently involved in the child’s life to make interested party status appropriate.

3 Proposed subsection (f) provides procedures for determining interested party status.
4 Subsection (f)(1) carries forward language from current K.S.A. 38-1541. Subsection (f)(2) is new
5 language providing for notice and a hearing before the court can deny or terminate interested party
6 status. Subsection (f)(3) is new language providing a mechanism for reviewing disputed denials or
7 terminations of interested party status. The committee was concerned that an ordinary appeal, if it
8 stayed the proceedings, would unduly delay the process, thereby causing harm to the child. On the
9 other hand, if the appeal did not stay the proceedings it would be of little use or could lead to an
10 appellate decision upsetting the disposition ordered by the court, again harming the child. Denying
11 review, however, would offer little protection for the important participatory interests recognized in
12 the statute. The committee opted for a collateral review by the chief judge of the relevant judicial
13 district (or the chief judge’s designee), which can be held promptly and can permit the proceedings
14 to go forward in the meantime without unduly prejudicing the interests of the child or of those
15 claiming interested party status.

1 **New Sec. 37. Ex parte orders of protective custody; application; determination of**
2 **probable cause; period of time; placement; procedures; orders for removal of child from**
3 **custody of parent, limitations.** (a) The court upon verified application may issue *ex parte* an order
4 directing that a child be held in protective custody and, if the child has not been taken into custody,
5 an order directing that the child be taken into custody. The application shall state for each child:

6 (1) The applicant's belief that the child is a child in need of care, (2) that the child is likely
7 to sustain harm if not immediately removed from the home and (3) that allowing the child to remain
8 in the home is contrary to the welfare of the child; and (4) the facts relied upon to support the
9 application, including efforts known to the applicant to maintain the family unit and prevent the
10 unnecessary removal of the child from the child's home, or the specific facts supporting that an
11 emergency exists which threatens the safety of the child.

12 (b) (1) The order of protective custody may be issued only after the court has determined
13 there is probable cause to believe the allegations in the application are true. The order shall remain
14 in effect until the temporary custody hearing provided for in section 38, and amendments thereto,
15 unless earlier rescinded by the court.

16 (2) No child shall be held in protective custody for more than 72 hours, excluding Saturdays,
17 Sundays and legal holidays, unless within the 72-hour period a determination is made as to the
18 necessity for temporary custody in a temporary custody hearing. Nothing in this subsection shall
19 be construed to mean that the child must remain in protective custody for 72 hours.

20 (c) Whenever the court determines the necessity for an order of protective custody, the court
21 may place the child in the protective custody of: (1) A parent or other person having custody of the
22 child and may enter a restraining order pursuant to subsection (e); (2) a person, other than the parent

1 or other person having custody, who shall not be required to be licensed under article 5 of chapter
2 65 of the Kansas Statutes Annotated; (3) a youth residential facility;(4) a shelter facility; or (5) the
3 secretary. However, if the secretary presents the court with a plan to provide services to a child or
4 family which the court finds will assure the safety of the child, the court may only place the child in
5 the protective custody of the secretary until the court finds the services are in place. The court shall
6 have the authority to require any person or entity agreeing to participate in the plan to perform as set
7 out in the plan. When the child is placed in the protective custody of the secretary, the secretary shall
8 have the discretionary authority to place the child with a parent or to make other suitable placement
9 for the child. When circumstances require, a child may be placed in a juvenile detention facility or
10 other secure facility pursuant to an order of protective custody for a period of not to exceed 24 hours,
11 excluding Saturdays, Sundays and legal holidays.

12 (d) The order of protective custody shall be served pursuant to section 32(a), and
13 amendments thereto, on the child's parents and any other person having legal custody of the child.
14 The order shall prohibit the removal of the child from the court's jurisdiction without the court's
15 permission.

16 (e) If the court issues an order of protective custody, the court may also enter an order
17 restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from
18 residing in the child's home; visiting, contacting, harassing or intimidating the child, other family
19 member or witness; or attempting to visit, contact, harass or intimidate the child, other family
20 member or witness. Such restraining order shall be served by personal service pursuant to section
21 32(a), and amendments thereto, on any alleged perpetrator to whom the order is directed.

1 (f) The court shall not enter an order removing a child from the custody of a parent pursuant
2 to this section unless the court first finds probable cause

3 (1) that the child is likely to sustain harm if not immediately removed from the home;

4 (2) that allowing the child to remain in the home is contrary to the welfare of the child; and

5 (3) that reasonable efforts have been made to maintain the family unit and prevent the
6 unnecessary removal of the child from the child's home or that an emergency exists which
7 threatens the safety of the child.

8 Such findings shall be included in any order entered by the court. If the child is placed in the custody
9 of the secretary, the court shall provide the secretary with a written copy of any orders entered upon
10 making the order.

11 COMMENT

12 Some changes in this section are technical and for purpose of clarity and do not warrant
13 further discussion. More significant amendments relate to compliance with ASFA, as well as a few
14 additional matters.

15 Changes in subsection (a) and (f) are intended to clarify the requirements for removing a
16 child from a parent's custody and ensure compliance with ASFA, which permits removal of a child
17 from the home only if one of two situations is present: (1) there have been reasonable efforts to
18 preserve the family; or (2) it is an emergency situation. In addition to one of these two prerequisites,
19 ASFA also requires a finding that remaining in the home is contrary to the welfare of the child.
20 These requirements are not inconsistent with current Kansas practices, but the use of different
21 language in the statute makes it difficult to document compliance with ASFA in some cases.

22 Subsection (c) was amended to permit the court to place a child in protective custody in a
23 shelter facility. The committee believed that this placement option is at times the best alternative
24 for protective custody and that it should be made available to the court. The committee removed
25 language limiting placement with the Secretary to cases in which the child is alleged to be a child
26 in need of care because that language was superfluous. Subsection (a) requires such an allegation
27 in every application and subsection (b) permits an order only if the court finds probable cause to
28 believe the allegations are true.

29 In subsections (d) and (e), the committee inserted cross-references to proposed section 32(a),
30 which specifies the means of serving the petition and other orders.

1 the court will conduct a hearing at _____ to determine if the above named child
2 or children should be in the temporary custody of some person or agency other than the parent or
3 other person having legal custody prior to the hearing on the petition filed in the above captioned
4 case. The court may order one or both parents to pay child support.

5 _____, an attorney, has been appointed as guardian *ad litem* for the child or children.

6 Each parent or other legal custodian has the right to appear and be heard personally, either with or
7 without an attorney. An attorney will be appointed for a parent who can show that the parent is not
8 financially able to hire one.

9 Date _____, (20__)

Clerk of the District Court

10 by _____

11 (Seal)

12 REPORT OF SERVICE

13 I certify that I have delivered a true copy of the above notice to the persons above named in
14 the manner and at the times indicated below:

15	Name	Location of Service	Manner of Service	Date	Time
16		(other than above)			
17	_____	_____	_____	_____	_____
18	_____	_____	_____	_____	_____
19	_____	_____	_____	_____	_____

20 Date Returned _____,(20__)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

(Signature)

(Title)

(d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party or interested party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay.

(e) Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice in substantially the following form:

(Name of Court)

(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at ____ o'clock __m. on _____, __ (20__), to the persons listed, in the manner and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(in person or telephone)

1 _____

2 I advised each of the above persons that:

3 (1) The hearing is to determine if the above child or children should be in the temporary
4 custody of a person or agency other than a parent;

5 (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or children
6 named above;

7 (3) each parent or legal custodian has the right to appear and be heard personally either with
8 or without an attorney;

9 (4) an attorney will be appointed for a parent who can show that the parent is not financially
10 able to hire an attorney; and

11 (5) the court may order one or both parents to pay child support.

12 _____
13 (Signature)

14 _____
15 (Name Printed)

16 _____
17 (Title)

18 (f) The court may enter an order of temporary custody after determining that: (1) The child
19 is dangerous to self or to others; (2) the child is not likely to be available within the jurisdiction of
20 the court for future proceedings; or (3) the health or welfare of the child may be endangered without
21 further care.

1 (g) Whenever the court determines the necessity for an order of temporary custody the court
2 may place the child in the temporary custody of: (1) A parent or other person having custody of the
3 child and may enter a restraining order pursuant to subsection (h); (2) a person, other than the parent
4 or other person having custody, who shall not be required to be licensed under article 5 of chapter
5 65 of the Kansas Statutes Annotated; (3) a youth residential facility; (4) a shelter facility; or (5) the
6 secretary. However, if the secretary presents the court with a plan to provide services to a child or
7 family which the court finds will assure the safety of the child, the court may only place the child in
8 the temporary custody of the secretary until the court finds the services are in place. The court shall
9 have the authority to require any person or entity agreeing to participate in the plan to perform as set
10 out in the plan. When the child is placed in the temporary custody of the secretary, the secretary shall
11 have the discretionary authority to place the child with a parent or to make other suitable placement
12 for the child. When circumstances require, a child may be placed in a juvenile detention facility or
13 other secure facility, but the total amount of time that the child may be held in such facility under
14 this section and section 37 and amendments thereto shall not exceed 24 hours, excluding Saturdays,
15 Sundays and legal holidays. The order of temporary custody shall remain in effect until modified or
16 rescinded by the court or a disposition order is entered but not exceeding 60 days, unless good cause
17 is shown and stated on the record.

18 (h) If the court issues an order of temporary custody, the court may also enter an order
19 restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from
20 residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting
21 to visit, contact, harass or intimidate the child, other family members or witnesses. Such restraining

1 order shall be served by personal service pursuant to section 32(a), and amendments thereto, on any
2 alleged perpetrator to whom the order is directed.

3 (i) The court shall not enter an order removing a child from the custody of a parent pursuant
4 to this section unless the court first finds probable cause:

5 (1) that the child is likely to sustain harm if not immediately removed from the home;

6 (2) that allowing the child to remain in the home is contrary to the welfare of the child; and

7 (3) that reasonable efforts have been made to maintain the family unit and prevent the
8 unnecessary removal of the child from the child's home or that an emergency exists which
9 threatens the safety of the child.

10 Such findings shall be included in any order entered by the court. If the child is placed in the custody
11 of the secretary, upon making the order the court shall provide the secretary with a written copy.

12 COMMENT

13 Some changes in this section are technical and for purpose of clarity and do not warrant
14 further discussion.

15 Subsection (g) was amended to permit the court to place temporary custody of a child in a
16 shelter facility. The committee believed that this placement option is at times the best alternative
17 for temporary custody and that it should be made available to the court. The committee removed
18 language limiting placement with the Secretary only when the child is alleged to be a child in need
19 of care because that language was unnecessary. These changes parallel changes in proposed section
20 37(c).

21 In subsection (h), language was added to permit the court to issue a restraining order to
22 prevent improper contact with other family members or witnesses. Current law only allows a
23 restraining order to protect the child himself or herself in conjunction with an order of temporary
24 custody. The proposed language is the same language currently included for restraining orders in
25 connection with an order of protective custody (*see* current 38-1542(e)), and the committee believed
26 that the court should have similar authority in this context. The committee also added language
27 requiring the restraining order to be served on the person to whom the order is issued pursuant to
28 proposed section 32(a).

1 Subsection (i) was amended to promote compliance with ASFA. (*See* comment to proposed
2 section 37.

1 **New Sec. 39. Order for informal supervision; restraining orders.** (a) At any time after
2 filing a petition, but prior to an adjudication, the court may enter an order for continuance and
3 informal supervision without an adjudication if no party or interested party objects. Upon granting
4 the continuance, the court shall include in the order any conditions with which the parties or
5 interested parties are expected to comply and provide the parties or interested parties with a copy of
6 the order. The conditions may include appropriate dispositional alternatives authorized by section
7 50 and amendments thereto.

8 (b) An order for informal supervision may remain in force for a period of up to six months
9 and may be extended, upon hearing, for an additional six-month period for a total of one year.

10 (c) The court after notice and hearing may revoke or modify the order with respect to a party
11 or interested party upon a showing that the party or interested party, being subject to the order for
12 informal supervision, has substantially failed to comply with the terms of the order, or that
13 modification would be in the best interests of the child. Upon revocation, proceedings shall resume
14 pursuant to this code.

