

HOUSE BILL No. 2536

By Committee on Children and Families

1-25

1 AN ACT concerning the revised Kansas code for care of children; relating
2 to grandparents; legislative access; amending K.S.A. 2011 Supp. 38-
3 2205, 38-2212, 38-2213, 38-2232, 38-2242, 38-2243, 38-2248, 38-
4 2252, 38-2255, 38-2258, 38-2259, 38-2260, 38-2264, 38-2270, 38-
5 2272 and 38-2275 and repealing the existing sections; also repealing
6 K.S.A. 2011 Supp. 38-2255b.
7

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

9 Section 1. K.S.A. 2011 Supp. 38-2205 is hereby amended to read as
10 follows: 38-2205. (a) *Appointment of guardian ad litem and attorney for*
11 *child; duties.* Upon the filing of a petition, the court shall appoint an
12 attorney to serve as guardian *ad litem* for a child who is the subject of
13 proceedings under this code. The guardian *ad litem* shall make an
14 independent investigation of the facts upon which the petition is based and
15 shall appear for and represent the best interests of the child. When the
16 child's position is not consistent with the determination of the guardian *ad*
17 *litem* as to the child's best interests, the guardian *ad litem* shall inform the
18 court of the disagreement. The guardian *ad litem* or the child may request
19 the court to appoint a second attorney to serve as attorney for the child,
20 and the court, on good cause shown, may appoint such second attorney.
21 The attorney for the child shall allow the child and the guardian *ad litem* to
22 communicate with one another but may require such communications to
23 occur in the attorney's presence.

24 (b) *Attorney for parent, grandparent or custodian.* A parent or
25 *grandparent* of a child alleged or adjudged to be a child in need of care
26 may be represented by an attorney, in connection with all proceedings
27 under this code. At the first hearing in connection with proceedings under
28 this code, the court shall distribute a pamphlet, designed by the court, to
29 the parents *and grandparents* of a child alleged or adjudged to be a child in
30 need of care, to advise the parents *and grandparents* of their rights in
31 connection with all proceedings under this code.

32 (1) If at any stage of the proceedings a parent or *grandparent* desires
33 but is financially unable to employ an attorney, the court shall appoint an
34 attorney for the parent or *grandparent*. It shall not be necessary to appoint
35 an attorney to represent a parent or *grandparent* who fails or refuses to
36 attend the hearing after having been properly served with process in

1 accordance with K.S.A. 2011 Supp. 38-2237, and amendments thereto. A
2 parent, *grandparent* or custodian who is not a minor, a mentally ill person
3 or a disabled person may waive counsel either in writing or on the record.

4 (2) The court shall appoint an attorney for a parent who is a minor, a
5 mentally ill person or a disabled person unless the court determines that
6 there is an attorney retained who will appear and represent the interests of
7 the person in the proceedings under this code.

8 (3) As used in this subsection: (A) "Mentally ill person" shall have
9 the meaning ascribed thereto in K.S.A. 59-2946, and amendments thereto;
10 and (B) "disabled person" shall have the meaning ascribed thereto in
11 K.S.A. 77-201, and amendments thereto.

12 (c) *Attorney for interested parties.* A person who, pursuant to K.S.A.
13 2011 Supp. 38-2241, and amendments thereto, is an interested party in a
14 proceeding involving a child alleged to be a child in need of care may be
15 represented by an attorney in connection with all proceedings under this
16 code. At the first hearing in connection with proceedings under this code,
17 the court shall distribute a pamphlet, designed by the court, to interested
18 parties in a proceeding involving a child alleged or adjudged to be a child
19 in need of care, to advise interested parties of their rights in connection
20 with all proceedings under this code. It shall not be necessary to appoint an
21 attorney to represent an interested party who fails or refuses to attend the
22 hearing after having been properly served with process in accordance with
23 K.S.A. 2011 Supp. 38-2237, and amendments thereto. If at any stage of the
24 proceedings a person who is an interested party under subsection (d) of
25 K.S.A. 2011 Supp. 38-2241, and amendments thereto, desires but is
26 financially unable to employ an attorney, the court may appoint an attorney
27 for the interested party.

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

35 (e) *Fees for counsel.* An attorney appointed pursuant to this section
36 shall be allowed a reasonable fee for services, which may be assessed as
37 an expense in the proceedings as provided in K.S.A. 2011 Supp. 38-2215,
38 and amendments thereto.

39 Sec. 2. K.S.A. 2011 Supp. 38-2212 is hereby amended to read as
40 follows: 38-2212. (a) *Principle of appropriate access.* Information
41 contained in confidential agency records concerning a child alleged or
42 adjudicated to be in need of care may be disclosed as provided in this
43 section. Disclosure shall in all cases be guided by the principle of

1 providing access only to persons or entities with a need for information
2 that is directly related to achieving the purposes of this code.

3 (b) *Free exchange of information.* Pursuant to K.S.A. 2011 Supp. 38-
4 2210, and amendments thereto, the secretary and juvenile intake and
5 assessment agencies shall participate in the free exchange of information
6 concerning a child who is alleged or adjudicated to be in need of care.

7 (c) *Necessary access.* The following persons or entities shall have
8 access to information from agency records. Access shall be limited to
9 information reasonably necessary to carry out their lawful responsibilities,
10 to maintain their personal safety and the personal safety of individuals in
11 their care, or to educate, diagnose, treat, care for or protect a child alleged
12 to be in need of care. Information authorized to be disclosed pursuant to
13 this subsection shall not contain information which identifies a reporter of
14 a child who is alleged or adjudicated to be a child in need of care.

15 (1) A child named in the report or records, a guardian *ad litem*
16 appointed for the child and the child's attorney.

17 (2) A parent or other person responsible for the welfare of a child, or
18 such person's legal representative.

19 (3) A court-appointed special advocate for a child, a citizen review
20 board or other advocate which reports to the court.

21 (4) A person licensed to practice the healing arts or mental health
22 profession in order to diagnose, care for, treat or supervise: (A) A child
23 whom such service provider reasonably suspects may be in need of care;
24 (B) a member of the child's family; or (C) a person who allegedly abused
25 or neglected the child.

26 (5) A person or entity licensed or registered by the secretary of health
27 and environment or approved by the secretary of social and rehabilitation
28 services to care for, treat or supervise a child in need of care.

29 (6) A coroner or medical examiner when such person is determining
30 the cause of death of a child.

31 (7) The state child death review board established under K.S.A. 22a-
32 243, and amendments thereto.

33 (8) An attorney for a private party who files a petition pursuant to
34 subsection (b) of K.S.A. 2011 Supp. 38-2233, and amendments thereto.

35 (9) A *grandparent*, foster parent, prospective foster parent, permanent
36 custodian, prospective permanent custodian, adoptive parent or
37 prospective adoptive parent. In order to assist such person's in making an
38 informed decision regarding acceptance of a particular child, to help the
39 family anticipate problems which may occur during the child's placement,
40 and to help the family meet the needs of the child in a constructive manner,
41 the secretary shall seek and shall provide the following information to such
42 person's as the information becomes available to the secretary:

43 (A) Strengths, needs and general behavior of the child;

1 (B) circumstances which necessitated placement;

2 (C) information about the child's family and the child's relationship to
3 the family which may affect the placement;

4 (D) important life experiences and relationships which may affect the
5 child's feelings, behavior, attitudes or adjustment;

6 (E) medical history of the child, including third-party coverage which
7 may be available to the child; and

8 (F) education history, to include present grade placement, special
9 strengths and weaknesses.

10 (10) The state protection and advocacy agency as provided by
11 subsection (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of
12 K.S.A. 74-5515, and amendments thereto.

13 (11) Any educational institution to the extent necessary to enable the
14 educational institution to provide the safest possible environment for its
15 pupils and employees.

16 (12) Any educator to the extent necessary to enable the educator to
17 protect the personal safety of the educator and the educator's pupils.

18 (13) Any other federal, state or local government executive branch
19 entity or any agent of such entity, having a need for such information in
20 order to carry out such entity's responsibilities under the law to protect
21 children from abuse and neglect.

