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1 AN ACT concerning children; relating to permanency; priority of certain orders; amending
2 K.S.A. 38-1116, 38-1121, 38-2201, 38-2203, 38-2262, 38-2284, 38-2304, and 60-1610
3 and repealing the existing sections.

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

5
6 **Sec. 1.** K.S.A. 38-1116 is hereby amended to read as follows: 38-1116. (a) The district court
7 has jurisdiction of an action brought under the Kansas parentage act. The action may be joined
8 with an action for divorce, annulment, separate maintenance, support or adoption.

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

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

16 (d) Any ~~custody, residency or parenting time~~ order issued pursuant to the revised Kansas
17 code for care of children or the revised Kansas juvenile justice code, shall take precedence over
18 any order under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments
19 thereto (determination of parentage), until jurisdiction under the revised Kansas code for care of
20 children or the revised Kansas juvenile justice code is terminated.

21 (e) If a court of competent jurisdiction within this state has entered an order pursuant to the
22 revised Kansas code for care of children regarding custody of a child or children who are involved
23 in a proceeding filed pursuant to this section, and such court has determined pursuant to
24 subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the orders in that case shall
25 become the custody orders in the parentage case, such court shall file a certified copy of the
26 orders with the civil case number in the caption and then close the case under the revised
27 Kansas code for care of children. Such orders shall be binding on the parties, unless modified
28 based on a material change in circumstances, even if such courts have different venues.

29
30 **Sec. 2.** K.S.A. 2008 Supp. 38-1121 is hereby amended to read as follows: 38-1121. (a) The
31 judgment or order of the court determining the existence or nonexistence of the parent and child
32 relationship is determinative for all purposes, but if any person necessary to determine the
33 existence of a father and child relationship for all purposes has not been joined as a party, a
34 determination of the paternity of the child shall have only the force and effect of a finding of fact
35 necessary to determine a duty of support.

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

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

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1 ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988,
2 provides for termination of support before the date provided by subsection (c)(2), the court may
3 review and modify such agreement, and any order based on such agreement, to extend the date
4 for termination of support to the date provided by subsection (c)(2). If an agreement approved by
5 the court prior to July 1, 1992, provides for termination of support before the date provided by
6 subsection (c)(3), the court may review and modify such agreement, and any order based on
7 such agreement, to extend the date for termination of support to the date provided by subsection
8 (c)(3). For purposes of this section, "bona fide high school student" means a student who is
9 enrolled in full accordance with the policy of the accredited high school in which the student is
10 pursuing a high school diploma or a graduate equivalency diploma (GED). The judgment may
11 require the party to provide a bond with sureties to secure payment. The court may at any time
12 during the minority of the child modify or change the order of support, including any order issued
13 in a title IV-D case, within three years of the date of the original order or a modification order, as
14 required by the best interest of the child. If more than three years has passed since the date of
15 the original order or modification order, a requirement that such order is in the best interest of the
16 child need not be shown. The court may make a modification of support retroactive to a date at
17 least one month after the date that the motion to modify was filed with the court. Any increase in
18 support ordered effective prior to the date the court's judgment is filed shall not become a lien on
19 real property pursuant to K.S.A. 60-2202, and amendments thereto.

20 (d) If both parents are parties to the action, the court shall enter such orders regarding
21 custody, residency and parenting time as the court considers to be in the best interest of the
22 child. If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan
23 is in the best interest of the child. This presumption may be overcome and the court may make a
24 different order if the court makes specific findings of fact stating why the agreed parenting plan is
25 not in the best interest of the child. If the parties are not in agreement on a parenting plan, each
26 party shall submit a proposed parenting plan to the court for consideration at such time before the
27 final hearing as may be directed by the court.