15 (d) Persons subject to the order for informal supervision who successfully complete the
16 terms and period of supervision shall not again be proceeded against in any court based solely upon
17 the allegations in the original petition and the proceedings shall be dismissed.

18 (e) If the court issues an order for informal supervision pursuant to this section, the court may
19 also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse
20 of the child from residing in the child's home, visiting, contacting, harassing or intimidating the
21 child, other family member or witness; or attempting to visit, contact, harass or intimidate the child,

1 other family member or witness. The restraining order shall be served by personal service pursuant
2 to section 32(a), and amendments thereto, on any alleged perpetrator to whom the order is directed.

3 (f) Lack of service on a parent shall not preclude an informal supervision under the
4 provisions of this statute. If an order of informal supervision is entered which effects change in
5 custody, any parent not served pursuant to section 32, and amendments thereto, who has not
6 consented to the informal supervision, may request reconsideration of the order of informal
7 supervision. The court shall hear the request without unnecessary delay. If the informal supervision
8 order effects a change in custody, efforts to accomplish service pursuant to section 32, and
9 amendments thereto, shall continue.

10 **COMMENT**

11 Subsection (e) was amended to cross reference section 32a as the provision governing the
12 means of serving a restraining order issued in connection with an order for informal supervision.

13 A new subsection (f) is proposed to reconcile the statute to with current practice. When cases
14 are appropriate for an informal supervision, it is important that supervision be implemented in a
15 timely fashion. In many cases the non-custodial parent is not present and has not been served at the
16 time of the first appearance. This proposed subsection would allow the custodial parent to consent
17 to informal supervision. The rights of the non-custodial parent are preserved by allowing a non-
18 custodial parent to request reconsideration of the order of informal supervision and by specifying that
19 efforts to serve process on the non-custodial parent shall continue if the order effects a change in
20 custody.

1 serve two important purposes. First, openness of child in need of care proceedings promotes the
2 accountability of all those involved, including SRS and the courts. Second, openness would promote
3 public awareness and provide legislators with information that would aid in making sound policy
4 decisions in this important area. At the same time, the committee recognized that opening
5 proceedings raises some privacy concerns, and sought to preserve privacy in various ways so as to
6 strike an appropriate balance.

7 Proposed subsection (a) provides that the adjudicatory phase is open unless the court rules
8 otherwise. The committee believed that openness is desirable during this phase because there is a
9 great public interest in whether the alleged abuse and neglect occurred and whether parental rights
10 will be restricted or terminated, while privacy concerns of those peripherally involved are less likely
11 to be affected in the adjudication phase. The court, however, could close the proceedings or exclude
12 individuals if the court determines that it would be in the best interests of the child or is necessary
13 to protect the parent's privacy rights.

14 In subsection (a)(1) the committee made some changes to the list of those who may not be
15 excluded. First, the list includes both parties and interested parties in keeping with the committee's
16 decision to recognize two classes of participants under section 36. (*See* comments to proposed
17 section 36. That provision is cross referenced to make clear that interested party status may be
18 terminated or restricted under that provision. Second, specific references to attorneys have been
19 removed from the list because the committee considered such a reference to be unnecessary, as the
20 presence of attorneys is inherent in the right of representation articulated in section 5. This deletion
21 was not intended to change current law.

22 Proposed subsection (b) provides that the dispositional phase is closed. Other persons would
23 be permitted to attend if the parties consent (but the consent of interested parties is not required) or
24 if the court determines that it would be in the best interest of the child or the conduct of the
25 proceedings, subject to the court's ultimate power to exclude them at a later time. In contrast to the
26 adjudicatory phase, the committee considered the public interest in disposition to be relatively small
27 and was particularly concerned that prospective adoptive parents, permanent custodians, or foster
28 parents should not be deterred from coming forward by the public disclosure of personal
29 information.

30 In light of the increased openness of proceedings as proposed in this section, proposed
31 subsection (c) provides a mechanism for excluding attendees when confidential information is to be
32 entered into evidence.

1 **New Sec. 43. Stipulations and no contest statements.** (a) In any proceedings under this
2 code, parents, legal guardians, persons with whom the child has been living pursuant to section
3 36(d), and amendments thereto, and *guardians ad litem* may stipulate or enter no contest statements
4 to all or part of the allegations in the petition.

5 Prior to the acceptance of any stipulation, or no contest statement, other than to names, ages,
6 parentage or other preliminary matters, the court shall ask each of the persons listed above the
7 following questions:

8 (1) Do you understand that you have a right to a hearing on the allegations contained in the
9 petition?

10 (2) Do you understand that you may be represented by an attorney and, if you are a parent
11 and financially unable to employ an attorney, the court will appoint an attorney for you, if you so
12 request?

13 (3) One of the following: (1) Do you understand that a stipulation is an admission that the
14 statements in the petition are true or (2) Do you understand that a no contest statement neither admits
15 nor denies the statement in the petition but allows the court to find that the statements in the petition
16 are true?

17 (4) Do you understand that, if the court accepts your stipulation, or no contest statement,
18 you will not be able to appeal that finding, the court may find the child to be a child in need of care
19 and the court will then make further orders as to the care, custody, and supervision of the child?

20 (5) Do you understand that, if the court finds the child to be a child in need of care, the
21 court is not bound by any agreement or recommendation of the parties as to disposition and
22 placement of the child?

1 (b) Before accepting a stipulation the court shall find that there is a factual basis for the
2 stipulation.

3 (c) Before an adjudication based on a no contest statement, the court shall find from a proffer
4 of evidence that there is a factual basis.

5 (d) If all persons listed in subsection (a) do not stipulate or enter no contest statements, the
6 court shall hear evidence as to those persons, unless they are in default. If a person is in default, the
7 matter may proceed by proffer as to that person.

8 COMMENT

9 This section was amended to provide the option of making a no contest statement respecting
10 allegations in a child in need of care petition. A no contest statement is analogous to a “nolo
11 contendere” plea in criminal law in that it does not constitute an admission of the truth of the facts
12 in the petition, but permits the court to treat the allegations as established (with respect to the non-
13 contesting party) for purposes of the proceedings. The committee believed that this option would
14 significantly expedite proceedings when parents or other individuals do not wish to contest
15 allegations in a petition but are reluctant to make potentially damaging admissions. Language has
16 been inserted at various points in the section to accommodate this option. In addition, the section
17 has been reorganized.

18 Most of the current section has been placed in subsection (a), which now sets for the option
19 of stipulating or entering a no contest statement, and the questions that the court must ask before
20 accepting a stipulation or no contest statement. Some material from the current section has been
21 placed in subsection (b), (c), and (d), which concerns the manner of proceeding if stipulations or no
22 contest statements are made.

23 In the first sentence subsection (a), the general reference to interested parties was stricken and
24 those who may stipulate or enter no contest statements have been specifically listed. They include
25 the parents, legal guardians, persons with whom the child has been living and the guardian ad litem
26 (on behalf of the child). In light of the committee’s decision to distinguish between parties and
27 interested parties and to expand the category of persons who may be made interested parties (*see*
28 proposed section 36 and comments thereto), the committee believed that stipulations or no contest
29 statements should not be necessary from all interested parties. Because the allegations in a petition
30 may include allegations concerning abuse or neglect by a person with whom the child has been
31 living, however, the committee believed that an opportunity to stipulate or enter a no contest
32 statement should be given to this category of interested parties. Former subsections (a), (b), (c), (d),
33 and (e) have been incorporated, with some changes in language, into subsection (a) and renumbered
34 as paragraphs (1), (2), (3), (4), and (5).

1 Proposed subsections (b), (c), and (d) specify the manner of proceeding when there have been
2 stipulations or no contest statements. Under subsection (b), which carries forward existing law, the
3 court must find there is a factual basis for a stipulation before accepting it. This does not require any
4 proffer of evidence. Under subsection (c), before a no contest statement can be accepted the court
5 must find that there is a factual basis “from a proffer of evidence.” The committee considered a
6 proffer of evidence, which is a relatively easy burden to meet, to be an appropriate requirement in
7 the case of a no contest statement. Subsection (d) specifies that if some, but not all, of the listed
8 persons do not stipulate or enter no contest statements as to some allegations, there must be a hearing
9 as to those persons on those allegations unless the person is in default, in which case the matter can
10 proceed by proffer of evidence (as if the defaulting party had entered a no contest statement).

1 **New Sec. 44. Rules of evidence.** (a) In all proceedings under this code, the rules of
2 evidence of the code of civil procedure shall apply, except that no evidence relating to the condition
3 of a child shall be excluded solely on the ground that the matter is or may be the subject of a
4 physician-patient privilege, psychologist-client privilege or social worker-client privilege.

5 (b) The judge presiding at the adjudicatory hearing shall not consider, read or rely upon any
6 report not properly admitted according to the rules of evidence, except as provided by section 14,
7 and amendments thereto.

8 (c) In any proceeding in which a child less than 13 years of age is alleged to have been
9 physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral
10 statement of the child, or of any witness less than 13 years of age, made before the proceeding began,
11 is admissible in evidence if:

12 (1) The court determines that the time, content and circumstances of the statement
13 provide sufficient indicia of reliability;

14 (2) no attorney for any party or interested party is present when the statement is
15 made;

16 (3) the recording is both visual and aural and is recorded on film or videotape or by
17 other electronic means;

18 (4) the recording equipment is capable of making an accurate recording, the operator
19 of the equipment is competent and the recording is accurate and has not been altered;

20 (5) the statement is not made in response to questioning calculated to lead the child
21 to make a particular statement or is clearly shown to be the child's statement and not
22 made solely as a result of a leading or suggestive question;

1 (6) every voice on the recording is identified;

2 (7) the person conducting the interview of the child in the recording is present at the
3 proceeding and is available to testify or be cross-examined by any party or interested
4 party; and

5 (8) each party or interested party to the proceeding is afforded an opportunity to view
6 the recording before it is offered into evidence.

7 (d) On motion of any party to a proceeding pursuant to the Revised Kansas code for care of
8 children in which a child less than 13 years of age is alleged to have been physically, mentally or
9 emotionally abused or neglected or sexually abused, the court may order that the testimony of the
10 child, or of any witness less than 13 years of age, be taken:

11 (1) In a room other than the courtroom and be televised by closed-circuit equipment in the
12 courtroom to be viewed by the court and the parties and interested parties to the proceeding; or

13 (2) outside the courtroom and be recorded for showing in the courtroom before the court and
14 the parties and interested parties to the proceeding if: (A) The recording is both visual and aural and
15 is recorded on film or videotape or by other electronic means; (B) the recording equipment is capable
16 of making an accurate recording, the operator of the equipment is competent and the recording is
17 accurate and has not been altered; (C) every voice on the recording is identified; and (D) each party
18 and interested party to the proceeding is afforded an opportunity to view the recording before it is
19 shown in the courtroom.

20 (e) At the taking of testimony under this subsection(d):

21 (1) Only an attorney for each party, interested party, the guardian *ad litem* for the child or
22 other person whose presence would contribute to the welfare and well-being of the child and persons

1 necessary to operate the recording or closed-circuit equipment may be present in the room with the
2 child during the child's testimony;

3 (2) only the attorneys for the parties may question the child; and

4 (3) the persons operating the recording or closed-circuit equipment shall be confined to an
5 adjacent room or behind a screen or mirror that permits them to see and hear the child during the
6 child's testimony, but does not permit the child to see or hear them.

7 (f) If the testimony of a child is taken as provided by subsection (d), the child shall not be
8 compelled to testify in court during the proceeding.

9 (g)(1) Any objection by any party to the proceeding to a recording under subsection (a)(2)
10 is inadmissible must be made by written motion filed with the court at least seven days before the
11 commencement of the adjudicatory hearing. An objection under this subsection shall specify the
12 portion of the recording which is objectionable and the reasons for the objection. Failure to file an
13 objection within the time provided by this subsection shall constitute waiver of the right to object
14 to the admissibility of the recording unless the court, in its discretion, determines otherwise.

