

Kansas Judicial Council Bulletin

JUNE, 1981

SPECIAL BULLETIN

**CONTAINS DRAFTS OF KANSAS
CODE FOR CARE OF CHILDREN
AND KANSAS JUVENILE
OFFENDERS CODE**



MEMBERS OF THE JUDICIAL COUNCIL

David Prager, Chairman, (1979-)	Topeka
Justice of the Supreme Court	
James D. Waugh, Secretary, (1963-)	Topeka
J. Richard Foth, (1977-)	Topeka
Chief Judge of the Court of Appeals	
Elwaine F. Pomeroy, (1977-)	Topeka
Chairman, Senate Judiciary Committee	
Joseph J. Hoagland, (1979-)	Overland Park
Chairman, House Judiciary Committee	
Robert H. Cobean, (1947-)	Wellington
Jack E. Dalton, (1969-)	Dodge City
Marvin E. Thompson, (1969-)	Russell
Herbert W. Walton, (1975-)	Olathe
Judge, Tenth Judicial District	
James J. Noone, (1975-)	Wichita
Judge, Eighteenth Judicial District	

FORMER MEMBERS OF THE JUDICIAL COUNCIL

W. W. HARVEY, <i>Chairman</i> , (1927-1941)	Ashland
Justice of the Supreme Court	
WALTER C. THIELE, <i>Chairman</i> , (1941-1954)	Lawrence
Justice of the Supreme Court	
ROBERT T. PRICE, <i>Chairman</i> , (1954-1963)	Topeka
Justice of the Supreme Court	
ALFRED C. SCHROEDER, <i>Chairman</i> , (1963-1979)	Newton
Justice of the Supreme Court	
J. C. RUPPENTHAL, <i>Secretary</i> , (1927-1941)	Russell
RANDAL C. HARVEY, <i>Secretary</i> , (1941-1953)	Topeka
WILLIAM M. MILLS, JR., <i>Secretary</i> , (1953-1957)	Topeka
WALTER C. THIELE, <i>Secretary</i> , (1957-1963)	Topeka
EDWARD L. FISCHER, (1927-1943)	Kansas City
ROBERT C. FOULSTON, (1927-1943)	Wichita
CHARLES L. HUNT, (1927-1941)	Concordia
CHESTER STEVENS, (1927-1941)	Independence
JOHN W. DAVIS, (1927-1933)	Greensburg
C. W. BURCH, (1927-1931)	Salina
ARTHUR C. SCATES, (1927-1929)	Dodge City
WALTER PLEASANT, (1929-1931)	Ottawa
ROSCOE H. WILSON, (1931-1933)	Jetmore
GEORGE AUSTIN BROWN, (1931-1933)	Wichita
RAY H. BEALS (1933-1938)	St. John
HAL E. HARLAN, (1933-1935)	Manhattan
SCHUYLER C. BLOSS, (1933-1935)	Winfield
E. H. REES, (1935-1937)	Emporia
O. P. MAY, (1935-1937)	Atchison
KIRKE W. DALE, (1937-1941)	Arkansas City
HARRY W. FISHER, (1937-1939)	Fort Scott
GEORGE TEMPLAR, (1939-1941, 1943-1947, 1953)	Arkansas City
EDGAR C. BENNETT, (1938-1951)	Marysville
SAMUEL E. BARTLETT, (1941-1951)	Wichita
PAUL R. WUNSCH, (1941-1943)	Kingman
WALTER F. JONES, (1941-1945)	Hutchinson
GROVER PIERPONT, (1943-1944)	Wichita
I. M. PLATT, (1943-1945)	Junction City
C. A. SPENCER, (1944-1951)	Oakley
CHARLES VANCE, (1945-1947)	Liberal
RICHARD L. BECKER, (1949-1951)	Coffeyville
W. D. VANCE, (1951-1952)	Belleville
JOHN A. ETILING, (1945-1953)	Kinsley
DALE M. BRYANT, (1947-1949, 1951-1953)	Wichita
FRANKLIN B. HETTINGER, (1952-1953)	Hutchinson
JOHN H. MURRAY, (1953-1957)	Leavenworth
A. K. STAVELEY, (1951-1959)	Lyndon
MAX L. DICE, (1957-1959)	Johnson
WILLIAM L. MITCHELL, (1959-1961)	Hutchinson
JOSEPH J. DAWES, (1953-1960, 1961)	Leavenworth
WILFORD RIEGLE, (1953-1960, 1961)	Emporia
GLEE S. SMITH, (1961-1963)	Larned
SPENCER A. GARD, (1959-1964)	Iola
CLYDE HILL, (1961-1965)	Yates Center
JAMES E. TAYLOR, (1941-1969)	Sharon Springs
J. WILLARD HAYNES, (1951-1969)	Kansas City
STEADMAN BALL, (1963-1973)	Atchison
JACK R. EULER, (1965-1973)	Wathena
ALEX HOTCHKISS, (1964-1973)	Lyndon
ALBERT B. FLETCHER, JR., (1973-1975)	Junction City
DOYLE E. WHITE, (1961-1975)	Arkansas City
J. C. TILLOTSON, (1973-1977)	Norton
JOHN F. HAYES, (1973-1977)	Hutchinson
E. RICHARD BREWSTER, (1977-1979)	Topeka

TABLE OF CONTENTS

	PAGE
Foreword	2
By Justice David Prager, Chairman, Kansas Judicial Council	
Introduction	3
By Robert H. Cobean, Chairman, Juvenile Code Advisory Committee	
Table of Sections—Kansas Code for Care of Children	5
Draft of Kansas Code for Care of Children	9
Table of Sections—Kansas Juvenile Offenders Code	53
Draft of Kansas Juvenile Offenders Code	57
Members of the Kansas Judicial Council	(Inside front cover)
Former Members of the Kansas Judicial Council	(Inside front cover)
Change in Address of Recipient	(Inside back cover)

FOREWORD

This special bulletin contains working drafts of the Judicial Council Juvenile Code Advisory Committee's proposed "Kansas Code for Care of Children" and "Kansas Juvenile Offenders Code." Customarily, the work of advisory committees is published upon approval by the Judicial Council. These codes are being published prior to approval by the Judicial Council due to the great public interest in the juvenile area and the desire of the Committee to receive comments and suggestions before finalizing the codes.

It should be noted that these codes were prepared for printing before the 1981 Legislature adjourned. At that time the Legislature was actively considering lowering the age at which youths are tried in adult courts and several other matters relating to the juvenile area. Any changes made by the 1981 Legislature will be incorporated into the appropriate code.

In the introduction that follows, Chairman Cobean of the Juvenile Code Advisory Committee requests comments from interested persons and gives notice of public hearings on the proposed codes to be held in Topeka in July.

The Juvenile Code Advisory Committee has put in many hours over a two-year period preparing these drafts and many more hours will be required to finalize them. The citizens of Kansas should be grateful for the sacrifice the committee members have made in order to improve our judicial system.

David Prager, *Chairman*
Kansas Judicial Council

INTRODUCTION

In May of 1979, Senator Ross O. Doyen, Chairman of the Legislative Coordinating Council, requested that “. . . the Judicial Council undertake the task of recodifying the Kansas Juvenile Code,” with consideration to be given to “. . . subdividing the Code in order to separate those sections that deal with criminal-type offenses from the sections that deal with status offenders.” At its June 1979 meeting the Judicial Council agreed to undertake the task, and appointed a Judicial Council Advisory Committee to study and recodify the Kansas Juvenile Code.

Robert H. Cobean, Wellington, a member of the Judicial Council, was appointed chairman of the advisory committee. The members of the committee are Michael G. Glover, Lawrence; Arthur H. Griggs, Topeka; Charles V. Hamm, Topeka; Camilla K. Haviland, Dodge City; Representative James Holderman, Wichita; Judge C. Fred Lorentz, Fredonia; Judge David P. Mikesic, Kansas City; Judge Robert L. Morrison, Wichita; Mary Ann Torrence, Topeka; and David J. Waxse, Olathe. The Committee is assisted by the Judicial Council Staff, which includes Randy M. Hearrell, who serves as reporter for the committee, Matthew B. Lynch, and Nell Ann Gaunt.

The Committee has met an average of two days each month since its formation, and on occasion has divided into subcommittees for consideration of specific topics. In addition to working on the recodification of the juvenile code the Committee has met and discussed its proposals with the House and Senate Judiciary Committees in a joint meeting held for that purpose. Members of the committee have also appeared before the State Association of Court Service Officers, the district magistrate judges of the state, and the 3rd Annual Kansas Action for Children Legislative Institute.

The drafts contained in this bulletin are working drafts of the Juvenile Code Advisory Committee's recodification of the Kansas Juvenile Code. *THEY HAVE NOT BEEN CONSIDERED BY THE JUDICIAL COUNCIL.* They are being published at this time to invite comments and suggestions and to be available in conjunction with public hearings to be held by the Committee in July. After consideration of the comments generated by this publication and the July hearings, the Committee will engage in any necessary redrafting of the proposed codes and will submit them to the Judicial Council. Upon approval by the Judicial Council, the proposed codes will be provided to the Legislative Coordinating Council and will be considered by the 1982 Legislature. Since the drafts were completed prior to the end of the 1981 legislative session, changes may be necessary in the proposed codes to conform them to 1981 legislation in the juvenile area.

The Juvenile Code Advisory Committee will hold public hearings on the proposed codes on the following dates and at the following time and place:

Dates:	Tuesday, July 14, 1981 and Wednesday, July 15, 1981,
Time:	9:30 a.m. both days,
Place:	Room 313-S, Statehouse, Topeka, Kansas.

Persons wishing to appear at the hearings should contact Randy M. Hearrell, at the Kansas Judicial Council, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612. The Committee requests that persons appearing at the hearings reduce their comments to writing so that they may be provided to the Committee. Persons who do not wish to or are unable to appear at the hearings should send their written comments to Mr. Hearrell at the above address. All comments received will be considered by the Committee.

As requested by the Legislative Coordinating Council, the Committee has separated the present juvenile code into two codes. They are the "Kansas Code for Care of Children" and the "Kansas Juvenile Offenders Code." The Committee has attempted to organize the codes in a more logical manner and to simplify the language, where possible. Proposed policy changes are identified in the comments to relevant sections.

Your comments are invited and will be helpful to the Committee in completing its recodification of the juvenile code.

Robert H. Cobean, *Chairman*
Judicial Council Juvenile Code
Advisory Committee

KANSAS CODE FOR CARE OF CHILDREN

GENERAL PROVISIONS

<i>Section</i>	<i>Title</i>
1501	CONSTRUCTION OF CODE
1502	DEFINITIONS
	(a) Child in Need of Care
	(b) Physical, Mental, or Emotional Abuse or Neglect
	(c) Parent
	(d) Interested Party
	(e) Law Enforcement Officer
	(f) Youth Residential Facility
	(g) Shelter Facility
	(h) Juvenile Detention or Correction Facility
	(i) Ward of the Court
	(j) Custody
	(k) Placement
	(l) Secretary
1503	JURISDICTION
1504	VENUE
1505	RIGHT TO AN ATTORNEY
	(a) Appointment of Attorney to Represent Child
	(b) Attorney for Parent, Guardian, or Custodian
	(c) Attorney for Parent Who is a Minor, Mentally Ill, or Incapacitated
	(d) Continuation of Representation
	(e) Fees for Attorneys
1506	COURT RECORDS
1507	RECORDS AND REPORTS CONCERNING CHILD ABUSE AND NEGLECT
1508	RECORDS OF LAW ENFORCEMENT AND OTHER GOVERNMENTAL ENTITIES
1509	VIOLATIONS OF CONFIDENTIALITY
1510	DUTIES OF COUNTY OR DISTRICT ATTORNEY
1511	COSTS AND EXPENSES
	(a) Docket Fee
	(b) Expenses
	(c) Assessment of Docket Fee and Expenses
1512	EXPENSE OF CARE AND CUSTODY OF CHILD
	(a) How Paid
	(b) Reimbursement by Parent to County General Fund
	(c) Reimbursement by Parent to State Social Welfare Fund

- 1513 HEALTH SERVICES
 - (a) Authorization
 - (b) Mental Care & Treatment
- 1514 EVALUATION OF DEVELOPMENT OR NEEDS
 - (a) Of Child
 - (b) Of Parent or Custodian
 - (c) Confidentiality of Reports
- 1515 AGE OF CHILD, PRESUMPTION
- 1516 PATERNITY
- 1517 RESTRICTIONS ON PLACEMENT AND COMMITMENT OF CHILD IN NEED OF CARE
- 1518-1520 (Reserved for future use)

MATTERS PRIOR TO FILING PETITION

<i>Section</i>	<i>Title</i>
1521	REPORTING OF CERTAIN PHYSICAL OR MENTAL ABUSE OR NEGLECT OF CHILDREN; DECLARATION OF POLICY; PUBLICITY AND EDUCATION PROGRAM
1522	SAME; PERSONS REPORTING; REPORTS
1523	SAME; DUTIES OF DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; INVESTIGATION BY SRS OR COUNTY OR DISTRICT ATTORNEY
1524	SAME; EMPLOYER PROHIBITED FROM IMPOSING SANCTIONS ON EMPLOYEE MAKING CERTAIN REPORTS
1525	SAME; IMMUNITY FROM LIABILITY
1526	INVESTIGATION; SRS PRIMARY REPORTING FORUM
1527	CHILD UNDER 18, WHEN LAW ENFORCEMENT OFFICER MAY TAKE INTO CUSTODY
1528	CHILD UNDER 18 TAKEN INTO CUSTODY; DUTIES OF OFFICERS; REFERRAL OF CASES FOR PROCEEDINGS UNDER THIS CODE
1529	PREFILING DETERMINATIONS
1530	(Reserved for future use)

PLEADINGS, PROCESS, & PRELIMINARY MATTERS

<i>Section</i>	<i>Title</i>
1531	PLEADINGS <ul style="list-style-type: none"> (a) Filing of Petition (b) Contents of Petition (c) Motions

1532	PROCEEDINGS UPON FILING OF PETITION
1533	SUMMONS; PERSONS UPON WHOM SERVED; FORM
1534	SERVICE OF PROCESS
1535	PROOF OF SERVICE
1536	SERVICE OF OTHER PLEADINGS
1537	SUBPOENAS AND WITNESS FEES
1538-1540	(Reserved for future use)
1541	DETERMINATION OF INTERESTED PARTY
1542	EX PARTE ORDERS OF PROTECTIVE CUSTODY; PROBABLE CAUSE; PROCEDURES
1543	ORDERS OF TEMPORARY CUSTODY; NOTICE; HEARING; PROCEDURE
1544	ORDER FOR INFORMAL SUPERVISION
1545	DISCOVERY
1546-1550	(Reserved for future use)

ADJUDICATION PROCEDURE

<i>Section</i>	<i>Title</i>
1551	TIME OF TRIAL AND DISCLOSURE OF WITNESSES
1552	CONFIDENTIALITY OF PROCEEDINGS
1553	STIPULATIONS
1554	RULES OF EVIDENCE
1555	DEGREE OF PROOF
1556	ADJUDICATION
1557-1560	(Reserved for future use)

DISPOSITION

<i>Section</i>	<i>Title</i>
1561	TIME FOR DISPOSITION
1562	ADDITIONAL EVIDENCE
1563	AUTHORIZED DISPOSITIONS
1564	REHEARING
1565	SRS REPORTS TO COURT
	(a) Notification of Court; Recommendations by Court
	(b) Report on Development of Child

1566	CHANGE OF PLACEMENT
1567	EMERGENCY CHANGE OF PLACEMENT
1568	REVIEW OF PLACEMENT
1569	DISCHARGE FROM JURISDICTION
1570-1580	(Reserved for future use)

TERMINATION OF PARENTAL RIGHTS

<i>Section</i>	<i>Title</i>
1581	REQUEST FOR TERMINATION
1582	JURISDICTION; ATTORNEY; SUMMONS
1583	CONSIDERATIONS IN TERMINATION
1584	PROCEDURE FOLLOWING TERMINATION OF PARENTAL RIGHTS
	(a) Purpose of Section
	(b) Actions by Court
	(c) Reports and Review of Progress
	(d) Discharge Upon Adoption
1585-1590	(Reserved for future use)

APPEALS

<i>Section</i>	<i>Title</i>
1591	APPEALABLE ORDERS
1592	APPEALS PROCEDURE
1593	TEMPORARY ORDERS PENDING APPEAL; STATUS OF ORDERS APPEALED FROM
1594	COSTS AND FEES

KANSAS CODE FOR CARE OF CHILDREN GENERAL PROVISIONS

Section 1501. Construction of code. This act shall be known as and may be cited as the Kansas Code for Care of Children and shall be liberally construed, to the end that each child within its provisions shall receive such care, custody, guidance, control and discipline, preferably in the child's own home, as will best serve the child's welfare and the best interests of the state. All proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state. Proceedings pursuant to this code shall be civil in nature.

Comment

The Committee has separated the Kansas Juvenile Code into the Kansas Code for Care of Children and the Kansas Juvenile Offenders Code. This section is the same as K.S.A. 1980 Supp. 38-801, except that it identifies this code as the Kansas Code for Care of Children, states that it may be cited as such, and deletes reference to criminal type matters which are covered by the Kansas Juvenile Offenders Code.

Section 1502. Definitions. As used in this code, unless the context otherwise indicates:

(a) "Child in Need of Care" means a person less than 18 years of age who:

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

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

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

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

(5) has been abandoned or has neither a known living parent nor a legal guardian;

(6) is not receiving the education required by K.S.A. 72-1111 and any amendments thereto;

(7) does an act the commission of which by a juvenile is specifically prohibited and made unlawful by state law, city ordinance or county resolution; and

(8) being less than ten years of age commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105.

(b) "Physical, mental or emotional abuse or neglect" means the infliction of physical, mental or emotional injury or the causing of

a deterioration of a child and may include, but shall not be limited to, failing to maintain reasonable care and treatment, negligent treatment or maltreatment or exploiting a child to such an extent that the child's health or emotional well-being is endangered. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of such religious beliefs shall not be considered a negligent parent or guardian; however, this exception shall not preclude a court from ordering that medical services be provided to a child when the child's health so requires.

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

(d) "Interested party" means the state, the child, any parent and a person found to be an interested party pursuant to section 1541 of this code.

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

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

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

(h) "Juvenile detention or correction facility" means:

(1) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders; or

(2) any public or private facility, secure or nonsecure, which is also used for the lawful custody of accused or convicted adult criminal offenders.

(i) "Ward of the court" means a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to this code and who continues subject to such jurisdiction until the petition is dismissed or said child is discharged as provided in section 1503 of this code.

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

(k) "Placement" means the designation by the individual or agency having custody of where and with whom the child shall live.

(l) "Secretary" means the secretary of social and rehabilitation services.

Comment

Section 1502 contains definitions of terms used in the Kansas Code for Care of Children. Prior to 1978, definitions relating to the Kansas Juvenile Code appeared in K.S.A. 38-802. In 1978, K.S.A. 38-840 and 38-841 were enacted as a part of the state's attempt to comply with the federal juvenile justice and delinquency prevention act. The Committee placed all definitions which have application to proceedings under the Kansas Code for Care of Children in this section.

Subsection (a) defines "child in need of care" and encompasses in the definition what is presently known as a status offender and found at K.S.A. 1980 Supp. 38-840(i). Parts (1) through (5) replace the present definitions of "wayward child" and "deprived child". Sexual abuse is not specifically mentioned in the definition because it is the opinion of the Committee that sexual abuse is included in "physical, mental or emotional abuse." Part (6) replaces present K.S.A. 1980 Supp. 38-802(f) which defines "truant". The Committee refers to K.S.A. 72-1111 instead of K.S.A. 72-1113, which is referred to in the present statute because 72-1111 is the statute which requires compulsory school attendance. The legislative act enacting this code will make appropriate amendments to 72-1113. Part (7) also preserves part of the definition of a "wayward child" with the exception that the reference to "traffic offenders" and "fish and game violators" contained in present 1980 Supp. 38-802(d)(4) is omitted. "Traffic offenders" and "fish and game violators" are dealt with under the Kansas Juvenile Offenders Code. Part (8) is included because section 1602 of the Kansas Juvenile Offenders Code defines a juvenile as a person at least 10 years of age, but less than 18 years of age. This part includes in this code children under 10 years of age who, under the present code, would be classified as either "delinquent" or "miscreant".

Subsection (b) is taken from K.S.A. 1980 Supp. 38-722(a), a part of the Kansas Child Protection Act. The Kansas Child Protection Act is being combined with appropriate parts of the present Kansas Juvenile Code to form the Kansas Code for Care of Children with the intention that the Kansas Code for Care of Children cover the entire field of the state's involvement with what are presently known as "status offenders". This subsection departs from K.S.A. 1980 Supp. 38-722(a) in certain respects. The concept of emotional abuse is included to be consistent with section 1502(a), which defines "Child in need of care". The terms "sexual abuse" and "morals" have been omitted. It is the opinion of the Committee that "sexual abuse" is included in "physical, mental, or emotional abuse" and that the term "morals" is ambiguous.