28 (e) If during the proceedings the court determines that there is probable cause to believe that
29 the child is a child in need of care, as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of
30 K.S.A. 2008 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have
31 residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or
32 adult sibling, or another person or agency if the court finds by written order that: (1)(A) The child
33 is likely to sustain harm if not immediately removed from the home; (B) allowing the child to
34 remain in home is contrary to the welfare of the child; or (C) immediate placement of the child is
35 in the best interest of the child; and (2) reasonable efforts have been made to maintain the family
36 unit and prevent the unnecessary removal of the child from the child's home or that an
37 emergency exists which threatens the safety of the child. In making such a residency order, the
38 court shall give preference, to the extent that the court finds it is in the best interests of the child,
39 first to awarding such residency to a relative of the child by blood, marriage or adoption and
40 second to awarding such residency to another person with whom the child has close emotional
41 ties. The court may make temporary orders for care, support, education and visitation that it
42 considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders
43 provided for in K.S.A. 2008 Supp. 38-2243 and 38-2244, and amendments thereto, and shall
44 remain in effect until there is a final determination under the revised Kansas code for care of
45 children. An award of temporary residency under this paragraph shall not terminate parental
46 rights nor give the court the authority to consent to the adoption of the child. When the court
47 enters orders awarding temporary residency of the child to an agency or a person other than the
48 parent, the court shall refer a transcript of the proceedings to the county or district attorney. The
49 county or district attorney shall file a petition as provided in K.S.A. 2008 Supp. 38-2234, and
50 amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2008
51 Supp. 38- 2266, and amendments thereto. The costs of the proceedings shall be paid from the
52 general fund of the county. If a final determination is made that the child is not a child in need of
53 care, the county or district attorney shall notify the court in writing and the court, after a hearing,
54 shall enter appropriate custody orders pursuant to this section. If the same judge presides over
55 both proceedings, the notice is not required. Any ~~custody, residency or parenting time~~ order

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1 pursuant to the revised Kansas code for care of children shall take precedence over any ~~custody,~~
2 ~~residency or parenting time~~ *similar* order under this section.

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

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

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

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

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

28
29 **Sec. 3.** K.S.A. 2008 Supp. 38-2201 is hereby amended to read as follows: 38-2201. K.S.A.
30 2008 Supp. 38-2201 through 38-2283, and amendments thereto, shall be known as and may be
31 cited as the revised Kansas code for care of children.

32 (a) Proceedings pursuant to this code shall be civil in nature and all proceedings, orders,
33 judgments and decrees shall be deemed to be pursuant to the parental power of the state. Any
34 ~~custody, residency or parenting time~~ orders pursuant to this code shall take precedence over any
35 ~~custody, residency or parenting time~~ *similar* order under article 11 of chapter 38 of the Kansas
36 Statutes Annotated, and amendments thereto (determination of parentage), article 21 of chapter
37 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment
38 act), article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto
39 (guardians and conservators), article 16 of chapter 60 of the Kansas Statutes Annotated, and
40 amendments thereto (divorce), article 31 of chapter 60 of the Kansas Statutes Annotated, and
41 amendments thereto (protection from abuse act), and article 31a of chapter 60 of the Kansas
42 Statutes Annotated, and amendments thereto (protection from stalking act), until jurisdiction
43 under this code is terminated.

44 (b) The code shall be liberally construed to carry out the policies of the state which are to:

- 45 (1) Consider the safety and welfare of a child to be paramount in all proceedings under the
46 code;
- 47 (2) provide that each child who comes within the provisions of the code shall receive the care,
48 custody, guidance control and discipline that will best serve the child's welfare and the interests of
49 the state, preferably in the child's home and recognizing that the child's relationship with such
50 child's family is important to the child's well being;
- 51 (3) make the ongoing physical, mental and emotional needs of the child decisive
52 considerations in proceedings under this code;
- 53 (4) acknowledge that the time perception of a child differs from that of an adult and to dispose
54 of all proceedings under this code without unnecessary delay;
- 55 (5) encourage the reporting of suspected child abuse and neglect;
- 56 (6) investigate reports of suspected child abuse and neglect thoroughly and promptly;

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1 (7) provide for the protection of children who have been subject to physical, mental or
2 emotional abuse or 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 without
5 further threat to the children;

6 (9) provide stability in the life of a child who must be removed from the home of a parent; and

7 (10) place children in permanent family settings, in absence of compelling reasons to the
8 contrary.