15 (2) The provisions of this subsection (e) shall not apply to any objection to admissibility for
16 the reason that the recording has been materially altered.

17 COMMENT

18 Subsection (b) has been amended to require strict adherence to the rules of evidence only
19 during the adjudicatory phase of a child in need of care proceeding. This limitation is in keeping
20 with the committee's recommendation that a clear differentiation be made between the adjudicatory
21 phase, in which the child's status as a child in need of care is determined, and the dispositional
22 phase, which focuses on how best to meet the needs of the child who is a child in need of care. It
23 is the committee's view that evidentiary rules are less desirable during this phase, in which the judge
24 should have the broadest possible information to make the best possible placement decisions for the
25 child. In addition, because the dispositional phase typically involves the consideration of a number
26 of written reports and other documentary information, strict adherence to evidentiary requirements
27 is costly and interferes with the expeditious conduct of the hearing.

1 Subsections (c) and (d), which deal with special rules for taking evidence from victims of
2 abuse under the age of 13, were moved from current K.S.A. 38-1557 and 38-1558, respectively, so
3 that all the CINC provisions concerning evidentiary rules would be consolidated into a single
4 section. In both subsections, the requirement that a written transcript be provided to the parties was
5 deleted because the committee believed that the requirement was both unnecessary and costly.

6 Other changes are technical.

1 In addition, the current provision indicates that the conference may “decide” the placement
2 of the child and the committee proposes that the conference may “recommend” placement. This
3 language more accurately describes the role of the conference. The requirement that the
4 recommendation must be accepted unless there is good cause to reject it has not been changed.

5 Subsection (d) has been eliminated as unnecessary.
6

1 **New Sec 49. Dispositional hearing; notice.** (a) the court shall require notice of the time
2 and place of the time and place of the dispositional hearing be given to the parties at least ten
3 business days before the hearing. Such notice of the hearing shall be given by first class mail. The
4 provisions of this subsection shall not require additional notice of the hearing pursuant to section 34
5 and amendments thereto.

6 (b) the court shall also require notice and opportunity to be heard as to proposals for living
7 arrangements for the child, the services to be provided the child and the child's family and the
8 proposed permanency goal for the child to the following:

9 (1) The child's foster parent or parents or permanent custodian providing care for the child;

10 (2) preadoptive parents for the child, if any;

11 (3) the child's grandparents at their last known addresses or if no grandparent is living or if
12 no living grandparent's address is known, to the closest relative of each of the child's parents
13 whose address is known;

14 (4) the person having custody of the child; and

15 (5) upon request, by any person having close emotional ties with the child and who is
16 deemed by the court to be essential to the deliberations before the court.

17 Such notice shall be given by first class mail, not less than 10 business days before the hearing.

18 Individuals receiving notice pursuant to (1) through (5) of this subsection shall not be made
19 a party or interested party to the action solely on the basis of this notice and opportunity to be heard.
20 Opportunity to be heard shall be at a time and in a manner determined by the court and does not
21 confer an entitlement to appear in person.

1 **New Sec. 50. Authorized dispositional orders:** (a) *Considerations.* Prior to entering an
2 order of disposition, the court shall give consideration to:

- 3 (1) the child's physical, mental and emotional condition;
- 4 (2) the child's need for assistance;
- 5 (3) the manner in which the parent participated in the abuse, neglect or abandonment of
6 the child;
- 7 (4) any relevant information from the intake and assessment process; and
- 8 (5) the evidence received at the dispositional hearing.

9 (b) *Placement with a parent.* The court may place the child in the custody of either of the child's
10 parents subject to terms and conditions which the court prescribes to assure the proper care and
11 protection of the child, including but not limited to:

- 12 (1) supervision of the child and the parent by a court services officer;
- 13 (2) participation by the child and the parent in available programs operated by an
14 appropriate individual or agency; and
- 15 (3) any special treatment or care which the child needs for the child's physical, mental
16 or emotional health and safety.

17 (c) *Removal of a child from custody of a parent.* The court may enter an order removing a child from
18 the custody of a parent pursuant to this section if the court finds from the evidence:

- 19 (1) that reasonable efforts have been made to maintain the family unit and prevent the
20 unnecessary removal of the child from the child's home or that an emergency exists
21 that threatens the safety of the child; and

1 (2) that allowing the child to remain in the home is contrary to the welfare of the child
2 and that the child is likely to sustain harm if not immediately removed from the
3 home.

4 (d) *Custody of a child removed from the custody of a parent* . If the court has made the findings
5 required by subsection (c) of this section, the court shall enter an order awarding custody to a
6 relative of the child or to a person with whom the child has close emotional ties, to any other suitable
7 person, to a shelter facility, to a youth residential facility; or to the secretary. Custody awarded under
8 this subsection shall continue until further order of the court.

9 (1) When custody is awarded to the secretary, the secretary shall consider any placement
10 recommendation by the court and notify the court of the placement or proposed
11 placement of the child within 10 days of the order awarding custody.

12 (A) After providing the parties or interested parties notice and opportunity to be
13 heard, the court may determine whether the secretary's placement or proposed
14 placement is contrary to the welfare or in the best interests of the child. In making
15 that determination the court shall consider the health and safety needs of the child
16 and the resources available to meet the needs of children in the custody of the
17 secretary. If the court determines that the placement or proposed placement is
18 contrary to the welfare or not in the best interests of the child, the court shall notify
19 the secretary, who shall then make an alternative placement.

20 (B) The secretary may propose and the court may order the child to be placed in
21 the custody of a parent or parents if the secretary has provided and the court
22 has approved an appropriate safety action plan which includes services to be

1 provided. The court may order the parent or parents and the child to perform
2 tasks as set out in the safety action plan.

3 (2) The custodian designated under this subsection shall notify the court in writing at
4 least 10 days prior to any planned placement with a parent. The written notice shall
5 state the basis for the custodian's belief that placement with a parent is no longer
6 contrary to the child's welfare. Upon reviewing the notice the court may allow the
7 custodian to proceed with the planned placement or may set the date for a hearing to
8 determine if the child shall be allowed to return home. If the court sets a hearing on
9 the matter, the custodian may not return the child home without written consent of
10 the court.

11 (3) The court may grant any person reasonable rights to visit the child upon motion of
12 the person and a finding that the visitation rights would be in the best interests of the
13 child.

14 (4) The court may enter an order restraining any alleged perpetrator of physical, sexual,
15 mental or emotional abuse of the child from residing in the child's home; visiting,
16 contacting, harassing or intimidating the child, other family member or witness; or
17 attempting to visit, contact, harass or intimidate the child, other family member or
18 witness. Such restraining order shall be served by personal service pursuant to
19 section 32(a), and amendments thereto, on any alleged perpetrator to whom the order
20 is directed.

21 (5) The court shall provide a copy of any orders entered within 10 days of entering the
22 order to the custodian designated under this subsection.

1 (e) *Further determinations regarding a child removed from the home.* If custody has been awarded
2 under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared
3 pursuant to section 60 and amendments thereto. If a permanency plan is provided at the dispositional
4 hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is
5 not a viable alternative, whether the child should be placed for adoption or a permanent custodian
6 appointed. In determining whether reintegration is a viable alternative, the court shall consider:

- 7 (1) whether a parent has been found by a court to have committed one of the following
8 crimes or to have violated the law of another state prohibiting such crimes or to have
9 aided and abetted, attempted, conspired or solicited the commission of one of these
10 crimes: murder in the first degree, K.S.A. 21-3401 and amendments thereto, murder
11 in the second degree, K.S.A. 21-3402 and amendments thereto, capital murder,
12 K.S.A. 21- 3439 and amendments thereto, voluntary manslaughter, K.S.A. 21-3403
13 and amendments thereto, or a felony battery that resulted in bodily injury;
- 14 (2) whether a parent has subjected the child or another child to aggravated circumstances
15 as defined in section 2 and amendments thereto;
- 16 (3) whether a parent has previously been found to be an unfit parent in proceedings under
17 this code or in comparable proceedings under the laws of another state or the federal
18 government;
- 19 (4) whether the child has been in extended out of home placement as defined in section
20 2 and amendments thereto;
- 21 (5) whether the parents have failed to work diligently toward reintegration;

1 (6) whether the secretary has provided the family with services necessary for the safe
2 return of the child to the home; and

3 (7) whether it is reasonable to expect reintegration to occur within a time frame
4 consistent with the child's developmental needs.

5 (f) *Proceedings if reintegration is not a viable alternative.* If the court determines that reintegration
6 is not a viable alternative, proceedings to terminate parental rights and permit placement of the child
7 for adoption or appointment of a permanent custodian shall be initiated unless the court finds that
8 compelling reasons have been documented in the case plan why adoption or appointment of a
9 permanent custodian would not be in the best interests of the child. If compelling reasons have not
10 been documented, the county or district attorney shall file a motion within 30 days to terminate
11 parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold
12 a hearing on the motion within 90 days of its filing. No hearing is required when the parents
13 voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

14 (g) *Additional Orders.* In addition to or in lieu of any other order authorized by this section:

15 (1) The court may order the child and the parents of any child who has been adjudicated
16 a child in need of care to attend counseling sessions as the court directs. The expense
17 of the counseling may be assessed as an expense in the case. No mental health
18 provider shall charge a greater fee for court-ordered counseling than the provider
19 would have charged to the person receiving counseling if the person had requested
20 counseling on the person's own initiative.

21 (2) If the court has reason to believe that a child is before the court due, in whole or in
22 part, to the use or misuse of alcohol or a violation of the uniform controlled

1 substances act by the child, a parent of the child, or another person responsible for
2 the care of the child, the court may order the child, parent of the child or other person
3 responsible for the care of the child to submit to and complete an alcohol and drug
4 evaluation by a qualified person or agency and comply with any recommendations.
5 If the evaluation is performed by a community-based alcohol and drug safety
6 program certified pursuant to K.S.A. 8-1008 and amendments thereto, the child,
7 parent of the child or other person responsible for the care of the child shall pay a fee
8 not to exceed the fee established by that statute. If the court finds that the child and
9 those legally liable for the child's support are indigent, the fee may be waived. In no
10 event shall the fee be assessed against the secretary.

11 (3) If child support has been requested and the parent or parents have a duty to support
12 the child, the court may order one or both parents to pay child support and, when
13 custody is awarded to the secretary, the court shall order one or both parents to pay
14 child support. The court shall determine, for each parent separately, whether the
15 parent is already subject to an order to pay support for the child. If the parent is not
16 presently ordered to pay support for any child who is subject to the jurisdiction of
17 the court and the court has personal jurisdiction over the parent, the court shall order
18 the parent to pay child support in an amount determined under section 72, and
19 amendments thereto. Except for good cause shown, the court shall issue an
20 immediate income withholding order pursuant to K.S.A. 23-4,105 *et seq.*, and
21 amendments thereto, for each parent ordered to pay support under this subsection,
22 regardless of whether a payor has been identified for the parent. A parent ordered to

1 pay child support under this subsection shall be notified, at the hearing or otherwise,
2 that the child support order may be registered pursuant to section 74, and
3 amendments thereto. The parent shall also be informed that, after registration, the
4 income withholding order may be served on the parent's employer without further
5 notice to the parent and the child support order may be enforced by any method
6 allowed by law. Failure to provide this notice shall not affect the validity of the child
7 support order.

