

**To:           Judicial Council**  
**From:       Tawnya Johnson, Staff Attorney**  
**Date:        December 6, 2013**  
**Re:          Family Law Advisory Committee Report**

**Family Law Code**

The Family Law Advisory Committee reviewed the family law code and the Kansas parentage act. The Committee's proposed amendments are enclosed for the Council's consideration. The majority of the revisions involve cross-referencing other articles of the family law code and deleting redundant provisions from the parentage act. Some of the sections clarify areas of law, but there are three substantive changes. First, K.S.A. 23-2215 is a major change because the preference for joint custody will now apply to both divorce and parentage proceedings. Second, the Committee recommends amendments to K.S.A. 23-2707 in order to address *In re Marriage of Brown*, 295 Kan. 966, 291 P.3d 55 (2012). Finally, the Committee recommends amendments to K.S.A. 23-3002 in order to address *Jones v. Jones*, 45 Kan. App. 2d 854, 268 P.3d 494 (2010) and to produce a different outcome in future cases. The Committee recommends that the Judicial Council introduce legislation revising the family law code for the 2014 legislative session. The proposed amendments are attached.

## Proposed Family Law Code

### K.S.A. 20-165 Rules establishing child support guidelines

The supreme court shall adopt rules establishing guidelines for the amount of child support to be ordered in any action in this state including, but not limited to, K.S.A. 39-755 and K.S.A. 23-2215, and amendments thereto, article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, and K.S.A. 23-2711, and amendments thereto. In adopting such rules, the court shall ~~consider the criteria in K.S.A. 23-2215, and amendments thereto.~~consider all relevant factors including, but not limited to, the following:

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

CREDIT(S)

Laws 1986, ch. 219, § 2; Laws 1992, ch. 312, § 1; Laws 2011, ch. 26, § 39, eff. July 1, 2011; Laws 2012, ch. 162, § 29, eff. May 31, 2012.

### Comment

The Committee recommends moving the list of factors from K.S.A. 23-2215(g) (formerly K.S.A. 38-1121) directly to this section rather than cross-referencing.

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### K.S.A. 23-2215 Judgment or order; other authorized orders

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a party's duty of support.

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

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child under Article 30 of Chapter 23. The court may order the payment of all or a portion of including the necessary medical expenses incident to the child's birth-of the child. The court may order the support and education expenses to be paid by either or both parents for the minor child. ~~When the child reaches 18 years of age, the support shall terminate unless: (1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time; (2) the child reaches 18 years of age before completing the child's high school education in which case the support shall not automatically terminate, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (c)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). The judgment may require the party to provide a bond with sureties to secure payment. The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support~~

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~~retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.~~

(d) If both parents are parties to the action, the court shall enter such orders regarding for legal custody, residency and parenting time as the court considers to be in the child's best interest of the child under Article 32 of Chapter 23.

~~If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.~~

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

## Proposed Family Law Code

(e)(1) In entering an original order for support of a child under this section, the court may ~~award~~ award an additional judgment ~~to reimburse the expenses of to the mother or any other party who made expenditures for~~ support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 23-2208, and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

~~(2) The court may consider any affirmative defenses pled and proved in making an award under this subsection.~~

~~(3) The amount of any award made under this subsection must be determined by applying the Kansas child support guidelines. For any period occurring five years or less before commencement of the action or after commencement of the action, there is a rebuttable presumption that the guidelines amount reflects the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award has the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.~~

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

~~(1) The needs of the child.~~

~~(2) The standards of living and circumstances of the parents.~~

~~(3) The relative financial means of the parents.~~

~~(4) The earning ability of the parents.~~

~~(5) The need and capacity of the child for education.~~

~~(6) The age of the child.~~

~~(7) The financial resources and the earning ability of the child.~~

~~(8) The responsibility of the parents for the support of others.~~

~~(9) The value of services contributed by both parents.~~

~~(h) The provisions of K.S.A. 23-3103, and amendments thereto, shall apply to all orders of support issued under this section.~~

~~(i) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-3401, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.~~

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### CREDIT(S)

Laws 1985, ch. 114, § 12; Laws 1985, ch. 115, § 39; Laws 1986, ch. 138, § 5; Laws 1986, ch. 137, § 22; Laws 1988, ch. 137, § 1; Laws 1991, ch. 171, § 3; Laws 1992, ch. 273, § 1; Laws 1994, ch. 292, § 10; Laws 1997, ch. 182, § 5; Laws 2000, ch. 171, § 10; Laws 2001, ch. 195, § 5; Laws 2010, ch. 75, § 3, eff. July 1, 2010; Laws 2011, ch. 24, § 2, eff. July 1, 2011.