9 (c) Nothing in this code shall be construed to permit discrimination on the basis of disability.

10 (1) The disability of a parent shall not constitute a basis for a determination that a child is a
11 child in need of care, for the removal of custody of a child from the parent, or for the termination
12 of parental rights without a specific showing that there is a causal relation between the disability
13 and harm to the child.

14 (2) In cases involving a parent with a disability, determinations made under this code shall
15 consider the availability and use of accommodations for the disability, including adaptive
16 equipment and support services.

17
18 **Sec. 4.** K.S.A. 2008 Supp. 38-2203 is hereby amended to read as follows: 38-2203. (a)
19 Proceedings concerning any child who may be a child in need of care shall be governed by this
20 code, except in those instances when the court knows or has reason to know that an Indian child
21 is involved in the proceeding, in which case, the Indian child welfare act of 1978 (25 U.S.C. §1901
22 et seq.) applies. The Indian child welfare act may apply to: The filing to initiate a child in need of
23 care proceeding (K.S.A. 2008 Supp. 38-2234, and amendments thereto); ex parte custody orders
24 (K.S.A. 2008 Supp. 38-2242, and amendments thereto); temporary custody hearing (K.S.A. 2008
25 Supp. 38-2243, and amendments thereto); adjudication (K.S.A. 2008 Supp. 38-2247, and
26 amendments thereto); burden of proof (K.S.A. 2008 Supp. 38-2250, and amendments thereto);
27 disposition (K.S.A. 2008 Supp. 38-2255, and amendments thereto); permanency hearings (K.S.A.
28 2008 Supp. 38-2264, and amendments thereto); termination of parental rights (K.S.A. 2008 Supp.
29 38-2267, 38-2268 and 38-2269, and amendments thereto); establishment of permanent
30 custodianship (K.S.A. 2008 Supp. 38-2268 and 38-2272, and amendments thereto); the
31 placement of a child in any foster, pre-adoptive and adoptive home and the placement of a child
32 in a guardianship arrangement under chapter 59, article 30 of the Kansas Statutes Annotated,
33 and amendments thereto.

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

37 (c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code
38 or upon issuance of an ex parte order pursuant to K.S.A. 2008 Supp. 38-2242, and amendments
39 thereto. When the court acquires jurisdiction over a child in need of care, jurisdiction may
40 continue until the child has: (1) Attained the age of 21 years; (2) been adopted; or (3) been
41 discharged by the court. Any child 18 years of age or over may request, in writing to the court,
42 that the jurisdiction of the court cease. The court shall give notice of the request to all parties and
43 interested parties and 30 days after receipt of the request, jurisdiction will cease.

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

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

54 (f) A court's order ~~affecting a child's custody, residency, parenting time and visitation that is~~
55 issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil
56 custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and

1 amendments thereto (protection from abuse act), or a comparable case in another jurisdiction,
2 except as provided by K.S.A. 38-1336 et seq., and amendments thereto (uniform child custody
3 jurisdiction and enforcement act).

4
5 **Sec. 5.** K.S.A. 38-2262 is hereby amended to read as follows: 38-2262. **Placement;**
6 **testimony of certain children.** At any hearing under the code, the court, if requested by the
7 child, shall ~~hear the testimony of the child as to the desires of the child concerning the child's~~
8 ~~placement~~ *allow the child to address the court*, if the child is 10 years of age ~~and of sound~~
9 ~~intellect or older.~~

10
11 **Sec. 6.** K.S.A. 38-2284 is hereby amended to read as follows: 38-2284. Any ~~custody or~~
12 ~~parenting time order, or order relating to the best interests of a child,~~ issued pursuant to the
13 revised Kansas code for care of children or the revised Kansas juvenile justice code, shall take
14 precedence over any order under article 21 of chapter 59 of the Kansas Statutes Annotated, and
15 amendments thereto (adoption and relinquishment act), or article 30 of chapter 59 of the Kansas
16 Statutes Annotated, and amendments thereto (guardians and conservators), until jurisdiction
17 under the revised Kansas code for care of children or the revised Kansas juvenile justice code is
18 terminated.