22 (d) *Specified access.* The following persons or entities shall have
23 access to information contained in agency records as specified.
24 Information authorized to be disclosed pursuant to this subsection shall not
25 contain information which identifies a reporter of a child who is alleged or
26 adjudicated to be a child in need of care.

27 (1) Information from confidential agency records of the department
28 of social and rehabilitation services, a law enforcement agency or any
29 juvenile intake and assessment worker of a child alleged or adjudicated to
30 be in need of care shall be available to members of the standing house or
31 senate committee on judiciary, *house committee on children and families*,
32 house committee on corrections and juvenile justice, house committee on
33 appropriations, senate committee on ways and means, legislative post audit
34 committee and any joint committee with authority to consider children's
35 and families' issues, when carrying out such member's or committee's
36 official functions in accordance with K.S.A. 75-4319, and amendments
37 thereto, in a closed or executive meeting. Except in limited conditions
38 established by $\frac{2}{3}$ of the members of such committee, records and reports
39 received by the committee shall not be further disclosed. Unauthorized
40 disclosure may subject such member to discipline or censure from the
41 house of representatives or senate. The secretary of social and
42 rehabilitation services shall not summarize the outcome of department
43 actions regarding a child alleged to be a child in need of care in

1 information available to members of such committees.

2 (2) The secretary of social and rehabilitation services may summarize
3 the outcome of department actions regarding a child alleged to be a child
4 in need of care to a person having made such report.

5 (3) Information from confidential reports or records of a child alleged
6 or adjudicated to be a child in need of care may be disclosed to the public
7 when:

8 (A) The individuals involved or their representatives have given
9 express written consent; or

10 (B) the investigation of the abuse or neglect of the child or the filing
11 of a petition alleging a child to be in need of care has become public
12 knowledge, provided, however, that the agency shall limit disclosure to
13 confirmation of procedural details relating to the handling of the case by
14 professionals.

15 (e) *Court order*: Notwithstanding the provisions of this section, a
16 court of competent jurisdiction, after in camera inspection, may order
17 disclosure of confidential agency records pursuant to a determination that
18 the disclosure is in the best interests of the child who is the subject of the
19 reports or that the records are necessary for the proceedings of the court
20 and otherwise admissible as evidence. The court shall specify the terms of
21 disclosure and impose appropriate limitations.

22 (f) (1) Notwithstanding any other provision of law to the contrary,
23 except as provided in paragraph (4), in the event that child abuse or
24 neglect results in a child fatality or near fatality, reports or records of a
25 child alleged or adjudicated to be in need of care received by the secretary,
26 a law enforcement agency or any juvenile intake and assessment worker
27 shall become a public record and subject to disclosure pursuant to K.S.A.
28 45-215, and amendments thereto.

29 (2) Within seven days of receipt of a request in accordance with the
30 procedures adopted under K.S.A. 45-220, and amendments thereto, the
31 secretary shall notify any affected individual that an open records request
32 has been made concerning such records. The secretary or any affected
33 individual may file a motion requesting the court to prevent disclosure of
34 such record or report, or any select portion thereof. If the affected
35 individual does not file such motion within seven days of notification, and
36 the secretary has not filed a motion, the secretary shall release the reports
37 or records. If such motion is filed, the court shall consider the effect such
38 disclosure may have upon an ongoing criminal investigation, a pending
39 prosecution, or the privacy of the child, if living, or the child's siblings,
40 parents or guardians. The court shall make written findings on the record
41 justifying the closing of the records and shall provide a copy of the journal
42 entry to the affected parties and the individual requesting disclosure
43 pursuant to the Kansas open records act, K.S.A. 45-215 *et seq.*, and

1 amendments thereto.

2 (3) For reports or records requested pursuant to this subsection, the
3 time limitations specified in this subsection shall control to the extent of
4 any inconsistency between this subsection and K.S.A. 45-218, and
5 amendments thereto. As used in this section, "near fatality" means an act
6 that, as certified by a person licensed to practice medicine and surgery,
7 places the child in serious or critical condition.

8 (4) Nothing in this subsection shall allow the disclosure of reports,
9 records or documents concerning the child and such child's biological
10 parents which were created prior to such child's adoption. Nothing herein
11 is intended to require that an otherwise privileged communication lose its
12 privileged character.

13 Sec. 3. K.S.A. 2011 Supp. 38-2213 is hereby amended to read as
14 follows: 38-2213. (a) *Principle of limited disclosure.* Information
15 contained in confidential law enforcement records concerning a child
16 alleged or adjudicated to be in need of care may be disclosed as provided
17 in this section. Disclosure shall in all cases be guided by the principle of
18 providing access only to persons or entities with a need for information
19 that is directly related to achieving the purposes of this code.

20 (b) *Free exchange of information.* Pursuant to K.S.A. 2011 Supp. 38-
21 2210, and amendments thereto, a law enforcement agency shall participate
22 in the free exchange of information concerning a child who is alleged or
23 adjudicated to be in need of care.

24 (c) *Access to information in law enforcement records.* In order to
25 discharge their official duties, the following persons or entities shall have
26 access to confidential law enforcement records concerning a child alleged
27 or adjudicated to be in need of care.

28 (1) The court having jurisdiction over the proceedings, including the
29 presiding judge and any court personnel designated by the judge.

30 (2) The secretary.

31 (3) The commissioner of juvenile justice.

32 (4) Law enforcement officers or county or district attorneys or their
33 staff.

34 (5) Any juvenile intake and assessment worker.

35 (6) Members of a court-appointed multidisciplinary team.

36 (7) Any other federal, state or local government executive branch
37 entity, or any agent of such entity, having a need for such information in
38 order to carry out such entity's responsibilities under law to protect
39 children from abuse and neglect.

40 (8) Persons or entities allowed access pursuant to subsection (f) of
41 K.S.A. 2011 Supp. 38-2212, and amendments thereto.

42 (d) *Necessary access.* The following persons or entities shall have
43 access to information from law enforcement records when reasonably

1 necessary to carry out their lawful responsibilities, to maintain their
2 personal safety and the personal safety of individuals in their care, or to
3 educate, diagnose, treat, care for or protect a child alleged or adjudicated
4 to be in need of care. Information authorized to be disclosed in this
5 subsection shall not contain information which identifies a reporter of a
6 child alleged or adjudicated to be a child in need of care.

7 (1) Any individual, or public or private agency authorized by a
8 properly constituted authority to diagnose, care for, treat or supervise a
9 child who is the subject of a report or record of child abuse or neglect,
10 including physicians, psychiatrists, nurses, nurse practitioners,
11 psychologists, licensed social workers, child development specialists,
12 physician assistants, community mental health workers, alcohol and drug
13 abuse counselors, and licensed or registered child care providers.

14 (2) School administrators shall have access to but shall not copy law
15 enforcement records and may disclose information to teachers,
16 paraprofessionals and other school personnel as necessary to meet the
17 educational needs of the child or to protect the safety of students and
18 school employees.

19 (3) The department of health and environment or persons authorized
20 by the department of health and environment pursuant to K.S.A. 65-512,
21 and amendments thereto, for the purposes of carrying out responsibilities
22 relating to licensure or registration of child care providers as required by
23 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments
24 thereto.

25 (4) *A parent, grandparent or other person considered a party to the*
26 *child in need of care action.*

27 (e) *Legislative access.* Information from law enforcement records of a
28 child alleged or adjudicated to be in need of care shall be available to
29 members of the standing house or senate committee on judiciary, *house*
30 *committee on children and families*, house committee on corrections and
31 juvenile justice, house committee on appropriations, senate committee on
32 ways and means, legislative post audit committee and any joint committee
33 with authority to consider children's and families' issues, when carrying
34 out such member's or committee's official functions in accordance with
35 K.S.A. 75-4319, and amendments thereto, in a closed or executive
36 meeting. Except in limited conditions established by $\frac{2}{3}$ of the members of
37 such committee, records and reports received by the committee shall not
38 be further disclosed. Unauthorized disclosure may subject such member to
39 discipline or censure from the house of representatives or senate.