### Comment

The amendment in subsection (a) is a technical clarification. It makes this section consistent with K.S.A. 23-2211(b), which provides that failure to join any person as a party does not deprive the court of jurisdiction to determine whether a party has a duty to support the child.

The amendments to subsections (c) and (d) are intended to ensure that the same rules apply to child custody and support orders entered in parentage cases and divorce cases. The amendment in subsection (c) cross-references Article 30 of Chapter 23, which governs establishment and modification of child support. This cross-reference to Article 30 eliminates the need for the remaining provisions in subsection (c), which already appear in K.S.A. 23-3001 and K.S.A. 23-3005.

The amendment in subsection (d) cross-references Article 32 of Chapter 23, which governs custody, residency and parenting plans. This cross-reference eliminates the need for the remaining provisions in subsection (d), which already appear in K.S.A. 23-3202 and K.S.A. 23-3207.

The Committee recognizes that cross-referencing Article 32 in the parentage act will result in a substantive change in the law, because the preference for joint custody will now apply to both divorce and parentage proceedings. However, the Committee believes there could be a constitutional issue with treating the two situations differently based solely on marital status. The Committee noted that most parentage actions involve parents who have cohabited, rather than single parents. The Committee believes judges can be relied upon to use their discretion in not ordering joint custody in situations where there has been no ongoing relationship between the child and alleged parent.

Subsection (e) is amended to address how a court may order retroactive child support.

The list of factors in subsection (g) is moved to K.S.A. 20-165 where they are currently cross-referenced.

Subsections (h) and (i) are deleted as duplicative and unnecessary.

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### K.S.A. 23-2216 Costs

(a) Costs and attorney fees may be awarded to either party as justice and equity require. Unless the attorney represents a public agency in the action, the court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(b) The court may order reasonable fees ~~of counsel and for~~ the child's guardian *ad litem* ~~and~~.  
(c) The court may order other expenses of the action, including ~~blood for genetic~~ tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid from the general fund of the county. After payment, the court may tax all, part or none of the expenses as costs in the action. ~~No fee shall be allowed for representation of the petitioner by the county or district attorney.~~

(d) The fee of an expert witness qualified ~~as an examiner of blood types to perform genetic testing~~, but not appointed by the court, shall be paid by the party calling the expert witness but shall not be taxed as costs in the action.

CREDIT(S)

Laws 1985, ch. 114, § 13.

### Comment

The amendments clarify the statute by breaking it down into four separate subsections, each dealing with a different kind of cost, fee or expense. The amendments also clarify that attorney fees are not allowed for any attorney representing a public agency.

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### **K.S. A. 23-2217. Enforcement of judgment or order**

~~(a) If existence of the father and child relationship has been determined and payment of support is ordered under prior law, the court may order support and any related expenses to be paid through the central unit for collection and disbursement of support payments designated pursuant to K. S.A. 39-7,135, and amendments thereto. If payment of support is ordered under this act, the court shall require such support and any related expense to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 39-7,135, and amendments thereto.~~

~~(b) The provisions of the Kansas income withholding act, K.S.A. 23-3101 *et seq.*, and amendments thereto, shall apply to orders of support issued under this act or under the predecessor to this act.~~

~~(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.~~

~~CREDIT(S)~~

~~Laws 1985, ch. 114, § 14; Laws 1985, ch. 115, § 40; Laws 2001, ch. 195, § 6; Laws 2012, ch. 162, § 35, eff. May 31, 2012.~~

### Comment

This section was deleted as an unnecessary provision after the Committee compared the current Kansas parentage act with the 1973 version of the Uniform Parentage Act. For instance, some provisions were outdated, such as the reference to “under prior law,” which was a reference to laws in effect before 1985. Other provisions were duplicative rather than outdated. For example, (b) was removed because the income withholding act applies to any child support ordered under Chapter 23, Article 30. Similarly, (c) was removed because the parentage act includes enforcement, and thus there is no need to include the contempt provision.