Subsection (c) is identical to K.S.A. 1980 Supp. 38-802(h), except it defines "parent" and not "parent or parents".

Subsection (d) defines interested party and recognizes that in a proceeding there may be an individual who has a material interest in the proceeding who does not come within the definition of a parent. Such an individual may desire to be recognized as an interpleader. This subsection involves a policy change in that it gives additional rights to certain persons who are not a parent. K.S.A. 1980 Supp. 38-834(b) allows demand of an appeal on behalf of the child by the child's parent, guardian, guardian *ad litem* or custodian, or by any relative of such child within the fourth degree of kinship. Even with the policy change included in this subsection the definition of interested parties is not as broad as persons who can appeal under 38-834.

Subsection (e) is identical to K.S.A. 1980 Supp. 38-802(i). In the Kansas Child Protection Act the terms "law enforcement officer" and "peace officer" are used. In the Kansas Code for Care of Children only the term "law enforcement officer" is used and defined.

Subsection (f) is identical to K.S.A. 1980 Supp. 38-802(a).

Subsection (g) is similar to K.S.A. 1980 Supp. 38-840(b). The language has been changed to reflect the title and terminology used in the Kansas Code for Care of Children.

Subsection (h) is nearly identical to K.S.A. 1980 Supp. 38-840(d). The definition is needed because section 1517 of this code prohibits the placement of a child in need of care in this type of facility.

Subsection (i) gives a new definition to the term "ward of the court". Presently, the term is used in K.S.A. 1980 Supp. 38-824(b) where a child was found to be a deprived child, but the court did not make an order depriving parental rights. Under the Kansas Code for Care of Children ward of the court describes the status of a child between the filing of a petition and its disposition.

Subsection (j) defines custody. Presently, the term custody is used many places in the juvenile code without a clear definition and in some instances is used interchangeably with "detention".

Subsection (k) defines placement and distinguishes it from custody. The term is used in the present juvenile code without definition.

Subsection (l) defines secretary to avoid the necessity of repeating the phrase secretary of social and rehabilitation services each of the many places it appears in the code.

Section 1503. Jurisdiction. (a) Proceedings concerning any child who appears to be a child in need of care, as defined in this code, shall be governed by this code.

(b) Subject to the uniform child custody jurisdiction act (K.S.A. 1980 Supp. 38-1301 *et seq.*), the court shall have original jurisdiction to receive and determine proceedings under this code.

(c) When jurisdiction has been acquired by the court over the person of a child in need of care it may continue until the child: (1) has attained the age of 21 years; (2) has been adopted; or (3) has been discharged by the court. Any such child 18 years of age or over may either orally or by written motion to the court request that the jurisdiction of the court cease; thereupon, the court shall enter an order discharging the person from any further jurisdiction of the court.

Comment

Subsections (a) and (b) replace the jurisdictional portion of the juvenile code contained in K.S.A. 1980 Supp. 38-806(a).

Subsection (c) is nearly identical to K.S.A. 1980 Supp. 38-806(b). It is the intention of the Committee that jurisdiction of the court may continue to age 21 even if the child is adopted.

Section 1504. Venue. (a) Venue of any case involving a child in need of care shall be in the county of such child's residence or in the county where the child may be found.

(b) Upon application of the petitioner, or any person authorized to appeal any final order in any proceeding pursuant to this code, the court in which original proceedings are pending alleging that a child is a child in need of care may order said proceedings transferred to the court of the county where the child is physically present, where the parent or parents reside or where another proceeding is pending in this state concerning custody of the same child or children. The court to which such case is transferred shall accept the case. Any judge transferring any case to another court shall transmit to said court a complete record thereof and, upon receipt of such record, said court shall assume jurisdiction as if such proceedings were originally filed in such court. The transferring judge, if an adjudicatory hearing has been held, shall also transmit recommendations as to disposition. In case the child is not present in the county to which such case is transferred and such county is not the residence of the child's parent or parents, the court shall return the case to the court where it originated.

Comment

Subsection (a) is nearly identical to K.S.A. 1980 Supp. 38-811(a). The only change is the substitution of "child in need of care" for "deprived child."

Subsection (b) is identical to K.S.A. 1980 Supp. 38-812, except this subsection allows transfer to another county where a proceeding concerning the custody of the same child or children is pending; "person authorized to appeal any final order" replaces "persons authorized to appeal pursuant to K.S.A. 1978 Supp. 38-834" and "child in need of care" has been substituted for "deprived child".

Section 1505. Right to an attorney. (a) Appointment of an attorney to represent child. Upon the filing of a petition the court shall appoint an attorney-at-law to represent the child identified in the petition as a party to the proceedings. The attorney shall investigate the facts upon which the petition is based and shall advise the child of the child's legal alternatives.

(b) Attorney for parent, guardian or custodian. A parent, guardian or custodian of a child alleged or adjudged to be a child in need of care may be represented by an attorney in connection with all hearings and proceedings under this code. If at any stage of the proceedings a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for such parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend such hearing after having been properly served with process in accordance with section 1534 of this code.

(c) Attorney for parent who is minor, mentally ill or incapacitated. The court shall appoint an attorney for a parent who is a minor, a mentally ill person as defined in K.S.A. 1980 Supp.

59-2902, or an incapacitated person as defined in K.S.A. 59-3002, unless the court determines that there is an attorney retained who will appear and represent the interests of such person in the proceeding under this code.

(d) Continuation of representation. An attorney appointed for a child or for a parent, guardian, or custodian shall continue to represent such client at all subsequent hearings in a proceeding under this code unless relieved by the court upon a showing of good cause.

(e) Fees for attorneys. Attorneys appointed for parties to proceedings hereunder shall be allowed a reasonable fee for such services, which may be assessed as an expense in such proceedings as provided in section 1511 of this code.

Comment

Subsection (a) differs from the present juvenile code in that under the present juvenile code a guardian *ad litem*, who is an attorney, is appointed to represent the child. Under present practice the guardian *ad litem* represents what the guardian *ad litem* believes to be the best interests of the child. It is the belief of the Committee, as set forth in this subsection, that it is the role of the attorney to protect and present the child's rights, that the attorney should represent the child in the same manner as any other client, that the attorney inform the court of the position and desires of the child and that the hearing be treated as an adversary proceeding.

Subsection (b) deals with attorneys for a parent, guardian or custodian. Presently, K.S.A. 1980 Supp. 38-820 states that no order may be made permanently depriving a parent of parental rights, unless the parent is represented by counsel. 38-820 also provides for the appointment of counsel if the parent is indigent. Subsection (b) states that an indigent parent be provided an attorney at any stage of the proceeding if the parent so desires. This is consistent with the decision in the case of *In re Estate of Cooper*, 5 Kan. App. 2d 584, 621 P.2d 437 (1981), which states that since earlier hearings may have bearing on deprivation of parental rights an indigent parent must be provided counsel at those hearings. *Cooper* also states that an attorney must be appointed even when custody is only removed temporarily from a parent.

Subsection (c) provides for the appointment of an attorney instead of a guardian *ad litem* to represent a parent who is a minor, mentally ill, or incapacitated. K.S.A. 1980 Supp. 38-821(b) of the Kansas Juvenile Code deals with the same subject. Provision for payment of such attorney is found at subsection (e).

Subsection (d) is a new subsection which accomplishes continuity in representation throughout the proceedings and avoids the undesirable practice of the appointment of a different attorney each time there is a hearing.

Subsection (e) recognizes that the fees for attorneys are expense items and directs them to be paid pursuant to section 1511 of this code. Presently, K.S.A. 1980 Supp. 38-821(b) addresses this subject.

Section 1506. Court records. (a) Official file. The official file of proceedings pursuant to this code shall consist of the petition, process, and the service thereof, orders, writs, and journal entries reflecting hearings held and judgments and decrees entered by the court, which shall be kept separate from other records of the

court. The official file shall be privileged and shall not be disclosed directly or indirectly to anyone except:

(1) A judge of the district court and members of the staff of the court designated by the judge of the district court;

(2) parties to the proceeding and their attorneys;

(3) a public or private agency or institution having custody of the child under court order; and

(4) to any other person when authorized by a judge of the district court, subject to any conditions imposed by the judge.

(b) Social file. Reports and information received by the court, other than the official file, shall be privileged and open to inspection only by the attorney for an interested party or upon order of a judge of the district court or an appellate court. Such reports shall not be further disclosed by the attorney without approval of the court or by being presented as admissible evidence.

Comment

This code divides court records into two categories, the official file and the social file. Subsection (a) retains the same accessibility to the official file as allowed by K.S.A. 1980 Supp. 38-805. Reports and evaluations received by the court shall be placed in the social file.

Subsection (b) alters the present law by restricting access to the social file to attorneys for interested parties, or other persons upon the order of a judge of the district court or appellate court. The subsection further provides such reports and evaluations shall not be further disclosed by the attorney without approval of the court, or by being presented as admissible evidence. Presently, reports and evaluations received by the court are accessible to the parties enumerated in K.S.A. 1980 Supp. 38-805(b). [See also, *Nunn v. Morrison*, 227 Kan. 730, 608 P.2d 1359 (1980)]. The Committee favors the change from present law due to the damage that may result from disclosure of the reports contained in the social file.

The court is required by statute (K.S.A. 1980 Supp. 38-826 [a] and [b]) to receive reports from SRS regarding the progress and location of the child. In many instances the court is dealing with an uncooperative and perhaps unstable parent and disclosure of the contents of the report may cause the loss of availability of a foster home or make the child accessible to kidnapping. In other instances disclosure of the contents of such reports and information could irreparably damage the already strained relationship between parent and child.

This concept is consistent with the "Model Statute on Juvenile and Family Court Records" of the National Council of Juvenile and Family Court Judges.

Section 1507. Records and reports concerning child abuse and neglect. All records and reports concerning child abuse and neglect received by the department of social and rehabilitation services or a county or district attorney, in accordance with section 1522 of this code, are confidential and shall not be disclosed except under the following conditions:

(a) Upon the order of any court after a determination by the court issuing the order that such records and reports are necessary for the conduct of proceedings before it and are otherwise admissible in evidence, except that such access shall be limited to *in*

camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it, and

(b) The secretary or the county or district attorney where the report is filed, may authorize access to such records and reports to:

(1) A person licensed to practice the healing arts who has before that person a child whom that person reasonably suspects may be abused or neglected;

(2) an agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record;

(3) a parent, guardian, or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons;

(4) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; and

(5) an agency of another state charged with the responsibility of preventing or treating physical, mental, or emotional abuse or neglect of children within that state, if the state of the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of this code.

Comment

This section is similar to K.S.A. 1980 Supp. 38-723, except 38-723 refers to records of SRS and the district court and in this section the reference is to SRS and the county or district attorney. The replacement of the term district court with the term county or district attorney is a part of a policy change made by the Committee at section 1522 of this code. The change is the removal of the court from the reporting, prefilling, and investigative stages of the proceeding.

Section 1508. Records of law enforcement and other governmental entities. All records of law enforcement officers or agencies in this state concerning a child in need of care shall be kept separate from all other records and shall not be disclosed to anyone except:

(a) The judge, and members of the court staff designated by the judge of the court having the child before it in any proceeding;

(b) the parties to the proceeding and their attorneys;

(c) the department of social and rehabilitation services, or the officers of public institutions or agencies to whom custody of the child has been granted;

(d) law enforcement officers or county or district attorneys of other jurisdictions when necessary for the discharge of their official duties, or

(e) to any other person, when ordered by a judge of the court in this state, under such conditions as the judge may prescribe.

Comment

This section is substantially similar to K.S.A. 1980 Supp. 38-705c(b), except those portions of the present statute that do not apply have been eliminated.

Section 1509. Violations of confidentiality. It shall be a violation of this code for any person, association, firm, corporation, or other agency willfully or knowingly to permit or encourage the unauthorized dissemination of the contents of the records and reports in sections 1507 and 1508 of this code. Anyone violating this section shall be guilty of a class B misdemeanor.

Comment

This section addresses the same subject as K.S.A. 1980 Supp. 38-720. The offense has been broadened to apply to records of law enforcement agencies and other governmental entities concerning child abuse or neglect.

Section 1510. Duties of county or district attorney. It shall be the duty of each county or district attorney within their respective county or judicial district to prepare petitions to be filed with the court alleging a child to be a child in need of care and for appearing at the hearing on said petition and presenting such evidence as will aid the court in making an appropriate adjudication at the conclusion of the trial and the county or district attorney shall also have such other duties as required by this code.

Comment

This section is a part of the policy change which removes the court from the investigatory and prefilng stages of the proceeding. Presently, K.S.A. 1980 Supp. 38-815c requires the county, district, and city attorney to assist the court in presenting evidence and as otherwise requested by the judge at hearings. This section requires the county or district attorney to represent the state in the exercise of its *parens patriae* power from the beginning of the judicial proceeding, including the preparation and filing of the petition. In addition to removing the court from the investigatory and prefilng stages of the proceeding, this section eliminates the problem presented when the county or district attorney must attempt to prove the allegations of a petition which has been prepared by a court staff member or some other nonlawyer.

Reference to city attorneys is omitted from this section. Information received by the Committee indicates that city attorneys are not performing the duties described by 38-815c.

Section 1511. Costs and expenses. (a) Docket fee. The docket fee for proceedings under this code, if one is assessed as herein-after provided, shall be \$15 for the services provided by court employees.

(b) Expenses. The expenses for proceedings under this code, including fees and mileage approved by the court for witnesses

and fees and expenses allowed appointed attorneys, shall be paid by the board of county commissioners from the general fund of the county.

(c) Assessment of docket fee and expenses. (1) Docket fee. The docket fee may be assessed to the complaining witness or person initiating the prosecution or an interested party, other than the state, a political subdivision thereof, or any agency of either. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362.

(2) Expenses. Expenses may be assessed to the complaining witness or person initiating the prosecution or an interested party, other than the state, a political subdivision thereof, or any agency of either. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of such recovery. If it appears to the court in any proceeding hereunder that expenses were unreasonably incurred at the request of any party the court may assess the portion of the expenses against such person or persons.

Comment

This section covers the same subjects as K.S.A. 1980 Supp. 38-817(b).

Subsection (a) changes present law by standardizing the docket fee at \$15 if one is assessed.

Subsection (b) indicates expenses shall be paid from the county general fund.

Subsection (c) relates to assessment of docket fees and expenses and alters present law by not requiring payment by the state, a political subdivision thereof, or any agency of either. Authority to assess expenses unreasonably incurred is included.

Section 1512. Expense of care and custody of child. (a) How paid. (1) If a child alleged or adjudged to be a child in need of care is not eligible for assistance under K.S.A. 1980 Supp. 39-709, or any amendments thereto, expenses for the care and custody of such child shall be paid out of the general fund of the county in which the proceedings are brought. For the purpose of this section, a child who is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the county where the proceedings are instituted.

(2) When custody of a child is awarded to the secretary the expenses of the care and custody of such child may be paid by the secretary out of the state social welfare fund, subject to payment or reimbursement as required in subsection (b), even though the child does not meet the eligibility standards of K.S.A. 1980 Supp. 39-709, or any amendments thereto.

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

(b) Reimbursement by parent to county general fund. (1) When expenses for the care and custody of a child alleged or adjudged

to be a child in need of care have been paid out of the county general fund, the court may fix a time and place for hearing on the question of requiring payment or reimbursement of all or part of such expenses by the parent.

(2) Unless such parent shall voluntarily appear or be in court at the time and place so fixed, summons shall be issued stating the court in which such hearing is to be held, the name and residence of each party to whom the summons is issued, and all information necessary to fully apprise such party of the nature of such hearing. The court, at the time fixed in the summons or by its order, shall proceed to hear and dispose of the case and may enter a final order requiring such parent to pay, in such manner as the court may direct, such sum, within the parent's ability to pay, as will cover in whole or in part the expenses referred to in subsection (b) (1) of this section. Any such parent, who shall willfully fail or refuse to pay such sum may be adjudged in contempt of court and punished accordingly.

(3) The county may bring a separate action against the parent of a child alleged or adjudged to be a child in need of care for the reimbursement of expenses paid out of the county general fund for the care and custody of the child.

(c) Reimbursement by parent to state social welfare fund. When expenses for the care and custody of a child alleged or adjudged to be a child in need of care have been paid out of the state social welfare fund, the secretary may recover such expenses from any parent.

The secretary shall annually make written demand upon the parent for the amount claimed by the secretary to be due for the preceding year. No action shall be commenced by the secretary against such parent for the recovery thereof unless such action is commenced within three years after the date of such written demand unless any part of the amount claimed to be due shall have been paid or any acknowledgement of an existing debt or claim, or any promise to pay the same shall have been made by the obligor, in which event an action may be brought within three years after such payment, acknowledgement, or promise. The secretary shall have the power to compromise and settle any claim due or any amount claimed to be due from parents.

Whenever the secretary shall negotiate a written compromise settlement of any amounts past due, no action shall thereafter be brought or claim made for any amounts other than the amounts provided for in the agreement if the provisions of such compromise agreement are not complied with, such failure to comply shall serve to revive and reinstate the original amount of the claim due before negotiation of such compromise agreement less amounts paid on such claim.

Comment

Presently K.S.A. 1980 Supp. 38-819(d) and 38-827 contain provisions regarding payment of expenses for the care of a ward of the court. 38-819(d) deals with the time frame preceding adjudication while 38-827 deals with post-adjudication care.

Subsection (a) shortens and simplifies the existing statutes and provides authority for payment of expenses from the county general fund and the state social welfare fund, whether the expense precedes or follows adjudication.

Subsection (b) sets forth the same procedure contained in K.S.A. 1980 Supp. 38-828 for reimbursement of the county general fund. Subsection (b)(3) is new and provides that the county may, by separate action, proceed against the persons having a statutory duty to support the child in question.

Subsection (c) sets forth the same procedure contained in 38-828(d) for reimbursement of the state social welfare fund.

Section 1513. Health services. (a) Authorization. (1) When the health or condition of a child who is a ward of the court shall require it the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records.

(2) Prior to adjudication the person having temporary custody of such child may give consent to the performance of the following:

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

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

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

(D) immunizations for the child; and

(E) administering drugs to the child which have been prescribed by a physician licensed to practice medicine and surgery.

A child, or parent of any child, who is an adherent of a religious denomination whose religious teachings are opposed to certain medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to any such hearing, the court may limit the performance of matters provided for in this subsection, or authorize the performance of such matters subject to such terms and conditions as the court may deem proper.

(3) When the court has granted legal custody of a child in a dispositional hearing to any agency, association, or individual such custodian shall have authority to consent to the performance and furnishing of hospital, medical, surgical, or dental treatment or procedures including the release and inspection of medical or hospital records, subject to restraints placed by the court.

(4) Any health care provider who in good faith renders hospital, medical, surgical or dental care or treatment to any child after

a consent has been obtained as authorized by subsections (a)(1), or (a)(3) of this section without first obtaining the consent of a parent or guardian of such child shall not be liable in any civil or criminal action for any failure to obtain consent of a parent or guardian.

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

(b) Mental care and treatment. If it is brought to the court's attention, while the court is exercising jurisdiction over the person of a child under this code, that such child may be a "mentally ill person" as defined in K.S.A. 1980 Supp. 59-2902 and any amendments thereto, the court may:

(1) Direct or authorize the person supplying such information to file the application provided for in K.S.A. 1980 Supp. 59-2913 and proceed to hear and determine the issues raised by such application as provided in the act for obtaining treatment for a mentally ill person; or

(2) authorize that such child seek voluntary admission to a treatment facility as provided in K.S.A. 1980 Supp. 59-2905.

The application to determine whether such child is a mentally ill person may be filed in the same proceeding as the petition alleging such child to be a child in need of care, or may be brought in a separate proceeding. In either event the court may enter an order staying any further proceeding under the code for care of children until all proceedings have been concluded under the act for obtaining treatment for a mentally ill person.

Comment

Subsection (a) gathers in one place existing statutes relating to medical care, (K.S.A. 1980 Supp. 38-824(e), 38-843, 38-844 and 38-845), and makes it clear that the court has authority to consent to medical treatment at all times after the filing of the petition.

Subsection (b) replaces K.S.A. 1980 Supp. 38-806(d), which recognizes a stay in juvenile code proceedings is appropriate when proceedings have been brought under the code for care and treatment of mentally ill persons and sets forth the procedure to be followed if the court believes the child may be a "mentally ill person". This subsection allows such determination to be made in the same or a separate proceeding.