19
20 **Sec. 7.** K.S.A. 2008 Supp. 38-2304 is hereby amended to read as follows: 38-2304. (a)
21 Except as provided in K.S.A. 2008 Supp. 38-2347, and amendments thereto, proceedings
22 concerning a juvenile shall be governed by the provisions of this code.

23 (b) The district court shall have original jurisdiction to receive and determine proceedings
24 under this code.

25 (c) When a complaint is filed under this code, the juvenile shall be presumed to be subject to
26 this code, unless the contrary is proved.

27 (d) Once jurisdiction is acquired by the district court over an alleged juvenile offender, except
28 as otherwise provided in subsection (e), jurisdiction shall continue until one of the following
29 occurs:

30 (1) The complaint is dismissed;

31 (2) the juvenile is adjudicated not guilty at trial;

32 (3) the juvenile, after being adjudicated guilty and sentenced:

33 (i) Successfully completes the term of probation or order of assignment to community
34 corrections;

35 (ii) is discharged by the commissioner pursuant to K.S.A. 2008 Supp. 38-2376, and
36 amendments thereto;

37 (iii) reaches the juvenile's 21st birthday and no exceptions apply that extend jurisdiction
38 beyond age 21;

39 (4) the court terminates jurisdiction; or

40 (5) the offender is convicted of a new felony while the offender is incarcerated in a juvenile
41 correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2008 Supp. 38-2373,
42 and amendments thereto, for an offense, which if committed by an adult would constitute the
43 commission of a felony.

44 (e) Once jurisdiction is acquired by the district court over an alleged juvenile offender, it shall
45 continue beyond the juvenile offender's 21st birthday but no later than the juvenile offender's 23rd
46 birthday if either or both of the following conditions apply:

47 (1) The juvenile offender is sentenced pursuant to K.S.A. 2008 Supp. 38-2369, and
48 amendments thereto, and the term of the sentence including successful completion of aftercare
49 extends beyond the juvenile offender's 21st birthday; or

50 (2) the juvenile offender is sentenced pursuant to an extended jurisdiction juvenile
51 prosecution and continues to successfully serve the sentence imposed pursuant to the revised
52 Kansas juvenile justice code.

53 (f) Termination of jurisdiction pursuant to this section shall have no effect on the juvenile
54 offender's continuing responsibility to pay restitution ordered.

55 (g) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the
56 custody of the secretary of social and rehabilitation services under the Kansas code for care of

1 children, the sentencing court may order the continued placement of the juvenile offender as a
2 child in need of care unless the offender was adjudicated for a felony or a second or subsequent
3 misdemeanor. If the adjudication was for a felony or a second or subsequent misdemeanor, the
4 continued placement cannot be ordered unless the court finds there are compelling
5 circumstances which, in the best interest of the juvenile offender, require that the placement
6 should be continued. In considering whether compelling circumstances exist, the court shall
7 consider the reports and recommendations of the foster placement, the contract provider, the
8 secretary of social and rehabilitation services, the presentence investigation and all other relevant
9 factors. If the foster placement refuses to continue the juvenile in the foster placement the court
10 shall not order continued placement as a child in need of care.

11 (2) If a placement with the secretary of social and rehabilitation services is continued after
12 sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this
13 code.

14 (3) If the juvenile offender is placed in the custody of the juvenile justice authority, the
15 secretary of social and rehabilitation services shall not be responsible for furnishing services
16 ordered in the child in need of care proceeding during the time of the placement pursuant to the
17 revised Kansas juvenile justice code. Nothing in this subsection shall preclude the juvenile
18 offender from accessing other services provided by the department of social and rehabilitation
19 services or any other state agency if the juvenile offender is otherwise eligible for the services.