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### K.S.A. 23-2218. Modification of judgment or order

~~The court has continuing jurisdiction to modify or vacate a judgment or order made under this act.~~

~~CREDIT(S)~~

~~Laws 1985, ch. 114, § 15.~~

#### Comment

This section was deleted as an unnecessary provision, because the parentage act refers to child support and child custody and delineates how and when jurisdiction continues for each particular matter. Thus, the general provision is too broad.

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### **K.S.A. 23-2223 Amendment of birth certificate to change name of parent or child; procedure**

(a) Whenever the parents of a minor child desire that the child's birth certificate be amended to add the name of a parent, correct the name of either parent or of the child or change the child's last name to that of either parent, both parents shall appear before a judge of the district court or a hearing officer authorized by rule of the supreme court to accept voluntary acknowledgments of parentage. The parents shall execute affidavits in the presence of the judge or hearing officer, attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child. If both parents are not residents of this state and are outside this state, both parents shall forward to such judge or hearing officer affidavits, sworn to before a judicial officer of the state in which they reside and attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child.

(b) The judge or hearing officer shall require the parents to exhibit or to forward to the judge or hearing officer evidence of the birth of the child. If the judge or hearing officer finds that the birth certificate of the child fails to name either the father or mother of the child, that the name of either parent or the child is incorrect or that the child's name should be changed to that of either parent, the judge or hearing officer shall forward both parents' affidavits to the state registrar of vital statistics, together with a certified order to prepare a new birth registration in the manner provided by K.S.A. 23-2222, and amendments thereto and to seal the affidavits, court order and original birth certificate and allow inspection of them only as provided therein.

(c) The judge or hearing officer shall return all evidence and other exhibits to the parents of the child. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

~~(d) This statute shall be part of and supplemental to the Kansas parentage act.~~

CREDIT(S)

Laws 1986, ch. 157, § 4.

### Comment

After the recodification of the family law code, subsection (d) is no longer needed.

## Proposed Family Law Code

### **K.S.A. 23-2224 Court orders; interlocutory orders; ex parte, when; notice and hearing; temporary support**

(a) The court, without requiring bond, may make and enforce orders which:

(1) ~~R~~restrain the parties from molesting or interfering with the privacy or rights of each other;

(2) confirm the existing de facto custody of the child subject to further order of the court if the court has jurisdiction under K.S.A. 23-3701 et seq.;

(3) appoint an expert to conduct genetic tests for determination of paternity as provided in K.S.A. 23-2212, and amendments thereto;

(4) order the mother and child and alleged father to contact the court appointed expert and provide tissue samples for testing within 30 days after service of the order;

(5) order the payment of temporary child support pursuant to subsection (c); or

(6) the court deems ~~necessary to carry appropriate under~~ the provisions of the Kansas parentage act.

(b)(1) Interlocutory orders authorized by this section that relate to genetic testing may be issued ex parte, if:

(A) The appointed expert is a paternity laboratory accredited by the American association of blood banks; and

(B) the order does not require an adverse party to make advance payment toward the cost of the test.

(2) If such ex parte orders are issued, and if an adverse party requests modification thereof, the court will conduct a hearing within 10 days of such request.

(c) After notice and hearing, the court shall enter an order for child support during the pendency of the action as provided in this subsection. The order shall be entered if the pleadings and the motion for temporary support, if separate from the pleadings, indicate there is only one presumed father and if probable paternity by the presumed father is indicated by clear and convincing evidence. For purposes of this subsection, “clear and convincing evidence” may be presented in any form, including, but not limited to, an uncontested allegation in the pleadings, an uncontested affidavit or an agreement between the parties. For purposes of this subsection, “clear and convincing evidence” means:

(1) The presumed father does not deny paternity;

(2) the mother and the presumed father were married to each other, regardless of whether the marriage was void or voidable, at any time between 300 days before the child's birth and the child's birth;

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(3) a voluntary acknowledgment of paternity was completed by the mother and the presumed father more than 60 days before the motion was filed and no request to revoke the voluntary acknowledgment has been filed; or

(4) results of genetic tests show the probability of paternity by the presumed father is equal to or greater than 97% and the report was received more than 20 days before the motion was filed, unless written notice of intent to challenge the validity of the report has been timely given.