Section 1514. Evaluation of development or needs. (a) Of child. (1) Psychological or emotional. During proceedings under this code the court may order an evaluation and written report of the psychological or emotional development or needs of a child who is the subject of the proceedings. The court may refer said child to a state institution for such evaluation if the secretary advises the court that such facility is a suitable place to care for, treat, or evaluate such child and that space is available. The

expenses of transportation to and from such state facility may be paid as a part of the expenses of such temporary care and custody. The child may be referred to a mental health center or other qualified professional for such evaluation and the expenses thereof considered as expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation as provided in this section, a parent of said child shall have the right to obtain an independent evaluation at the expense of such parent.

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

(3) Educational. The court may request the chief administrative officer of the school which the child attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the child. If the resources of the school permit, the school may conduct an educational needs assessment of the child and send a report thereof to the court. As used herein educational needs assessment may include a meeting involving any of the following: the child's parents; the child's teacher or teachers; the school psychologist; a school special services representative and such other persons as the chief administrative officer of the school, or such officer's designee, deems appropriate.

(b) Of parent or custodian. (1) Psychological or emotional. During proceedings under this code the court may order an examination, evaluation, and report of the physical, mental, or emotional status or needs of a parent or any other relative being considered as one to whom the court may grant custody. Written reports and other materials so received may be considered by the court, but if requested by any interested party in attendance, the court shall require the person preparing the report or other material to appear and testify.

(2) Parenting skills. At any dispositional hearing the court may receive and consider written reports of the parenting skills or ability to provide for the physical, mental or emotional needs and future development of a child by a parent or other relative being considered for custody from any physician or qualified therapist. If requested by any interested party in attendance at such dispositional hearing, the court shall require the person preparing such report to appear and testify.

(c) Confidentiality of reports. (1) Reports of court ordered examination or evaluation. No confidential relationship of physician and patient or psychologist or therapist and client shall arise from an examination or evaluation ordered by the court.

(2) Report from private physician, psychologist or therapist. When any interested party to a proceeding under this code wishes the court to have the benefit of information or opinion from a physician, psychologist or other qualified therapist with whom there is a confidential relationship, such interested party may waive such confidential relationship but restrict the information to be furnished or testimony to be given to those matters material to the issues before the court. If requested, the court may make an *in camera* examination of the proposed witness or the file of the proposed witness and excise any matters that are not material to the issues before this court.

Comment

Presently, K.S.A. 1980 Supp. 38-823(c) authorizes the referral of the child to a state institution for evaluation. K.S.A. 1980 Supp. 38-824(b) authorizes the court to order counseling for the child and the parents. There is presently no statutory provision for evaluation of the parents. This section also addresses the nature of the relationship between the psychologist and client.

Section 1515. Age of child, presumption. When a petition is filed under this code, a person who is alleged to be under 18 years of age shall, for the purposes of this code, be presumed to be under that age, unless the contrary is proved.

Comment

This section restates the presumption contained in K.S.A. 38-836.

Section 1516. Paternity. NOTE: When drafted, this section will address the issue of determining paternity in connection with certain proceedings under this code. The Judicial Council Family Law Advisory Committee is studying the determination of paternity and the Uniform Parentage Act. The Juvenile Code Advisory Committee is waiting for the recommendations of that committee before drafting this section.

Section 1517. Restrictions on placement of child in need of care. No child in need of care shall be ordered placed in a juvenile detention or correctional facility as defined in section 1502 of this code by virtue of jurisdiction exercised by the court over such child under this code. If a child in need of care is placed in the custody of the secretary or some other person or agency outside the child's home, such child shall not be placed in a facility other than a youth residential facility or shelter facility.

Comment

This section is a restatement of K.S.A. 1980 Supp. 38-841(a), passage of which was required for participation in funding under the federal juvenile justice and delinquency prevention act. Changes have been made in the terminology to conform with the Kansas Code for Care of Children.

Section 1518-1520. Reserved for future use.**MATTERS PRIOR TO FILING PETITION**

Section 1521. Reporting of certain physical or mental abuse or neglect of children; declaration of policy; publicity and educational program. It is the policy of this state to provide for the protection of children who have been subject to physical, mental, or emotional abuse or neglect by encouraging the reporting of suspected child abuse and neglect, insuring the thorough and prompt investigation of these reports, and providing preventive and rehabilitation services where appropriate to abused or neglected children and their families so that, if possible, the families can remain together without further threat to the children.

The secretary, within the limit of appropriations therefor, shall conduct a continuing publicity and educational program for local staff of the department of social and rehabilitation services, persons required to report under this code and amendments thereto, and other appropriate persons to encourage the reporting of cases of injury to children suspected of having been inflicted as a result of physical, mental, or emotional abuse or neglect. The educational program shall include, but not be limited to, an analysis of the powers and duties granted under this code, the methods of diagnosing injuries inflicted as a result of physical, mental, or emotional abuse or neglect, the procedures followed by the department of social and rehabilitation services in carrying out its duties under this code, and the role of the courts in this area of the law.

Comment

The first paragraph is identical to K.S.A. 1980 Supp. 38-716, except that the term "emotional" has been inserted to be consistent with the definition of "child in need of care".

The second paragraph is nearly identical to K.S.A. 1980 Supp. 38-721c, except reference is made to the Kansas Code for Care of Children, rather than the Kansas Child Protection Act.

Section 1522. Same; persons reporting; reports. When a person licensed to practice the healing arts or dentistry, persons licensed to practice optometry, persons engaged in postgraduate training programs approved by the state board of healing arts, certified

psychologists, Christian Science practitioners, licensed practical nurse, examining, attending, or treating a child under the age 18, every teacher, school administrator, or other employee of a school which such child is attending, the chief administrative officer of a medical care facility, every person licensed by the secretary of health and environment to provide child care services, or employee of the person so licensed at the place where the child care services are being provided to the child, or any law enforcement officer having reason to suspect that a child has had injury or injuries inflicted upon the child as a result of physical, mental, or emotional abuse or neglect, shall report and all other persons who have reason to suspect that a child has had injury or injuries as a result of physical, mental, or emotional abuse or neglect may report the matter promptly to the county or district attorney of the county in which such examination or attendance is made, treatment is given, school is located, or such abuse or neglect is extant or to the department of social and rehabilitation services. Such report may be made orally by telephone or otherwise and shall be followed by a written report if requested. When medical examination or treatment with respect to a child is pursuant to the performance of services by a member of the staff of a medical care facility or similar institution, such staff member shall immediately notify the superintendent, manager, or other person in charge of the institution who shall make such a report in writing forthwith. Every such report when required to be written shall contain, if known, the names and addresses of the child and the child's parents or other persons responsible for the child's care, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the persons allegedly responsible therefor.

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-717. The county or district attorney replaces the district court as a proper recipient of reports of abuse or neglect. This is part of a major policy change made by the Committee which removes the court from reporting, investigative, and prefiling stages of the proceeding. It is the opinion of the Committee that if the court is to remain impartial and unbiased in judging the evidence on its merits the court should not be involved in these initial stages of the proceedings.

The term "emotional abuse or neglect" has been added to that of "physical and mental abuse or neglect" contained in 38-717. 38-717 is part of the Kansas Child Protection Act which was adopted prior to the inclusion of the term "emotional abuse or neglect" in the Kansas Juvenile Code.

Section 1523. Same; duties of department of social and rehabilitation services; investigation by SRS or county or district

attorney. Except as otherwise provided in this section, the county or district attorney, upon receipt of a report concerning an injury or injuries being inflicted upon any child as a result of physical, mental, or emotional abuse or neglect, shall report the matter promptly to the department of social and rehabilitation services upon forms to be provided by the secretary. The department shall promptly initiate an investigation of the report to determine its accuracy and whether reasonable grounds for suspicion of abuse or neglect exist. If reasonable grounds to believe abuse or neglect exist, immediate steps shall be taken to protect the health and welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. Reports concerning physical, mental, or emotional abuse or neglect of children of persons employed by the department of social and rehabilitation services shall be investigated by the county or district attorney and not by the department of social and rehabilitation services.

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-721. As in the previous section, district court or judge has been replaced by county or district attorney, and the term "emotional abuse or neglect" has been added. The last sentence of 38-721 has been deleted.

Section 1524. Same; employer prohibited from imposing sanctions on employee making certain reports. No employer shall terminate the employment of, prevent or impair the practice or occupation of, or impose any other sanction on any employee because the employee made an oral or written report to the county or district attorney or department of social and rehabilitation services relating to an injury or injuries inflicted upon a child which were suspected by the employee of having resulted from the physical, mental, or emotional abuse or neglect of the child.

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-721d. As in the previous two sections district court has been replaced by county or district attorney and the term "emotional abuse or neglect" has been added.

Section 1525. Same; immunity from liability. Anyone participating without malice in the making of an oral or written report to the county or district attorney or department of social and rehabilitation services relating to an injury or injuries inflicted upon a child under 18 years of age as a result of physical, mental, or emotional abuse or neglect or in any follow-up activity to such a report shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such partici-

pant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-718. As in the previous three sections district court has been replaced by county or district attorney and the term "emotional abuse or neglect" has been added.

Section 1526. Investigation; SRS primary reporting forum. Whenever any person shall furnish information to the state department of social and rehabilitation services that a child appears to be a child in need of care it shall be the duty of the department to make a preliminary inquiry to determine whether the interest of such child requires that further action be taken. Whenever practicable, such inquiry shall include a preliminary investigation of the circumstances which were the subject of such information, including the home and environmental situation and the previous history of such child. Only if, after such inquiry, the department determines that it is not possible to provide those services necessary to protect the interest of the child in the home, the department may recommend to the county or district attorney that a petition be filed.

Comment

This section reconciles the somewhat inconsistent directions of K.S.A. 1980 Supp. 38-816(b) and K.S.A. 1980 Supp. 38-721 and removes the court from the investigatory stage of the proceeding. The section also sets forth the policy of the Committee that even though a child may be an appropriate subject of a proceeding under this code that the child should not be removed from the child's home unless it is dangerous for the child to remain in the home.

Section 1527. Child under 18, when law enforcement officers may take into custody. A law enforcement officer may take a child under 18 years of age into custody when:

(a) The officer has a court order commanding that such child be taken into custody as a child in need of care; or

(b) the officer has probable cause to believe that a court order commanding that such child be taken into custody as a child in need of care has been issued in this state or in another jurisdiction; or

(c) the officer has probable cause to believe that the child is a "child in need of care" and that there are reasonable grounds to believe that the circumstances or condition of the child is such that continuing in the place or residence in which the child has been found or in the care and custody of the person in whose care or custody the child has been found would present an imminent danger to the child.

Comment

This section combines K.S.A. 1980 Supp. 38-721a of the Kansas Child Protection Act with the appropriate sections of K.S.A. 1980 Supp. 38-815d. Language which applies to "juvenile offenders" has been removed and only that language that is applicable to a "child in need of care" remains.

Section 1528. Child under 18 taken into custody; duty of officers; referral of cases for proceedings under this code. (a) When any law enforcement officer takes into custody a child under the age of 18 years, without a court order, such child shall forthwith be delivered to a shelter facility or other person designated by the court. It shall be the duty of such law enforcement officer to furnish the county or district attorney, without unnecessary delay, all the information in the possession of such officer pertaining to the child, the child's parents, guardian, or other person interested in, or likely to be interested in, the child, and all other facts and circumstances which caused such child to be taken into custody.

(b) Whenever a child under the age of 18 years is taken into custody by a law enforcement officer without a court order and is thereafter placed in the custody of a shelter facility or other person as authorized by this code, such facility or person shall have physical custody and provide care and supervision for such child upon written application of any law enforcement officer having custody of any child as provided in this code. The application shall state:

- (1) The name and address of such child, if known;
- (2) the names and addresses of such child's parents or nearest relatives and person with whom the child has been residing, if known; and
- (3) the officer's belief that such child is a child in need of care and that there are reasonable grounds to believe that the circumstances or condition of the child is such that unless the child is placed in the immediate custody of the shelter facility or other person an imminent danger to the child would exist.

(c) A copy of the application filed with the shelter facility or other person shall be furnished by the shelter facility to the county or district attorney without unnecessary delay.

(d) The shelter facility or other person designated by the court who has custody of the child pursuant to this section shall discharge such child not later than five o'clock p.m. of the next full day that the district court of the county of the presence of such person is open for the transaction of business after the admission date of such person, but in no case later than 48 hours following such admission date, excluding Sundays and legal holidays, unless a court has entered an order pertaining to a temporary custody or release.

(e) In absence of a court order to the contrary the county or district attorney shall have the authority to direct release of said child prior to the time set out in subsection (d) of this section.

Comment

Subsection (a) is substantially the same as K.S.A. 1980 Supp. 38-815(a) and requires the officer to notify the county or district attorney of the child's placement. Subsection (c) requires a shelter facility to give similar notice.

Subsection (b) replaces K.S.A. 1980 Supp. 38-815(e) and gives a shelter facility authority to hold a child on the application and placement by a law enforcement officer for a sufficient length of time for a petition to be filed, even though a parent demands custody.

Subsection (d) is similar to K.S.A. 1980 Supp. 59-2911 of the mental care and treatment act and limits the period of time a shelter facility may hold a child unless a court order is issued prior to the expiration of that time.

Subsection (e) gives the county or district attorney authority to release the child if no court order has been issued.

Section 1529. Prefiling determinations. (a) Whenever the state department of social and rehabilitation services or any other person refers a case to the county or district attorney for the purpose of filing a petition in the court alleging that a child is a child in need of care the county or district attorney shall review the facts and recommendations of the department and any other evidence available and make a determination whether or not the circumstances are such as to warrant the filing of such petition.

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

(c) In the event an individual does not wish to employ an attorney such individual may request the county or district attorney of the county in which the petition is filed to represent the petitioner and present the case in court. In the event the county or district attorney decides not to represent the petitioner, the petitioner may request the court to make a preliminary inquiry into the matter and the court shall have the authority, following the preliminary inquiry, to order the county or district attorney to represent such individual and present the case in court, or the court may dismiss the petition unless the individual secures an attorney and desires to proceed with the case. Any judge making such an order shall be disqualified from sitting in any case wherein such order has entered and is further prohibited from communicating about such case with any other judge appointed to preside therein.

Comment

This section replaces K.S.A. 1980 Supp. 38-816 and removes the court from the making of prefiling determinations, except in limited circumstances covered in

subsection (c) of this section. This is consistent with the policy of the Committee to maintain the impartiality of the court.

Subsection (a) places the duty of determining whether or not a petition should be filed with the county or district attorney.

Subsection (b) provides for the possibility of an individual filing a petition and proceeding with retained counsel.

Subsection (c) deals with contingency of an individual filing the petition, but requesting the county or district attorney to present the case.

Section 1530. Reserved for future use.

PLEADINGS, PROCESS, AND PRELIMINARY MATTERS

Section 1531. Pleadings. (a) Filing of petition. An action pursuant to this code is commenced by the filing of a petition with the clerk of the district court.

(b) Contents of Petition.

(1) The petition shall state:

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

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

(C) the name and residence address of any persons having custody or control of the child, or the nearest known relative if no parent or guardian can be found;

(D) a plain and concise statement drawn in the language of the statutory definition which is alleged as the basis for requesting that the court assume jurisdiction over the child; and

(E) a statement of specific facts which are relied upon to support the allegation referred to in the preceding paragraph; including the dates, times, and locations at which the alleged facts occurred.

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

(3) If any of the times enumerated in subsection (b)(E) are not known to the petitioner, the petition shall so state.

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

(c) Motions. Applications for orders may be made in a pending action by motion in writing. The motion shall state with particularity the grounds therefore and shall state the relief or order sought.

Comment

Subsection (a) states how an action is commenced and is the point at which the court is first involved in the proceedings.

Subsection (b) sets forth the required contents of the petition. Subsections (b)(1)(A), (B), and (C) require essentially the same information as presently required by K.S.A. 1980 Supp. 38-816(a). Subsections (b)(1)(D) and (E) are similar in style to the code of criminal procedure and require a statement of the statutory definition relied upon and the specific facts which place the child within that statutory definition. Subsection (b)(4) requires the petition to contain a prayer.

Subsection (c) recognizes that motions are appropriate to invoke the authority of the court. This is a change from the present juvenile code which does not mention motions.

Section 1532. Proceedings upon filing of petition. (a) Upon the filing of a petition under this code the court shall fix the time and place for hearing thereon, which shall be not less than 15 or more than 30 days following the date the petition is filed.

(b) Upon the filing of the petition the clerk shall forthwith issue a summons, attach a copy of the petition, and deliver it for service to the sheriff or to a person specially appointed to serve it. Upon the written request of the petitioner's attorney separate or additional summons shall issue to any interested party.

Comment

This section brings this code more in line with the terminology and practice of the code of civil procedure, and provides for attaching a copy of the petition to the summons, rather than repeating the allegations in the summons.

Section 1533. Summons; persons upon whom served; form. (a) Persons upon whom served. The summons and a copy of the petition shall be served on the child alleged to be a child in need of care, if such child is 12 years old or older, unless the court orders otherwise, the parent or parents, the person with whom the child is residing, and any other person designated by the county or district attorney.

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

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT, JUVENILE DEPARTMENT
_____ COUNTY, KANSAS

In the Interest of

_____ Case No. _____
(Name [s]) (D.O.B.)

Each a child under 18 years of age

SUMMONS

TO:

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

A petition has been filed in this court, a copy of which is attached.

On _____, 19__ at ____ o'clock ____m. the above parent(s), and any other person having legal custody are required to appear before this court at _____.

Failure to appear before the court at the above time will not prevent the court from entering judgment that each child is a child in need of care if it finds judgment should be granted and removing such child from the custody of parent,

parents, guardians or any other present legal custodian until the further order of the court. After a child has been adjudged to be a child in need of care, if the court finds a parent or parents to be unfit to have custody of the child, the court may make an order permanently terminating such parent's or parents' parental rights.

An attorney will be appointed to represent said child or children. Each parent, guardian, or legal custodian has the right to hire an attorney. The court will appoint an attorney for any parent who is financially unable to hire one.

Date _____, 19__

Clerk of the District Court
by _____

(seal)

Comment

This section sets forth the requirements for the summons and includes a form of summons. Presently, no statute contains a form of summons although K.S.A. 1980 Supp. 38-817 and 38-818 speak to the contents of the summons.

Section 1534. Service of process. Summons, notice of hearings, and other process may be served by one of the following methods:

(a) Personal service. Personal service is completed by delivering a copy of the process personally to the person named therein. Personal service upon an individual outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308.

(b) Residential service. Residential service is completed by leaving a copy of the process with a person of suitable age and discretion residing therein, or in a conspicuous place at the usual place of residence of the person named therein at least 48 hours prior to the hearing for which the summons, notice, or other process is issued.

(c) Restricted mail service. Service by restricted mail is completed upon mailing in accordance with the provisions of K.S.A. 60-103.

(d) Service upon confined parent. If a parent of a child, who is the subject of proceedings under this code, is confined in a state penal institution, state hospital, or other state institution, service shall be made by restricted mail to both the confined parent and the person in charge of the institution. It shall be the duty of the person in charge of the institution to confer with the parent, if the parent's mental condition is such that a conference will serve any useful purpose, and advise the court in writing as to the wishes of such parent with regard to said child.

(e) Affidavit for service by publication. Before service by publication, the county or district attorney, the petitioner, or a court service officer shall file an affidavit which shall be in substantially the following form:

(Name of Court)

(Caption of Case)

AFFIDAVIT

STATE OF KANSAS _____ COUNTY, SS

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

- (1) affiant is (state position) and makes this affidavit for the purpose of obtaining service by publication upon the parties named herein.
- (2) affiant has made a reasonable, but unsuccessful, effort to ascertain the names and/or residences of the parties named or described herein.
- (3) the parties on whom service by publication is sought are as follows: (Names or, if names are unknown, description of relationship to alleged child in need).

(Signature)

(Jurat)

(f) Service by publication. 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, which notice shall be in substantially the following form:

(Name of Court)

(Caption of Case)

NOTICE OF HEARING

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

A (describe pleading) has been filed in this court requesting that the court (describe action the court is being requested to take).

You are required to appear before this court at (state time, date, and location) or prior to said time file your written response to said pleading with the clerk of this court. Failure to either appear or respond may result in the court entering judgment granting the requested action.

Each parent or other legal custodian of the child or children has the right to hire and be represented by an attorney. The court will appoint an attorney for a parent who is financially unable to hire one.

Clerk of the District Court

by _____

Comment

This section is similar to K.S.A. 1980 Supp. 38-810a, but adds forms for affidavits and notice of hearing for service of publication.