8 COMMENT

9
10 This section has been extensively revised to clarify the factors that should be considered at
11 the dispositional phase and the orders that can be made. The section also clarifies the relationship
12 between the dispositional hearing and permanency planning.
13

14 Subsection (a) outlines the considerations that must be evaluated at the dispositional hearing,
15 which have been moved to this section from former section 49(c) and given separate enumeration.
16

17 Subsection (b) carries forward language from former subsection (a) with some minor
18 rewording for purposes of clarity.
19

20 Subsection (c) contains the standards for removal of a child from the home, which are found
21 in subsection (d) of the current statute. The standards have been revised to comply with ASFA.
22 These revisions do not substantially alter current practice in the state but will ensure that findings
23 are made that are consistent with federal law.
24

25 Proposed subsection (d) deals with the placement of a child removed from the home. It
26 combines material in current subsections (d), (e), (f), and (g) with new language to provide a
27 comprehensive treatment of placement options and related orders. In respect to these matters, the
28 committee proposes some changes to current law. First, a youth residential facility is added to the
29 placement options available to the court. Second, the committee has deleted language providing that
30 if the secretary has presented a plan for services that would enable the child to remain with a parent,
31 the court may not place the child with the secretary unless the court finds, inter alia, that placement
32 with the parent would be contrary to the child's welfare. This language is unnecessary and repetitive
33 in light of changes to the findings required for removal from the home. Third, subsection (d)(1) has
34 been reworded to clarify the roles of the secretary and the court in determining placement when
35 custody is awarded to the secretary. Finally, subsection (d)(2) is new language requiring notice to
36 the court before a custodian may place the child with a parent based on a determination that such

1 placement would no longer be contrary to the welfare of the child. The court may require a hearing
2 and placement with the parent cannot proceed without the court's consent.
3

4 Subsection (e) concerns the procedure if custody is awarded to a person other than a parent.
5 It contains new language specifying that a permanency plan must be prepared and that if a
6 permanency plan is provided at the hearing, the court may proceed to consider whether reintegration
7 is a viable option. The subsection then incorporates language from former subsection (h) concerning
8 the factors to be considered in determining whether reintegration is a viable option. One new factor
9 has been added to the list: whether the parents have failed to work diligently toward reintegration.
10 The committee believes that this factor is critical, because reintegration will not be viable unless the
11 parents will work diligently towards that goal.
12

13 Subsection (f) incorporates language from current section 49(c), with some changes,
14 regarding the steps to be taken if the court finds that reintegration is not a viable option. It requires
15 that proceedings for termination of parental rights and placement of the child for adoption or
16 appointment of a permanent custodian shall be initiated unless the court finds compelling reasons
17 to the contrary. This is a change from current law, which does not require proceedings to be initiated
18 unless the court finds that it would be in the best interests of the child to do so. The committee
19 believes that the presumption should be strongly in favor of initiating such proceedings, to prevent
20 a child from lingering in temporary custody arrangements without any hope of reintegration and
21 without any progress toward permanent placement, except in the most compelling circumstances.
22 Such uncertainty and impermanency is detrimental to the emotional and developmental needs of the
23 child and the child will become more difficult to place as he or she gets older. The language
24 directing the county or district attorney to file a motion within 30 days and the court to hold a hearing
25 within 90 days carries forward the requirements of current law. Language has also been added
26 specifying that no hearing is needed when parents voluntarily relinquish rights or consent to the
27 appointment of a permanent custodian.
28

29 Subsection (g) combines language from several existing provisions concerning ancillary
30 orders by the court into a single subsection. These include orders directing the parent or child to
31 enter into counseling (former subsection (c)), drug treatment (former subsection (i)), and child
32 support (former subsection (j)). These provisions have been carried forward with only minor
33 changes in wording, For example, subsection (g)(3) (former subsection (j)) was amended for clarity
34 by changing the phrase "a ward of the court" to "child who is subject to the jurisdiction of the court."
35
36
37
38

1 **New Sec. 53. Change of placement; removal from home of parent, findings by court.**

2 (a) Except as provided in section 54, and amendments thereto, if a child has been in the same foster
3 home or shelter facility for six months or longer, or has been placed by the secretary in the home of
4 a parent or relative, the secretary shall give written notice of any plan to move the child to a different
5 placement. The notice shall be given to (1) the court having jurisdiction over the child; (2) each
6 parent whose address is available; (3) the foster parent or custodian from whose home or shelter
7 facility it is proposed to remove the child; (4) the child, if 12 or more years of age; and (5) the child's
8 guardian *ad litem*. The notice shall state the placement to which the secretary plans to transfer the
9 child and the reason for the proposed action. The notice shall be delivered or mailed by first class
10 mail 30 days in advance of the planned transfer, except that the secretary shall not be required to wait
11 30 days to transfer the child if all persons enumerated in paragraphs (2) through (5) consent in
12 writing to the transfer. Within 10 days after receipt of the notice any person receiving notice as
13 provided above may request, either orally or in writing, that the court conduct a hearing to determine
14 whether or not the change in placement is in the best interests of the child concerned. When the
15 request has been received, the court shall schedule a hearing and immediately notify the secretary
16 of the request and the time and date the matter will be heard. The court shall give notice of the
17 hearing to persons enumerated in clauses (2) through (5). The secretary shall not change the
18 placement of the child unless the change is approved by the court;

19 (b) When, after the notice set out above, a child in the custody of the secretary is removed
20 from the home of a parent after having been placed in the home of a parent for a period of six months
21 or longer, the secretary shall request a finding.

1 (1) that reasonable efforts have been made to maintain the family unit and prevent
2 the unnecessary removal of the child from the child's home or that an emergency
3 exists which threatens the safety of the child, and

4 (2) that allowing the child to remain in the home is contrary to the welfare of the
5 child and that the child is likely to sustain harm if not immediately removed from the
6 home.

7 The secretary shall present to the court in writing the efforts to maintain the family unit and prevent
8 the unnecessary removal of the child from the child's home. In making the findings, the court may
9 rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If
10 the secretary requests such finding, the court, not more than 45 days from the date of the request,
11 shall provide the secretary with a written copy of the findings by the court for the purpose of
12 documenting these orders.

13 COMMENT

14 Minor changes have been made to subsection (a), including the replacement of the phrase
15 "home or shelter facility" with the term "placement," which is more generic. Language has also been
16 inserted specifying that notice of a change in placement is to be made by "first class mail."
17

18 Subsection (b) has been amended by replacing current language with language that reflects
19 ASFA. This language does not substantially change the current law but will ensure that the
20 necessary findings are made. Other changes to subsection (b) are technical and for purposes of
21 clarity.
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

New Sec. 55. Placement; order directing child to remain in present or future placement; application for determination that child has violated order; procedure; authorized dispositions; limitations on facilities used for placement; computation of time limitations. (a)

Valid court order. During proceedings under this code, the court may enter an order directing a child who is the subject of the proceedings to remain in a present or future placement if:

(1) The child and the child’s guardian ad litem are present in court when the order is entered.

(2) The court finds that the child has been adjudicated a child in need of care pursuant to subsections ((d)(6), (d)(7), (d)(8), (d)(9), (d)(10), or (d)(12) of section 2, and amendments thereto, and the that the child is not likely to be available within the jurisdiction of the court for future proceedings;

(3) The child and the guardian *ad litem* receive oral and written notice of the consequences of violation of the order; and

(4) A copy of the written notice is filed in the official case file.

(b) *Application.* Any person may file a verified application for determination that a child has violated an order entered pursuant to subsection (a) and for an order authorizing holding the child in a secure facility as defined by this section. The application shall state the applicant's belief that the child has violated the order entered pursuant to subsection (a) without good cause and the specific facts supporting the allegation.

(c) *Ex parte order.* After reviewing the application filed pursuant to subsection (b), the court may enter an *ex parte* order directing that the child be taken into custody and held in a secure facility designated by the court, which may include a juvenile detention center, if the court finds probable

1 cause that the child violated the courts order to remain in placement without good cause. Pursuant
2 to section 32, and amendments thereto, the order shall be served on the child's parents, the child's
3 legal custodian and the child's guardian *ad litem*.

4 (d) *Preliminary hearing.* Within 24 hours following a child's being taken into custody
5 pursuant to an order issued under subsection (c), the court shall hold a preliminary hearing to
6 determine whether the child admits or denies the allegations of the application and, if the child
7 denies the allegations, to determine whether probable cause exists to support the allegations.

8 (1) Notice of the time and place of the preliminary hearing shall be given orally or in writing to the
9 child's parents, any legal custodian of the child and the child's guardian *ad litem*. (2) At the hearing,
10 the child shall have the right to: a guardian *ad litem*; and the child shall be served with a copy of the
11 application. (3) If the child admits the allegations or enters a no contest statement and if the court
12 finds that the admission or no contest statement is knowledgeable and voluntary, the court shall
13 proceed without delay to the placement hearing pursuant to subsection (f). (4) If the child denies
14 the allegations, the court shall determine whether probable cause exists to hold the child in a secure
15 facility pending an evidentiary hearing pursuant to subsection (e) After hearing the evidence, if the
16 court finds that (A) there is probable cause to believe that the child has violated an order entered
17 pursuant to subsection (a) without good cause and (B) secure detention is necessary for the protection
18 of the child or to assure the presence of the child at the evidentiary hearing pursuant to subsection
19 (e), the court may order the child held in a secure facility pending the evidentiary hearing.

20 (e) *Evidentiary hearing.* The court shall hold an evidentiary hearing on an application
21 within 72 hours of the child's being taken into custody. Notice of the time and place of the hearing

1 shall be given orally or in writing to the child's parents, any legal custodian of the child and the
2 child's guardian *ad litem*.

3 At the evidentiary hearing, the court shall determine by a clear and convincing evidence
4 whether:

5 (1) the child has violated a court order entered pursuant to subsection (a) without good cause;

6 and

7 (2) the child has been provided at the hearing with the rights enumerated at subsection (d)(2)
8 and has been informed of: (A) the nature and consequences of the proceeding; (B) the right to
9 confront and cross-examine witnesses and present evidence; (C) the right to have a transcript or
10 recording of the proceedings; and (D) the right to appeal.

11 (f) Placement. (1) If the child admits violating the subsection (a) order or if, after an
12 evidentiary hearing, the court finds that the child has violated such an order, the court shall
13 immediately proceed to a placement hearing. The court may enter an order awarding custody of the
14 child to (A) a parent or other legal custodian; (B) a person other than a parent or other person having
15 custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes
16 Annotated, and amendments thereto; (C) a youth residential facility; or (D) the secretary, if the
17 secretary does not already have legal custody of the child. The court may authorize the custodian
18 to place the child in a secure care facility, if the court determines that all placement options other
19 than secure confinement have been exhausted or are inappropriate, based upon a written report
20 submitted by the secretary, if the child is in the secretary's custody, or submitted by a public agency
21 independent of the court and law enforcement, if the child is in the custody of someone other than

1 the secretary. The report shall detail the behavior of the child and the circumstances under which the
2 child was brought before the court and made subject to the subsection (a) order.

3 (1) The authorization to place the child in a secure care facility pursuant to this subsection
4 shall expire 60 days, inclusive of weekend and legal holidays, after its issue. The court may grant
5 extensions of such authorization for two additional periods, each not to exceed 60 days, upon
6 rehearing pursuant to section 51 and amendments thereto.

7 (g) Payment. The secretary shall only pay for placement and services for a child placed in
8 a secure facility pursuant to subsection (f) upon receipt of a valid court order authorizing secure care
9 placement.

10 (h) *Limitations on facilities used.* Nothing in this section shall authorize placement of a child
11 in an adult jail or lockup. Secure placement is limited to secure care facilities.

12 (i) *Time limits, computation.* Except as otherwise specifically provided by subsection (f),
13 Saturdays, Sundays and legal holidays shall not be counted in computing any time limit imposed by
14 this section.