40 (f) *Court order.* Notwithstanding the provisions of this section, a
41 court of competent jurisdiction, after in camera inspection, may order
42 disclosure of confidential law enforcement records pursuant to a
43 determination that the disclosure is in the best interests of the child who is

1 the subject of the reports or that the records are necessary for the
2 proceedings of the court and otherwise admissible as evidence. The court
3 shall specify the terms of disclosure and impose appropriate limitations.

4 Sec. 4. K.S.A. 2011 Supp. 38-2232 is hereby amended to read as
5 follows: 38-2232. (a) To the extent possible, when any law enforcement
6 officer takes into custody a child under the age of 18 years without a court
7 order, the child shall forthwith be delivered to the custody of the child's
8 parent, *grandparent* or other custodian unless there are reasonable grounds
9 to believe that such action would not be in the best interests of the child.
10 Except as provided in subsection (b), if the child is not delivered to the
11 custody of the child's parent, *grandparent* or other custodian, the child
12 shall forthwith be delivered to a shelter facility designated by the court,
13 court services officer, juvenile intake and assessment worker, licensed
14 attendant care center or other person or, if the child is 15 years of age or
15 younger, or 16 or 17 years of age if the child has no identifiable parental or
16 family resources or shows signs of physical, mental, emotional or sexual
17 abuse, to a facility or person designated by the secretary. If, after delivery
18 of the child to a shelter facility, the person in charge of the shelter facility
19 at that time and the law enforcement officer determine that the child will
20 not remain in the shelter facility and if the child is presently alleged, but
21 not yet adjudicated, to be a child in need of care solely pursuant to
22 subsection (d)(9) or (d)(10) of K.S.A. 2011 Supp. 38-2202, and
23 amendments thereto, the law enforcement officer shall deliver the child to
24 a juvenile detention facility or other secure facility, designated by the
25 court, where the child shall be detained for not more than 24 hours,
26 excluding Saturdays, Sundays, legal holidays, and days on which the
27 office of the clerk of the court is not accessible. No child taken into
28 custody pursuant to this code shall be placed in a juvenile detention
29 facility or other secure facility, except as authorized by this section and by
30 K.S.A. 2011 Supp. 38-2242, 38-2243 and 38-2260, and amendments
31 thereto. It shall be the duty of the law enforcement officer to furnish to the
32 county or district attorney, without unnecessary delay, all the information
33 in the possession of the officer pertaining to the child, the child's parents or
34 other persons interested in or likely to be interested in the child and all
35 other facts and circumstances which caused the child to be taken into
36 custody.

37 (b) When any law enforcement officer takes into custody any child as
38 provided in subsection (b)(2) of K.S.A. 2011 Supp. 38-2231, and
39 amendments thereto, proceedings shall be initiated in accordance with the
40 provisions of the interstate compact on juveniles, K.S.A. 38-1001 *et seq.*,
41 and amendments thereto, or K.S.A. 2011 Supp. 38-1008, and amendments
42 thereto, when effective. Any child taken into custody pursuant to the
43 interstate compact on juveniles may be detained in a juvenile detention

1 facility or other secure facility.

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

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

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

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

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

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

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

26 (g) When any law enforcement officer takes into custody any child as
27 provided in subsection (d) of K.S.A. 2011 Supp. 38-2231, and
28 amendments thereto, the child shall forthwith be delivered to the school in
29 which the child is enrolled, any location designated by the school in which
30 the child is enrolled or the child's parent, *grandparent* or other custodian.

31 New Sec. 5. (a) Upon receiving a petition, pursuant to K.S.A. 2011
32 Supp. 38-2234, and amendments thereto, the court of proper jurisdiction
33 shall send a form to the child's parents requiring the parents to list the
34 names, addresses and telephone numbers of, and any comments
35 concerning the appropriateness of the child's potential placement with
36 every grandparent, aunt, uncle, brother, sister, half-sibling and first cousin
37 of the child.

38 (b) The court shall provide a copy of the completed form to the
39 department of social and rehabilitation services.

40 (c) The court shall order the county department of social and
41 rehabilitation services to exercise due diligence to contact all grandparents
42 and other adult relatives within 30 days following the removal of the child
43 and to inform them about placement possibilities for the child, unless the

1 court determines there is good cause not to contact or good cause to delay
2 contacting the child's relatives, including but not limited to, family or
3 domestic violence. The county department of social and rehabilitation
4 services shall provide notice to the relatives that the child has been
5 removed from such child's home; options under federal, state and local law
6 to participate in the child's care or placement; options that may be lost by
7 failing to respond; and requirements to become a foster parent, and
8 services and supports available to the child placed in a foster home. The
9 county department of social and rehabilitation services shall advise each
10 appropriately identified relative that the possibility for placement of the
11 child in such person's home may terminate at a future date; request each
12 such relative who is interested in becoming a placement option for the
13 child to come forward at the earliest possible time to seek placement of the
14 child in such person's home and to cooperate with the county department
15 of social and rehabilitation services to expedite procedures pertaining to
16 the placement of the child in such person's home, if the child cannot be
17 safely returned to the home of the child's parents. The department of social
18 and rehabilitation services shall promulgate rules and regulations for the
19 implementation of this subsection.

20 (d) This section shall be part of and supplemental to the revised
21 Kansas code for care of children.

22 Sec. 6. K.S.A. 2011 Supp. 38-2242 is hereby amended to read as
23 follows: 38-2242. (a) The court, upon verified application, may issue ex
24 parte an order directing that a child be held in protective custody and, if
25 the child has not been taken into custody, an order directing that the child
26 be taken into custody. The application shall state for each child:

- 27 (1) The applicant's belief that the child is a child in need of care;
- 28 (2) that the child is likely to sustain harm if not immediately removed
29 from the home;
- 30 (3) that allowing the child to remain in the home is contrary to the
31 welfare of the child; and
- 32 (4) the facts relied upon to support the application, including efforts
33 known to the applicant to maintain the family unit and prevent the
34 unnecessary removal of the child from the child's home, or the specific
35 facts supporting that an emergency exists which threatens the safety of the
36 child.

37 (b) (1) The order of protective custody may be issued only after the
38 court has determined there is probable cause to believe the allegations in
39 the application are true. The order shall remain in effect until the
40 temporary custody hearing provided for in K.S.A. 2011 Supp. 38-2243,
41 and amendments thereto, unless earlier rescinded by the court.

42 (2) No child shall be held in protective custody for more than 72
43 hours, excluding Saturdays, Sundays, legal holidays, and days on which

1 the office of the clerk of the court is not accessible, unless within the 72-
2 hour period a determination is made as to the necessity for temporary
3 custody in a temporary custody hearing. The time spent in custody
4 pursuant to K.S.A. 2011 Supp. 38-2232, and amendments thereto, shall be
5 included in calculating the 72-hour period. Nothing in this subsection shall
6 be construed to mean that the child must remain in protective custody for
7 72 hours. If a child is in the protective custody of the secretary, the
8 secretary shall allow at least one supervised visit between the child and the
9 parent or parents within such time period as the child is in protective
10 custody. The court may prohibit such supervised visit if the court
11 determines it is not in the best interest of the child.

12 (c) (1) Whenever the court determines the necessity for an order of
13 protective custody, the court may place the child in the protective custody
14 of:

15 (A) A parent, *grandparent* or other person having custody of the child
16 and may enter a restraining order pursuant to subsection (e);

17 (B) a person, other than the parent, *grandparent* or other person
18 having custody, who shall not be required to be licensed under article 5 of
19 chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

20 (C) a youth residential facility;

21 (D) a shelter facility; or

22 (E) the secretary, if the child is 15 years of age or younger, or 16 or
23 17 years of age if the child has no identifiable parental or family resources
24 or shows signs of physical, mental, emotional or sexual abuse.