Section 1535. Proof of service. Proof of service shall be made as follows:

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

REPORT OF SERVICE

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

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

Date Returned: _____, 19____ Sheriff of _____ County, Kansas
by _____

(Title)

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

REPORT OF SERVICE

State of _____ County of _____, SS
_____ being first duly sworn upon oath, states that the undersigned served the annexed summons or other process upon _____ at _____ on the ____ day of _____, 19____ in the aforesaid county and state by delivering to said party a copy of the annexed summons or other process together with a copy of the pleading therein described.

Sheriff of _____ County
State of _____

(Jurat)

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

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

CERTIFICATE OF MAILING

On _____, 19____ I mailed a copy of the (summons or other process) and a copy of the (petition or other pleading) described therein to each of the parties named in such summons or process at the address indicated by registered or certified mail of the United States Postal Service endorsed "return receipt requested showing address where delivered" and "delivered to addressee only" with all appropriate fees paid.

Date _____, 19____

(Deputy) Clerk of the District Court

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

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

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

Comment

K.S.A. 1980 Supp. 38-810a(d) says, "The person serving the process shall inform the court of the time and manner of service." This section is more explicit as to how various types of service shall be reported, and contains appropriate forms.

Section 1536. Service of other pleadings. (a) Proceedings upon filing. Upon the filing of a motion or paper, other than a petition, requesting or indicating the necessity for a hearing, the court shall fix the time and place for such hearing.

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

(Name of Court)

(Caption of Case)

NOTICE OF HEARING

TO:

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

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

On _____, 19____ at _____ o'clock ____m. the parents, any other person having legal custody of the above named children, or any other interested party are required to appear before this court at (describe location). Your failure to either appear or respond will not prevent the court from entering judgement granting the request contained in the pleading served with this notice if the court finds that such judgment should be granted.

An attorney will be appointed to represent the child or children. Each parent, guardian, legal custodian, or other interested party has the right to hire an attorney. The court will appoint an attorney for any parent who is financially unable to hire one.

Date _____, 19____

Clerk of the District Court

by _____

(seal)

(c) Method and report of service. Notice of hearing and motions or other pleadings subsequent to the petition shall be served and report of service made in the same manner as service of the petition and summons.

(d) When required. Every pleading subsequent to the original petition, every written motion other than one that may be heard *ex parte*, every written notice, and similar papers shall be served upon the interested party. No service need be made on a party in default for failure to appear, except that pleadings asserting new or additional claims for relief contrary to the interest of such party shall be served in the manner provided in this code for the service of summons.

Comment

The present code is silent on how pleadings other than the petition are to be served. This section makes it the duty of the clerk to serve such pleadings.

Section 1537. Subpoenas and witness fees. (a) An interested party, as defined by section 1502 of this code, shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, such subpoenas and other compulsory process shall be issued and served in the same manner and the disobedience thereof punished the same as in other civil cases.

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

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

Comment

This section states that interested parties have the right to subpoena witnesses and recognizes that subpoenas under this code are compulsory process. Subsections (a) and (b) are similar to K.S.A. 22-3214. Subsection (c) is identical to the last two sentences of K.S.A. 1980 Supp. 38-813.

Section 1538-1540. Reserved for future use.

Section 1541. Determination of interested party. Upon written or oral motion of any person with whom the child has been residing and who desires to have standing to participate in the proceeding regarding the child, the court at any time during the proceeding, may order that such person may participate in the proceedings to the same extent as other interested parties. In considering the entry of such an order the court shall take into consideration the length of time the child has resided with such person, the nature of the custody, the relationship between the child and such person, and the degree to which the person has been standing in the place of the child's parent.

Comment

This section is new, and provides a procedure to determine that an individual who does not fit within the definition of parent may have standing to participate in the proceedings.

Section 1542. Ex parte orders of protective custody; probable cause; procedures. (a) At or after the filing of a petition the court upon verified application may issue an *ex parte* order of protective custody. Such application shall state:

(1) The name and address of the child alleged to be a child in need of care;

(2) the names and addresses of such child's parents or nearest relatives if known;

(3) the name and address of any person having custody of such child;

(4) the applicant's belief that the child is a child in need of care and is likely to sustain harm if not immediately afforded protective custody, and

(5) a statement of specific facts which are relied upon to support the belief.

(b) The order of protective custody may be issued only after the court has determined there is probable cause to believe the allegations in the application are true. Said order shall remain in effect until the temporary custody hearing provided for in section 1543, unless earlier rescinded by the court.

(c) No child shall be held in protective custody for more than 48 hours, excluding Saturdays, Sundays, and legal holidays, unless within such 48 hour period a determination is made as to the necessity for temporary custody in a temporary custody hearing. The order of protective custody shall be served on parents and other persons having legal custody and shall prohibit all parties from removing the child from the court's jurisdiction without the court's permission.

Comment

This section replaces K.S.A. 1980 Supp. 38-819(a) and relates to orders of protective custody. This section distinguishes protective custody, which is that period from an *ex parte* order removing a child from parental custody until the temporary custody hearing, from temporary custody, which is that period from the temporary custody hearing until the adjudicatory hearing.

Subsection (b) contains the new requirement that an *ex parte* order removing the child from the parents home may be issued only after the court has determined there is probable cause for such action and that such action is necessary to protect the child.

Subsection (c) retains the present requirement in 38-819(a) that if a child is to be held more than 48 hours a temporary custody hearing must be held.

Section 1543. Orders of temporary custody; notice; hearing; procedure. (a) The court may issue an order directing who shall have custody as provided in this section and may modify said order during the pendency of the proceedings as will best serve the child's welfare.

(b) A hearing hereunder shall be held within 48 hours, excluding Saturdays, Sundays, and legal holidays, following a child having been taken into protective custody on an order of protective custody or on application of the petitioner or any other interested party made at the time of filing petition.

(c) Whenever it is determined that a temporary custody hearing is required the court shall immediately set the time and place for

such hearing and shall appoint an attorney to represent the child identified in the petition as a party to the proceedings. The costs of an attorney for the child may be assessed to the parent, guardian, or other person having custody of the child as a part of the costs of the case. Notice of a temporary custody hearing shall be in substantially the following form:

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT, JUVENILE DEPARTMENT
_____ COUNTY, KANSAS

In the Interest of

(Name[s]) (D.O.B.) Case No. _____
Each a child under 18 years of age

NOTICE OF TEMPORARY CUSTODY HEARING

TO:

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

On _____, _____, 19____, at ____ o'clock ____m. the
(day) (date)

court will conduct a hearing at _____ to determine if the above named child or children should be in the temporary custody of some person or agency other than the parent, guardian, or other person having legal custody prior to the hearing on the petition filed in the above captioned case.

An attorney will be appointed to represent the child or children. Each parent, guardian, or other person having legal custody has the right to hire an attorney and have such attorney present at the hearing. An attorney will be appointed for a parent who can show that the parent is not financially able to hire one.

Date _____, 19____

Clerk of the District Court

by _____

(seal)

REPORT OF SERVICE

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

Name	Location of Service (other than above)	Manner of Service	Date	Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Date Returned _____, 19____

(Signature)

(Title)

(d) Notice of the temporary custody hearing shall be given at least 24 hours prior to said hearing. The court may continue said hearing to afford the 24 hours prior notice or, with the consent of said party, proceed with the hearing at the designated time. If custody is ordered and the parent, guardian, 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

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, and is completed upon filing a certificate of oral notice in substantially the following form:

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT, JUVENILE DEPARTMENT
_____ COUNTY, KANSAS

In the Interest of _____

(Name[s])

(D.O.B.)

Case No. _____

Each a child under 18 years of age

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at ____ o'clock ____m. on _____, 19____, to the persons listed, in the manner and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I advised each of the above persons that:

- (1) The hearing is to determine if the above child or children should be in the temporary custody of a person or agency other than a parent;
- (2) the court will appoint an attorney for the child or children named above;
- (3) each parent, guardian or other person having legal custody has the right to hire an attorney and have said attorney present at this hearing; and
- (4) the court will appoint an attorney for a parent who is not financially able to hire an attorney.

(Signature)

(Name Printed)

(Title)

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

(g) Whenever the court shall determine the necessity for said order the court may place such child in the temporary custody of: (1) some person, other than the parent, guardian, or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated; (2) a youth residential facility; or (3) the secretary. The order of temporary custody shall remain in effect until modified or rescinded by the court or a disposition order is entered.

Comment

This section replaces K.S.A. 1980 Supp. 38-815b and 38-819, clarifies the temporary custody hearing procedure, and sets out forms of oral and written notice for such hearing.

The section continues the requirement that the court conduct the hearing within 48 hours if the child is removed from the parents home prior to adjudication, and contains the same requirements as 38-815b(c) regarding what the court must find to order temporary custody. A city or county jail is eliminated as a possible recipient of temporary custody.

Section 1544. Order for informal supervision. (a) At any time prior to an adjudication the court may enter an order for continuance and informal supervision without an adjudication, provided no interested party objects. Upon granting such continuance, the court shall include in such order any conditions with which the interested parties are expected to comply and provide such parties with a copy of such order. Such conditions may include appropriate dispositional alternatives authorized by section 1563 of this code. The court shall include in such order the conditions to be complied with by the interested parties upon which such continuance is granted.

(b) An order for informal supervision may remain in force for a period of up to six months and may be extended, upon hearing, for additional six months periods up to two years.

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

(d) Parties to the order for informal supervision who complete the period of supervision shall not again be proceeded against in any court based upon the original petition and the original petition shall be dismissed with prejudice.

Comment

This section is not part of the present juvenile code, and codifies a procedure which as a practical matter is common practice.

Section 1545. Discovery. Upon hearing and finding by the judge that discovery procedures, as described in K.S.A. 60-226 through 60-237, would expedite the proceedings the judge may allow discovery subject to such limitations as are prescribed by the judge.

Comment

This section is new and makes discovery procedures available under certain circumstances.

Section 1546-1550. Reserved for future use.**ADJUDICATION PROCEDURE**

Section 1551. Time of trial and disclosure of witnesses. (a) All proceedings under this code shall be disposed of without unnecessary delay. Continuances may be granted for good cause shown.

(b) Upon request of any interested party any other party shall disclose the names of all potential witnesses.

Comment

Subsection (a) deals with the same subject as K.S.A. 1980 Supp. 38-817(a), which prescribes a hearing within two weeks of the filing of the petition. It is seldom that the court can schedule a trial, or that attorneys can be prepared for trial within that time.

Subsection (b) is new and is consistent with the philosophy of avoiding trial by surprise.

Section 1552. Confidentiality of proceedings. The court may exclude from any hearing, pursuant to this code, all persons except interested parties and their attorney, officers of the court, and the witness testifying.

Upon agreement of all interested parties the court shall allow other persons to attend said proceedings, unless the court finds the presence of such persons would be disruptive to the proceedings.

Comment

The first paragraph of this section is similar to K.S.A. 1980 Supp. 38-822, except interested parties may not be excluded. The second paragraph is new and allows the court to open some proceedings under proper circumstances.

Section 1553. Stipulations. In any proceeding under this code, a parent may stipulate that all or part of the allegations stated in the petition are true.

Prior to the acceptance of any stipulation, the court shall make the following inquiry of the stipulating party:

(a) Do you understand you have a right to a hearing on the allegations contained in the petition;

(b) do you understand you may be represented by an attorney and if you are financially unable to employ an attorney and request one the court will appoint one for you;

(c) do you understand a stipulation is an admission that the allegation stipulated to is true;

(d) do you understand if the court accepts the stipulations of the interested parties as to allegations of the petition the court may adjudge the child to be a child in need of care and the court will make further orders as to the care, supervision, and custody of the child; and

(e) do you understand that if the court adjudges the child to be a child in need of care, the court is not bound by any agreement of the parties as to the disposition or placement of the child?

The court shall require that a stipulating party state a factual basis for the stipulations. If all parties do not stipulate the court shall hear evidence as to the other interested party or parties.

Comment

This section is new and sets forth standards for the receipt of stipulations by the court. The standards insure that the parties understand their rights and the legal effect of entering into a stipulation. The section also clarifies that if only one party stipulates, the court is restricted to hearing evidence as to the other party or parties.

Section 1554. Rules of evidence. In all proceedings under this code the rules of evidence of the code of civil procedure shall apply.

No evidence relating to the condition of a child shall be excluded solely on the ground that the matter is or may be the subject of a physician-patient privilege.

The judge presiding at the hearing shall not consider, read, or rely upon any report not properly admitted according to the rules of evidence.

Comment

The first paragraph of this section retains portions of K.S.A. 1980 Supp. 38-813, and states that the rules of evidence apply to proceedings under this code. The second paragraph is similar to K.S.A. 38-719. The third paragraph is an admonition to judges and contains the same subject as the last sentence of K.S.A. 1980 Supp. 38-808(b).

Section 1555. Degree of proof. In all proceedings on a petition alleging a child is a child in need of care the petitioner or state must prove by a preponderance of evidence that the child is a child in need of care.

Comment

This section states that the degree of proof necessary to prove a child is a child in need of care is the same as other civil cases. This is a departure from present case law. See *In re Hamlett*, 2 Kan. App. 2d 642, 586 P.2d 277 (1978).

Section 1556. Adjudication. If the court finds that the child is not a child in need of care, the court shall enter an order dismissing the petition.

If the court finds that the child is a child in need of care, the court shall enter an order adjudicating the child to be a child in need of care and may proceed to enter such orders of disposition as are authorized by this code.

Comment

This section states in general language what action the court is to take upon adjudication. K.S.A. 1980 Supp. 38-817(B) and 38-819(b) speak to the same subject.

Section 1557-1560. Reserved for future use.

DISPOSITION

Section 1561. Time for disposition. The order of disposition may be entered at the time of the adjudication, but shall be entered within 30 days following, unless delayed for good cause shown.

Comment

This section replaces K.S.A. 1980 Supp. 38-823e.

Section 1562. Additional evidence. (a) At any time after a child has been adjudicated to be a child in need of care and prior to disposition the judge shall, subject to the rules of evidence, at the request of an interested party, hear additional evidence as to proposals for reasonable and appropriate disposition of the case.

(b) Prior to entering an order of disposition the court shall give consideration to the child's physical, mental, and emotional condition, the child's need for assistance, the manner in which the parent or guardian participated in the abuse, neglect, or abandonment of the child, and the evidence received at the dispositional hearing concerning the ability of the child's parent or guardian to provide supervision and care of the child.

Comment

Subsection (a) is a new section that clarifies that in the adjudicatory hearing evidence is limited to that which would tend to prove or disprove the allegations of the petition. At present, there is a tendency for parties to introduce the subject of dispositional alternatives prior to the adjudication. This section directs the court, following adjudication, to allow interested parties to present evidence relating to dispositional alternatives.

Subsection (b) provides direction to the judge as to the issues to be considered prior to entering an order of disposition.

Section 1563. Authorized dispositions. (a) After consideration of any evidence offered relating to disposition, the court may retain jurisdiction and place the child in the custody of the child's parent subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including supervision of the child and the parent by the secretary, a court service officer or other appropriate individual or agency. Such terms and conditions may require any special treatment or care which the child needs for the child's physical, mental, or emotional health.

(b) The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than 18 months and the court, at the expiration of that period, upon a hearing and for good cause shown, may make successive extensions of such supervision or other terms or conditions of up to 12 months at a time.

(c) The court may order the child and the parents of any child who has been adjudged a child in need of care to attend such counseling sessions as the court may direct. The expense of such counseling may be assessed as expense in the case. No mental health center shall charge a fee different for court ordered counseling than such center would have charged to the person receiving such counseling when such person requests counseling on their own initiative.

(d) If the court finds that placing the child in the custody of a parent will not assure protection from physical, mental, or emotional abuse or neglect or will not be in the best interests of the child the court may enter an order awarding custody of the child, until the further order of the court, to one of the following:

- (1) A relative or other suitable person; or
- (2) a shelter facility; or
- (3) the secretary.

If the court has awarded legal custody based on such a finding, the legal custodian shall not return the child to the home of the parent without the written consent of the court.

Comment

Subsection (a) incorporates the portions of K.S.A. 1980 Supp. 38-824 that apply to disposition without a deprivation of parental rights and is intended to encourage leaving the child in the home if possible. Such parental custody may be subject to supervision by SRS and court personnel.

Subsection (b) requires automatic review.

Subsection (c) is a restatement of the part of present 38-824 relating to counseling.

Subsection (d) is the present law restated, except for the last sentence, which comes from K.S.A. 1980 Supp. 38-825 and which broadens the restriction against returning the child to the home of a parent to apply to other legal custodians as well as the secretary.

Section 1564. Rehearing. After the entry of any dispositional order the court may rehear the matter on its own motion or the motion of any interested party. Upon such hearing the court may enter any dispositional order authorized by this code.

Comment

This section has the same effect as K.S.A. 1980 Supp. 38-829 and 38-829a and states the continuing authority of the court to modify prior dispositional orders up to the time the court determines continued supervision is unnecessary and discharges the child from the court's jurisdiction.

Section 1565. SRS reports to court. (a) Notification of court; recommendations by court. When the custody of a child has been awarded to the secretary: (1) The secretary shall notify the court in writing of the initial placement of such child as soon as such placement has been accomplished, and (2) the court may recommend to the secretary where the child should be placed but the court shall have no power to direct a specific placement.

(b) Report on development of child. During the time a child remains in the custody of the secretary, the provisions of this section or the statutory predecessor thereof, said secretary at least every six months shall report to the court as to the current living arrangement and social and mental development of the child.

Comment

Subsection (a) is identical to K.S.A. 1980 Supp. 38-826a, except the secretary is required to notify the court, in writing, of the initial placement in all cases.

Section 1566. Change of placement. Except as provided in section 1567, after a child has been in the same foster home or shelter facility for six months or longer, or has been placed by the secretary in the home of a parent or relative, when the secretary plans to move such child to a different placement, said secretary shall give written notice of such planned transfer to (a) the court having jurisdiction over the child; (b) each parent whose address is available; (c) the foster parent or custodian from whose home or shelter facility it is proposed to remove said child, and (d) the child, if said child is 12 years of age or older. The notice shall state the home or shelter facility to which said secretary plans to transfer said child and the reason for the proposed action. The notice shall be delivered or mailed 30 days in advance of such planned transfer. Within 10 days after receipt of said notice any person receiving notice as provided above may request, either orally or by written notice, that the court conduct a hearing to determine whether or not such change in placement is in the best

interests of the child concerned. When such a request has been received, the court shall schedule a hearing and immediately notify the secretary of such request and the time and date such matter will be heard. The court shall give notice of the hearing to persons enumerated in clauses (a) through (d) of this section and the child's attorney. The secretary shall then refrain from changing the placement of said child until such action is approved by the court.

Comment

This section restates the present law contained in K.S.A. 1980 Supp. 38-826b(b).

Section 1567. Emergency change of placement. When an emergency exists requiring immediate action to assure the safety and protection of such child or the secretary is notified that the foster parents or shelter facility refused to allow said child to remain, the secretary may transfer said child to another foster home or shelter facility without prior court approval, but the secretary shall notify the court of such action at the earliest practical time.

Comment

This section restates the present law contained in K.S.A. 1980 Supp. 38-826b(c).

Section 1568. Review of placement. At least yearly the court having jurisdiction shall review the progress being made toward return of the child to the custody of the child's parents or other permanency plan.

The court may conduct the review in any manner it deems appropriate including conducting a hearing on the subject.

Comment

This section is new and requires that the court take affirmative steps to avoid children remaining in long-term foster care where such care is unnecessary.

Section 1569. Discharge from jurisdiction. In every case under this code the judge shall designate in the file of the case the date each child is discharged from the jurisdiction of the court stating the basis for such discharge.

Comment

This section is new and requires that each case be formally terminated.

Section 1570-1580. Reserved for future use.

TERMINATION OF PARENTAL RIGHTS

Section 1581. Request for termination. (a) Either in the petition or in a motion filed in the action, any interested party may request that the parental rights of either or both parents be terminated.

(b) Whenever a pleading is filed requesting termination of parental rights, the pleading shall contain a statement of specific facts which are relied upon to support such request; including dates, times, and locations at which the alleged facts occurred.

Comment

Subsection (a) recognizes that the initial circumstances surrounding the filing of a petition may warrant termination of parental rights in the adjudicatory hearing. However, in most cases, termination is requested and considered only after extensive efforts to work the child back into the home.

Subsection (b) recognizes the possible inclusion of the allegations to support the request for termination in the original petition or by subsequent pleading.

Section 1582. Jurisdiction; attorney; summons. (a) No order or decree permanently terminating parental rights under this code, shall be made unless the court has jurisdiction to enter a child custody determination in accordance with K.S.A. 1980 Supp. 38-1303. The court shall appoint an attorney to represent any parent who fails to appear or is unable to employ an attorney and may award a reasonable fee to said attorney to be paid from the general fund of the county.