~~(d) The provisions of this section are part of and supplemental to the Kansas parentage act.~~

CREDIT(S)

Laws 1991, ch. 110, § 3; Laws 1997, ch. 182, § 65.

### Comment

Subsection (a) is amended to clarify that a court can make an order relating to child custody only if it has jurisdiction under the UCCJEA.

After recodification of the family law code, subsection (d) is no longer needed.

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### K.S.A. 23-2225 Change in child's residence; notice; effect; exception

~~(a) Except as provided in subsection (d), a parent granted rights pursuant to subsection (d) of K.S.A. 23-2215, and amendments thereto, shall give written notice to the other parent who has been granted rights pursuant to subsection (d) of K.S.A. 23-2215, and amendments thereto, not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.~~

~~(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.~~

~~(c) A change of the residence or the removal of a child from this state as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of child support, custody or parenting time. In determining any such motion, the court shall consider all factors the court deems appropriate including, but not limited to:~~

~~(1) The effect of the move on the best interests of the child;~~

~~(2) the effect of the move on any party having rights granted pursuant to subsection (d) of K.S.A. 23-2215, and amendments thereto; and~~

~~(3) the increased cost the move will impose on any party seeking to exercise rights granted under subsection (d) of K.S.A. 23-2215, and amendments thereto.~~

~~(d) A parent who has been granted rights pursuant to subsection (d) of K.S.A. 23-2215, and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, in which the child is the victim of such crime.~~

~~(e) This section shall be part of and supplemental to the Kansas parentage act.~~

#### CREDIT(S)

~~Laws 1998, ch. 139, § 11; Laws 2000, ch. 171, § 11; Laws 2011, ch. 30, § 154, eff. July 1, 2011.~~

#### Comment

This section is deleted as duplicative and unnecessary. These provisions already appear in K.S.A. 23-3222.

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### K.S.A. 23-2707 Interlocutory orders

(a) *Permissible orders.* After the filing of a petition for divorce, annulment or separate maintenance ~~has been filed~~, and during the pendency of the action until the entry of prior to final judgment the judge assigned to hear the action may, without requiring bond, make, modify, vacate and enforce by attachment, orders which:

(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the legal custody and residency of and parenting time with the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;

(4) require mediation between the parties on issues, including, but not limited to, child custody, residency, division of property, parenting time and development of a parenting plan;

(5) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case;

(6) require an investigation by court service officers into any issue arising in the action; or

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

(b) *Ex parte orders.* Orders authorized by subsections (a)(1), (2), (3), (4) and (7) may be entered after ex parte hearing upon compliance with rules of the supreme court, except that no ex parte order shall have the effect of changing the residency of a minor child from the parent who has had the sole de facto residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 14 days of the date on which a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the action, any other judge of the district court may make any order authorized by this section, including vacation or modification or any order issued by the judge assigned to hear the action.

(c) *Support orders.* (1) An order of support obtained pursuant to this section may be enforced by an order of garnishment as provided in this section.

(2) No order of garnishment shall be issued under this section unless: (A) Fourteen or more days have elapsed since the order of support was served upon the party required to pay the support, and (B) the order of support contained a notice that the order of support may be enforced by

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garnishment and that the party has a right to request an opportunity for a hearing to contest the issuance of an order of garnishment, if the hearing is requested by motion filed within seven days after service of the order of support upon the party. If a hearing is requested, the court shall hold the hearing within seven days after the motion requesting the hearing is filed with the court or at a later date agreed to by the parties.

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) fourteen or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the seven days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

(d) If an interlocutory order for legal custody, residency or parenting time is sought, the party seeking such order shall file a proposed temporary parenting plan as provided by K.S.A. 23-3211, and amendments thereto, at the time such order is sought. If any motion is filed to modify any such interlocutory orders, or in opposition to a request for issuance of interlocutory orders, that party shall attach to such motion or opposition a proposed alternative parenting plan.