25 (2) *In the event the child is placed out of the child's home, if in the*
26 *best interest of the child, preference may be given to placing the child with*
27 *the child's grandparent who is appropriate, capable, willing and available*
28 *to care for the child.*

29 (3) If the secretary presents the court with a plan to provide services
30 to a child or family which the court finds will assure the safety of the
31 child, the court may only place the child in the protective custody of the
32 secretary until the court finds the services are in place. The court shall
33 have the authority to require any person or entity agreeing to participate in
34 the plan to perform as set out in the plan. When the child is placed in the
35 protective custody of the secretary, the secretary shall have the
36 discretionary authority to place the child with a parent, *a grandparent* or to
37 make other suitable placement for the child. When the child is presently
38 alleged, but not yet adjudicated, to be a child in need of care solely
39 pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2011 Supp. 38-2202, and
40 amendments thereto, the child may be placed in a juvenile detention
41 facility or other secure facility pursuant to an order of protective custody
42 for a period of not to exceed 24 hours, excluding Saturdays, Sundays, legal
43 holidays, and days on which the office of the clerk of the court is not

1 accessible.

2 (d) The order of protective custody shall be served pursuant to
3 subsection (a) of K.S.A. 2011 Supp. 38-2237, and amendments thereto, on
4 the child's parents, *grandparents* and any other person having legal
5 custody of the child. The order shall prohibit the removal of the child from
6 the court's jurisdiction without the court's permission.

7 (e) If the court issues an order of protective custody, the court may
8 also enter an order restraining any alleged perpetrator of physical, sexual,
9 mental or emotional abuse of the child from residing in the child's home;
10 visiting, contacting, harassing or intimidating the child, other family
11 member or witness; or attempting to visit, contact, harass or intimidate the
12 child, other family member or witness. Such restraining order shall be
13 served by personal service pursuant to subsection (a) of K.S.A. 2011 Supp.
14 38-2237, and amendments thereto, on any alleged perpetrator to whom the
15 order is directed.

16 (f) (1) The court shall not enter the initial order removing a child
17 from the custody of a parent pursuant to this section unless the court first
18 finds probable cause that: (A)(i) The child is likely to sustain harm if not
19 immediately removed from the home;

20 (ii) allowing the child to remain in home is contrary to the welfare of
21 the child; or

22 (iii) immediate placement of the child is in the best interest of the
23 child; and

24 (B) reasonable efforts have been made to maintain the family unit and
25 prevent the unnecessary removal of the child from the child's home or that
26 an emergency exists which threatens the safety to the child.

27 (2) Such findings shall be included in any order entered by the court.
28 If the child is placed in the custody of the secretary, the court shall provide
29 the secretary with a written copy of any orders entered upon making the
30 order.

31 Sec. 7. K.S.A. 2011 Supp. 38-2243 is hereby amended to read as
32 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
33 order directing who shall have temporary custody and may modify the
34 order during the pendency of the proceedings as will best serve the child's
35 welfare.

36 (b) A hearing pursuant to this section shall be held within 72 hours,
37 excluding Saturdays, Sundays, legal holidays, and days on which the
38 office of the clerk of the court is not accessible, following a child having
39 been taken into protective custody.

40 (c) Whenever it is determined that a temporary custody hearing is
41 required, the court shall immediately set the time and place for the hearing.
42 Notice of a temporary custody hearing shall be given to all parties and
43 interested parties.

1 (d) Notice of the temporary custody hearing shall be given at least 24
2 hours prior to the hearing. The court may continue the hearing to afford the
3 24 hours prior notice or, with the consent of the party or interested party,
4 proceed with the hearing at the designated time. If an order of temporary
5 custody is entered and the parent, *grandparent* or other person having
6 custody of the child has not been notified of the hearing, did not appear or
7 waive appearance and requests a rehearing, the court shall rehear the
8 matter without unnecessary delay.

9 (e) Oral notice may be used for giving notice of a temporary custody
10 hearing where there is insufficient time to give written notice. Oral notice
11 is completed upon filing a certificate of oral notice.

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

17 (g) (1) Whenever the court determines the necessity for an order of
18 temporary custody the court may place the child in the temporary custody
19 of:

20 (A) A parent, *grandparent* or other person having custody of the child
21 and may enter a restraining order pursuant to subsection (h);

22 (B) a person, other than the parent, *grandparent* or other person
23 having custody, who shall not be required to be licensed under article 5 of
24 chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

25 (C) a youth residential facility;

26 (D) a shelter facility; or

27 (E) the secretary, if the child is 15 years of age or younger, or 16 or
28 17 years of age if the child has no identifiable parental or family resources
29 or shows signs of physical, mental, emotional or sexual abuse.

30 (2) If the secretary presents the court with a plan to provide services
31 to a child or family which the court finds will assure the safety of the
32 child, the court may only place the child in the temporary custody of the
33 secretary until the court finds the services are in place. The court shall
34 have the authority to require any person or entity agreeing to participate in
35 the plan to perform as set out in the plan. When the child is placed in the
36 temporary custody of the secretary, the secretary shall have the
37 discretionary authority to place the child with a parent, *grandparent* or to
38 make other suitable placement for the child. When the child is presently
39 alleged, but not yet adjudicated to be a child in need of care solely
40 pursuant to subsection (d)(9) or (d)(10) of K.S.A. 2011 Supp. 38-2202, and
41 amendments thereto, the child may be placed in a juvenile detention
42 facility or other secure facility, but the total amount of time that the child
43 may be held in such facility under this section and K.S.A. 2011 Supp. 38-

1 2242, and amendments thereto, shall not exceed 24 hours, excluding
2 Saturdays, Sundays, legal holidays, and days on which the office of the
3 clerk of the court is not accessible. The order of temporary custody shall
4 remain in effect until modified or rescinded by the court or an adjudication
5 order is entered but not exceeding 60 days, unless good cause is shown
6 and stated on the record.

7 (3) *In the event the child is placed out of the child's home, if in the*
8 *best interest of the child, preference may be given to placing the child with*
9 *the child's grandparent who is appropriate, capable, willing and available*
10 *to care for the child.*

11 (h) If the court issues an order of temporary custody, the court may
12 also enter an order restraining any alleged perpetrator of physical, sexual,
13 mental or emotional abuse of the child from residing in the child's home;
14 visiting, contacting, harassing or intimidating the child; or attempting to
15 visit, contact, harass or intimidate the child, other family members or
16 witnesses. Such restraining order shall be served by personal service
17 pursuant to subsection (a) of K.S.A. 2011 Supp. 38-2237, and amendments
18 thereto, on any alleged perpetrator to whom the order is directed.

19 (i) (1) The court shall not enter the initial order removing a child from
20 the custody of a parent pursuant to this section unless the court first finds
21 probable cause that: (A)(i) The child is likely to sustain harm if not
22 immediately removed from the home;

23 (ii) allowing the child to remain in home is contrary to the welfare of
24 the child; or

25 (iii) immediate placement of the child is in the best interest of the
26 child; and

27 (B) reasonable efforts have been made to maintain the family unit and
28 prevent the unnecessary removal of the child from the child's home or that
29 an emergency exists which threatens the safety to the child.

30 (2) Such findings shall be included in any order entered by the court.
31 If the child is placed in the custody of the secretary, upon making the order
32 the court shall provide the secretary with a written copy.

33 (j) If the court enters an order of temporary custody that provides for
34 placement of the child with a person other than the parent, the court shall
35 make a child support determination pursuant to K.S.A. 2011 Supp. 38-
36 2277, and amendments thereto.

37 Sec. 8. K.S.A. 2011 Supp. 38-2248 is hereby amended to read as
38 follows: 38-2248. (a) In any proceedings under this code, parents,
39 *grandparents*, persons with whom the child has been residing pursuant to
40 subsection (d) of K.S.A. 2011 Supp. 38-2241, and amendments thereto,
41 and guardians *ad litem* may stipulate or enter no contest statements to all
42 or part of the allegations in the petition.

43 (b) Prior to the acceptance of any stipulation or no contest statement,

1 other than to names, ages, parentage or other preliminary matters, the court
2 shall ask each of the persons listed in subsection (a) the following
3 questions:

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

6 (2) Do you understand that you may be represented by an attorney
7 and, if you are a parent *or grandparent* and financially unable to employ
8 an attorney, the court will appoint an attorney for you, if you so request?