15 COMMENT

16 This section has been extensively reorganized and reworded for purposes of clarity, but
17 without effecting significant changes in its substance. Aside from changes in organization and
18 rewording, there were a few minor substantive changes. First, in subsection (a), the categories of
19 CINC adjudications that may provide the basis for a valid court order directing the child to remain
20 in placement have been restricted to those categories that, under federal law, may provide the basis
21 for such an order and for the subsequent detention of a child in a secure facility for violating the
22 order. Second, a cross reference to proposed section 32, concerning service of process, has been
23 added to subsection (c)'s requirement that an ex parte order be served on the child, the child's legal
24 custodian, and the child's guardian ad litem. Third, in subsection (d), the committee added language
25 permitting a child to enter a "no contest" statement as an alternative to admitting the allegations.
26 The committee believed that this option would significantly expedite proceedings in some cases,
27 when the child may be reluctant to make potentially damaging admissions. Fourth, in subsection (e)
28 the committee eliminated the separate requirement that an evidentiary hearing be held within 24
29 hours of an application for a determination that the child has violated a valid court order if the child

1 admits the allegations. Instead, all evidentiary hearings on these issues would fall within the general
2 time limit of 72 hours, which is the time limit that would otherwise apply under current law. The
3 committee believes that the 24 hour time frame for this class of cases was unrealistic and
4 unnecessary.
5

6

1 5. Physical and emotional condition of the child
2 excellent good satisfactory needs improvement

3 6. Social worker's interaction with the child and foster family
4 excellent good satisfactory needs improvement

5 7. School status of child:
6 _____

	School	Grade
8 Grades	Good _____ Fair _____ Poor _____	
9 Attendance	Good _____ Fair _____ Poor _____	
10 Behavior	Good _____ Fair _____ Poor _____	

11 8. If visitation with parents has occurred, describe the frequency of visits, with whom,
12 supervised or unsupervised, and any significant events which have occurred.

13 _____
14 _____
15 _____

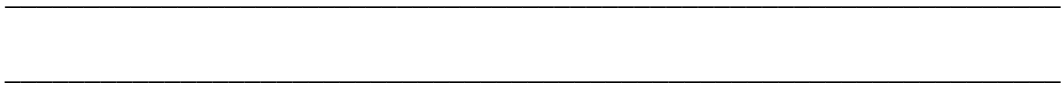
16 9. Your opinion regarding the overall adjustment, progress and condition of the child:

17 _____
18 _____
19 _____

20 10. Do you have any special concerns or comments with regard to the child not addressed
21 by this form? Please specify.

22 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18



COMMENT

The requirement that foster parents submit reports has been deleted along with most of section 52 (*see* comment to proposed section 52) and has not been reintroduced in the new provisions concerning case and permanency planning. The new provisions do afford the foster parents an opportunity to be heard, *see* proposed section 60, and foster parents may submit a report if they desire to do so. New language has been added to this section providing for notification to foster parents by the secretary of their right to submit the reports and the form for the reports has been retained. The committee added language providing that copies of the report shall be made available to the parties and interested parties because as a matter of fairness there should be no *ex parte* communication about active cases. SRS and private contractors still would not have access to the reports.

1 **New Sec. 58. Planning for Permanency.** (a) The goal of permanency planning is to assure,
2 in so far as is possible, that children have permanency and stability in their living situations and that
3 the continuity of family relationships and connections is preserved. In planning for permanency, the
4 safety and well being of children shall be paramount.

5 (b) Whenever a child is subject to the jurisdiction of the court pursuant to the Revised Kansas
6 Code for Care of Children an initial permanency plan shall be developed for the child and submitted
7 to the court within 30 days of the initial order of the court. If the child is in the custody of the
8 secretary, or the secretary is providing services to the child, the secretary shall prepare the plan.
9 Otherwise the plan shall be prepared by the person who has custody or, if directed by the court, by
10 a court services officer.

11 (c) A permanency plan is a written document prepared, where possible, in consultation with
12 the child's parents or guardians and which:

13 (1) Describes the permanency goal which, if achieved, will most likely give the child a
14 permanent and safe living arrangement;

15 (2) describes the child's level of physical health, mental and emotional health, and
16 educational functioning;

17 (3) provides an assessment of the needs of the child and family;

18 (4) describes the services to be provided the child, the child's parents, and the child's foster
19 parents, if appropriate;

20 (5) includes a description of the tasks and responsibilities designed to achieve the plan and
21 to whom assigned; and

22 (6) includes measurable objectives and time schedules for achieving the plan.

1 (d) In addition to the requirements of subsection (c), if the child is in an out of home
2 placement, the permanency plan shall include:

3 (1) a plan for reintegration of the child's parent or parents or if reintegration is determined
4 not to be a viable alternative a statement of the basis for that conclusion and a plan for another
5 permanent living arrangement;

6 (2) a description of the available placement alternatives;

7 (3) a justification for the placement selected, including a description of the safety and
8 appropriateness of the placement; and

9 (4) a description of the programs and services which will help the child prepare to live
10 independently as an adult.

11 (e) If there is a lack of agreement among persons necessary for the success of the permanency
12 plan, the person or entity having custody of the child shall notify the court which shall set a hearing
13 on the plan.

14 (f) A permanency plan may be amended at any time upon agreement of the plan participants.
15 If a permanency plan requires amendment which changes the permanency goal, the person or entity
16 having custody of the child shall notify the court which shall set a permanency hearing pursuant to
17 sections 59 and 60, and amendments thereto.

18 **COMMENT**

19 This section is one of several new sections intended to provide a single comprehensive set
20 of provisions for permanency planning and permanency hearings. (*See also* proposed sections 59
21 and 60.) This provision deals generally with permanency plans, while the other provisions deal with
22 permanency hearings.

23
24 Subsection (a) specifies the goals and underlying policies of permanency planning. The
25 committee believed that an explicit statement of these goals and policies would serve as a useful
26 reminder to focus the attention of all those involved on the need for children to have permanence and

1 stability and the importance of preserving family relations, while reminding them that the safety and
2 well being of the child are paramount concerns.

3
4 Subsection (b) specifies the timing (within 30 days) and the responsibility for preparing the
5 initial plan.

6
7 Subsection (c) specifies the content of the plan, to be prepared in consultation with the child's
8 parents or guardians.

9
10 Subsection (d) specifies additional requirements for the plan that apply when a child is in out
11 of home placement.

12
13 In most cases, permanency plans can be crafted by agreement of those involved. If agreement
14 is not possible, subsection (e) provides for notification of the court and a hearing on the plan.

15
16 Subsection (f) provides that the plan can be changed at any time by agreement of the
17 participants, except that if the permanency goal is changed, the court is to be notified and a
18 permanency hearing will be held.

1 **New Sec. 59. Permanency hearings, purpose, procedure, time for hearings.** (a) A
2 permanency hearing is a proceeding conducted by the court or by a citizen review board for the
3 purpose of determining progress toward accomplishment of a permanency plan as defined by section
4 58 and amendments thereto.

5 (b) The court or a citizen review board shall determine whether, and if applicable, when the
6 child will be:

7 (1) Reintegrated with the child's parents;

8 (2) placed for adoption;

9 (3) placed with a permanent custodian; or if the secretary has documented compelling reasons
10 why it would not be in the child's best interests for a placement in one of alternatives (1), (2) or (3);

11 (4) placed in another planned permanent arrangement.

12 (c) The court or citizen review board conducting the permanency hearing shall enter a finding
13 as to whether the person or entity having custody of the child has made reasonable efforts to
14 accomplish the permanency plan in place at the time of the hearing.

15 (d) A permanency hearing shall be held within 12 months of the date the child entered out
16 of home placement and not less frequently than every 12 months thereafter.

17 (e) If the court determines at any time other than during a permanency hearing that
18 reintegration may not be a viable alternative for the child, a permanency hearing shall be held no
19 later than 30 days following that determination.

20 (f) When the court finds that reintegration continues to be viable alternative, the court shall
21 determine whether and, if applicable, when the child will be returned to the parent; the court may
22 rescind any of its prior dispositional orders and enter any dispositional order authorized by this code

1 or may order that a new plan for the reintegration be prepared and submitted to the court. If
2 reintegration cannot be accomplished as approved by the court, the court shall be informed and shall
3 schedule a hearing pursuant to this section. No such hearing is required when the parents voluntarily
4 relinquish parental rights or consent to appointment of a permanent custodian.

5 (g) If the court finds reintegration is no longer a viable alternative, the court shall consider
6 whether the child is in a stable placement with a relative, services set out in the case plan necessary
7 for the safe return of the child have been made available to the parent with whom reintegration is
8 planned or compelling reasons are documented in the case plan to support a finding that neither
9 adoption nor appointment of a permanent custodian are in the child's best interest. If reintegration
10 is not a viable alternative and either adoption or appointment of a permanent custodian might be in
11 the best interests of the child, the county or district attorney or the county or district attorney's
12 designee shall file a motion to terminate parental rights or a motion to appoint a permanent custodian
13 within 30 days and the court shall set a hearing on such motion within 90 days of the filing of such
14 motion.

15 (h) If the court enters an order terminating parental rights to a child, or an agency has
16 accepted a relinquishment pursuant to K.S.A. 59-2124, and amendments thereto, the requirements
17 for permanency hearings shall continue until an adoption or appointment of a permanent custodian
18 has been accomplished. If the court determines that reasonable efforts or progress have not made
19 toward finding an adoptive placement or appointment of a permanent custodian or placement with
20 a fit and willing relative, the court may rescind its prior orders and make other orders regarding
21 custody and adoption that are appropriate under the circumstances. Reports of a proposed adoptive
22 placement need not contain the identity of the proposed adoptive parents.

1 **COMMENT**

2 This provision is a comprehensive provisions on permanency hearings. Subsection (a)
3 specifies that the hearing will be conducted by a court or a citizen review board for purposes of
4 determining progress toward accomplishment of the goals of the permanency plan.
5

6 Subsections (b) and (c) sets forth determinations to be made by the court or citizen review
7 board. Subsection (b) concerns the permanency goal and its expected date of accomplishment, while
8 subsection (c) requires a finding as to whether reasonable efforts have been m,ade to accomplish the
9 permanency plan.
10

11 Subsection (d) carries forward the current requirement that a permanency hearing be
12 conducted at least every twelve months, which is also required by federal law.
13

14 Subsection (e) carries forward the existing requirement that a permanency hearing must be
15 held if the court determines that reintegration is no longer a viable alternative. Current law,
16 however, does not specify the timing of such a hearing, which the committee believes should be held
17 no later than 30 days after the determination.
18

19 Subsection (f) specifies the action that may be taken if the court determines that reintegration
20 continues to be a viable alternative, which include rescinding, revising, or issuing new dispositional
21 orders and ordering the preparation of a new plan for reintegration.
22

23 Subsection (g) incorporates, with some technical changes, language currently found in section
24 52(c). It specifies the considerations and determinations to be made if the court finds at a
25 permanency hearing that reintegration is no longer a viable alternative. If the court determines that
26 adoption or appointment of a permanent custodian are in the best interests of the child, the
27 appropriate official is directed to file a motion for termination of parental rights or appoint a
28 permanent custodian within 30 days and a hearing must be held within 90 days of the filing.
29

30 Subsection (h) incorporates, with some technical changes, language currently found in section
31 64(h)(2), which deals with permanency planning after termination of parental rights. It provides for
32 continued permanency planning and hearings until adoption or appointment of a permanent
33 custodian has been accomplished.
34

1 **New Sec. 60. Permanency hearings; notice.** (a) The court shall require notice of the time
2 and place of the permanency hearing be given to the parties and interested parties at least ten
3 business days before the hearing. Such notice shall be given by first class mail. The notice shall state
4 that the person receiving the notice shall have an opportunity to be heard at the hearing.

5 (b) The court shall also require notice and opportunity to be heard to the following:

6 (1) The child's foster parent or parents or permanent custodian providing care for the child;

7 (2) preadoptive parents for the child, if any;

8 (3) the child's grandparents at their last known addresses or, if no grandparent is living or
9 if no living grandparent's address is known, to the closest relative of each of the child's
10 parents whose address is known;

11 (4) the person having custody of the child; and

12 (5) upon request, by any person having close emotional ties with the child and who is
13 deemed by the court to be essential to the deliberations before the court.

14 Such notice shall be given by first class mail, not less than 10 business days before the hearing.

15 Individuals receiving notice pursuant to (1) through (5) of this subsection shall not be made
16 a party or interested party to the action solely on the basis of this notice and opportunity to be heard.
17 Opportunity to be heard shall be at a time and in a manner determined by the court and does not
18 confer an entitlement to appear in person.

19 (c) The provisions of this section shall not require additional notice to any person otherwise
20 receiving notice of the hearing pursuant to section 34 and amendments thereto.