(b) If a person entitled to receive a summons cannot be found or the person's residence address ascertained by a diligent effort, the court shall review the efforts made to locate the person entitled to receive a summons. Upon finding that a diligent effort has been made to locate that person, the court may order service of summons by publication.

(c) In any case in which the parent of a child cannot be located by the exercise of due diligence, service shall be made upon the child's nearest blood relative who can be located as well as upon the person with whom the child resides, and service by publication shall be ordered upon the parent.

Comment

Subsection (a) contains the requirement of K.S.A. 1980 Supp. that an attorney be appointed for a parent who is indigent or absent in cases involving termination of parental rights.

Subsection (b) is new and places on the court the duty to determine that a diligent effort has been made to notify an absent parent.

Subsection (c) changes slightly the requirement of K.S.A. 1980 Supp. 38-817, which requires service on some relative or other interested person by requiring service on the child's nearest blood relative who can be located as well as the person with whom the child resides.

Section 1583. Considerations in termination. (a) The court may terminate parental rights when the court finds by clear and convincing evidence the parent is unfit, or that the conduct or condition of the parent is such to render the parent unable to properly care for the child and said conduct or condition is unlikely to change in the foreseeable future. In making a determination hereunder the court shall consider, but is not limited to, the following:

(1) Emotional illness, mental illness, mental deficiency, or physical disability of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child.

(2) Conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature.

(3) Excessive use of intoxicating liquors or narcotic or dangerous drugs.

(4) Physical, mental, or emotional neglect of the child.

(5) Conviction of a felony and imprisonment.

(6) Unexplained injury or death of a sibling.

(7) Reasonable efforts by appropriate public or private child caring agencies have been unable to rehabilitate the family.

(8) Lack of effort on the part of the parent to adjust their circumstances, conduct, or conditions to meet the needs of the child.

(b) Where a child is not in the physical custody of the parent, the court in proceedings concerning the termination of parental rights, in addition to the foregoing, shall also consider, but is not limited to the following:

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

(2) Failure to maintain regular visitation with the child.

(3) Failure to maintain regular contact or communication with the child or with the custodian of the child.

(4) Failure to carry out a reasonable plan approved by the court directed toward the integration of the child into the parental home.

(5) Failure to pay a reasonable portion of substitute physical care and maintenance based on ability to pay. Failure to pay, in itself, will not be grounds to terminate parental rights.

(6) In making the above determination, the court may disregard incidental visitations, contacts, communications, or contributions.

(c) Where a child has been placed in foster care by a court order or has been otherwise placed by parents or others into the physical custody of such family, the court shall in proceedings concerning the termination of parental rights and responsibilities consider whether said child has become integrated into the foster

family to the extent that the child's familial identity is with that family, and said family or person is able and willing to permanently so integrate the child. In such considerations, the court shall note, but is not limited to the following:

(1) The love, affection, and other emotional ties existing between the child and the parents, and the child's ties with the integrating family.

(2) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining such continuity.

(3) The home, school, and community record of the child, both when with the parents from whom the child was removed and when with the integrating family.

(4) The reasonable preference of the child, if the court deems the child of sufficient capacity to express a preference.

(5) Any other factor considered by the court to be relevant to a particular placement of the child.

(d) The rights of the parents may be terminated as provided herein if the court finds that the parents have abandoned the child or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months following the finding of the child.

(e) In considering any of the above basis for terminating the rights of a parent, the court shall give primary consideration to the physical, mental, or emotional condition and needs of the child.

Comment

In K.S.A. 1980 Supp. 38-824(c) the present code recognizes that the court may find a parent "unfit to have custody" without any guidance as to the circumstances which constitute grounds for such a finding. Therefore, the judge or attorney who may not be familiar with juvenile code practice must resort to examination of case law for guidance. This section sets forth the issues the court shall examine.

This section is adopted from the "Model Statute for Termination of Parental Rights" adopted in 1976 by the Neglected Children Committee of the National Council of Juvenile Court Judges.

Section 1584. Procedure following termination of parental rights. (a) Purpose of section. The purpose of this section is to provide stability in the life of a child who must be removed from the home of a parent, to acknowledge that time perception of a child differs from that of an adult and to make the ongoing physical, mental, and emotional needs of the child the decisive consideration in proceedings under this section.

(b) Actions by the court. (1) Placement for adoption. After parental rights have been terminated the court may place the

child in the custody of (A) a reputable citizen of good moral character, (B) a youth residential facility, (C) the secretary, or (D) a corporation organized under the laws of the state of Kansas authorized to care for and surrender children for adoption as provided in K.S.A. 38-119 *et seq.* Such individual or corporation shall have authority to place such child in a family home, be a party to proceedings, and give consent for the legal adoption of such child which consent shall be the only consent required to authorize the entry of an order or decree of adoption. In lieu of placing the child in the custody of some person or corporation, the court may place the child in a proposed adoptive home and consent to the adoption of said child by the proposed adoptive parents.

(2) Placement for long-term foster care. When parental rights have been terminated, but it does not appear that adoption is a viable alternative, the court may place the child in the custody of (A) a reputable citizen of good moral character, (B) a youth residential facility, (C) the secretary, or (D) a corporation or association willing to receive the child, embracing in its objects the purpose of caring for or obtaining homes for children.

(c) Reports and review of progress. After parental rights have been terminated and up to the time an adoption has been accomplished, the person or agency in whom the court has placed custody of said child shall not less frequently than each six months make a written report to the court stating the progress having been made toward finding an adoptive placement for said child. Upon the receipt of each such report the court shall review the contents thereof and determine whether or not a hearing should be held on such subject. If the court determines that inadequate progress is being made toward finding an adoptive placement or establishing an acceptable long-term foster care plan, the court may rescind its prior orders and make such other orders regarding custody and adoption as are appropriate under the circumstances. Reports of a proposed adoptive placement need not contain the identity of the proposed adoptive parents.

(d) Discharge upon adoption. When the adoption of a child has been accomplished the court shall enter an order discharging the child from the court's jurisdiction in the pending proceeding.

Comment

Subsection (a) charges the court with the requirement for what is often referred to as "permanency planning" so that a child whose parents' parental rights have been terminated does not float aimlessly in a variety of foster care placements.

Subsection (b) speaks to the same subject as K.S.A. 1980 Supp. 38-824(d). The present statute seems to contemplate that whenever parental rights are terminated an adoption will follow without delay, and contains no provision for the court to continue supervision. This subsection continues the court's involvement after the termination of parental rights.

Subsection (c) requires that the individual or agency charged with the accomplishment of an adoption make periodic progress reports to the court. It also recognizes that if progress is not satisfactory the court may change the placement.

Subsection (d) requires that after an adoption has been completed that an order discharging the child from the court's jurisdiction be entered. At present, the official file often ends with the order depriving parental rights and it is not possible to distinguish between a child who has been adopted, and one for which long-term foster care is the only viable solution.

Section 1585-1590. Reserved for future use.

APPEALS

Section 1591. Appealable orders. An appeal may be taken by any interested party from any final order in any proceeding pursuant to this code. Such appeal shall be taken within 10 days after the entry of the order appealed from.

Comment

Presently, K.S.A. 1980 Supp. 38-834(b) contains a 30 day appeal period. This section shortens the appeal period to 10 days in recognition of the fact that these matters should be concluded as rapidly as possible.

Section 1592. Appeals procedure. (a) An appeal from an order entered by a district magistrate judge shall be to a district judge or associate district judge. Such appeal shall be heard *de novo* within 30 days from the date the notice of appeal was filed.

(b) An appeal from an order entered by a district judge or associate district judge shall be to the court of appeals.

(c) An appeal from a decision of the court of appeals shall be to the supreme court.

(d) Procedure on appeal shall be governed by article 21 of chapter 60 of Kansas Statutes Annotated.

Comment

This section restates K.S.A. 1980 Supp. 38-834(b), and states that appeals from district magistrate judges shall be heard *de novo* within 30 days.

Section 1593. Temporary orders pending appeal; status of orders appealed from. (a) Pending the determination of the appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) The court on appeal, pending a hearing, may modify the order appealed from and may make such temporary orders concerning the care and custody of the child as the court deems advisable.

Comment

This section restates the provisions of K.S.A. 1980 Supp. 38-834(c) relating to the effect of an appeal.

Section 1594. Costs and fees. When an appeal is taken pursuant to this code, fees of an attorney appointed to represent a child or parent shall be fixed by the court on appeal. Such fees, together with the costs of transcripts and records on appeal, shall be taxed as costs on appeal. The court on appeal may assess the costs against the appealing party or order that they be paid from the general fund of the county. When the court orders such costs assessed against the appealing party:

(a) The costs shall be paid from the county general fund, subject to reimbursement by such appealing party;

(b) the county may enforce such order as a civil judgment, except the county shall not be required to pay the docket fee or fee for execution.

Comment

Presently, K.S.A. 1980 Supp. 38-834b makes the county responsible for paying the allowable attorneys' fees and expenses if they are not assessed and collected from a parent, guardian, or conservator. The present statute gives the appellate court the duty of determining to whom these items shall be assessed but not the duty of determining the amount as in criminal appeals where the fees and expenses are paid from the AID fund. The trial court does not have sufficient knowledge to determine the amount of fees that should be allowed on appeal.

KANSAS JUVENILE OFFENDERS CODE

GENERAL PROVISIONS

<i>Section</i>	<i>Title</i>
1601	CONSTRUCTION OF CODE
1602	DEFINITIONS
	(a) Juvenile
	(b) Juvenile Offender
	(c) Parent
	(d) Law Enforcement Officer
	(e) Youth Residential Facility
	(f) Juvenile Detention or Correction Facility
	(g) Secure Facility
	(h) Warrant
	(i) Secretary
1603	TIME LIMITATIONS
1604	JURISDICTION
1605	VENUE
1606	RIGHT TO AN ATTORNEY
	(a) Appointment of Attorney to Represent Juvenile
	(b) Continuation of Representation
	(c) Attorneys' Fees
1607	COURT RECORDS
	(a) Official File
	(b) Social File
1608	RECORDS OF LAW ENFORCEMENT OFFICERS AND AGEN- CIES AND MUNICIPAL COURTS CONCERNING JUVENILE OF- FENDERS
1609	RECORDS OF DIAGNOSTIC, TREATMENT, OR MEDICAL FA- CILITIES CONCERNING JUVENILE OFFENDERS
1610	EXPUNGEMENT OF RECORDS
1611	AUTHORITY TO FINGERPRINT OR PHOTOGRAPH
1612	DUTIES OF COUNTY OR DISTRICT ATTORNEY
1613	COSTS AND EXPENSES
	(a) Docket Fee
	(b) Expenses
	(c) Assessment of Docket Fee and Expenses
1614	HEALTH SERVICES
	(a) Authorization
	(b) Mental Care and Treatment
1615	AGE OF CHILD, PRESUMPTION
1616-1620	Reserved for future use.

PLEADINGS, PROCESS, AND PRELIMINARY MATTERS

- 1621 COMMENCEMENT OF PROCEEDINGS
- 1622 PLEADINGS
 - (a) Complaint
 - (b) Motions
- 1623 NOTICE OF DEFENSE OF ALIBI OR INSANITY
- 1624 JUVENILE TAKEN INTO CUSTODY
 - (a) When
 - (b) Procedure
 - (c) Person 18 or Over Taken Into Custody; Detention and Release
- 1625 PROCEEDINGS UPON FILING OF COMPLAINT
- 1626 SUMMONS; PERSONS UPON WHOM SERVED; FORM
- 1627 SERVICE OF PROCESS
- 1628 PROOF OF SERVICE
- 1629 SERVICE OF OTHER PLEADINGS
- 1630 SUBPOENAS AND WITNESS FEES
- 1631 ISSUANCE OF WARRANT
- 1632 DETENTION HEARING; WAIVER; NOTICE; PROCEDURE
- 1633 PLEA HEARING
- 1634 *NOLO CONTENDERE*
- 1635 DIVERSION
- 1636 PROSECUTION AS AN ADULT
- 1637 PROCEEDINGS TO DETERMINE COMPETENCY
- 1638 SAME; COMMITMENT OF INCOMPETENT
- 1639 SAME; PROCEDURE WHEN RESPONDENT NOT CIVILLY COMMITTED
- 1640-1650 Reserved for future use.

ADJUDICATION PROCEDURE

- 1651 TIME OF TRIAL
- 1652 CONFIDENTIALITY OF PROCEEDINGS
- 1653 RULES OF EVIDENCE
- 1654 DEGREE OF PROOF
- 1655 ADJUDICATION
- 1656-1660 Reserved for future use.

DISPOSITIONAL PROCEDURES

- 1661 PREDISPOSITIONAL INVESTIGATION AND REPORT
- 1662 EVALUATION OF DEVELOPMENT OR NEEDS
- 1663 DISPOSITIONAL ALTERNATIVES
- 1664 JUVENILE PLACED IN CUSTODY OF SECRETARY
- 1665 MODIFICATION OF DISPOSITION
- 1666 REHEARING ON ISSUE OF CUSTODY
- 1667 VIOLATION OF CONDITION OF PROBATION OR PLACEMENT
- 1668 TERMINATION OF JURISDICTION
- 1669-1670 Reserved for future use.
- 1671 COMMITMENT TO STATE YOUTH CENTER; DUTIES AT TIME OF COMMITMENT
- 1672 SAME; COURT REVIEW AFTER COMMITMENT
- 1673 SAME; PROCEDURE WHEN NEW OFFENSE ALLEGED
- 1674 SAME; CONDITIONAL RELEASE; PROCEDURE; SUPERVISION
- 1675 SAME; CONDITIONAL RELEASE; FAILURE TO OBEY
- 1676 SAME; DISCHARGE FROM COMMITMENT
- 1677-1680 Reserved for future use.

APPEALS

- 1681 ORDERS APPEALABLE BY JUVENILE
 - (a) Order finding Juvenile Not a Fit and Proper Subject to be Dealt with Pursuant to Kansas Juvenile Offenders Code
 - (b) Orders of Adjudication and Disposition
- 1682 APPEALS BY PROSECUTION
- 1683 INTERLOCUTORY APPEALS
- 1684 APPEALS PROCEDURE
- 1685 TEMPORARY ORDERS PENDING APPEAL; STATUS OF ORDERS APPEALED FROM
- 1686 COSTS AND FEES

KANSAS JUVENILE OFFENDERS CODE

GENERAL PROVISIONS

Section 1601. Construction of Code. This act shall be known and may be cited as the Kansas Juvenile Offenders Code and shall be liberally construed to the end that each juvenile coming within its provisions shall receive such care, custody, guidance, control and discipline, preferably in the juvenile's own home, as will best serve the juvenile's rehabilitation and the protection of society. In no case shall any order, judgment or decree of the district court, in any proceedings under the provisions of this code, be deemed or held to import a criminal act on the part of any juvenile; but all proceedings, orders, judgments and decrees shall be deemed to have been taken and done in the exercise of the parental power of the state.

Comment

The Committee has separated the Kansas Juvenile Code into the Kansas Juvenile Offenders Code and the Kansas Code for the Care of Children. This section is essentially the same as K.S.A. 1980 Supp. 38-801, except that it identifies this code as the Kansas Juvenile Offenders Code, states it may be cited as such, and deletes reference to status type offenses which will be handled under the Kansas Code for Care of Children. The word "child" has been changed to "juvenile" to be consistent with the policy of using "juvenile" throughout this code, and "child" throughout the Kansas Code for Care of Children.

Section 1602. Definitions. (a) "Juvenile" means a person at least 10 years of age but less than 18 years of age.

(b) "Juvenile Offender" means (1) A juvenile who does an act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by 21-3105 except as follows: "Juvenile Offender" shall not mean

(A) a person age 14 years or over who commits a traffic offense pursuant to chapter 8 of K.S.A. or any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways, or streets, or the operation of self-propelled or non-self-propelled vehicles of any kind.

(B) a person age 16 years or over who commits an offense as defined in K.S.A. chapter 32.

(2) A person who escapes from or runs away from any lawful court ordered placement or placement by the secretary after a commitment to said secretary pursuant to the Kansas Juvenile Offenders Code.

(c) "Parent" when used in relation to a juvenile offender, includes a guardian, conservator, and every person who is by law liable to maintain, care for, or support the juvenile.

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

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

(f) "Juvenile detention or correctional facility" means:

(1) Any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders; or

(2) any public or private facility, secure or nonsecure, which is also used for the lawful custody of accused or convicted adult criminal offenders.

(g) "Secure facility" means a facility which is operated or structured so as to ensure that all entrances and exits from such facility are under the exclusive control of the staff of such facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding such officer to take into custody the juvenile named or described therein.

(i) "Secretary" means the secretary of social and rehabilitation services.

Comment

Subsection (a) states the age category of those individuals who are to be dealt with under this code. There is presently no statutory minimum age for criminal-type offenders. This change varies little, if any, from the present practice of treating very young miscreants and delinquents as status-type offenders. The Kansas Code for Care of Children, at subsection 1502, defines a "juvenile offender" less than 10 years of age as a "child in need of care."

Subsection (b) replaces the definition of "delinquent child" and "miscreant child" found in K.S.A. 1980 Supp. 38-802 (b) and (c). The term "juvenile offender" also excludes by definition those persons 16 years of age or over who violate fish and game laws.

Presently, under K.S.A. 1980 Supp. 38-815b a child over 14 who commits a traffic offense is not dealt with under the juvenile code, unless the offense is one of the following: K.S.A. 8-262 (driving while license cancelled, suspended or revoked); K.S.A. 8-287 (relating to habitual violators); K.S.A. 8-1566 (reckless driving); K.S.A. 8-1568 (fleeing or attempting to elude a police officer); K.S.A. 21-3405 (vehicular homicide), or K.S.A. 1980 Supp. 8-1567 (driving while under influence of intoxicating liquor or drugs). Subsection (b)(1)(A) excludes all juveniles 14 years of age or over who commit a traffic offense from the Kansas Juvenile Offenders Code, even if the violation is one listed above.

Subsection (b)(1)(A) will also result in juveniles 16 years of age or older charged with unlawful hunting being dealt with as adults.

Subsection (b)(2) is substantially the same as K.S.A. 1980 Supp. 38-802(c)(2). K.S.A. 1980 Supp. 8-2117, concerning incarceration, will require amendment to implement this section.

Subsection (c) is identical to K.S.A. 1980 Supp. 38-802(h) except it defines "parent" and not "parent or parents."

Subsection (d) is identical to K.S.A. 1980 Supp. 38-802(i).

Subsection (e) is identical to K.S.A. 1980 Supp. 38-802(a), except the term "juveniles" is used instead of "children."

Subsection (f) is nearly identical to K.S.A. 1980 Supp. 38-840(d).

Subsection (g) is identical to K.S.A. 1980 Supp. 38-840(g).

Subsection (h) is patterned after K.S.A. 1980 Supp. 22-2207(17). The present code does not contain a definition of "warrant", but makes reference to warrants in K.S.A. 1980 Supp. 38-816a.

Subsection (i) defines "secretary" to avoid the necessity of repeating the phrase "secretary of social and rehabilitation services" each of the many places it appears in the code.

Section 1603. Time limitations. (a) Proceedings under this code must be commenced within two years after the act giving rise to the proceedings is committed, except that proceedings involving acts committed by a person under 18 which if committed by an adult, would constitute a violation of K.S.A. 21-3401 or 21-3402 may be commenced at any time.

(b) The period within which such proceeding must be commenced shall not include any period in which:

- (1) The accused is absent from the state;
- (2) the accused so conceals oneself within the state that process cannot be served upon the accused, and
- (3) the fact of the offense is concealed.

Comment

This section is patterned after K.S.A. 21-3106. The present juvenile code has no time limitations on acts of delinquency or miscreancy. It is the opinion of the Committee that juveniles are entitled to the same limitations granted to adults.

Section 1604. Jurisdiction. (a) Except as provided in K.S.A. 1980 Supp. 21-3611 and section 1636 of this code proceedings concerning a juvenile who appears to be a juvenile offender as defined in this code shall be governed by the provisions of this code.

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

(c) When jurisdiction is acquired by the district court over an alleged juvenile offender it may continue until the juvenile (1) has attained the age of 21 years; or (2) has been discharged.

Comment

This section is a statement of present law and replaces K.S.A. 1980 Supp. 38-806.

Section 1605. Venue. (a) Venue for adjudicatory proceedings in any case involving a juvenile offender shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for dispositional proceedings in any case involving a juvenile alleged to be a juvenile offender shall be in the county of such juvenile's residence or, if such juvenile is not a resident of this state, in the county where the alleged offense was committed. When the dispositional hearing is to be held in a county other than the county where the offense was committed, the adjudicating judge shall transmit the record of the adjudicatory hearing, and recommendations as to disposition, to the court where the dispositional hearing is to be held.