9 (3) One of the following: (A) Do you understand that a stipulation is
10 an admission that the statements in the petition are true or (B) Do you
11 understand that a no contest statement neither admits nor denies the
12 statement in the petition but allows the court to find that the statements in
13 the petition are true?

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

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

21 (c) Before accepting a stipulation the court shall find that there is a
22 factual basis for the stipulation.

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

25 (e) In proceedings other than termination of parental rights
26 proceedings under this code if all persons listed in subsection (a) do not
27 stipulate or enter no contest statements, the court shall hear evidence as to
28 those persons, if they are present. The case may proceed by proffer as to
29 persons not present, unless they appear by counsel and have instructed
30 counsel to object.

31 (f) In evidentiary hearings for termination of parental rights under this
32 code, the case may proceed by proffer as to parties not present, unless they
33 appear by counsel and have instructed counsel to object.

34 Sec. 9. K.S.A. 2011 Supp. 38-2252 is hereby amended to read as
35 follows: 38-2252. (a) Before placement pursuant to this code of a child
36 with a person other than the child's parent, the secretary, the court or the
37 court services officer, at the direction of the court, may convene a
38 conference of *the child's grandparents, aunts, uncles, siblings, cousins,*
39 *other relatives and* persons determined by the court, the secretary or the
40 court services officer to have a potential interest in determining a
41 placement which is in the best interests of the child. Such persons shall be
42 given any information relevant to the determination of the placement of
43 the child, including the needs of the child and any other information that

1 would be helpful in making a placement in the best interests of the child.
2 After presentation of the information, such persons shall be permitted to
3 discuss and recommend to the secretary or the court services officer the
4 person or persons with whom it would be in the child's best interest to be
5 placed. Unless the secretary or the court services officer determines that
6 there is good cause to place the child with a person other than as
7 recommended, the child shall be placed in accordance with the
8 recommendations.

9 (b) A person participating in a conference pursuant to this section
10 shall have immunity from any civil liability that might otherwise be
11 incurred or imposed as a result of the person's participation.

12 Sec. 10. K.S.A. 2011 Supp. 38-2255 is hereby amended to read as
13 follows: 38-2255. (a) *Considerations*. Prior to entering an order of
14 disposition, the court shall give consideration to:

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

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

- 26 (1) Supervision of the child and the parent by a court services officer;
- 27 (2) participation by the child and the parent in available programs
28 operated by an appropriate individual or agency; and
- 29 (3) any special treatment or care which the child needs for the child's
30 physical, mental or emotional health and safety.

31 (c) *Removal of a child from custody of a parent*. The court shall not
32 enter the initial order removing a child from the custody of a parent
33 pursuant to this section unless the court first finds probable cause that: (1)
34 (A) The child is likely to sustain harm if not immediately removed from
35 the home;

36 (B) allowing the child to remain in home is contrary to the welfare of
37 the child; or

38 (C) immediate placement of the child is in the best interest of the
39 child; and

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

43 The court shall not enter an order removing a child from the custody of

1 a parent pursuant to this section based solely on the finding that the parent
2 is homeless.

3 (d) *Custody of a child removed from the custody of a parent.* If the
4 court has made the findings required by subsection (c), the court shall
5 enter an order awarding custody to a relative of the child or to a person
6 with whom the child has close emotional ties who shall not be required to
7 be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated,
8 and amendments thereto, to any other suitable person, to a shelter facility,
9 to a youth residential facility or, if the child is 15 years of age or younger,
10 or 16 or 17 years of age if the child has no identifiable parental or family
11 resources or shows signs of physical, mental, emotional or sexual abuse, to
12 the secretary. Custody awarded under this subsection shall continue until
13 further order of the court.

14 (1) When custody is awarded to the secretary, the secretary shall
15 consider any placement recommendation by the court and notify the court
16 of the placement or proposed placement of the child within ~~10~~ 14 days of
17 the order awarding custody. After providing the parties or interested parties
18 notice and opportunity to be heard, the court may determine whether the
19 secretary's placement or proposed placement is contrary to the welfare or
20 in the best interests of the child. In making that determination the court
21 shall consider the health and safety needs of the child and the resources
22 available to meet the needs of children in the custody of the secretary. *If in*
23 *the best interest of the child, the court may give preference to placing the*
24 *child with the child's grandparent who is found to be appropriate, capable,*
25 *willing and available to care for the child.* If the court determines that the
26 placement or proposed placement is contrary to the welfare or not in the
27 best interests of the child, the court shall notify the secretary, who shall
28 then make an alternative placement.

29 (2) The custodian designated under this subsection shall notify the
30 court in writing at least ~~10~~ 14 days prior to any planned placement with a
31 parent. The written notice shall state the basis for the custodian's belief that
32 placement with a parent is no longer contrary to the welfare or best interest
33 of the child. Upon reviewing the notice, the court may allow the custodian
34 to proceed with the planned placement or may set the date for a hearing to
35 determine if the child shall be allowed to return home. If the court sets a
36 hearing on the matter, the custodian shall not return the child home without
37 written consent of the court.

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

41 (4) The court may enter an order restraining any alleged perpetrator
42 of physical, mental or emotional abuse or sexual abuse of the child from
43 residing in the child's home; visiting, contacting, harassing or intimidating

1 the child, other family member or witness; or attempting to visit, contact,
2 harass or intimidate the child, other family member or witness. Such
3 restraining order shall be served by personal service pursuant to subsection
4 (a) of K.S.A. 2011 Supp. 38-2237, and amendments thereto, on any
5 alleged perpetrator to whom the order is directed.

6 (5) The court shall provide a copy of any orders entered within ~~10~~ 14
7 days of entering the order to the custodian designated under this
8 subsection.

9 (e) *Further determinations regarding a child removed from the home.*

10 If custody has been awarded under subsection (d) to a person other than a
11 parent, a permanency plan shall be provided or prepared pursuant to
12 K.S.A. 2011 Supp. 38-2264, and amendments thereto. If a permanency
13 plan is provided at the dispositional hearing, the court may determine
14 whether reintegration is a viable alternative or, if reintegration is not a
15 viable alternative, whether the child should be placed for adoption or a
16 permanent custodian appointed. In determining whether reintegration is a
17 viable alternative, the court shall consider:

18 (1) Whether a parent has been found by a court to have committed
19 one of the following crimes or to have violated the law of another state
20 prohibiting such crimes or to have aided and abetted, attempted, conspired
21 or solicited the commission of one of these crimes: (A) Murder in the first
22 degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2011 Supp. 21-5402,
23 and amendments thereto; (B) murder in the second degree, K.S.A. 21-
24 3402, prior to its repeal, or K.S.A. 2011 Supp. 21-5403, and amendments
25 thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A.
26 2011 Supp. 21-5401, and amendments thereto; (D) voluntary
27 manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2011 Supp.
28 21-5404, and amendments thereto; or (E) a felony battery that resulted in
29 bodily injury;

30 (2) whether a parent has subjected the child or another child to
31 aggravated circumstances;

32 (3) whether a parent has previously been found to be an unfit parent
33 in proceedings under this code or in comparable proceedings under the
34 laws of another state or the federal government;

35 (4) whether the child has been in extended out of home placement;

36 (5) whether the parents have failed to work diligently toward
37 reintegration;

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

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

42 (f) *Proceedings if reintegration is not a viable alternative.* If the court
43 determines that reintegration is not a viable alternative, proceedings to

1 terminate parental rights and permit placement of the child for adoption or
2 appointment of a permanent custodian shall be initiated unless the court
3 finds that compelling reasons have been documented in the case plan why
4 adoption or appointment of a permanent custodian would not be in the best
5 interests of the child. If compelling reasons have not been documented, the
6 county or district attorney shall file a motion within 30 days to terminate
7 parental rights or a motion to appoint a permanent custodian within 30
8 days and the court shall hold a hearing on the motion within 90 days of its
9 filing. No hearing is required when the parents voluntarily relinquish
10 parental rights or consent to the appointment of a permanent custodian.