20 (h) A court's order ~~affecting a child's custody, residency, parenting time and visitation that is~~
21 issued in a proceeding pursuant to this code, shall take precedence over such orders in a
22 proceeding under article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments
23 thereto (parentage act), a proceeding under article 16 of chapter 60 of the Kansas Statutes
24 Annotated, and amendments thereto (divorce), a proceeding under article 31 of chapter 60 of the
25 Kansas Statutes Annotated, and amendments thereto (protection from abuse act), a proceeding
26 under article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto
27 (adoption and relinquishment act), a proceeding under article 30 of chapter 59 of the Kansas
28 Statutes Annotated, and amendments thereto (guardians and conservators), or a comparable
29 case in another jurisdiction, except as provided by K.S.A. 38-1336 et seq., and amendments
30 thereto (uniform child custody jurisdiction and enforcement act).

31
32 **Sec. 8.** K.S.A. 2008 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A
33 decree in an action under this article may include orders on the following matters:

34 (a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the
35 support and education of the minor children. Subject to the provisions of K.S.A. 23-9,207, and
36 amendments thereto, the court may modify or change any prior order, including any order issued
37 in a title IV-D case, within three years of the date of the original order or a modification order,
38 when a material change in circumstances is shown, irrespective of the present domicile of the
39 child or the parents. If more than three years has passed since the date of the original order or
40 modification order, a material change in circumstance need not be shown. The court may make a
41 modification of child support retroactive to a date at least one month after the date that the motion
42 to modify was filed with the court. Any increase in support ordered effective prior to the date the
43 court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202 and
44 amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the
45 court may order the child support and education expenses to be paid by either or both parents for
46 any child less than 18 years of age, at which age the support shall terminate unless: (A) The
47 parent or parents agree, by written agreement approved by the court, to pay support beyond the
48 time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing
49 the child's high school education in which case the support shall not terminate automatically,
50 unless otherwise ordered by the court, until June 30 of the school year during which the child
51 became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide
52 high school student after June 30 of the school year during which the child became 18 years of
53 age, in which case the court, on motion, may order support to continue through the school year
54 during which the child becomes 19 years of age so long as the child is a bona fide high school
55 student and the parents jointly participated or knowingly acquiesced in the decision which
56 delayed the child's completion of high school. The court, in extending support pursuant to

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1 subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child
2 support utilizing the guideline table category for 12-year through 18-year old children. Provision
3 for payment of support and educational expenses of a child after reaching 18 years of age if still
4 attending high school shall apply to any child subject to the jurisdiction of the court, including
5 those whose support was ordered prior to July 1, 1992. If an agreement approved by the court
6 prior to July 1, 1992, provides for termination of support before the date provided by subsection
7 (a)(1)(C), the court may review and modify such agreement, and any order based on such
8 agreement, to extend the date for termination of support to the date provided by subsection
9 (a)(1)(C). For purposes of this section, "bona fide high school student" means a student who is
10 enrolled in full accordance with the policy of the accredited high school in which the student is
11 pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the
12 amount to be paid for child support, the court shall consider all relevant factors, without regard to
13 marital misconduct, including the financial resources and needs of both parents, the financial
14 resources and needs of the child and the physical and emotional condition of the child. Until a
15 child reaches 18 years of age, the court may set apart any portion of property of either the
16 husband or wife, or both, that seems necessary and proper for the support of the child. Except for
17 good cause shown, every order requiring payment of child support under this section shall require
18 that the support be paid through the central unit for collection and disbursement of support
19 payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written
20 agreement between the parties to make direct child support payments to the obligee and not pay
21 through the central unit shall constitute good cause, unless the court finds the agreement is not in
22 the best interest of the child or children. The obligor shall file such written agreement with the
23 court. The obligor shall maintain written evidence of the payment of the support obligation and, at
24 least annually, shall provide such evidence to the court and the obligee. If the divorce decree of
25 the parties provides for an abatement of child support during any period provided in such decree,
26 the child support such nonresidential parent owes for such period shall abate during such period
27 of time, except that if the residential parent shows that the criteria for the abatement has not been
28 satisfied there shall not be an abatement of such child support.

29 (2) *Child custody and residency. (A) Changes in custody.* Subject to the provisions of the
30 uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and
31 amendments thereto), the court may change or modify any prior order of custody, residency,
32 visitation and parenting time, when a material change of circumstances is shown, but no ex parte
33 order shall have the effect of changing residency of a minor child from the parent who has had
34 the sole de facto residency of the child to the other parent unless there is sworn testimony to
35 support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the
36 court shall hear a motion to vacate or modify the order within 15 days of the date that a party
37 requests a hearing whether to vacate or modify the order.