(c) If the adjudicatory hearing is held in a county other than the county of the juvenile's residence, the dispositional hearing may be held in such other county if the adjudicating judge, upon motion by the petitioner or any person authorized to appeal, finds that it is in the best interests of the juvenile and the community that the dispositional hearing be held in the county where the act was committed.

Comment

This section excerpts those parts of the present venue statute (K.S.A. 1980 Supp. 38-811) which apply to juvenile offenders.

Section 1606. Right to an attorney. (a) Appointment of attorney to represent juvenile. A juvenile charged by the State of Kansas under the Kansas Juvenile Offenders Code is entitled to have the assistance of an attorney at every stage of the proceedings against such juvenile. If a juvenile appears before any court without an attorney it shall be the duty of the court to inform the juvenile and the parents that they are entitled to employ an attorney of their own choosing and upon failure to retain an attorney the court will forthwith appoint an attorney to represent the juvenile and the expense of the appointed attorney may be assessed to the juvenile or parent or both as part of the expenses of the case.

(b) Continuation of representation. An attorney appointed for a juvenile shall continue to represent such juvenile at all subsequent hearings in a proceeding under this code unless relieved by the court upon a showing of good cause.

(c) Attorneys' Fees. Attorneys appointed hereunder shall be allowed a reasonable fee for such services, which may be assessed

as an expense in the proceedings as provided in section 1613 of this code.

Comment

Subsection (a) recognizes that the role of the attorney is that of legal counsel rather than guardian *ad litem*. Present K.S.A. 1980 Supp. 38-821 provides for the appointment of a guardian *ad litem*, who is required to be an attorney. This subsection continues the requirement of K.S.A. 1980 Supp. 38-817 that the court inform the juvenile of the right to an attorney and to appoint an attorney if necessary. This subsection allows the court to assess attorneys' fees for appointed counsel.

Subsection (b) is new and in most instances requires the juvenile to be represented by the same attorney at each stage of the proceedings. This is not the present practice in many courts.

Subsection (c) is similar to K.S.A. 1980 Supp. 38-821b.

Section 1607. Court records. (a) Official file. The official file of proceedings pursuant to this code shall consist of the complaint, process and the service thereof, orders, writs, and journal entries reflecting hearings held and judgments and decrees entered by the court, which shall be kept separate from other records of the court. The official file shall be privileged as to any juvenile less than 16 years of age at the time any act is alleged to have been committed and shall not be disclosed directly or indirectly to anyone except:

(1) A judge of the district court and members of the staff of the court designated by the judge;

(2) parties to the proceeding and their attorneys;

(3) a public or private agency or institution having custody of the juvenile under court order; or

(4) to any other person when authorized by a judge of the court, subject to any conditions imposed by the judge.

(b) Social file. Reports and information received by the court other than the official file shall be privileged and open to inspection only by attorneys for the parties or upon order of a judge of the district court or an appellate court. Such reports shall not be further disclosed by the attorney without approval of the court or by being presented as admissible evidence.

Comment

This section divides court records into two categories, the official file and the social file.

Subsection (a) retains the same accessibility to the official file as allowed by K.S.A. 1980 Supp. 38-805 with regard to juveniles less than 16 years of age at the time the alleged act is committed. The official file is opened as to juveniles 16 years of age or older. Reports and evaluations received by the court shall be placed in the social file.

Subsection (b) alters the present law by restricting access to such reports and evaluations to attorneys for interested parties, or other persons upon the order of a judge of the district court or appellate court. Presently, reports and evaluations

received by the court are accessible to the parties enumerated in K.S.A. 1980 Supp. 38-805(b). [See also *Nunn v. Morrison*, 227 Kan. 730, 608 P.2d 1359, (1980)]. The subsection further provides such reports and evaluations shall not be further disclosed by counsel without approval of the court, or by being presented as admissible evidence.

The Committee favors the change from present law due to the damage that may result from disclosure of the reports and information contained in the social file. To allow unlimited access to evaluations received by court service officers could be detrimental to treatment or rehabilitation programs developed for the juvenile.

This concept is consistent with the "Model Statute on Juvenile and Family Court Records" of the National Council of Juvenile and Family Court Judges.

Section 1608. Records of law enforcement officers and agencies and municipal courts concerning juvenile offenders. (a) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile under 16 years of age shall be kept separate from criminal and other records and shall not be disclosed to anyone except:

(1) The judge, and members of the court staff designated by the judge of a court having the juvenile before it in any proceeding;

(2) the parties to the proceeding and their attorneys;

(3) the department of social and rehabilitation services, or the officers of public institutions or agencies to whom the juvenile is committed;

(4) law enforcement officers or county or district attorneys of other jurisdictions when necessary for the discharge of their official duties, or

(5) to any other person, when ordered by a judge of a district court in this state, under such conditions as the judge may prescribe.

Comment

This section is nearly identical to present K.S.A. 1980 Supp. 38-805c(b). This section changes present law by removing confidentiality of such records for a juvenile 16 years of age or older.

Section 1609. Records of diagnostic, treatment, or medical facilities concerning juvenile offenders. (a) The diagnostic, treatment, or medical records of any juvenile offender shall be privileged and shall not be disclosed except under any of the following conditions:

(1) Upon the consent, in writing, of the former juvenile, or if the juvenile offender is under 18 years of age, by the parent of such juvenile; or

(2) upon the consent of the head of the treatment facility who has the records after a statement, in writing, by such person that

such disclosure is necessary for the treatment of the juvenile offender; or

(3) upon the order of any court having jurisdiction of said juvenile offender; or

(4) as authorized by section 1614 of this code; or

(5) upon the oral or written request of any attorney representing the juvenile offender. Such reports shall not be further disclosed by the attorney without approval of the court or being presented as admissible evidence.

(b) Any person willfully violating this section shall be guilty of a class C misdemeanor.

(c) Nothing in this section shall operate to extinguish any right of a juvenile offender established by K.S.A. 60-426, 60-427 or 74-5323.

Comment

This section is a new section and recognizes the need for some confidentiality in treatment and diagnostic records. The section preserves the confidentiality of records of juvenile treatment facilities where disclosure would not be in the best interests of the juvenile. This section does make such information available to those providing further services to the juvenile under the provisions of 1614 of this code, and makes the information available to the attorney representing the juvenile subject to restrictions by the court regarding further disclosure.

Subsection (c) preserves attorney-client, physician-patient, and psychologist-client privileges.

Section 1610. Expungement of records. (a) Any records or files specified in this code concerning a juvenile may be expunged upon application of such person, or if such person is a juvenile, such person's parent or next friend to a judge of the court of any county in which such records or files are maintained.

(b) When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the county or district attorney. The petition shall state: (1) the juvenile's full name; (2) the full name of the juvenile at the time of the adjudication, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile was adjudicated; (5) the date of the adjudication, and (6) the identity of the adjudicating court. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) After hearing, the court shall order the expungement of such records and files if the court finds that:

(1) the person has reached 21 years of age or that two years have elapsed since the final discharge of the person;

(2) since the final discharge of the person, such person has not been convicted of a felony or of a misdemeanor other than a traffic offense or adjudicated a juvenile offender under the Kansas Juvenile Offenders Code and no proceeding is pending seeking such conviction or adjudication; and

(3) such person has been rehabilitated.

(d) Upon entry of an order expunging records or files, the offense which such records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or disposition in a subsequent action under this code the offense may be considered in determining the sentence to be imposed or disposition to be made. The person, the court, and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or file exists with respect to the person. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. Such inspection shall be limited to inspection by the person who is the subject of the files or records and those persons designated by such person.

(e) Copies of any order made pursuant to subsection (a) or (b) of this section shall be sent to each public officer and agency in the county having possession of any records or files ordered to be expunged. If any such officer or agency fails to comply with such order within a reasonable time after its receipt, such officer or agency may be adjudged in contempt of court and punished accordingly.

(f) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-805d, except subsection (b) which is new and is patterned after K.S.A. 1980 Supp. 21-4619.

Section 1611. Authority to fingerprint or photograph. Neither the fingerprints nor a photograph shall be taken of any juvenile less than 16 years of age who is taken into custody for any purpose, without the consent of a judge of the court having jurisdiction. When a judge permits the fingerprinting or photographing of any such juvenile, the prints or photographs shall be kept separate from criminal records.

Comment

This section allows fingerprinting and photographing of juveniles 16 years of age or over without court approval. The present law is contained in K.S.A. 1980 Supp. 38-805c(a).

Section 1612. Duties of county or district attorney. It shall be the duty of each county or district attorney to prepare the complaint to be filed with the court alleging a juvenile to be a juvenile offender and to prosecute such case.

Comment

This section is a part of the policy change which removes the court from the investigatory and prefilng stages of the proceeding. Presently, K.S.A. 1980 Supp. 38-815c requires the county, district, and city attorney to assist the court in presenting evidence and as otherwise requested by the judge at hearings. This section requires the county or district attorney to represent the state in the exercise of its *parens patriae* power from the beginning of the judicial proceeding, that is in the preparation and filing of the complaint. In addition to removing the court from the investigatory and prefilng stages of the proceeding this section eliminates the problem presented when the county or district attorney must attempt to prove the allegations of a petition which has been prepared by a court staff member or some other nonlawyer.

Reference to city attorneys is omitted from this section. Information received by the Committee indicates that city attorneys are not performing the duties described by 38-815c.

Section 1613. Costs and expenses. (a) Docket fee. The docket fee for proceedings under this code, if one is assessed as herein-after provided, shall be \$15 for the services provided by court employees.

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

(c) Assessment of docket fee and expenses. (1) Docket fee. The docket fee may be assessed to the complaining witness or person initiating the prosecution or an interested party, other than the state, a political subdivision thereof, or any agency of either. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362.

(2) Expenses. Expenses may be assessed to the complaining witness or person initiating the prosecution or an interested party, other than the state, a political subdivision thereof, or any agency of either. When expenses are recovered from a party against whom they have been assessed the general fund of the county shall be reimbursed in the amount of such recovery. If it appears to the court in any proceeding hereunder that expenses were unreasonably incurred at the request of any party the court may assess that portion of the expenses against such person or persons.

Comment

This section covers the same subjects as K.S.A. 1980 Supp. 38-817(b). Subsection (a) changes present law by standardizing the docket fee at \$15, if one is assessed.

Subsection (b) indicates expenses shall be paid from the county general fund.

Subsection (c) relates to assessment of docket fees and expenses and alters present law by not requiring payment by the state, a political sub-division thereof, or any agency of either. Authority to assess expenses unreasonably incurred is included.

Section 1614. Health services. (a) Authorization. (1) When the health or condition of a juvenile who is subject to the jurisdiction of the court shall require it the court may consent to the performing and furnishing of hospital, medical, surgical, or dental treatment or procedures including the release and inspection of medical or dental records.

(2) When the health or condition of a juvenile shall require it and the juvenile has been placed in the custody of a person other than a parent or placed in or committed to an appropriate facility such custodian shall have authority to consent to the performance and furnishing of hospital, medical, surgical, or dental treatment or procedures including the release and inspection of medical or dental records, subject to restraints placed by the court.

(3) Any health care provider who in good faith renders hospital, medical, surgical, or dental care or treatment to any juvenile after a consent has been obtained as authorized by subsections (a)(1) or (a)(2) of this section without first obtaining the consent of a parent or guardian of such juvenile shall not be liable in any civil or criminal action for any failure to obtain consent of a parent or guardian.

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

(b) Mental care and treatment. If it is brought to the court's attention while the court is exercising jurisdiction over the person of a juvenile under this code, that such juvenile may be a "mentally ill person" as defined in K.S.A. 1980 Supp. 59-2902, and any amendments thereto, the court may:

(1) Direct or authorize the person supplying such information to file the application provided for in K.S.A. 1980 Supp. 59-2913 and proceed to hear and determine the issues raised by such application as provided in the act for obtaining treatment for a mentally ill person; or

(2) authorize that such juvenile seek voluntary admission to a treatment facility as provided in K.S.A. 1980 Supp. 59-2905.

The application to determine whether such juvenile is a mentally ill person may be filed in the same proceeding as the petition alleging such juvenile to be a juvenile offender or may be brought in a separate proceeding. In either event the court may enter an order staying any further proceeding under the Kansas Juvenile Offenders Code until all proceedings have been concluded under the act for obtaining treatment for a mentally ill person.

Comment

Present statutes on this subject are K.S.A. 1980 Supp. 38-843, 38-844, and 38-845.

Subsection (a)(1) gives the court authority at any time to consent to medical treatment.

Subsection (a)(2) grants the legal custodian the same authority.

Subsection (a)(3) protects the health care provider from liability when relying on the consent of the court or legal custodian.

Subsection (a)(4) clarifies that the parent is not relieved of responsibility to provide health care.

Subsection (b) replaces K.S.A. 1980 Supp. 38-806(d) which recognizes a stay in juvenile code proceedings is appropriate when proceedings have been brought under the code for care and treatment of mentally ill person. Subsection (b) sets forth the procedure to be followed if the court believes the juvenile may be a "mentally ill person" and allows such determination to be made in the same or a separate proceeding.

Section 1615. Age of child, presumption. When a complaint is filed under this code, a person who is alleged to be a juvenile shall, for the purposes of this code, be presumed to be a juvenile, unless the contrary is proved.

Comment

This section restates the presumption contained in K.S.A. 38-836 that unless the contrary is proved the person named in the complaint is a juvenile.

Section 1616-1620. Reserved for future use.

PLEADINGS, PROCESS AND PRELIMINARY MATTERS

Section 1621. Commencement of proceedings. An action under the Kansas Juvenile Offenders Code shall be commenced by filing a verified complaint with the court and the issuance of process thereon.

Comment

This section states how an action is commenced and is the point at which the court is first involved in the proceedings.

Section 1622. Pleadings. (a) Complaint. (1) Any person 18 years of age or over having knowledge of a juvenile who appears to be a juvenile offender pursuant to this code may file with the court having jurisdiction, a verified complaint in writing which shall state if known:

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

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

(C) the name and residence address of any persons having custody or control of the juvenile or the nearest known relative if no parent or guardian can be found;

(D) a plain and concise statement of the essential facts constituting the offense charged. If the statement is drawn in the language of the statute, ordinance, or resolution alleged to have been violated it shall be deemed sufficient;

(E) for each count, the official or customary citation of the statute, ordinance, or resolution which is alleged to have been violated. Error in the citation or its omission shall not be grounds for dismissal of the complaint or for reversal of an adjudication if the error or omission did not prejudice the respondent.

(2) The proceedings shall be entitled: "In the matter of _____, respondent."

(3) The precise time of the commission of an offense need not be stated in the complaint, but it is sufficient if shown to have been within the statute of limitations, except where the time is an indispensable ingredient in the offense.

(4) The prosecuting attorney shall endorse the names of all witnesses known to said attorney upon the complaint at the time of filing. The prosecuting attorney may endorse thereon the names of other witnesses as may afterward become known to said attorney, at such times as the court may by rule or otherwise prescribe.

(b) Motions. Application for orders may be made in a pending action by motion in writing. The motion shall state with particularity the grounds therefore and shall state the relief or order sought.

Comment

Subsection (a) sets forth the required contents of a complaint. Subsections (a)(1)(A), (B) and (C) require essentially the same information as presently required by K.S.A. 1980 Supp. 38-816(a). Subsections (a)(1)(D) and (E) and subsections (a)(3) and (4) are drawn from K.S.A. 1980 Supp. 22-3201(2) and (6). The caption of the pleadings under this code is "in the matter of . . ." and the alleged juvenile offender is designated as the "respondent."

Subsection (b) recognizes that motions are appropriate to invoke the authority of the court. This is a change from the present juvenile code which does not mention motions.

Section 1623. Notice of defense of alibi or insanity. A juvenile whose defense to the allegations in the complaint is that of alibi or insanity shall, within five days after the initial appearance and denial of the charges, give written notice to the county or district attorney and the court of such proposed defense. Such notice shall include the names of witnesses the juvenile plans to call to provide evidence in support of such defense. Upon receipt of such notice the court shall enter such orders as are appropriate

under the circumstances which may include an independent examination and report of the juvenile claiming insanity. For good cause shown the court may permit notice at a later date.

Comment

This section codifies the procedure for giving notice of the defenses of alibi and insanity. Presently, the juvenile code does not address these subjects.

Section 1624. Juvenile taken into custody. (a) When. A law enforcement officer may take an alleged juvenile offender into custody when:

(1) Any offense has been or is being committed by the juvenile in the officer's view; or

(2) the officer has a warrant commanding that the juvenile be taken into custody; or

(3) the officer has probable cause to believe that a warrant or order commanding that the juvenile be taken into custody has been issued in this state or in another jurisdiction for an act committed therein; or

(4) the officer has probable cause to believe that the juvenile is a juvenile offender and that:

(A) the juvenile will not be apprehended or evidence of the offense will be irretrievably lost unless the juvenile is immediately taken into custody; or

(B) the juvenile may cause injury to self or others or damage to property or may be injured unless immediately taken into custody.

(b) Procedure. When any law enforcement officer takes a juvenile into custody pursuant to subsection (a) of this section without a warrant or court order and determines that the juvenile shall be detained, the juvenile shall be taken forthwith before the court for proceedings in accordance with this code or, in the event the court is not open for the regular conduct of business, to a place of detention which the court shall have designated. It shall be the duty of the officer to furnish the county or district attorney with all of the information in the possession of the officer pertaining to the juvenile, the juvenile's parents, guardian, or other person interested in, or likely to be interested in, the juvenile, and all other facts and circumstances which caused such juvenile to be arrested or taken into custody.

(c) Person 18 or over taken into custody; detention and release. Whenever an alleged juvenile offender 18 years of age or more is taken into custody by a law enforcement officer for an alleged offense which was committed prior to the time such person reached the age of 18, the officer shall notify and refer the matter to the court for proceedings pursuant to this code, except that the

provisions of this code relating to detention hearings shall not apply to such person. Unless the law enforcement officer took the person into custody pursuant to a warrant issued by the court and such warrant specifies the amount of bond or indicates that the person may be released on personal recognizance, the person shall be taken before the court of the county where the alleged act took place or at the request of the alleged juvenile offender said offender shall be taken, without delay, before the nearest court. The court shall fix the terms and conditions of an appearance bond upon which the person may be released from custody. The provisions of article 28 of chapter 22 and K.S.A. 22-2901 relating to appearance bonds and review of conditions and release shall be applicable to appearance bonds provided for in this section.

Comment

Subsection (a) is similar to K.S.A. 1980 Supp. 38-815d. This subsection uses the term "juvenile" rather than "child" and omits language which is not relevant to juvenile offenders. Subsection (a)(3) enables an officer to take a juvenile into custody if a warrant has been issued in another state regardless of whether the act upon which that warrant is based would constitute a felony in Kansas.

Subsection (b) differs from K.S.A. 1980 Supp. 38-815(a) in two areas. First, it makes it clear that if a juvenile is taken into custody by a law enforcement officer, the juvenile is to be taken before the district court unless the court is not open for the conduct of business, in which case the juvenile is taken to a place of detention designated by the court. Second, the law enforcement officer is to provide the information necessary for the filing of the complaint to the county or district attorney, rather than to the district court.

Subsection (c) is virtually identical to K.S.A. 1980 Supp. 38-815(c).

Section 1625. Proceedings upon filing of complaint. Upon the filing of a complaint in any proceeding under this code, the court shall fix the time and place for appearance thereon which shall be not less than 15 or more than 30 days following the date the summons is issued. The clerk shall forthwith issue a summons, attach a copy of the complaint, and deliver it for service to the sheriff or to a person specially appointed to serve it.

Comment

This section is similar to K.S.A. 1980 Supp. 38-817a and changes the time for hearing from within two weeks following the filing of the petition to between 15 to 30 days following the date summons is issued. The word "appearance" has been substituted for the word "hearing."

Section 1626. Summons; persons upon whom served; form. (a) Persons upon whom served. The summons and a copy of the complaint shall be served on the juvenile alleged to be a juvenile offender, the parent or parents, the person with whom the juvenile is residing, and any other person designated by the county or district attorney.

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

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT, JUVENILE DEPARTMENT
_____ COUNTY, KANSAS

In the Matter of _____, Respondent

Case No. _____

Date of birth _____
A — male — female under the age of 18 years.

SUMMONS

TO:

_____	_____
(Juvenile)	_____
_____	_____
(Father)	_____
_____	_____
(Mother)	_____
_____	_____
(Other having custody- relationship)	(Address)

A complaint has been filed in this court, a copy of which is attached.

On _____, 19____ at ____ o'clock ____m. the above named juvenile and a parent and any other person having legal custody are required to appear before this court at _____. Failure to appear may cause said juvenile to be taken into custody and brought before the court.