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

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

20 (2) If the court has reason to believe that a child is before the court
21 due, in whole or in part, to the use or misuse of alcohol or a violation of
22 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, by
23 the child, a parent of the child, or another person responsible for the care
24 of the child, the court may order the child, parent of the child or other
25 person responsible for the care of the child to submit to and complete an
26 alcohol and drug evaluation by a qualified person or agency and comply
27 with any recommendations. If the evaluation is performed by a
28 community-based alcohol and drug safety program certified pursuant to
29 K.S.A. 8-1008, and amendments thereto, the child, parent of the child or
30 other person responsible for the care of the child shall pay a fee not to
31 exceed the fee established by that statute. If the court finds that the child
32 and those legally liable for the child's support are indigent, the fee may be
33 waived. In no event shall the fee be assessed against the secretary.

34 (3) If child support has been requested and the parent or parents have
35 a duty to support the child, the court may order one or both parents to pay
36 child support and, when custody is awarded to the secretary, the court shall
37 order one or both parents to pay child support. The court shall determine,
38 for each parent separately, whether the parent is already subject to an order
39 to pay support for the child. If the parent is not presently ordered to pay
40 support for any child who is subject to the jurisdiction of the court and the
41 court has personal jurisdiction over the parent, the court shall order the
42 parent to pay child support in an amount determined under K.S.A. 2011
43 Supp. 38-2277, and amendments thereto. Except for good cause shown,

1 the court shall issue an immediate income withholding order pursuant to
2 K.S.A. 23-4,105 *et seq.*, and amendments thereto, for each parent ordered
3 to pay support under this subsection, regardless of whether a payor has
4 been identified for the parent. A parent ordered to pay child support under
5 this subsection shall be notified, at the hearing or otherwise, that the child
6 support order may be registered pursuant to K.S.A. 2011 Supp. 38-2279,
7 and amendments thereto. The parent shall also be informed that, after
8 registration, the income withholding order may be served on the parent's
9 employer without further notice to the parent and the child support order
10 may be enforced by any method allowed by law. Failure to provide this
11 notice shall not affect the validity of the child support order.

12 Sec. 11. K.S.A. 2011 Supp. 38-2258 is hereby amended to read as
13 follows: 38-2258.(a) Except as provided in K.S.A. 2011 Supp. 38-2255(d)
14 (2) and 38-2259, and amendments thereto, if a child has been in the same
15 foster home or shelter facility for six months or longer, or has been placed
16 by the secretary in the home of a parent or relative, the secretary shall give
17 written notice of any plan to move the child to a different placement unless
18 the move is to the selected preadoptive family for the purpose of
19 facilitating adoption. The notice shall be given to: (1) The court having
20 jurisdiction over the child; (2) the petitioner; (3) the attorney for the
21 parents, if any; (4) each parent whose address is available; (5) *the attorney*
22 *for the grandparents*; (6) *the grandparents whose address is available*; (7)
23 the foster parent or custodian from whose home or shelter facility it is
24 proposed to remove the child; ~~(6)~~ (8) the child, if 12 or more years of age;
25 ~~(7)~~ (9) the child's guardian *ad litem*; ~~(8)~~ (10) any other party or interested
26 party; and ~~(9)~~ (11) the child's court appointed special advocate.

27 (b) The notice shall state the placement to which the secretary plans
28 to transfer the child and the reason for the proposed action. The notice
29 shall be mailed by first class mail 30 days in advance of the planned
30 transfer, except that the secretary shall not be required to wait 30 days to
31 transfer the child if all persons enumerated in subsection (a)(2) through ~~(8)~~
32 (10) consent in writing to the transfer.

33 (c) Within 14 days after receipt of the notice, any person enumerated
34 in subsection (a)(2) through ~~(8)~~ (10) receiving notice as provided above
35 may request, either orally or in writing, that the court conduct a hearing to
36 determine whether or not the change in placement is in the best interests of
37 the child concerned. When the request has been received, the court shall
38 schedule a hearing and immediately notify the secretary of the request and
39 the time and date the matter will be heard. The court shall give notice of
40 the hearing to persons enumerated in subsection (a)(2) through ~~(9)~~ (10). If
41 the court does not receive a request for hearing within the specified time,
42 the change in placement may occur prior to the expiration of the 30 days.
43 The secretary shall not change the placement of the child, except for the

1 purpose of adoption, unless the change is approved by the court.

2 (d) When, after the notice set out above, a child in the custody of the
3 secretary is removed from the home of a parent after having been placed in
4 the home of a parent for a period of six months or longer, the secretary
5 shall request a finding that: (1)(A) The child is likely to sustain harm if not
6 immediately removed from the home;

7 (B) allowing the child to remain in home is contrary to the welfare of
8 the child; or

9 (C) immediate placement of the child is in the best interest of the
10 child; and

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

14 (e) The secretary shall present to the court in writing the efforts to
15 maintain the family unit and prevent the unnecessary removal of the child
16 from the child's home. In making the findings, the court may rely on
17 documentation submitted by the secretary or may set the date for a hearing
18 on the matter. If the secretary requests such finding, the court, not more
19 than 45 days from the date of the request, shall provide the secretary with a
20 written copy of the findings by the court for the purpose of documenting
21 these orders.

22 Sec. 12. K.S.A. 2011 Supp. 38-2259 is hereby amended to read as
23 follows: 38-2259. (a) When an emergency exists requiring immediate
24 action to assure the safety and protection of the child or the secretary is
25 notified that the foster parents or shelter facility refuse to allow the child to
26 remain, the secretary may transfer the child *to a grandparent's home*, to
27 another foster home or shelter facility without prior court approval. The
28 secretary shall notify the court of the action at the earliest practical time.
29 When the child is removed from the home of a parent after having been
30 placed in the home for a period of six months or longer, the secretary shall
31 present to the court in writing the specific nature of the emergency and
32 reasons why it is contrary to the welfare of the child to remain in the
33 placement and request a finding by the court whether remaining in the
34 home is contrary to the welfare of the child. If the court enters an order the
35 court shall make a finding as to whether an emergency exists. The court
36 shall provide the secretary with a copy of the order. In making the finding,
37 the court may rely on documentation submitted by the secretary or may set
38 the date for a hearing on the matter. If the secretary requests such a
39 finding, the court shall provide the secretary with a written copy of the
40 finding by the court not more than 45 days from the date of the request.

41 (b) The court shall not enter an order approving the removal of a
42 child from the home of a parent pursuant to this section unless the court
43 first finds probable cause that: (1)(A) The child is likely to sustain harm if

1 not immediately removed from the home;

2 (B) allowing the child to remain in home is contrary to the welfare of
3 the child; or

4 (C) immediate placement of the child is in the best interest of the
5 child; and

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

9 Sec. 13. K.S.A. 2011 Supp. 38-2260 is hereby amended to read as
10 follows: 38-2260. (a) *Valid court order*. During proceedings under this
11 code, the court may enter an order directing a child who is the subject of
12 the proceedings to remain in a present or future placement if:

13 (1) The child and the child's guardian *ad litem* are present in court
14 when the order is entered;

15 (2) the court finds that the child has been adjudicated a child in need
16 of care pursuant to subsections (d)(6), (d)(7), (d)(8), (d)(9), (d)(10) or (d)
17 (12) of K.S.A. 2011 Supp. 38-2202, and amendments thereto, and that the
18 child is not likely to be available within the jurisdiction of the court for
19 future proceedings;

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

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

23 (b) *Application*. Any person may file a verified application for
24 determination that a child has violated an order entered pursuant to
25 subsection (a) and for an order authorizing holding the child in a secure
26 facility or juvenile detention facility. The application shall state the
27 applicant's belief that the child has violated the order entered pursuant to
28 subsection (a) without good cause and the specific facts supporting the
29 allegation.

30 (c) *Ex parte order*. After reviewing the application filed pursuant to
31 subsection (b), the court may enter an ex parte order directing that the
32 child be taken into custody and held in a secure facility or juvenile
33 detention facility designated by the court, if the court finds probable cause
34 that the child violated the court's order to remain in placement without
35 good cause. Pursuant to K.S.A. 2011 Supp. 38-2237, and amendments
36 thereto, the order shall be served on the child's parents, *the child's*
37 *grandparents*, the child's legal custodian and the child's guardian *ad litem*.