38 (B) *Examination of parties.* The court may order physical or mental examinations of the
39 parties if requested pursuant to K.S.A. 60-235 and amendments thereto.

40 (3) *Child custody or residency criteria.* The court shall determine custody or residency of a
41 child in accordance with the best interests of the child.

42 (A) If the parties have entered into a parenting plan, it shall be presumed that the agreement
43 is in the best interests of the child. This presumption may be overcome and the court may make a
44 different order if the court makes specific findings of fact stating why the agreed parenting plan is
45 not in the best interests of the child.

46 (B) In determining the issue of child custody, residency and parenting time, the court shall
47 consider all relevant factors, including but not limited to:

48 (i) The length of time that the child has been under the actual care and control of any person
49 other than a parent and the circumstances relating thereto;

50 (ii) the desires of the child's parents as to custody or residency;

51 (iii) the desires of the child as to the child's custody or residency;

52 (iv) the interaction and interrelationship of the child with parents, siblings and any other
53 person who may significantly affect the child's best interests;

54 (v) the child's adjustment to the child's home, school and community;

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1 (vi) the willingness and ability of each parent to respect and appreciate the bond between the
2 child and the other parent and to allow for a continuing relationship between the child and the
3 other parent;

4 (vii) evidence of spousal abuse;

5 (viii) whether a parent is subject to the registration requirements of the Kansas offender
6 registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other
7 state, or under military or federal law;

8 (ix) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, and
9 amendments thereto;

10 (x) whether a parent is residing with an individual who is subject to registration requirements
11 of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any
12 similar act in any other state, or under military or federal law; and

13 (xi) whether a parent is residing with an individual who has been convicted of abuse of a
14 child, K.S.A. 21-3609, and amendments thereto.

15 (C) Neither parent shall be considered to have a vested interest in the custody or residency of
16 any child as against the other parent, regardless of the age of the child, and there shall be no
17 presumption that it is in the best interests of any infant or young child to give custody or residency
18 to the mother.

19 (D) There shall be a rebuttable presumption that it is not in the best interest of the child to
20 have custody or residency granted to a parent who:

21 (i) Is residing with an individual who is subject to registration requirements of the Kansas
22 offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in
23 any other state, or under military or federal law; or

24 (ii) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609,
25 and amendments thereto.

26 (E) If a court of competent jurisdiction within this state has entered an order pursuant to the
27 revised Kansas code for care of children regarding custody of a child or children who are involved
28 in a proceeding filed pursuant to this section, and such court has determined pursuant to
29 subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the orders in that case shall
30 become the custody orders in the divorce case, such court shall file a certified copy of the orders
31 with the civil case number in the caption and then close the case under the revised Kansas code
32 for care of children. Such orders shall be binding on the parties, unless modified based on a
33 material change in circumstances, even if such courts have different venues.

34 (4) *Types of legal custodial arrangements.* Subject to the provisions of this article, the court
35 may make any order relating to custodial arrangements which is in the best interests of the child.
36 The order shall provide one of the following legal custody arrangements, in the order of
37 preference:

38 (A) *Joint legal custody.* The court may order the joint legal custody of a child with both
39 parties. In that event, the parties shall have equal rights to make decisions in the best interests of
40 the child.

41 (B) *Sole legal custody.* The court may order the sole legal custody of a child with one of the
42 parties when the court finds that it is not in the best interests of the child that both of the parties
43 have equal rights to make decisions pertaining to the child. If the court does not order joint legal
44 custody, the court shall include on the record specific findings of fact upon which the order for
45 sole legal custody is based. The award of sole legal custody to one parent shall not deprive the
46 other parent of access to information regarding the child unless the court shall so order, stating
47 the reasons for that determination.

