

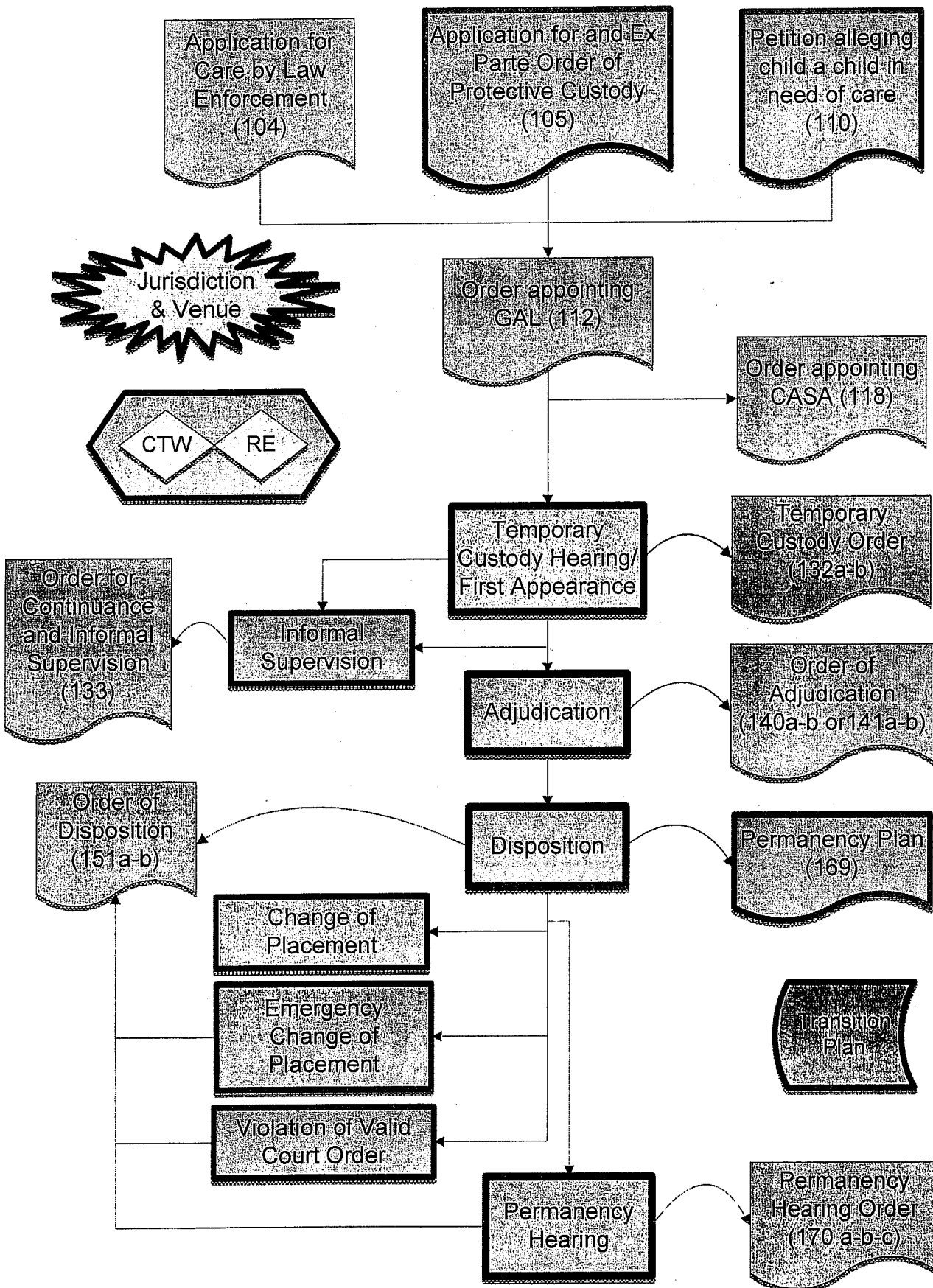
Kansas Code for the Care of Children Process Map

Sample Process Maps and Notes
Prepared for the House Children and Seniors
Committee
February 14, 2013