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

1 (1) Notice of the time and place of the preliminary hearing shall be
2 given orally or in writing to the child's parents, *the child's grandparents*,
3 the child's legal custodian and the child's guardian *ad litem*.

4 (2) At the hearing, the child shall have the right to a guardian *ad*
5 *litem* and shall be served with a copy of the application.

6 (3) If the child admits the allegations or enters a no contest statement
7 and if the court finds that the admission or no contest statement is
8 knowledgeable and voluntary, the court shall proceed without delay to the
9 placement hearing pursuant to subsection (f).

10 (4) If the child denies the allegations, the court shall determine
11 whether probable cause exists to hold the child in a secure facility or
12 juvenile detention facility pending an evidentiary hearing pursuant to
13 subsection (e). After hearing the evidence, if the court finds that: (A) There
14 is probable cause to believe that the child has violated an order entered
15 pursuant to subsection (a) without good cause; and (B) placement in a
16 secure facility or juvenile detention facility is necessary for the protection
17 of the child or to assure the presence of the child at the evidentiary hearing
18 pursuant to subsection (e), the court may order the child held in a secure
19 facility or juvenile detention facility pending the evidentiary hearing.

20 (e) *Evidentiary hearing*. The court shall hold an evidentiary hearing
21 on an application within 72 hours of the child's being taken into custody.
22 Notice of the time and place of the hearing shall be given orally or in
23 writing to the child's parents, *the child's grandparents*, the child's legal
24 custodian and the child's guardian *ad litem*. At the evidentiary hearing, the
25 court shall determine by a clear and convincing evidence whether the child
26 has:

27 (1) Violated a court order entered pursuant to subsection (a) without
28 good cause;

29 (2) been provided at the hearing with the rights enumerated in
30 subsection (d)(2); and

31 (3) been informed of:

32 (A) The nature and consequences of the proceeding;

33 (B) the right to confront and cross-examine witnesses and present
34 evidence;

35 (C) the right to have a transcript or recording of the proceedings; and

36 (D) the right to appeal.

37 (f) *Placement*. (1) If the child admits violating the order entered
38 pursuant to subsection (a) or if, after an evidentiary hearing, the court finds
39 that the child has violated such an order, the court shall immediately
40 proceed to a placement hearing. The court may enter an order awarding
41 custody of the child to:

42 (A) A parent or other legal custodian;

43 (B) *a grandparent, who shall not be required to be licensed under*

1 *article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments*
2 *thereto;*

3 (C) a person other than a parent, *grandparent* or other person having
4 custody, who shall not be required to be licensed under article 5 of chapter
5 65 of the Kansas Statutes Annotated, and amendments thereto;

6 ~~(C)~~ (D) a youth residential facility; or

7 ~~(D)~~ (E) the secretary, if the secretary does not already have legal
8 custody of the child.

9 (2) The court may authorize the custodian to place the child in a
10 secure facility or juvenile detention facility, if the court determines that all
11 other placement options have been exhausted or are inappropriate, based
12 upon a written report submitted by the secretary, if the child is in the
13 secretary's custody, or submitted by a public agency independent of the
14 court and law enforcement, if the child is in the custody of someone other
15 than the secretary. The report shall detail the behavior of the child and the
16 circumstances under which the child was brought before the court and
17 made subject to the order entered pursuant to subsection (a).

18 (3) The authorization to place the child in a secure facility or juvenile
19 detention facility pursuant to this subsection shall expire 60 days, inclusive
20 of weekend and legal holidays, after its issue. The court may grant
21 extensions of such authorization for two additional periods, each not to
22 exceed 60 days, upon rehearing pursuant to K.S.A. 2011 Supp. 38-2256,
23 and amendments thereto.

24 (g) *Payment.* The secretary shall only pay for placement and services
25 for a child placed in a secure facility or juvenile detention facility pursuant
26 to subsection (f) upon receipt of a valid court order authorizing secure care
27 placement.

28 (h) *Limitations on facilities used.* Nothing in this section shall
29 authorize placement of a child in an adult jail or lockup.

30 (i) *Time limits, computation.* Except as otherwise specifically
31 provided by subsection (f), Saturdays, Sundays, legal holidays, and days
32 on which the office of the clerk of the court is not accessible shall not be
33 counted in computing any time limit imposed by this section.

34 Sec. 14. K.S.A. 2011 Supp. 38-2264 is hereby amended to read as
35 follows: 38-2264. (a) A permanency hearing is a proceeding conducted by
36 the court or by a citizen review board for the purpose of determining
37 progress toward accomplishment of a permanency plan as established by
38 K.S.A. 2011 Supp. 38-2263, and amendments thereto.

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

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

42 (2) *placed with a grandparent;*

43 (3) placed for adoption;

1 ~~(3)~~ (4) placed with a permanent custodian; or
2 ~~(4)~~ (5) if the secretary has documented compelling reasons why it
3 would not be in the child's best interests for a placement in one of the
4 placements pursuant to paragraphs (1), (2) ~~or~~, (3) *or* (4) placed in another
5 planned permanent arrangement.

6 (c) The court shall enter a finding as to whether reasonable efforts
7 have been made by appropriate public or private agencies to rehabilitate
8 the family and achieve the permanency goal in place at the time of the
9 hearing.

10 (d) A permanency hearing shall be held within 12 months of the date
11 the court authorized the child's removal from the home and not less
12 frequently than every 12 months thereafter.

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

17 (f) When the court finds that reintegration continues to be a viable
18 alternative, the court shall determine whether and, if applicable, when the
19 child will be returned to the parent. The court may rescind any of its prior
20 dispositional orders and enter any dispositional order authorized by this
21 code or may order that a new plan for the reintegration be prepared and
22 submitted to the court. If reintegration cannot be accomplished as
23 approved by the court, the court shall be informed and shall schedule a
24 hearing pursuant to this section. No such hearing is required when the
25 parents voluntarily relinquish parental rights or consent to appointment of
26 a permanent custodian.

27 (g) If the court finds reintegration is no longer a viable alternative, the
28 court shall consider whether: (1) The child is in a stable placement with a
29 relative; (2) services set out in the case plan necessary for the safe return
30 of the child have been made available to the parent with whom
31 reintegration is planned; or (3) compelling reasons are documented in the
32 case plan to support a finding that neither adoption nor appointment of a
33 permanent custodian are in the child's best interest. If reintegration is not a
34 viable alternative and either adoption or appointment of a permanent
35 custodian might be in the best interests of the child, the county or district
36 attorney or the county or district attorney's designee shall file a motion to
37 terminate parental rights or a motion to appoint a permanent custodian
38 within 30 days and the court shall set a hearing on such motion within 90
39 days of the filing of such motion.

40 (h) If the court enters an order terminating parental rights to a child,
41 or an agency has accepted a relinquishment pursuant to K.S.A. 59-2124,
42 and amendments thereto, the requirements for permanency hearings shall
43 continue until an adoption or appointment of a permanent custodian has

1 been accomplished. If the court determines that reasonable efforts or
2 progress have not been made toward finding an adoptive placement or
3 appointment of a permanent custodian or placement with a fit and willing
4 relative, the court may rescind its prior orders and make others regarding
5 custody and adoption that are appropriate under the circumstances.
6 Reports of a proposed adoptive placement need not contain the identity of
7 the proposed adoptive parents.

8 (i) If permanency with one parent has been achieved without the
9 termination of the other parent's rights, the court may, prior to dismissing
10 the case, enter child custody orders, including residency and parenting
11 time that the court determines to be in the best interests of the child. The
12 court shall complete a parenting plan pursuant to K.S.A. 60-1625, and
13 amendments thereto.

14 (1) Before entering a custody order under this subsection, the court
15 shall inquire whether a custody order has been entered or is pending in a
16 civil custody case by a court of competent jurisdiction within the state of
17 Kansas.