48 (5) *Types of residential arrangements.* After making a determination of the legal custodial
49 arrangements, the court shall determine the residency of the child from the following options,
50 which arrangement the court must find to be in the best interest of the child. The parties shall
51 submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting
52 plans for the court's consideration. Such options are:

53 (A) *Residency.* The court may order a residential arrangement in which the child resides with
54 one or both parents on a basis consistent with the best interests of the child.

55 (B) *Divided residency.* In an exceptional case, the court may order a residential arrangement
56 in which one or more children reside with each parent and have parenting time with the other.

1 (C) *Nonparental residency.* If during the proceedings the court determines that there is
2 probable cause to believe that the child is a child in need of care as defined by subsections (d)(1),
3 (d)(2), (d)(3) or (d)(11) of K.S.A. 2008 Supp. 38-2202, and amendments thereto, or that neither
4 parent is fit to have residency, the court may award temporary residency of the child to a
5 grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds by written
6 order that: (i) (a) The child is likely to sustain harm if not immediately removed from the home;
7 (b) allowing the child to remain in home is contrary to the welfare of the child; or
8 (c) immediate placement of the child is in the best interest of the child; and
9 (ii) reasonable efforts have been made to maintain the family unit and prevent the
10 unnecessary removal of the child from the child's home or that an emergency exists which
11 threatens the safety to the child. In making such a residency order, the court shall give
12 preference, to the extent that the court finds it is in the best interests of the child, first to awarding
13 such residency to a relative of the child by blood, marriage or adoption and second to awarding
14 such residency to another person with whom the child has close emotional ties. The court may
15 make temporary orders for care, support, education and visitation that it considers appropriate.
16 Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A.
17 2008 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there
18 is a final determination under the revised Kansas code for care of children. An award of
19 temporary residency under this paragraph shall not terminate parental rights nor give the court
20 the authority to consent to the adoption of the child. When the court enters orders awarding
21 temporary residency of the child to an agency or a person other than the parent, the court shall
22 refer a transcript of the proceedings to the county or district attorney. The county or district
23 attorney shall file a petition as provided in K.S.A. 2008 Supp. 38-2234, and amendments thereto,
24 and may request termination of parental rights pursuant to K.S.A. 2008 Supp. 38-2266, and
25 amendments thereto. The costs of the proceedings shall be paid from the general fund of the
26 county. When a final determination is made that the child is not a child in need of care, the county
27 or district attorney shall notify the court in writing and the court, after a hearing, shall enter
28 appropriate custody orders pursuant to this section. If the same judge presides over both
29 proceedings, the notice is not required. Any order pursuant to the revised Kansas code for care of
30 children shall take precedence over any order under this section.

31 (6) *Priority.* Any ~~custody or parenting time order, or order relating to the best interests of a~~
32 ~~child,~~ issued pursuant to the revised Kansas code for care of children or the revised Kansas
33 juvenile justice code, shall be binding and shall take precedence over any order under article 16
34 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto (divorce), until
35 jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile
36 justice code is terminated.

37 (7) *Child health insurance coverage.* The court may order that each parent execute any and
38 all documents, including any releases, necessary so that both parents may obtain information
39 from and to communicate with any health insurance provider regarding the health insurance
40 coverage provided by such health insurance provider to the child. The provisions of this
41 paragraph shall apply irrespective of which parent owns, subscribes or pays for such health
42 insurance coverage.

43 (b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal
44 property of the parties, including any retirement and pension plans, whether owned by either
45 spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or
46 acquired by the spouses' joint efforts, by: (A) A division of the property in kind; (B) awarding the
47 property or part of the property to one of the spouses and requiring the other to pay a just and
48 proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and
49 dividing the proceeds of the sale. Upon request, the trial court shall set a valuation date to be
50 used for all assets at trial, which may be the date of separation, filing or trial as the facts and
51 circumstances of the case may dictate. The trial court may consider evidence regarding changes
52 in value of various assets before and after the valuation date in making the division of property. In
53 dividing defined-contribution types of retirement and pension plans, the court shall allocate profits
54 and losses on the nonparticipant's portion until date of distribution to that nonparticipant. In
55 making the division of property the court shall consider the age of the parties; the duration of the
56 marriage; the property owned by the parties; their present and future earning capacities; the time,