The juvenile will be required to admit or deny the statements in the complaint. You have the right to hire an attorney to represent the above juvenile. If you do not hire an attorney, the court will appoint an attorney for the juvenile and the juvenile, parent, guardian, or other person having legal custody of the juvenile may be required to repay the court for the expense of such appointed attorney.

Date _____, 19____ Clerk of the District Court
by _____

(Seal)

Comment

This section sets forth the requirements for the summons and includes a form of summons. Presently, no statute contains a form of summons although K.S.A. 1980 Supp. 38-817 and 38-818 speak to the contents of the summons.

Section 1627. Service of process. Summons, notice of hearing, or other process may be served by one of the following methods:

(a) Personal service. Personal service is completed by delivering a copy of the process personally to the person named therein.

(b) Residential service. Residential service is completed by leaving a copy of the process with a person of suitable age and discretion residing therein or in a conspicuous place at the usual place of residence of the person named therein at least 48 hours prior to the hearing for which the summons, notice, or other process is issued.

(c) Restricted mail service. Service by restricted mail is completed upon mailing in accordance with the provisions of K.S.A. 60-103.

(d) Regular mail service. Service may be made by regular mail, addressed to the individual to be served at the usual place of residence of such person with postage prepaid, and is completed upon such person appearing before the court in response thereto. If such person fails to appear, the summons, notice, or other process shall be delivered by personal, residential, or restricted mail service.

Comment

This section is similar to the portions of K.S.A. 1980 Supp. 38-810a that apply to offender cases. Service by publication and service on a confined parent are omitted. A provision providing for service by regular mail has been included as an economy measure.

Section 1628. Proof of service. Proof of service shall be made as follows:

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

REPORT OF SERVICE

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

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

Date Returned: _____, 19____ Sheriff of _____ County, Kansas
by _____

(Title)

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

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

CERTIFICATE OF MAILING

On _____, 19____ I mailed a copy of the above (summons or other process) and a copy of the (complaint or other pleading) described therein to each of the parties named therein at the address indicated on said process:

- * ☐ by placing in an envelope properly addressed and delivering the same to the United States Postal Service for delivery with postage prepaid.
- * ☐ by registered or certified mail of the United States Postal Service endorsed "return receipt requested showing address where delivered" and "delivered to addressee only" with all appropriate fees paid.

Date: _____, 19____

(Deputy) Clerk of the District Court

* Check ☒ paragraph to indicate method used

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

Comment

K.S.A. 1980 Supp. 38-810a(d) says, "The person serving the process shall inform the court of the time and manner of service." This section is more explicit as to how various types of service shall be reported and contains appropriate forms.

Section 1629. Service of other pleadings. (a) Proceedings upon filing. Upon the filing of a motion or paper other than a complaint requesting or indicating the necessity for a hearing, the court shall fix the time and place for such hearing.

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

(Name of Court)
(Caption of Case)

NOTICE OF HEARING

TO: NAME

_____	_____
(Juvenile)	
_____	_____
(Father)	
_____	_____
(Mother)	
_____	_____
(Other having custody-relationship)	(Address)

This court has received a _____,
(describe pleading)
a copy of which is attached, which will require a hearing before the court.

On _____, 19____ at ____ o'clock ____m. at _____, the court will hear this matter.

The above named juvenile and a parent having legal custody of said juvenile are required to be present. Failure to appear may cause said juvenile to be taken into custody and brought before the court.

Date: _____, 19____

Clerk of the District Court
by: _____

(Seal)

(c) Method and report of service. Notice of hearing and motions or other pleadings subsequent to the petition shall be served and report of service made in the same manner as service of the complaint and summons.

(d) When Required. Every pleading subsequent to the original complaint, every written motion other than one that may be heard *ex parte*, every written notice, and similar papers shall be served upon each interested party. Pleadings asserting new or additional claims for relief contrary to the interest of such party shall be served in the manner provided in this code for the service of summons.

Comment

The present code is silent on how pleadings other than the complaint are to be served. This section makes it the duty of the clerk to serve such pleadings.

Section 1630. Subpoenas and witness fees. (a) A party shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, such subpoenas and other compulsory process shall be issued and served in the same manner and the disobedience thereof punished the same as in other civil cases.

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

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

Comment

Subsection (a) states that interested parties have the right to subpoena witnesses and recognizes that subpoenas under this code are compulsory process. This subsection and subsection (b) are similar to K.S.A. 22-3214.

Subsection (c) is nearly identical to the last two sentences of K.S.A. 1980 Supp. 38-813.

Section 1631. Issuance of warrant. If the court finds there is probable cause to believe the juvenile will not appear for proceedings under this code or if the court is unable to make service of summons the court may issue a court order or warrant commanding that the juvenile named in the complaint be taken into custody and brought before the court. The order or warrant may designate the place the juvenile is to be taken in the event the juvenile is taken into custody at a time when the court is not open for the regular conduct of business. Such order or warrant shall describe the offense charged in the complaint.

Comment

Presently, K.S.A. 1980 Supp. 38-816a provides that if the court finds probable cause to believe a juvenile is within any of the categories over which the juvenile code grants jurisdiction a warrant may issue. This section indicates the court should use the summons to obtain attendance of the juvenile unless that method is unsuccessful.

Section 1632. Detention hearing; waiver; notice; procedure.
(a) Length of detention. Whenever a juvenile is taken into custody

(c) Notice of hearing. Whenever it is determined that a detention hearing is required the court shall immediately set the time and place for such hearing. Notice of the detention hearing shall be given at least 24 hours prior to said hearing and shall be in substantially the following form:

NOTICE OF DETENTION HEARING

On _____, _____, 19____, at ____o'clock ____m.

there will be a hearing for the court to determine if there is a need for further detention of the above named juvenile. Each parent or other person having legal custody of said juvenile should be present at such hearing which will be held in the _____

You have the right to hire an attorney to represent the above juvenile. Upon failure to hire an attorney the court will appoint an attorney for the juvenile and the juvenile, parent, guardian, or other person having legal custody of said juvenile may be required to repay the court for the expense of such appointed attorney.

Date: _____, 19____ Clerk of the District Court

by: _____

(Seal)

REPORT OF SERVICE

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

Name	Location of Service (other than above)	Manner of Service	Date	Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Date Returned: _____, 19____

(Signature) _____

(Title) _____

(d) Oral Notice. When there is insufficient time to give written notice, oral notice may be made and is completed upon filing a certificate of oral notice with the clerk in substantially the following form:

(NAME OF COURT)
(CAPTION OF CASE)

CERTIFICATE OF ORAL NOTICE OF DETENTION HEARING

I gave oral notice that the court will hold a hearing at ____ o'clock ____ m. on _____, 19____, to the persons listed, in the manner and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I advised each of the above named persons that:

- (1) The hearing is to determine if the above named juvenile shall be detained;
- (2) each parent or person having legal custody should be present at such hearing;
- (3) they have the right to hire an attorney of their own choice for the juvenile;
- (4) if an attorney is not hired, the court will appoint an attorney for the juvenile;
- and
- (5) the juvenile, parent, guardian, or other person having custody of said juvenile may be required to repay the court for the expense of such appointed attorney.

(Signature) _____

(Name Printed) _____

(Title) _____

(e) Hearing, finding, bond. At the time set for the detention hearing if no retained attorney is present to represent the juvenile, the court shall appoint an attorney for the juvenile, and may recess the hearing for not to exceed 24 hours to obtain attendance of the attorney appointed. The expense of such appointed attorney may be assessed to the juvenile or the parent, guardian, or other person having custody of the juvenile as a part of the expenses of the case. At the detention hearing if the court finds the juvenile is dangerous to self or others, the juvenile shall be detained. If the court finds the juvenile is not likely to appear for further proceedings, the juvenile may be detained or may be released upon the giving of an appearance bond in an amount specified by the court and on such conditions as the court may

impose, in accordance with the applicable provisions of article 28, chapter 22 of Kansas Statutes Annotated. In the absence of either finding, the court shall order the juvenile's release. If detention is ordered and the parent was not notified of the hearing and did not appear and later requests a rehearing, the court shall rehear the matter without unnecessary delay.

Comment

This section incorporates the applicable portions of K.S.A. 1980 Supp. 38-815b and includes forms for the giving of adequate notice of a detention hearing and for recording the giving of oral notice. Under this section, if continued detention is justified by a finding that the juvenile is not likely to appear, the court may either detain the juvenile or require the giving of an appearance bond. The present juvenile code does not provide for the giving of an appearance bond for a juvenile under 18 years of age.

Section 1633. Plea Hearing. (a) At the initial appearance of a juvenile in response to a complaint filed under this code the court shall first determine that the juvenile understands the nature of the charges in the complaint and the rights of the juvenile to include:

(1) The right to be represented by an attorney of the juvenile's own choice;

(2) the duty of the court to appoint an attorney for the juvenile if no attorney is hired by the juvenile or parent;

(3) that the court may require the juvenile or parent to pay the expense of a court appointed attorney;

(4) the right of the juvenile to be presumed innocent of each charge;

(5) the right to trial and to confront and cross-examine witnesses appearing in support of the allegations of the complaint;

(6) the right to subpoena witnesses; and

(7) the right of the juvenile to testify or to decline to testify. The court should then explain the dispositional alternatives the court may select as the result of an adjudication.

(b) Unless there is an application for and approval of a diversion program, the juvenile will be required to admit or deny the allegations stated in the complaint.

(c) If the juvenile admits the allegations contained in a complaint or pleads *nolo contendere*, the court shall determine that there has been a voluntary waiver of the rights enumerated in subsection (a) (4), (5), (6), and (7) of this section, and there is a factual basis for the admission or the plea of *nolo contendere* and then enter an adjudication.

(d) If allegations of the complaint are denied, the court shall schedule a time and date for trial to the court.

Comment

This section is new and recognizes that the initial appearance of an accused juvenile offender is for the purpose of receiving the juvenile's response to the allegations and determining the necessity of scheduling a trial. The section sets forth the juvenile's rights, which are to be explained to the juvenile by the judge.

The present code, in K.S.A. 1980 Supp. 38-817(a), provides that the original summons or notice must advise the juvenile and parent of the right to retain an attorney and requires that if no response has been received within five days the court must appoint an attorney and give notice of the appointment. To avoid serving two notices before the original appearance, most courts presently appoint a guardian *ad litem* without waiting the five days and give notice of the appointment along with the original notice of hearing.

This section should alleviate the resulting problem of an appointed attorney being used where the parties have the ability to retain an attorney.

Section 1634. *Nolo contendere*. A plea of *nolo contendere* is a formal declaration that the respondent does not contest the charge. When a plea of *nolo contendere* is accepted the court may adjudge the juvenile to be a juvenile offender. The plea cannot be used against the respondent as an admission in any other action based on the same act.

Comment

This section is similar to K.S.A. 22-3209(b), although it is new to this code. It recognizes that a plea of *nolo contendere* is allowable under this code.

Section 1635. Diversion. (a) Each court shall adopt a policy and establish guidelines for a diversion program by which a juvenile who has not been previously adjudged to be a juvenile offender may avoid such an adjudication.

(b) Prior to an adjudication on a complaint pending before the court, a juvenile may apply for diversion of the proceedings. Such application shall first be presented to the county or district attorney who shall recommend approval or disapproval of such application. The application may then be presented to the court, and if the district or county attorney has recommended disapproval, the court shall afford such prosecutor an opportunity to appear and state the reasons for such recommendation. The court shall then determine whether to approve or disapprove such application and in making such determination may consider:

(1) The nature of the charge and the circumstances surrounding it;

(2) whether the diversion program is appropriate to the needs of the juvenile;

(3) whether diversion in such case is in the best interest of the community;

(4) recommendations, if any, of the victim; and

(5) proposals for restitution.

(c) A juvenile shall not be required to admit the allegations of the complaint as a condition for diversion. No statements made by the juvenile in any discussion of a diversion application or proposed diversion agreement shall be admissible as evidence in any subsequent adjudication proceeding on the complaint.

(d) The diversion agreement shall specifically include a waiver of all rights to a speedy hearing on the complaint and may include provisions concerning payment of restitution, docket fee and/or court expenses, and such other conditions as the court deems appropriate.

(e) The execution and filing of a diversion agreement shall stay further proceedings on the complaint. If the juvenile fulfills the terms of the diversion agreement for its full term, the court shall enter an order dismissing the complaint with prejudice.

(f) If the court finds that the juvenile has failed to fulfill the terms of the diversion agreement, proceedings on the complaint shall be resumed and the juvenile shall be required to admit or deny the allegations thereof.

Comment

The juvenile code has no provision dealing with the subject of diversion. Practice in many courts has been to handle some cases with informal supervision. This is apparently sanctioned by the provisions of K.S.A. 1980 Supp. 38-816(b), which authorizes a juvenile probation officer to make a determination of when and whether a petition should be filed on the report of a violation.

This section establishes a diversion procedure compatible with the similar procedure available in the adult criminal procedure available under K.S.A. 1980 Supp. 22-2906 to 22-2912. In this code the court is the decision making authority rather than the county or district attorney. It is hoped that placing this diversion section in the statute will make the procedures to allow avoidance of adjudication more uniform throughout the state.

Section 1636. Prosecution as an adult. Notwithstanding any provisions of the Kansas Juvenile Offenders Code or any other law of this state to the contrary, whenever a complaint has been filed pursuant to the Kansas Juvenile Offenders Code alleging that a juvenile is, by reason of violation of any criminal statute, a juvenile offender, and that the juvenile was 16 years of age or older at the time of the alleged commission of such offense and the county or district attorney upon motion made prior to the hearing on the complaint, alleges that such juvenile is not a fit and proper subject to be dealt with under the Kansas Juvenile Offenders Code, the court shall immediately set a time and place for a hearing to determine if such juvenile is a fit and proper person to be dealt with under the Kansas Juvenile Offenders Code. Such hearing shall be held prior to the hearing on the complaint and shall conform to the requirements for notice and appointment of an attorney as provided by section 1632, for detention hearings.

Upon the completion of the hearing and a finding that the juvenile was 16 years of age or older at the time of the alleged commission of the offense, the court may make a finding, noted in the minutes of the court, that the juvenile is not a fit and proper subject to be dealt with under the Kansas Juvenile Offenders Code. In determining whether or not such finding should be made, the court shall consider each of the following factors: (1) Whether the seriousness of the alleged offense is so great that the protection of the community requires criminal prosecution of the juvenile; (2) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (3) the maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, and pattern of living; (4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted; (5) the record and previous history of the juvenile; (6) whether the juvenile would be amenable to the care, treatment, and training program for juveniles available through the facilities of the court; and (7) whether the interests of the juvenile or of the community would be better served by criminal prosecution of the juvenile. The insufficiency of evidence pertaining to any one or more of the factors listed in this section shall not in and of itself be determinative of the issue. Written reports and other materials relating to the juvenile's mental, physical, educational, and social history may be considered by the court, but the court, if so requested by the juvenile, the juvenile's parent or guardian, or other interested party, shall require the person, persons or agency preparing the report and other material to appear and be subject to both direct and cross-examinations.

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-808(b). The Committee made no change in this section because during the time of the drafting of this code the legislature has been actively considering lowering the age at which juveniles are tried in adult courts. If the legislature makes any policy changes in this area they will be incorporated into this draft.

Section 1637. Proceedings to determine competency. (a) For the purpose of this section, a juvenile is "incompetent for hearing" when the juvenile is charged as a juvenile offender and, because of mental illness or defect is unable:

(1) To understand the nature and purpose of the proceedings;
or

(2) to make or assist in making a defense.

(b) Whenever the words "competent," "competency," "incompetent," and "incompetency" are used without qualification

in this code, they shall refer to the juvenile's competency or incompetency, as defined in subsection (a) of this section.

(c) (1) At any time after the juvenile has been charged with an act which, if the juvenile is found to have committed would result in adjudication as a juvenile offender, and before adjudication, the juvenile, the juvenile's attorney or the county or district attorney may request a determination of the juvenile's competency for hearing. If, upon the request of either party or upon one's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the juvenile is incompetent for hearing the proceedings shall be suspended and a hearing conducted to determine the competency of the juvenile.

(2) All proceedings under this section shall be in the court in which the case is pending. The court shall determine the issue of competency and may order a psychiatric examination of the juvenile. To facilitate such psychiatric examination the court may either appoint two qualified physicians to examine the juvenile or designate a private psychiatric facility or public mental health center to conduct such examination and report to the court. If either the physician, the private psychiatric facility, or the public mental health center determines that further examination is necessary the court may commit the juvenile for not more than 60 days, or for good cause shown, the commitment may be extended for another 60 days to any appropriate state, county, or private institution for examination and appropriate report to the court. No statement made by the juvenile in the course of any examination provided for by this section, whether the examination shall be with or without the consent of the juvenile, shall be admitted in evidence against the juvenile in any hearing.

(3) If the juvenile is found to be competent the proceedings which have been suspended shall be resumed.

(4) If the juvenile is found to be incompetent the juvenile shall be committed for treatment and shall remain subject to the further order of the court.

(5) The juvenile shall be present personally at all proceedings under this section.

(6) A juvenile who is found to be incompetent shall be committed for treatment to any appropriate state, county, or private institution during the continuance of that condition. Upon application of the juvenile and in the discretion of the court, the juvenile may be released to any appropriate private institution upon terms and conditions as the court may prescribe.

(7) When reasonable grounds exist to believe that a juvenile who has been adjudged incompetent is now competent the court in which the case is pending shall conduct a hearing to determine the person's present mental condition. Reasonable notice of such

hearings shall be given to the county or district attorney, the juvenile, and to the juvenile's attorney of record, if any. If the court, following such hearing, finds the juvenile to be competent the proceedings pending against the juvenile shall be resumed.

Comment

This section is taken from the code of criminal procedure to provide for appropriate proceedings where there is a question of competency. The section can be compared with K.S.A. 1980 Supp. 38-819a, which was added to the juvenile code in 1978 and provides for suspension of juvenile code proceedings during proceedings for care and treatment of a mentally ill person.

Section 1638. Same; commitment of incompetent. (a) A respondent who is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county, or private institution for a period of not to exceed 90 days. Within 90 days of the respondent's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the respondent has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the respondent to remain in an appropriate state, county, or private institution until the respondent attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statute Annotated, and any amendments thereto.

(b) If a respondent who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (a) of this section has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto.

(c) When reasonable grounds exist to believe that a respondent who has been adjudged incompetent to stand trial is competent, the court in which the case is pending shall conduct a hearing in accordance with section 1637 of this code, to determine the person's present mental condition. Reasonable notice of such hearings shall be given to the prosecuting attorney, the respondent, and the respondent's attorney of record, if any. If the court, following such hearing, finds the respondent to be competent the proceedings pending against the respondent shall be resumed.

(d) A respondent committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all

or any part of the time during which the respondent was committed and confined in such public institution.

Comment

This section is taken from the code of criminal procedure to provide for appropriate proceedings where there is a question of competency.

Section 1639. Same; procedure when respondent not civilly committed. (a) Whenever involuntary commitment proceedings have been commenced by the secretary as required by section 1638 of this code, and the respondent is not committed to a treatment facility as a patient, the respondent shall remain in the institution where committed pursuant to section 1638, of this code, and the secretary shall promptly notify the court in which the proceedings are pending of the result of the involuntary commitment proceeding. The court shall then proceed pursuant to subsection (c).

(b) Whenever involuntary commitment proceedings have been commenced by the secretary as required by section 1638 of this code, and the respondent is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, the respondent shall remain in the institution where committed pursuant to section 1638 of this code, and the head of the treatment facility shall promptly notify the court in which the proceedings are pending that the respondent is to be discharged. The court shall then proceed pursuant to subsection (c).

(c) Within five days after receiving notice pursuant to subsection (a) or (b), the court shall order the respondent to be discharged from commitment and shall dismiss without prejudice the charges against the respondent, and the period of limitation for the prosecution for the crime charged shall not continue to run until the respondent has been determined to have attained competency.

Comment

This section is taken from the code of criminal procedure to provide for appropriate proceedings where there is a question of competency.

Section 1640—1650. Reserved for future use.

ADJUDICATION PROCEDURE

Section 1651. Time of trial. All persons charged under this code shall be tried without unnecessary delay. Continuances may be granted to either party for good cause shown.

Comment

Presently, K.S.A. 1980 Supp. 38-817(a) prescribes a hearing within two weeks of the filing of a petition but authorizes continuances for good cause. It is seldom that the court can schedule a trial or that attorneys can be prepared for trial within that time. This section recognizes that fact.

Section 1652. Confidentiality of proceedings. In the trial of any case where the juvenile was less than 16 years old at the time of the alleged act the court may exclude from any hearing pursuant to this code all persons except the juvenile, the juvenile's parents, attorneys for interested parties, officers of the court, and the witness testifying.