18 (2) If a civil custody case has been filed or is pending, a certified
19 copy of the custody, residency and parenting time orders shall be filed in
20 the civil custody case. The court in the civil custody case may, after
21 consultation with the court in the child in need of care case, enter an order
22 declaring that the custody order in the child in need of care case shall
23 become the custody order in the civil custody case.

24 (3) A district court, on its own motion or upon the motion of any
25 party, may order the consolidation of the child in need of care case with
26 any open civil custody case involving the child and both of the child's
27 parents. Custody, residency and parenting time orders entered in
28 consolidated child in need of care and civil custody cases take precedence
29 over any previous orders affecting both parents and the child that were
30 entered in the civil custody case regarding the same or related issues.
31 Following entry of a custody order in a consolidated case, the court shall
32 dismiss the child in need of care case and, if necessary, return the civil
33 custody case to the original court having jurisdiction over it.

34 (4) If no civil custody case has been filed, the court may direct the
35 parties to file a civil custody case and to file the custody orders from the
36 child in need of care case in that case. Costs of the civil custody case may
37 be assessed to the parties.

38 (5) Nothing in this subsection shall operate to expand access to
39 information that is confidential under K.S.A. 38-2209, and amendments
40 thereto, and the confidentiality of such information shall be preserved in
41 all filings in a civil custody case.

42 (j) When permanency has been achieved to the satisfaction of the
43 court, the court shall enter an order closing the case.

1 Sec. 15. K.S.A. 2011 Supp. 38-2270 is hereby amended to read as
2 follows: 38-2270. (a) When parental rights have been terminated and it
3 appears that adoption is a viable alternative, the court shall enter one of the
4 following orders:

5 (1) An order granting custody of the child, for adoption proceedings,
6 to the secretary or a corporation organized under the laws of the state of
7 Kansas authorized to care for and surrender children for adoption as
8 provided in K.S.A. 38-112 *et seq.*, and amendments thereto. The person,
9 secretary or corporation shall have authority to place the child in a family
10 home, and give consent for the legal adoption of the child which shall be
11 the only consent required to authorize the entry of an order or decree of
12 adoption.

13 (2) An order granting custody of the child to proposed adoptive
14 parents and consenting to the adoption of the child by the proposed
15 adoptive parents.

16 (b) In making an order under subsection (a), the court shall give
17 preference, to the extent that the court finds it is in the best interests of the
18 child, first to granting such custody for adoption to a *grandparent who is*
19 *appropriate, capable, willing and available to care for the child, second to*
20 *another* relative of the child and ~~second~~ *third* to granting such custody to a
21 person with whom the child has close emotional ties.

22 (c) *Discharge upon adoption.* When an adoption decree has been filed
23 with the court in the child in need of care case, the secretary's custody shall
24 cease, the court's jurisdiction over the child shall cease and the court shall
25 enter an order to that effect.

26 Sec. 16. K.S.A. 2011 Supp. 38-2272 is hereby amended to read as
27 follows: 38-2272. (a) A permanent custodian may be appointed:

28 (1) With the consent and agreement of the parents and approval by
29 the court;

30 (2) after a finding of unfitness pursuant to K.S.A. 2011 Supp. 38-
31 2269, and amendments thereto; or

32 (3) after termination of parental rights pursuant to K.S.A. 2011 Supp.
33 38-2270, and amendments thereto.

34 (b) Upon the appointment of a permanent custodian, the secretary's
35 custody of the child shall cease. The court's jurisdiction over the child shall
36 continue unless the court enters an order terminating jurisdiction.

37 (c) Subject to subsection (d), a permanent custodian shall stand *in*
38 *loco parentis* and shall exercise all of the rights and responsibilities of a
39 parent except the permanent custodian shall not:

40 (1) Consent to an adoption of the child; and

41 (2) be subject to court ordered child support or medical support.

42 (d) When the court retains jurisdiction after appointment of a
43 permanent custodian, the court, in its order, may impose limitations or

1 conditions upon the rights and responsibilities of the permanent custodian
2 including, but not limited to, the right to:

- 3 (1) Determine contact with the biological parent;
- 4 (2) consent to marriage;
- 5 (3) consent to psychosurgery, removal of a bodily organ or
6 amputation of a limb;
- 7 (4) consent to sterilization;
- 8 (5) consent to behavioral and medical experiments;
- 9 (6) consent to withholding life-prolonging medical treatment;
- 10 (7) consent to placement in a treatment facility; or
- 11 (8) consent to placement in a psychiatric hospital or an institution for
12 the developmentally disabled.

13 (e) Absent a judicial finding of unfitness or court-ordered limitations
14 pursuant to subsection (d), a permanent custodian may share parental
15 responsibilities with a parent of the child as the permanent custodian
16 determines is in the child's best interests. Sharing parental responsibilities
17 does not relieve the permanent custodian of legal responsibility for the
18 child.

19 (f) Parental consent to appointment of a permanent custodian shall be
20 in writing and shall be acknowledged before a judge of a court of record or
21 before an officer authorized by law to take acknowledgments. If the
22 consent is acknowledged before a judge of a court of record, it shall be the
23 duty of the court before which the consent is acknowledged to advise the
24 consenting parent of the consequences of the consent, including the
25 following:

26 (1) Do you understand that your parental rights are not being
27 terminated and you can be ordered to pay child support and medical
28 support for your child?

29 (2) Do you understand that to get the rights you still have with your
30 child, you must keep the court up to date about how to contact you? This
31 means that the court needs to always have your current address and
32 telephone number.

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

37 (4) Do you understand that if you want information about your child's
38 health or education, you will have to keep the information you give the
39 court about where you are up to date because the information will be sent
40 to the latest address the court has?

41 (5) Do you understand that you may be able to have some contact
42 with your child, but only if the permanent custodian decides it is in the
43 child's best interests and if the court allows the contact?

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

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

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

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

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

21 (2) the right to inherit from the child.

22 (3) The right to consent to adoption of the child. All other parental
23 rights transfer to the permanent custodian.

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

26 (j) Prior to appointing a permanent custodian, the court shall receive
27 and consider an assessment of any potential permanent custodian as
28 provided in K.S.A. 59-2132, and amendments thereto. In making an order
29 appointing a permanent custodian the court shall give preference, to the
30 extent that the court finds it in the child's best interests, to first appointing
31 a permanent custodian who is a *grandparent who is appropriate, capable,*
32 *willing and available to care for the child, second to another relative of*
33 *the child or ~~second~~ third to a person with whom the child has close*
34 *emotional ties.*

35 (k) If permanent custodians are divorced, such custodian's marriage is
36 annulled or the court orders separate maintenance, the court in that case
37 has jurisdiction to make custody determinations between the permanent
38 custodians.

39 Sec. 17. K.S.A. 2011 Supp. 38-2275 is hereby amended to read as
40 follows: 38-2275. (a) When an appeal is taken pursuant to this code, fees ~~if~~
41 *of the guardian ad litem or*, of an attorney appointed to represent a parent
42 *or of an attorney appointed to represent a grandparent* shall be fixed by
43 the district court. The fees, together with the costs of transcripts and

1 records on appeal, shall be taxed as expenses on appeal. The court on
2 appeal may assess the fees and expenses against a party or interested party
3 or order that they be paid from the general fund of the county.

4 (b) When the court orders the fees and expenses assessed against a
5 party or interested party, such fees shall be paid from the county general
6 fund, subject to reimbursement by the party or interested party against
7 whom the fees were assessed. The county may enforce the order as a civil
8 judgment, except the county shall not be required to pay the docket fee or
9 fee for execution.

10 Sec. 18. K.K.S.A. 2011 Supp. 38-2205, 38-2212, 38-2213, 38-2232,
11 38-2242, 38-2243, 38-2248, 38-2252, 38-2255, 38-2255b, 38-2258, 38-
12 2259, 38-2260, 38-2264, 38-2270, 38-2272 and 38-2275 are hereby
13 repealed.

14 Sec. 19. This act shall take effect and be in force from and after its
15 publication in the statute book.
16