1 source and manner of acquisition of property; family ties and obligations; the allowance of
2 maintenance or lack thereof; dissipation of assets; the tax consequences of the property division
3 upon the respective economic circumstances of the parties; and such other factors as the court
4 considers necessary to make a just and reasonable division of property. The decree shall provide
5 for any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned
6 by the parties, or in the case of group life insurance policies, under which either of the parties is a
7 covered person; (B) any trust instrument under which one party is the grantor or holds a power of
8 appointment over part or all of the trust assets, that may be exercised in favor of either party; or
9 (C) any transfer on death or payable on death account under which one or both of the parties are
10 owners or beneficiaries. Nothing in this section shall relieve the parties of the obligation to
11 effectuate any change in beneficiary designation by the filing of such change with the insurer or
12 issuer in accordance with the terms
13 of such policy.

14 (2) *Maintenance*. The decree may award to either party an allowance for future support
15 denominated as maintenance, in an amount the court finds to be fair, just and equitable under all
16 of the circumstances. The decree may make the future payments modifiable or terminable under
17 circumstances prescribed in the decree. The court may make a modification of maintenance
18 retroactive to a date at least one month after the date that the motion to modify was filed with the
19 court. In any event, the court may not award maintenance for a period of time in excess of 121
20 months. If the original court decree reserves the power of the court to hear subsequent motions
21 for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated
22 period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the
23 recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing,
24 the court may reinstate the payments in whole or in part for a period of time, conditioned upon
25 any modifying or terminating circumstances prescribed by the court, but the reinstatement shall
26 be limited to a period of time not exceeding 121 months. The recipient may file subsequent
27 motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for
28 maintenance payments to be made, but no single period of reinstatement ordered by the court
29 may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a
30 percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to
31 the party affected, the court may modify the amounts or other conditions for the payment of any
32 portion of the maintenance originally awarded that has not already become due, but no
33 modification shall be made without the consent of the party liable for the maintenance, if it has the
34 effect of increasing or accelerating the liability for the unpaid maintenance beyond what was
35 prescribed in the original decree. Except for good cause shown, every order requiring payment of
36 maintenance under this section shall require that the maintenance be paid through the central
37 unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118,
38 and amendments thereto. A written agreement between the parties to make direct maintenance
39 payments to the obligee and not pay through the central unit shall constitute good cause. If child
40 support and maintenance payments are both made to an obligee by the same obligor, and if the
41 court has made a determination concerning the manner of payment of child support, then
42 maintenance payments shall be paid in the same manner.

43 (3) *Separation agreement*. If the parties have entered into a separation agreement which the
44 court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A
45 separation agreement may include provisions relating to a parenting plan. The provisions of the
46 agreement on all matters settled by it shall be confirmed in the decree except that any provisions
47 relating to the legal custody, residency, visitation parenting time, support or education of the
48 minor children shall be subject to the control of the court in accordance with all other provisions of
49 this article. Matters settled by an agreement incorporated in the decree, other than matters
50 pertaining to the legal custody, residency, visitation, parenting time, support or education of the
51 minor children, shall not be subject to subsequent modification by the court except: (A) As
52 prescribed by the agreement or (B) as subsequently consented to by the parties.

53 (4) *Costs and fees*. Costs and attorney fees may be awarded to either party as justice and
54 equity require. The court may order that the amount be paid directly to the attorney, who may
55 enforce the order in the attorney's name in the same case.

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1 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court
2 shall order the restoration of that spouse's maiden or former name. The court shall have
3 jurisdiction to restore the spouse's maiden or former name at or after the time the decree of
4 divorce becomes final. The judicial council shall develop a form which is simple, concise and
5 direct for use with this paragraph.

6 (2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this
7 state, with any other person before a judgment of divorce becomes final shall be voidable until the
8 decree of divorce becomes final. An agreement which waives the right of appeal from the
9 granting of the divorce and which is incorporated into the decree or signed by the parties and filed
10 in the case shall be effective to shorten the period of time during which the remarriage is
11 voidable.