1 **COMMENT**

2 This subsection concerns notice of a permanency hearing, which is currently covered by
3 section 52. Subsection (a) requires notice to the parties, while subsection (b) requires notice to
4 additional persons with an interest in the permanency plan. Under both provisions, notice must be
5 given at least ten days before the hearing by first class mail. Notice under subsection (b) does not
6 make a person a party or interested party. The persons receiving notice will be heard at a time and
7 in a manner determined by the court and do not have a right to appear in person. Subsection (c)
8 specifies that notice pursuant to section 34 is sufficient to satisfy the notice requirements of this
9 section. As explained in the comments to that section, if a party or interested party has been served
10 at the outset of the proceedings, notice by first class mail is sufficient for further proceedings in the
11 case.

1 **New Sec. 62. Procedure upon receipt of request.** (a) Upon receiving a petition or motion
2 requesting termination of parental rights or appointment of permanent custodian the court shall set
3 the time and place for the hearing, which shall be held within 90 days. Any continuance shall be
4 granted only if the court finds it is in the best interests of the child. Upon motion of a party the chief
5 judge shall reassign a petition or motion requesting termination of parental rights from a district
6 magistrate judge to a district judge pursuant to K.S.A. 20-302b(e), and amendments thereto.

7 (b) (1) The court shall give notice of the hearing: (A) To the parties and interested parties
8 as provided in sections 31 and 32 and amendments thereto; (B) to all the child's grandparents at their
9 last known addresses or, if no grandparent is living or if no living grandparent's address is known,
10 to the closest relative of each of the child's parents whose address is known;

11 (C) In any case in which a parent of a child cannot be located by the exercise of due diligence,
12 service shall be made upon the parents nearest relative who can be located, if any; and (D) to the
13 foster parents, preadoptive parents or relatives providing care. This notice shall be given by first
14 class mail not less than 10 business days before the hearing. Individuals receiving notice pursuant
15 to this subsection shall not be made a party or interested party to the action solely on the basis of this
16 notice. (2) The provisions of subsection (b)(1) shall not require additional service to any person
17 otherwise receiving notice of the hearing pursuant to section 34 and amendments thereto.

18 (c) At the beginning of the hearing the court shall determine that due diligence has been used
19 in determining the identity and location of the interested parties and in accomplishing service of
20 process.

21 (d) Prior to a hearing on a petition, a motion requesting termination of parental rights or a
22 motion for appointment of a permanent custodian, the court shall appoint an attorney to represent

1 any parent who fails to appear and may award a reasonable fee to the attorney for services. The fee
2 may be assessed as an expense in the proceedings.

3 **COMMENT**

4 Subsection (a) of this section has been amended to require a hearing on termination or
5 appointment of a permanent custodian to take place within 90 days of receiving the petition or
6 motion for termination and permitting continuances only in the best interests of the child. The
7 committee believes that, particularly when a proceeding moves to termination, time is of the essence
8 for the child.

9
10 Subsection (b) of this section has been amended to implement the committee's proposal to
11 require service of process to be made once at the outset of the proceedings and permit subsequent
12 notice to be provided by first class mail. See the general comment to Sections 29, 31, 32, 34 and 62.
13 Under current law, service of process pursuant to K.S.A. 38-1534 is required when the proceedings
14 move to the termination phase. Although current paragraph (b)(2) provides an exception for any
15 person otherwise receiving notice under section 34, this exception only applies to notice required by
16 subparagraph (B) of paragraph (a)(2), which applies to grandparents or if there is no living
17 grandparent, the child's closest living relative. The committee broadened the exception so that it
18 applies to all persons required to be served in paragraph (b)(1). Thus, service is required only if a
19 person has not previously been served, or if a person has not been notified by mail or orally by the
20 court, as required by proposed section 34(c).

21
22 Subsection (b)(3) has been amended to require that the court assure due diligence in
23 determining the location of parties and interested parties as well as their identity. This reflects
24 constitutional due process requirements. *See* comments to proposed section 32.

25
26 References to appointment of a permanent custodian have been added in this section to
27 reflect the committee's view that this option should be available. *See* proposed section 64 and
28 comments thereto.

29
30 Other changes to this section are technical.
31
32

1 **New Sec. 63. Voluntary relinquishment, voluntary permanent custodianship and**
2 **consent to adoption.**

3 (a) Prior to an unfitness hearing, if the child’s permanency plan is either adoption or appointment
4 of a custodian, with the consent of the guardian ad litem and the Secretary, either or both parents may
5 relinquish parental rights to the child, consent to an adoption or consent to appointment of a
6 permanent custodian.

7 (b) Relinquishment of child to Secretary.

8 (1) Any parent or parents may relinquish a child to the Secretary, and if the Secretary accepts
9 the relinquishment in writing, the Secretary shall stand *in loco parentis* to the child and shall
10 have and possess over the child all rights of a parent or legal guardian, including the power
11 to place the child for adoption and give consent thereto.

12 (2) All relinquishments to the Secretary shall be in writing, in substantial conformity with
13 the form for relinquishment contained in the appendix of forms following K.S.A. 59-2143,
14 and amendments thereto, and shall be executed by either parent of the child.

15 (3) The relinquishment shall be acknowledged before a judge of a court of record. It shall
16 be the duty of the court to advise the relinquishing parent of the consequences of the
17 relinquishment.

18 (4) Except as otherwise provided, in all cases where a parent has relinquished a child to the
19 agency pursuant to K.S.A. 59-2111 through 59-2143, and amendments thereto, all the rights
20 of the parent shall be terminated, including the right to receive notice in a subsequent
21 adoption proceeding involving the child. Upon such relinquishment, all the rights of the
22 parents to such child, including their right to inherit from or through such child, shall cease.

1 (5) If a parent has relinquished a child to the Secretary, based on a belief that the child's other
2 parent would relinquish the child to the Secretary or would be found unfit, and this does not
3 occur, the rights of the parent who has relinquished a child to the Secretary shall not be
4 terminated. (6) A parent's relinquishment of a child shall not terminate the right of the child
5 to inherit from or through the parent.

6 (c) Permanent custody

7 (1) A parent may consent to appointment of the Secretary or an individual as permanent
8 custodian and if the Secretary or individual accepts the consent, the Secretary or individual
9 shall stand *in loco parentis* to the child and shall have and possess over the child all the
10 rights of a legal guardian. When the consent is to the Secretary, the Secretary shall have the
11 right to place the child in the permanent custody of an individual who is appointed permanent
12 custodian.

13 (2) All consents to appointment of a permanent custodian shall be in writing and shall be
14 executed by either parent of the child. The consent shall be acknowledged before a judge
15 of a court of record. It shall be the duty of the court to advise the consenting parent of the
16 consequences of the consent.

17 (3) If a parent has consented to appointment of a permanent custodian based upon a belief
18 that the child's other parent would so consent or would be found unfit, and this does not
19 occur, the consent shall be null and void.

20 d. Adoption.

21 If the parental rights of one parent have been terminated or that parent has relinquished
22 parental rights to the Secretary, the other parent may consent to the adoption of the child by

1 persons approved by the Secretary or approved by the court. The consent shall follow the
2 form at K.S.A. 59-2143 and amendments thereto.

3 COMMENT

4 This is a new provision with no counterpart in the current CINC code. The provision is
5 designed to facilitate voluntary resolution of cases and avoid hearings on unfitness when possible
6 and to clarify the powers and responsibilities of custodians after relinquishment or consent.
7

8 Under subsection (a), either or both parents may voluntarily relinquish parental rights,
9 consent to an adoption, or consent to appointment of a permanent custodian for the child. The
10 consent of the guardian ad litem and of the secretary is required.
11

12 Subsection (b) concerns relinquishment of a child to the secretary and cross references
13 relevant provisions of K.S.A. 59-2111 through 59-2143 relating to relinquishment of a child.
14 Subsection (b)(1) clarifies the secretary's authority and responsibilities for the child in such a case.
15 Subsections (b)(2) and (3) concern the procedures for relinquishment. Subsection (b)(4) specifies
16 that relinquishment will terminate all rights, including the rights of the parent to inherit from the
17 child. It also specifies that if a parent has relinquished his or her rights based on the belief that the
18 other parent would also do so, the relinquishing parent does not lose his or her rights if the other
19 parent fails to relinquish his or her rights as expected. Subsection (b)(6) specifies that the child does
20 not lose inheritance rights if the parent relinquishes the child.
21

22 Subsection (c) references the new relationship of permanent custodianship (*see* proposed
23 section 67, which is similar in many respects to the current permanent guardianship, but will have
24 distinctive features. A key feature of this relationship is that a parent may consent to appointment
25 of a permanent custodian of the child without a finding of unfitness or the termination or
26 relinquishment of parental rights. It also specifies that in such an arrangement, the permanent
27 custodian stands in loco parentis with full right of a legal guardian. Subsection (c)(2) requires
28 consent to be in writing and subsection (c)(3) specifies that if a parent consents to appointment of
29 a permanent custodian based on the belief that the other parent will also consent, and the latter parent
30 does not in fact consent, the first parent's consent is null and void.
31

32 Subsection (d) provides for consent to adoption by a parent after the other parent's rights
33 have been terminated or relinquished.

1 **New Sec. 64. Factors to be considered in termination of parental rights; appointment**
2 **of a permanent custodian.** (a) When the child has been adjudicated to be a child in need of care,
3 the court may terminate parental rights or appoint a permanent custodian when the court finds by
4 clear and convincing evidence that the parent is unfit by reason of conduct or condition which
5 renders the parent unable to care properly for a child and the conduct or condition is unlikely to
6 change in the foreseeable future.

7 (b) In making a determination of unfitness the court shall consider, but is not limited to, the
8 following, if applicable:

9 (1) Emotional illness, mental illness, mental deficiency or physical disability of the parent,
10 of such duration or nature as to render the parent unable to care for the ongoing physical, mental and
11 emotional needs of the child;

12 (2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;

13 (3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature
14 as to render the parent unable to care for the ongoing physical, mental or emotional needs of the
15 child;

16 (4) physical, mental or emotional neglect of a child;

17 (5) conviction of a felony and imprisonment;

18 (6) unexplained injury or death of another child or stepchild of the parent or any child in the
19 care of the parent at the time of injury or death;

20 (7) failure of reasonable efforts made by appropriate public or private agencies to
21 rehabilitate the family; and

1 (8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or
2 conditions to meet the needs of the child.

3 (c) In addition to the foregoing, when a child is not in the physical custody of a parent, the
4 court, shall also consider, but is not limited to the following:

5 (1) Failure to assure care of the child in the parental home when able to do so;

6 (2) failure to maintain regular visitation, contact or communication with the child or with the
7 custodian of the child;

8 (3) failure to carry out a reasonable plan approved by the court directed toward the
9 integration of the child into a parental home; and

10 (4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance
11 based on ability to pay.

12 In making the above determination, the court may disregard incidental visitations, contacts,
13 communications or contributions.

14 (d) A finding of unfitness may be made as provided in this section if the court finds that the
15 parents have abandoned the child, the custody of the child was surrendered pursuant to section 77,
16 and amendments thereto, or the child was left under such circumstances that the identity of the
17 parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not
18 come forward to claim the child within three months after the child is found.

19 (e) If a person is convicted of a felony in which sexual intercourse occurred, or if a juvenile
20 is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a
21 felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is
22 conceived, a finding of unfitness may be made.

1 (f) The existence of any one of the above factors standing alone may, but does not
2 necessarily, establish grounds for termination of parental rights.

3 (g)(1) If the court makes a finding of unfitness, the court shall consider whether termination
4 of parental rights as requested in the petition or motion is in the best interests of the child. In making
5 the determination, the court shall give primary consideration to the physical, mental and emotional
6 health of the child. If the physical, mental or emotional needs of the child would best be served by
7 termination of parental rights, the court shall so order. A termination of parental rights under the
8 Revised Kansas code for care of children shall not terminate the right of a child to inherit from or
9 through a parent. Upon such termination all rights of the parent to such child, including their right
10 to inherit from or through such child, shall cease.