(e) *Service of process.* Service of process served under subsection (a)(1) and (2) shall be by personal service and not by certified mail return receipt requested.

### CREDIT(S)

Laws 1963, ch. 303, 60-1607; Laws 1976, ch. 251, § 25; Laws 1977, ch. 204, § 2; Laws 1979, ch. 183, § 3; Laws 1982, ch. 152, § 7; Laws 1990, ch. 202, § 32; Laws 1998, ch. 162, § 2; Laws 2000, ch. 171, § 14; Laws 2008, ch. 127, § 1, eff. May 1, 2008; Laws 2010, ch. 135, § 176, eff. July 1, 2010.

### Comment

The Committee amended K.S.A. 23-2707(a) in order to address *In re Marriage of Brown*, 295 Kan. 966, 291 P.3d 55 (2012). *Brown* stated, “the Kansas Legislature has limited a district court’s authority to discharge past-due child support in a final decree of divorce; specifically, a court’s authority is limited by the provision in K.S.A. 60-1610(a)(1) that limits the retroactivity of a modification to a date at least 1 month after the date that a motion to modify was filed.”

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### K.S.A. 23-3002 Determining amount of child support

~~(a) In determining the amount to be paid for child support, the court shall follow the child support guidelines adopted by the supreme court pursuant to K.S.A. 20-165 and amendments thereto. the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child.~~

~~(b) Anyone requesting a child support order or modification order must file with the motion a completed domestic relations affidavit and a proposed child support worksheet.~~

CREDIT(S)

Laws 2011, ch. 26, § 31, eff. July 1, 2011.

#### Comment

The Committee believes the deleted language is obsolete and should be repealed. Language has been added to clarify that trial courts must follow the child support guidelines adopted by the Supreme Court.

New subsection (b) requires that a completed domestic relations affidavit and child support worksheet accompany any motion to modify child support. The requirement already appears in Supreme Court Rule 139. However, in *Jones v. Jones*, 45 Kan. App. 2d 854, 268 P.3d 494 (2010), the Court of Appeals held that a delay in filing the domestic relations affidavit and child support worksheet as required by Supreme Court Rule 139 until sometime after the filing of a motion to modify child support did not affect the court's ability to make the modification effective back to 1 month after the filing of the motion. The proposed amendment is intended to require a different result in future cases.



## Proposed Family Law Code

### K.S.A. 23-3005 Modification of child support

(a) Subject to the provisions of K.S.A. 23-36,207, and amendments thereto, the court may modify ~~or change~~ any prior child support order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown.

(b) The court may make a modification of child support retroactive to ~~a date at least one month after the date that the motion to modify was filed with the court~~ the first day of the month following the filing of the motion to modify. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto, until the date of the order.

CREDIT(S)

Laws 2011, ch. 26, § 34, eff. July 1, 2011; Laws 2012, ch. 162, § 47, eff. May 31, 2012.

### Comment

In subsection (a), the words “or change” are stricken as redundant.

Subsection (b) is amended to clarify when a retroactive modification of support may take effect and when a retroactive support order may become a lien on real property.

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### K.S.A. 23-3203 Factors considered in determination of child custody, residency and parenting time

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

~~(a) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto; Each parent's role and involvement with the minor child before and after separation;~~

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

(c) the desires of ~~the~~ child of sufficient age and maturity as to the child's custody or residency;

(d) the age, the emotional and physical needs of the child;

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

~~(ef)~~ the child's adjustment to the child's home, school and community;

~~(fg)~~ the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

~~(gh)~~ evidence of spousal abuse, either emotional or physical;

(i) Ability of the parties to communicate, cooperate or manage parental duties;

(j) School activity schedule of the child;

(k) Work schedule of the parties;

(l) Location of parties' residences, places of employment and child's school;

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

~~(in)~~ whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto;

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

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| (~~k~~p) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto.

CREDIT(S)

Laws 2011, ch. 26, § 20, eff. July 1, 2011.

### Comment

The Committee proposes amendments to K.S.A. 23-3203 in order to clarify the appropriate factors to be considered in determining child custody. The factors under current law are based on a third party custody case and are not applicable to most residential custody situations.