Upon agreement of all interested parties the court shall allow other persons to attend said proceedings, unless the court finds the presence of such persons would be disruptive to the proceedings.

Comment

Presently, K.S.A. 1980 Supp. 38-822 gives the judge the authority to exclude persons from any hearing pursuant to the juvenile code. This section removes that authority from the judge in hearings involving juveniles 16 and 17 years old. This is consistent with the opening of official records of those juveniles.

The second paragraph is new and allows the court to open proceedings in certain circumstances.

Section 1653. Rules of evidence. In all proceedings under this code the rules of evidence of the code of civil procedure shall apply.

The judge presiding at the hearing shall not consider, read, or rely upon any report not properly admitted according to the rules of evidence.

Comment

The first paragraph of this section retains a portion of K.S.A. 1980 Supp. 38-813. The second paragraph is an admonition to judges and contains the same subject as the last sentence of K.S.A. 1980 Supp. 38-808(b).

Section 1654. Degree of proof. In all proceedings on complaints alleging a juvenile to be a juvenile offender the state must prove beyond a reasonable doubt that the juvenile committed the act or acts charged in the complaint or some lesser included offense.

Comment

This section makes no change in current case law regarding the degree of proof. Presently, K.S.A. 1980 Supp. 38-816(f) provides that upon hearing of any petition

the judge may amend the petition to conform with the facts and render judgments accordingly. Under this section the judge is restricted to the offense charged or a lesser included offense thereof.

Section 1655. Adjudication. If the court finds that the evidence fails to prove an offense charged or an included offense as defined in K.S.A. 21-3107(2) the court shall enter an order dismissing such charge.

If the court finds that the juvenile committed the offense charged or an included offense as defined in K.S.A. 21-3107(2) the court shall adjudicate the juvenile to be a juvenile offender and may enter such orders of disposition as are authorized by this code.

Comment

This section states in general language what action the court is to take upon adjudication. Presently, K.S.A. 1980 Supp. 38-817(b) and 38-819(b) speak to the same subject.

Section 1656—1660. Reserved for future use.

DISPOSITIONAL PROCEDURES

Section 1661. Predispositional investigation and report. (a) Prior to a dispositional hearing the court may request an investigation and report by a court service officer unless the court finds that adequate and current information is available from a previous investigation, report or from other sources.

(b) The court may direct that the investigation include the circumstances of the offense; the attitude of the complainant, victim, or the victim's family; and the juvenile or criminal record, social history, and present condition of the respondent. Except where specifically prohibited by law, all local governmental and state agencies shall furnish to the officer conducting the predispositional investigation such records as such officer may request. If ordered by the court, the predispositional investigation shall include a physical examination and mental evaluation of the respondent. Predispositional investigations shall contain such other information as may be prescribed by the court.

Comment

This section is new and was adopted from K.S.A. 21-4604, the presentence investigation and report procedures section of the criminal code. The section will make no change from the practice in most courts.

Section 1662. Evaluation of development or needs. (a) Psychological or emotional. Following an adjudication under this

code the court may order an evaluation and written report of the psychological or emotional development or needs of a juvenile who is the subject of the proceedings. The court may refer said juvenile to a state institution for such evaluation if the secretary advises the court that such facility is a suitable place to care for, treat, or evaluate such juvenile and that space is available. The expenses of transportation to and from such state facility may be paid as a part of the expenses of such temporary care and custody. The juvenile may be referred to a mental health center or a qualified professional for such evaluation and the expenses thereof considered as expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation as provided in this section, a parent of said juvenile shall have the right to obtain an independent evaluation at the expense of such parent.

(b) Medical. Following an adjudication under this code the court may order an examination and report of the medical condition and needs of a juvenile who is the subject of the proceedings. The court may also order a report from any physician who has been attending such juvenile stating the diagnosis, condition, and treatment afforded such juvenile.

(c) Educational. The court may request the chief administrative officer of the school which the juvenile attends or attended to provide to the court information that is readily available which the school officials feel would properly indicate the educational needs of the juvenile. If the resources of the school permit, the school may conduct an educational needs assessment of the juvenile and send a report thereof to the court. As used herein educational needs assessment may include a meeting involving any of the following: (1) The juvenile's parents, (2) the juvenile's teacher or teachers, (3) the school psychologist, (4) a school special services representative, and (5) such other persons as the chief administrative officer of the school, or such officer's designee, deems appropriate.

Comment

Presently, K.S.A. 1980 Supp. 38-823(c) authorizes the referral of the juvenile to a state institution for evaluation and authorizes requests for information from the chief administrative officer of the school which the juvenile attends.

Subsection (b) gives the court authority to order an examination and report of the medical condition and needs of a juvenile.

Section 1663. Dispositional alternatives. When a juvenile has been adjudged to be a juvenile offender, the judge may select from the following alternatives:

(a) Place such juvenile on probation for a fixed period, subject to such terms and conditions as the court may deem appropriate, including a requirement of:

(1) restitution in an amount fixed by the court;

(2) working for the person who has sustained a loss in order to compensate for such loss.

(b) Place such juvenile in the custody of a parent or other suitable person, subject to such terms and conditions as the court may deem appropriate.

(c) Place such juvenile in a youth residential facility, subject to such terms and conditions as the court may deem proper.

(d) Place such juvenile in the custody of the secretary, who may place such juvenile in:

(1) any institution operated by the secretary;

(2) a youth residential facility; or

(3) a community mental health clinic.

(e) Impose any appropriate combination of (a), (b), (c), and (d), and the court may make such other orders directed to the juvenile or the juvenile's parents or both, as may be deemed appropriate.

(f) Commit such juvenile to a state operated youth center if the juvenile:

(1) is 13 years of age or older;

(2) had had a previous out-of-home placement arising from a dispositional order pursuant to this code or the Kansas Juvenile Code; or

(3) has been adjudicated a juvenile offender as a result of having committed an act which, if done by a person 18 years of age or over, would constitute a class A, B, or C felony or the crime of rape or aggravated sodomy, as defined by the Kansas Criminal Code.

(g) In addition to the orders authorized pursuant to the foregoing provisions of this section, the court may order the juvenile or the parents of any juvenile who has been adjudged a juvenile offender to attend such counseling sessions as the court may direct. The costs of any such counseling may be assessed as expenses in the case. No mental health center shall charge a fee different for court-ordered counseling than such center would have charged the person receiving such counseling when such person requests counseling on the person's own initiative.

Comment

This section is a restatement of K.S.A. 1980 Supp. 38-826 with some clarifying modifications. The principal distinction is that at present a juvenile is committed to the secretary whether for required placement in a youth center or other purposes. The Committee has used the term "committed" to apply only where prerequisites have been met and placement in a youth center can be required by the court.

Subsection (e) clarifies that a juvenile may be placed on probation and in the custody of the secretary at the same time.

Section 1664. Juvenile placed in custody of secretary. (a) When a juvenile has been placed in the custody of the secretary, the secretary shall notify the court in writing of the initial placement of such juvenile as soon as such placement has been accomplished. The court shall have no power to direct a specific placement by the secretary, but may make recommendations to the secretary. The secretary may place such juvenile in an institution operated by the secretary, a youth residential facility, or a community mental health clinic. If the court has recommended an out-of-home placement, the secretary may not return the juvenile to the home from which removed without first notifying the court of such plan.

(b) The secretary shall not permit the juvenile to remain detained in any jail for more than 72 hours, excluding Saturdays, Sundays, and legal holidays, after the secretary has received notice that the juvenile has been placed in the custody of the secretary.

(c) During the time a juvenile remains in the custody of the secretary, the secretary shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile.

Comment

Subsection (a) restates K.S.A. 1980 Supp. 38-826a and clarifies that the court shall not have the power to direct a specific placement.

Subsection (b) is taken from K.S.A. 1980 Supp. 38-826e.

Subsection (c) is taken from K.S.A. 1980 Supp. 38-826b(a).

Section 1665. Modification of disposition. When a juvenile offender has been placed in the custody of a person other than a parent or in a youth residential facility, the court may cause the juvenile to be brought before it, together with the person or persons in whose custody the juvenile may be, and if it shall appear that a continuance of such custody or placement is not in the best interests of such juvenile, the court may rescind and set aside the order giving such custody and make such further dispositional order for the custody of the juvenile as shall be appropriate.

Comment

This section is substantially the same as K.S.A. 1980 Supp. 38-829.

Section 1666. Rehearing on issue of custody. At any time after the entry of an authorized disposition awarding custody of a juvenile to a person other than a parent, the court on its own motion, or the secretary, the attorney for the juvenile, or any

interested party may file a motion with the court for a rehearing on the issue of custody. Upon such motion, the court shall fix a time and place for hearing and shall notify each interested party of such time and place. After the hearing, the court may enter any authorized disposition. If the court shall determine that it is in the best interests of the juvenile to be returned to the custody of the parent or parents, the court shall so order:

Comment

This section is nearly identical to K.S.A. 1980 Supp. 38-829a(a), except it requires notice and speaks to possible dispositions.

Section 1667. Violation of condition of probation or placement. If it is alleged that a juvenile offender has violated a condition of probation or of a court ordered placement that would not constitute grounds for filing a new complaint, the county or district attorney, the assigned court service officer, or the person in whom care, custody, and control of a juvenile has been placed may file a report with the court describing the alleged violation and requesting a hearing thereon. The court shall then proceed in the same manner and under the same procedure as for a hearing on a complaint. If the court finds at the hearing that the juvenile violated a condition of probation or placement, the court may extend or modify the terms of probation or placement or enter another authorized disposition.

Comment

This section is nearly identical to present K.S.A. 1980 Supp. 38-829b(a).

Section 1668. Termination of jurisdiction. In every case under this code the judge shall designate in the file of the case the date of the termination of jurisdiction by the court whether the termination is by virtue of an order of the court, the juvenile reaching the age of majority, the death of the juvenile, or any other reason.

Comment

This section is new and requires that each case under this code be formally terminated.

Section 1669—1670. Reserved for future use.

Section 1671. Commitment to state youth center; duties at time of commitment. (a) Actions by the court. When a juvenile has been committed to a state youth center, the clerk of the court shall forthwith notify the secretary of such commitment and provide the secretary with a certified copy of the dispositional order. If the

court wishes to recommend placement of the juvenile in a specific youth center, such recommendation should be included in the dispositional order. After the court has received notice of the youth center designated as provided in subsection (b), it shall be the duty of the court or the sheriff of the county to deliver such juvenile to such facility at the time designated by the secretary.

(b) Actions by the secretary. (1) After receiving notice of commitment as provided in subsection (a), the secretary shall give the committing court written notice designating the youth center or youth rehabilitation center to which such juvenile is to be admitted and the date of such admission.

(2) The secretary shall not permit the juvenile to remain detained in any jail for more than 72 hours, excluding Saturdays, Sundays, and legal holidays, after the secretary has received notice of such commitment. In the event placement of the juvenile in a state youth center or youth rehabilitation center cannot be accomplished within such 72 hour period, the secretary may make any temporary placement the secretary deems appropriate, other than placement in a jail, pending placement of the juvenile in a youth center or youth rehabilitation center.

Comment

Subsection (a) is new and was written to clarify the duties of the various parties at the time the juvenile is committed to a state youth center.

Subsection (b) relates to the actions to be taken by the secretary upon receipt of notice of commitment. This subsection is similar to K.S.A. 1980 Supp. 38-826c.

Section 1672. Same; court review after commitment. Anytime within 60 days after a court has committed a juvenile to a youth center the court may modify such dispositional order and enter any other authorized disposition.

Comment

This section is new and states that the court may withdraw the commitment to a youth center during the first 60 days.

Section 1673. Same; procedure when new offense alleged. (a) Except as provided in subsection (b), if a complaint is filed alleging new offenses by a juvenile who is under commitment to the state youth center, such juvenile shall be forthwith returned to the custody of the secretary to be detained in such place as the secretary directs during the pendency of such complaint and may not be either released or detained in any other facility or place. Such juvenile shall be allowed to confer with the juvenile's attorney and said secretary shall release such juvenile to the custody of the court at the times required for adjudication or

disposition. If such juvenile is again adjudged to be a juvenile offender, such juvenile shall again be committed to the previously designated state youth center or youth rehabilitation center.

(b) The provisions of subsection (a) shall not apply if a motion is filed under the provisions of section 1636 alleging that such juvenile is not a fit and proper subject to be dealt with under the Kansas Juvenile Offenders Code. In such case the juvenile may be detained in a detention facility until the hearing on said motion. If the court hearing said motion fails to find said juvenile is not a fit and proper subject to be dealt with under the Kansas Juvenile Offenders Code, said juvenile shall then be returned to the state youth center as provided in subsection (a).

Comment

This section is substantially similar to K.S.A. 1980 Supp. 38-826d.

Section 1674. Same; conditional release; procedure; supervision. (a) When a juvenile has satisfactorily completed the program at the state youth center to which said juvenile was committed, the superintendent in charge of said youth center shall have authority to release said juvenile on appropriate conditions and for a specified period of time.

(b) At least 30 days prior to releasing a juvenile as provided in subsection (a), the superintendent in charge of the youth center shall notify the committing court of the date and conditions upon which it is proposed said juvenile is to be released.

(c) Upon receipt of the notice as provided in subsection (b), the court shall review the proposed conditions of release and may recommend modifications or additions to such conditions.

(d) If the juvenile is not returning to the county from which committed during the conditional release, the superintendent shall also give notice to the court of the county in which the juvenile is to be residing.

(e) To assure compliance with conditions of release from a youth center, the secretary shall have the authority to prescribe the manner in which compliance with said conditions shall be supervised. When requested by the secretary, the appropriate court may assist in supervising compliance with the conditions of release during the term of such conditional release.

Comment

This is a new section and is intended to resolve the disparity between the provision in the juvenile code contained in K.S.A. 1980 Supp. 38-806(c), which states that once the juvenile is adjudicated the court retains jurisdiction until age 21, or final discharge by the court, and K.S.A. 75-3336a, K.S.A. 1980 Supp. 76-2114, and K.S.A. 76-2212 which say the superintendent of a youth center has authority to discharge a juvenile upon completion of the youth center program and such discharge is final.

It is intended that this section facilitate a better coordinated effort between local courts and SRS in returning the juvenile to the home community.

Section 1675. Same; conditional release; failure to obey. If it is alleged that a juvenile offender who has been conditionally released from a state youth center has failed to obey the specified conditions of release, any social worker or court service officer assigned to supervise compliance with the conditions of release or the county or district attorney may file a motion with the committing court or the court of the county in which the juvenile is residing. The motion shall describe the alleged violation and request a hearing thereon. The court shall then proceed in the same manner and under the same procedure as provided for a hearing on a complaint filed under this code. If the court finds that a condition of release has been violated, the court may impose such additional conditions of release as the court may deem appropriate, extend the term of such conditional release, or order that the juvenile be returned to the youth center until discharged by the superintendent in charge thereof.

Comment

This section is similar to K.S.A. 1980 Supp. 38-829b(b), but has given authority to the court service officer to initiate a review when the court service officer is requested to supervise compliance with conditions of release.

Section 1676. Same; discharge from commitment. When a juvenile offender has reached the age of 21 years, or has successfully completed the program at a youth center together with any conditional release following such program, the superintendent in charge of such youth center shall discharge such juvenile from any further obligation under such commitment. Such a discharge shall operate as a full and complete release from any obligations imposed on the juvenile arising from the offense for which the juvenile was committed.

Comment

This section places in this code language now found in K.S.A. 1980 Supp. 76-2109 and K.S.A. 76-2209, and clarifies who has authority to discharge after the juvenile has been through the state youth center for a given offense or offenses.

Section 1677—1680. Reserved for future use.

APPEALS

Section 1681. Orders appealable by juvenile. (a) Order finding juvenile not a fit and proper subject to be dealt with pursuant to Kansas Juvenile Offenders Code. (1) Except as provided in sub-

section (b) herein, an appeal may be taken by a juvenile or in the juvenile's behalf by a parent or attorney from an order finding the juvenile not a fit and proper subject to be dealt with under the Kansas Juvenile Offenders Code. Such appeal shall be taken only after conviction and in the same manner as other appeals pursuant to the Kansas Code of Criminal Procedure.

(2) No appeal shall be taken from an order finding a juvenile not a fit and proper subject to be dealt with under the Kansas Juvenile Offenders Code where such juvenile has consented to such findings or where the criminal prosecution has resulted in a judgment of conviction upon plea of guilty or *nolo contendere*.

(b) Orders of adjudication and disposition. An appeal may be taken by a juvenile, or in the juvenile's behalf by a parent or attorney, from an order of adjudication or disposition, or both. Such appeal shall be taken within 10 days after entry of the order of disposition.

Comment

This section includes language presently found in K.S.A. 1980 Supp. 38-834. The principal change is in subsection (a) which deals with restrictions on the present right to appeal from an order finding the juvenile not a fit and proper subject to be dealt with under the Kansas Juvenile Code.

Section 1682. Appeals by prosecution. An appeal may be taken by the prosecution from an order dismissing a complaint or upon a question reserved by the prosecution. Such appeal shall be taken within 10 days after the entry of the order of adjudication.

Comment

This section is similar to K.S.A. 1980 Supp. 38-834a(a), except it reduces the appeal time from 30 days to 10 days on questions reserved. There is no change in the time for certification appeals.

Section 1683. Interlocutory appeals. (a) When a judge prior to the adjudicatory hearing makes an order quashing a search warrant, suppressing evidence, or suppressing a confession or admission, an appeal may be taken by the prosecution from such order if notice of appeal is filed within 10 days after entry of the order.

(b) At the request of the county or district attorney further proceedings shall be stayed pending determination of the appeal.

Comment

This section is new and is patterned after K.S.A. 22-3603.

Section 1684. Appeals procedure. (a) An appeal from an order entered by a district magistrate judge shall be to a district judge or

associate district judge. Such appeal shall be heard *de novo* within 30 days from the date the notice of appeal was filed.

(b) An appeal from an order entered by a district judge or associate district judge shall be to the court of appeals.

(c) An appeal from a decision of the court of appeals shall be to the supreme court.

(d) Procedure on appeal shall be governed by article 21 of chapter 60 of Kansas Statutes Annotated.

Comment

This section restates K.S.A. 1980 Supp. 38-834(b).

Section 1685. Temporary orders pending appeal; status of orders appealed from. (a) Except as provided in section 1683, pending the determination of the appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) The court on appeal, pending a hearing, may modify the order appealed from and may make such temporary orders concerning the care and custody of the juvenile as the court deems advisable.

Comment

This section is substantially the same as K.S.A. 1980 Supp. 38-834(c).

Section 1686. Costs and fees. When an appeal is taken pursuant to this code, fees of an attorney appointed to represent the juvenile shall be fixed by the court on appeal. Such fees, together with the costs of transcripts and records on appeal, shall be taxed as costs on appeal. The court on appeal may assess the costs against the appealing party or order that they be paid from the general fund of the county. When the court orders such costs assessed against the appealing party:

(a) The costs shall be paid from the county general fund, subject to reimbursement by such appealing party;

(b) the county may enforce such order as a civil judgment except the county shall not be required to pay the docket fee or fee for execution.

Comment

Presently, K.S.A. 1980 Supp. 38-834b makes the county responsible for paying the allowable attorneys' fees and expenses if they are assessed and collected from a parent, guardian, or conservator. The present statute gives the appellate court the duty of determining to whom these items shall be assessed, but not the duty of determining the amount as in criminal appeals where the fees and expenses are paid by the AID fund. The trial court does not have sufficient knowledge to determine the amount of fees that should be allowed on appeal.

Change in Address of Recipient

The KANSAS JUDICIAL COUNCIL BULLETIN is published at least once each year and is mailed without charge to lawyers, courts, public officials, libraries and other persons who are interested in the work of the Judicial Council.

In order to save unnecessary printing and mailing expenses the mailing list for the KANSAS JUDICIAL COUNCIL BULLETIN is continually being revised.

Persons receiving the KANSAS JUDICIAL COUNCIL BULLETIN, other than lawyers registered with the Supreme Court under Rule 208, should advise the Judicial Council promptly if they have changed their address, and should provide the Judicial Council with both their previous address and their new address.

Lawyers registered under Supreme Court Rule 208 need not inform the Judicial Council of a change in address, but need only comply with subsection (c) of Supreme Court Rule 208. The Clerk of the Appellate Courts will then furnish the change in address to the Judicial Council.

Address all correspondence to KANSAS JUDICIAL COUNCIL, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612.

KANSAS JUDICIAL COUNCIL
Kansas Judicial Center
101 West 10th Street
Topeka, Kansas 66612

Bulk Rate
U. S. POSTAGE

PAID

Topeka, Kansas
Permit No. 421

PRINTED IN THE
KANSAS STATE PRINTING PLANT
TOPEKA, KANSAS

1981

38-9187