11 (g)(2) If the court terminates parental rights, the court may authorize adoption pursuant to
12 section 65, and amendments thereto, appointment of a permanent custodian pursuant to section 67,
13 amendments thereto, or continued permanency planning.

14 (g)(3) If the court does not terminate parental rights, the court may authorize appointment of
15 a permanent custodian pursuant to section 67, and amendments thereto, or continued permanency
16 planning.

17 (h) If a parent is convicted of an offense as provided in subsection (7) of section 66 and
18 amendments thereto or is adjudicated a juvenile offender because of an act which if committed by
19 an adult would be an offense as provided in subsection (7) of section 66 and amendments thereto,
20 and if the victim was the other parent of a child, the court may disregard such convicted or
21 adjudicated parent's opinions or wishes in regard to the placement of such child.

22 (i) A record shall be made of the proceedings.

1 (j) When adoption, proceedings to appoint a permanent custodian or continued permanency
2 planning has been authorized, the person or agency awarded custody of the child shall within 30
3 days submit a written plan for permanent placement which shall include measurable objectives and
4 time schedules.

5 COMMENT

6 In subsection (a), appointment of a permanent custodian is included as an alternative that
7 does not require termination of parental rights.

8
9 In subsection (b), “unfitness” is inserted into the introductory phrase for clarification.
10 Subsection (b)(3) has been amended to clarify the standard for termination based on substance abuse.
11 The word “excessive” has been stricken as ambiguous and new language has been inserted
12 specifying that the substance abuse must be such as to interfere with the parent’s ability to care for
13 the needs of the child.. In subsection (b)(4), the amendment makes a policy change in that it refers
14 to the physical, mental or emotional neglect of any child as opposed to the current subsection which
15 refers only to the child of the parent whose parental rights may be terminated. Similarly, in
16 subsection (b)(6), the amendment permits the death of any child in the care of the parent to be
17 considered in determining whether the parent is unfit, as opposed to the current version which refers
18 only to that parent’s child or stepchild. In both situations, the committee believes that a parent’s
19 conduct in relation to other children in their care is relevant to the determination whether his or her
20 child is a child in need of care, regardless of whether those other children are also the children of the
21 parent.

22
23 In subsection (d), the reference to termination of parental rights has been replaced by a
24 reference to a finding of unfitness, which must be made prior to termination.

25
26 Proposed subsection (e) incorporates from K.S.A. 38-1586 with some technical changes. The
27 committee believed that the substance of that provision properly belongs in this section of the code
28 because it is a consideration relevant to termination of parental rights.
29 Most of the language of subsection (e) has been stricken or moved and, as amended, it provides only
30 that any one of the factors to be considered in determining unfitness may, but need not be, sufficient.

31
32 Proposed subsection (f) carries forward some language from current subsection (e). Most
33 of current subsection (e) however, was moved to proposed subsection (g)(1). The portion of current
34 subsection (e) relating to evidence was deleted because it is covered by the rules of evidence which
35 apply in CINC cases.

36
37 In new subsection (g), the procedure, standards and options to be used after a finding of
38 unfitness are set out. Proposed subsection (g) incorporates some language from current subsections

1 (g) and (i), and references adoption and permanent custodianship provisions. As a result current,
2 subsection (i) is unnecessary and has been stricken.
3

4 Proposed subsection (h) carries forward existing subsection (h)
5

6 Proposed subsection (i) requires a record be made of the termination proceedings.
7

8 Proposed subsection (j) deals with continued permanency planning if placement for adoption,
9 appointment of a permanent custodian, or continued planning are ordered. It replaces current
10 subsection (i) with broader and more comprehensive requirements of continued permanency
11 planning.
12

13

14

15

16

17

18

19

20

21

1 **New Sec. 66. Presumption of unfitness, when; burden of proof.** (a) It is presumed in the
2 manner provided in K.S.A. 60-414 and amendments thereto that a parent is unfit by reason of
3 conduct or condition which renders the parent unable to fully care for a child, if the state establishes
4 by clear and convincing evidence that:

5 (1) A parent has previously been found to be an unfit parent in proceedings under section 61
6 *et seq.* and amendments thereto, or comparable proceedings under the laws of another jurisdiction;

7 (2) a parent has twice before been convicted of a crime specified in article 34, 35, or 36 of
8 chapter 21 of the Kansas Statutes Annotated, or comparable offenses under the laws of another
9 jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of
10 18 years;

11 (3) on two or more prior occasions a child in the physical custody of the parent has been
12 adjudicated a child in need of care as defined by subsection (d)(1),(d)(3), (d)(5) and (d)(11) of
13 section 2 and amendments thereto or comparable proceedings under the laws of another jurisdiction.

14 (4) the parent has been convicted of causing the death of another child or stepchild of the
15 parent;

16 (5) the child has been in an out-of-home placement, under court order for a cumulative total
17 period of one year or longer and the parent has substantially neglected or willfully refused to carry
18 out a reasonable plan, approved by the court, directed toward reintegration of the child into the
19 parental home;

20 (6) (A) the child has been in an out-of-home placement, under court order for a cumulative
21 total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved

1 by the court, directed toward reintegration of the child into the parental home; and (C) there is a
2 substantial probability that the parent will not carry out such plan in the near future;

3 (7) a parent has been convicted of capital murder, K.S.A. 21-3439 and amendments thereto,
4 murder in the first degree, K.S.A. 21-3401 and amendments thereto, murder in the second degree,
5 K.S.A. 21-3402 and amendments thereto or voluntary manslaughter, K.S.A. 21-3403 and
6 amendments thereto or comparable proceedings under the laws of another jurisdiction or, or has
7 been adjudicated a juvenile offender because of an act which if committed by an adult would be an
8 offense as provided in this subsection, and the victim of such murder was the other parent of the
9 child;

10 (8) a parent abandoned or neglected the child after having knowledge of the child's birth or
11 either parent has been granted immunity from prosecution for abandonment of the child under
12 subsection (b) of K.S.A. 21-3604, and amendments thereto; or

13 (9) a parent has made no reasonable efforts to support or communicate with the child after
14 having knowledge of the child's birth;

15 (10) a father, after having knowledge of the pregnancy, failed without reasonable cause to
16 provide support for the mother during the six months prior to the child's birth;

17 (11) a father abandoned the mother after having knowledge of the pregnancy;

18 (12) a parent has committed rape resulting in the conception of the child's; or

19 (13) a parent has failed or refused to assume the duties of a parent for two consecutive years
20 next preceding the filing of the petition, in making this determination the court may disregard
21 incidental visitations, contacts, communications or contributions.

1 (b) The burden of proof is on the parent to rebut the presumption of unfitness by a
2 preponderance of the evidence. In the absence of proof that the parent is presently fit and able to
3 care for the child or that the parent will be fit and able to care for the child in the foreseeable future,
4 the court shall terminate parental rights in proceedings pursuant to section 61 *et seq.* and
5 amendments thereto.

6 **COMMENT**

7 In subsections (a)(1), (a)(2), (a)(3) and (a)(7), provisions concerning convictions for similar
8 offenses under the laws of another jurisdiction have been amended or added. All four provision
9 create a presumption of unfitness when the parent has previously been found unfit or convicted of
10 specified criminal offenses under Kansas law. Current (a)(1) and (a)(2) provide that the presumption
11 also arises when the parent has been found unfit or convicted of comparable offenses under the laws
12 of another jurisdiction, but no such language is found in subsections (a)(3) and (a)(7). Moreover,
13 in (a)(1) the comparable offense language applies to convictions of under the laws of another state
14 or the federal government, while in (a)(2) it extends to foreign governments as well. The committee
15 incorporated identical language in all four provisions extending the presumption of unfitness to
16 convictions under the comparable laws of another “jurisdiction” to establish consistency and
17 comprehensiveness of coverage for these presumptions.

18
19 Subsection (a)(3) has also been amended to extend the presumption of unfitness that arises
20 when a child in the physical custody of a parent has previously been adjudicated a child in need of
21 care on two or more prior occasions. Under current law, the presumption arises only if the
22 adjudication was based on abuse or neglect. Under the committee’s proposal provision, the
23 presumption would also arise from two or more prior adjudications based on (1) lack of adequate
24 care, control, or subsistence; (2) abandonment; and (3) abuse or neglect of a sibling. The committee
25 considered these additional cases sufficiently severe and relevant to warrant inclusion in the
26 presumption

27
28 In subsection (a)(5) and (a)(6), the language “other than kinship care” has been stricken. The
29 committee believes that if a child has been in an out of home placement for extended periods and
30 the parent’s failure to carry out a court-ordered integration plan meets the criteria in these provisions,
31 the presumption of unfitness should arise even if the child was in kinship care. Although kinship
32 care is often preferable to other placements outside the home, these provisions focus on the conduct
33 of the parent and the likelihood of a successful reintegration, not the desirability of the child’s out
34 of home placement.

35
36 Subsection (a) (8) was rewritten to combine the existing language with the language currently
37 found in K.S.A. 59-2136 (h)(1).
38

1 **New Sec. 67. Appointment of permanent custodian.** (a) A permanent custodian may
2 be appointed: (1) with the consent and agreement of the parents and approval by the court; (2) after
3 a finding of unfitness pursuant to section 64 and amendments thereto; or (3) after termination of
4 parental rights pursuant to section 65 and amendments thereto. Upon the appointment of a
5 permanent custodian, the Secretary's custody of the child shall cease. The court's jurisdiction over
6 the child shall continue unless the court enters an order terminating jurisdiction.

7 (b) Subject to subsection (c), a permanent custodian shall stand in loco parentis and shall exercise
8 all of the rights and responsibilities of a parent except:

9 (1) The permanent custodian shall not consent to an adoption of the child; and

10 (2) The permanent custodian shall not be subject to court ordered child support or medical
11 support.

12 (c) When the court retains jurisdiction after appointment of a permanent custodian, the court, in its
13 order, may impose limitations or conditions upon the rights and responsibilities of the permanent
14 custodian including but not limited to the right to:

15 (1) Determine contact with the biological parent;

16 (2) Consent to marriage;

17 (3) Consent to psychosurgery, removal of a bodily organ, or amputation of a limb;

18 (4) Consent to sterilization;

19 (5) Consent to behavioral and medical experiments;

20 (6) Consent to withholding life-prolonging medical treatment;

21 (7) Consent to placement in a treatment facility;

1 (8) Consent to placement in a psychiatric hospital or an institution for the
2 developmentally disabled.

3 (d) Absent a judicial finding of unfitness or court-ordered limitations pursuant to subsection (c) of
4 this section, a permanent custodian may share parental responsibilities with a parent of the child as
5 the permanent custodian determines is in the child's best interests. Sharing parental responsibilities
6 does not relieve the permanent custodian of legal responsibility for the child.

7 (e) Parental consent to appointment of a permanent custodian shall be on the record or executed by
8 the parent of the child and acknowledged before a judge of a court of record. It shall be the duty of
9 the court before which the consent is acknowledged to advise the consenting parent of the
10 consequences of the consent, including the following:

11 1. Do you understand that your parental rights are not being terminated and you can be
12 ordered to pay child support and medical support for your child?

13 2. Do you understand that to get the rights you still have with your child, you must keep the
14 Court up to date about how to contact you? This means that the Court needs to always have your
15 current address and telephone number.

16 3. Do you understand that if your child is ever placed for adoption, the court will try to let
17 you know by using the information you have given them? If your address and telephone number are
18 not up to date, you might not know your child is placed for adoption.

19 4. Do you understand that if you want information about your child's health or education,
20 you will have to keep the information you give the Court about where you are up to date because the
21 information will be sent to the latest address the Court has?

1 5. Do you understand that you may be able to have some contact with your child, but only
2 if the permanent custodian decides it is in the child's best interests and if the Court allows the
3 contact?

4 6. Do you understand that unless the Court orders differently, the permanent custodian has
5 the right to make the following decisions about your child: the amount and type of contact you have
6 with the child; consent to your child's marriage; consent to medical treatment; consent to mental
7 health treatment; consent to placement in a psychiatric hospital or an institution for the
8 developmentally disabled; consent to behavioral and medical experiments; consent to sterilization
9 and consent to withholding life-prolonging medical treatment?

10 (f)(1) A consent is final when executed, unless the parent whose consent is at issue, prior
11 to issuance of the order appointing a permanent custodian, proves by clear and convincing evidence
12 that the consent was not freely and voluntarily given. The burden of proving the consent was not
13 freely and voluntarily given shall rest with that parent.

14 (2) If a parent has consented to appointment of a permanent custodian based upon a belief
15 that the child's other parent would so consent or would be found unfit, and this does not occur, the
16 consent shall be null and void.

17 (g) If a permanent custodian is appointed after a judicial finding of parental unfitness without
18 a termination of parental rights, the parent shall retain only the following rights and responsibilities:

19 (1) The obligation to pay child support and medical support; and

20 (2) The right to inherit from the child.

21 (3) The right to consent to adoption of the child.

22 All other parental rights transfer to the permanent custodian.

1 (h) If a permanent custodian is appointed after termination of parental rights, the parent retains no
2 right or responsibilities to the child.

3 (i) Prior to appointing a permanent custodian, the court shall receive and consider an assessment of
4 any potential permanent custodian as provided in K.S.A. 59-2132 and amendments thereto. In
5 making an order appointing a permanent custodian the court shall give preference, to the extent that
6 the court finds it in the child's best interests, to first appointing a permanent custodian who is a
7 relative of the child or second a person with whom the child has close emotional ties.

8 (j) If permanent custodians are divorced, their marriage is annulled, or the court orders separate
9 maintenance, the Court in that case has jurisdiction to make custody determinations between the
10 permanent custodians.

11 **COMMENT**

12 This section has been completely reworked to provide for the appointment of a permanent
13 custodian and to prescribe the procedures for appointing one and the rights and duties that arise from
14 this new legal relationship. The committee intends that this new relationship would replace that of
15 a permanent guardian under current law. The committee contemplates that the relationship would
16 be substantially similar, although there would be some differences. The term "permanent custodian"
17 was used to avoid confusion with other forms of guardianship and problematic legal implications.
18 The proposed section deals comprehensively with matters that, under the current guardianship
19 provisions, are scattered in various sections of the code.
20

21 Subsection (a) provides that a permanent custodian may be appointed under three
22 circumstances: (1) when the parents consent and the court approves; (2) when there has been a
23 finding of unfitness; or (3) when parental rights have been terminated. This provision reflects a
24 fundamental change proposed by the committee, under which a permanent custodian may be
25 appointed without the termination of parental rights. The committee believes that some parents
26 recognize that their child would be better off in an alternative custodial arrangement but they are
27 unwilling to completely surrender their parental rights. Making this option available may induce
28 some parents to cooperate with a permanent placement for a child without the need for a termination
29 proceeding. The delays inherent in such proceedings may cause harm to the child and make
30 permanent placement more difficult. In addition, the committee believes that a continued relationship
31 with the parent may at times be in the best interests of the child even though the parent is not capable
32 of caring for the child.
33

1 Subsection (b) specifies the rights and obligations of the permanent custodian, who stands
2 in loco parentis to the child (as does the guardian under current K.S.A. 38-1502(w)), with two
3 exceptions. First, in keeping with the possibility that parental rights have not been terminated, the
4 custodian cannot consent to an adoption, which would require a judicial decision terminating
5 parental rights (if one has not already been made) and the placement of the child by the court for
6 adoption. Second, to eliminate a potential disincentive to becoming a permanent custodian, this
7 subsection specifies that the permanent custodian is not liable for court ordered child support or
8 medical support.
9

10 Under subsection (c), which is new language, the court may retain jurisdiction after the
11 appointment of a permanent custodian and, if it does so, may impose some restrictions on the rights
12 and responsibilities of the custodian. The retention of jurisdiction may be necessary when the parent
13 has not been found unfit and the parent's rights have not been terminated.
14

15 Subsection (d) permits the custodian to share parental responsibilities with a parent if the
16 parent has not been found unfit and the court does not preclude it. This provision is in keeping with
17 the committee's view that a continued relationship between a child and a parent may at times be
18 desirable. The discretion in this regard rests with the custodian and the parent has no right to insist
19 on any particular role in the child's life.
20

21 Subsections (e) and (f) concern parental consent. Subsection (e) specifies the requirements
22 for consent to the appointment of a permanent custodian, including warnings to insure that consent
23 is fully informed and voluntary. Subsection (f) concerns circumstances in which consent may be
24 void, which include either proof by clear and convincing evidence prior to an order appointing a
25 permanent custodian that the consent was not voluntary or the failure of the other parent to consent
26 when the consenting parent's consent was premised on the other parent's consent.
27

28 Subsection (g) specifies the rights and duties retained if a permanent custodian is appointed
29 after a parent has been found unfit but without a termination of parental rights. The parent retains
30 the obligation to support the child, the right to inherit from the child, and the right to consent to an
31 adoption. All other rights are transferred to the custodian.
32

33 Subsection (h) specifies that the parent retains no rights if a permanent custodian is appointed
34 after termination of parental rights.
35

36 Subsection (i) contains some material found in current K.S.A. 38-1583(g), requiring an
37 assessment of potential custodians under K.S.A. 59-2132. It also incorporates a preference for
38 granting custody to a relative or a person with whom the child has close emotional ties.
39

40 Subsection (j) specifies that in the event that marriage of custodians dissolves, the court
41 having jurisdiction over the proceedings may determine custody as between the custodians

1 **New Sec. 72. Determination of child support under code.** (a) In determining the amount
2 of a child support order under the Revised Kansas code for care of children, the court shall apply the
3 Kansas child support guidelines adopted pursuant to K.S.A. 20-165 and amendments thereto.

4 (b) If the appropriate amount of support under the Kansas child support guidelines cannot
5 be determined because any necessary fact is not proven by evidence or by stipulation of the
6 appropriate parent, the court shall apply one or more of the following presumptions:

7 (1) Both parents have only gross earned income equal to 40 hours per week at the federal
8 minimum wage then in effect;

9 (2) neither parent's income is subject to adjustment for any reason;

10 (3) the number of children is as alleged in the petition;

11 (4) the age of each child is as alleged in the petition or, if unknown, is between seven and 15
12 years;

13 (5) no adjustment for child care, health or dental insurance or income tax exemption is
14 appropriate; or

15 (6) neither parent is entitled to any other credit or adjustment.

16 (c) If the county or district attorney determines that: (1) A parent will contest the amount of
17 support resulting from application of the guidelines; (2) the parent is or may be entitled to an
18 adjustment pursuant to the guidelines; and (3) it is in the child's best interests to resolve the support
19 issue promptly and with minimal hostility, the county or district attorney may enter into a stipulation
20 with the parent as to the amount of child support for that parent. The amount of support may be
21 based upon one or more of the presumptions in subsection (b). Except for good cause or as otherwise
22 provided in section 74, and amendments thereto, a stipulation under this subsection shall be binding

1 upon the court and all parties or interested parties. The criteria for application of this subsection shall
2 be incorporated into the journal entry or judgment form.

3 **COMMENT**

4 Changes to this section are technical.

1 **New Sec. 74. Withholding order for child support under code; filing; service.** (a) A
2 person entitled to receive child support under an order issued pursuant to the Revised Kansas code
3 for care of children may file with the clerk of the district court in the county in which the judgment
4 was rendered the original child support order and the original income withholding order, if any. If
5 the original child support or income withholding order is unavailable for any reason, a certified or
6 authenticated copy of the order may be substituted. The clerk of the district court shall number the
7 child support order as a case filed under chapter 60 of the Kansas Statutes Annotated and enter the
8 numbering of the case on the appearance docket of the case. Registration of a child support order
9 under this section shall be without cost or docket fee.

10 (b) If the number assigned to a case under the Revised Kansas code for care of children
11 appears in the caption of a document filed pursuant to this section, the clerk of the district court may
12 obliterate that number and replace it with the new case number assigned pursuant to this section.

13 (c) The filing of the child support order shall constitute registration under this section. Upon
14 registration of the child support order, all matters related to that order, including but not limited to
15 modification of the order, shall proceed under the new case number. Registration of a child support
16 order under this section does not confer jurisdiction in the registration case for custody or visitation
17 issues.

18 (d) The person registering a child support order shall serve a copy of the registered child
19 support order and income withholding order, if any, upon the party or interested parties by first-class
20 mail. The person registering the child support order shall file, in the privileged official file for each
21 child affected, either a copy of the registered order showing the new case number or a statement that
22 includes the caption, new case number and date of registration of the child support order.

1 (e) If the secretary is entitled to receive payment under an order which may be registered
2 under this section, the county or district attorney shall take the actions permitted or required in
3 subsections (a) and (d) on behalf of the secretary, unless otherwise requested by the secretary.

4 (f) A child support order registered pursuant to this section shall have the same force and
5 effect as an original child support order entered under chapter 60 of the Kansas Statutes Annotated
6 including, but not limited to:

7 (1) The registered order shall become a lien on the real estate of the judgment debtor in the
8 county from the date of registration;

9 (2) execution or other action to enforce the registered order may be had from the date of
10 registration;

11 (3) the registered order may itself be registered pursuant to any law, including but not limited
12 to the revised uniform interstate family support act, K.S.A. 23-9,101 et seq. and amendments
13 thereto;

14 (4) if any installment of support due under the registered order becomes a dormant judgment,
15 it may be revived pursuant to K.S.A. 60-2404 and amendments thereto; and

16 (5) the court shall have continuing jurisdiction over the child support action and the parties
17 thereto and subject matter and, except as otherwise provided in subsection (g), may modify any prior
18 support order when a material change in circumstances is shown irrespective of the present domicile
19 of the child or parents. The court may make a modification of child support retroactive to a date at
20 least one month after the date that the motion to modify was filed with the court.

21 (g) If a motion to modify the child support order is filed within three months after the date
22 of registration pursuant to this section; if no motion to modify the order has previously been heard

1 and if the moving party shows that the support order was based upon one or more of the
2 presumptions provided in section 72, and amendments thereto, or upon a stipulation pursuant to
3 subsection (c) of section 72, and amendments thereto, the court shall apply the Kansas child support
4 guidelines adopted pursuant to K.S.A. 20-165 and amendments thereto without requiring a showing
5 that a material change of circumstances has occurred, without regard to any previous presumption
6 or stipulation used to determine the amount of the child support order, and irrespective of the present
7 domicile of the child or parents. Nothing in this subsection shall prevent or limit enforcement of the
8 support order during the three months after the date of registration.

9 **COMMENT**

10 Changes to this section are technical.

1 **New Sec. 77. Title of act; to whom physical custody may be surrendered;**
2 **relinquishment of medical records.** (a) This section shall be known and may be cited as the
3 newborn infant protection act.

4 (b) A parent or other person having lawful custody of an infant which is 45 days old or
5 younger and which has not suffered bodily harm may surrender physical custody of the infant to any
6 employee who is on duty at a fire station, city or county health department or medical care facility
7 as defined by K.S.A. 65-425, and amendments thereto. Such employee shall take physical custody
8 of an infant surrendered pursuant to this section.

9 (c) As soon as possible after a person takes physical custody of an infant under this section,
10 such person shall notify a local law enforcement agency that the person has taken physical custody
11 of an infant pursuant to this section. Upon receipt of such notice a law enforcement officer from such
12 law enforcement agency shall take custody of the infant as an abandoned child. The law enforcement
13 agency shall deliver the infant to a facility or person designated by the secretary of the department
14 of social and rehabilitation services pursuant to section 27, and amendments thereto.

15 (d) Any person, city or county or agency thereof or medical care facility taking physical
16 custody of an infant surrendered pursuant to this section shall perform any act necessary to protect
17 the physical health or safety of the infant, and shall be immune from liability for any injury to the
18 infant that may result therefrom.

19 (e) Upon request, all medical records of said infant shall be made available to the department
20 of social and rehabilitation services and given to person awarded custody of said infant. The medical
21 facility providing such records shall be immune from liability for their release.

COMMENT

1

2

This section has been carried forward unchanged from current K.S.A. 38-15,100.

3