Developed by the Office of Judicial Administration and the Kansas
Supreme Court Task Force on Permanency Planning with funding
provided by the Administration for Children and Families, Court
Improvement Program
May 2011

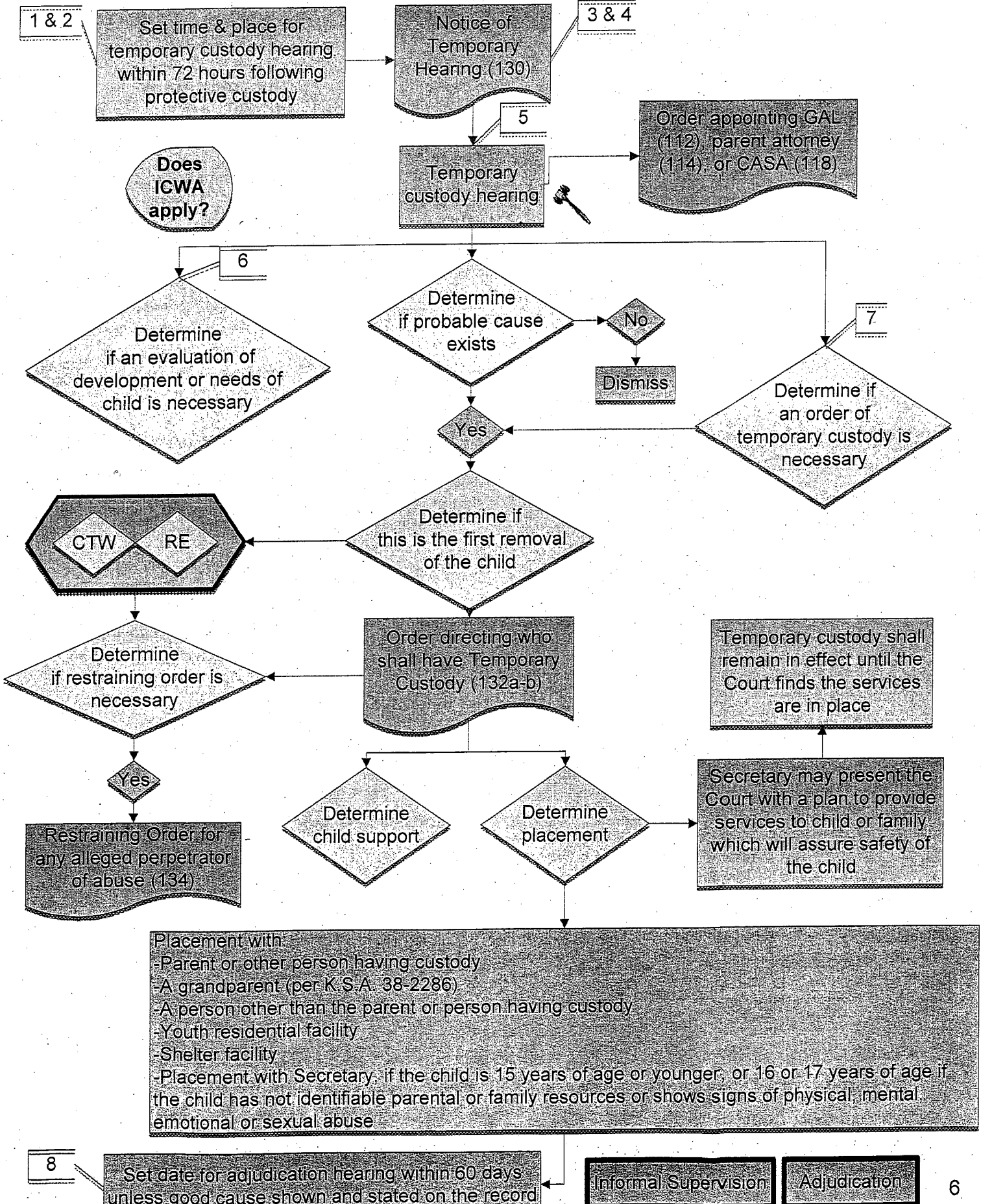
Updated February 2013

Kansas Code for Care of Children K.S.A. 38-2201 through K.S.A. 38-2283 Updated May 2010



Order of Temporary Custody K.S.A. 38-2243

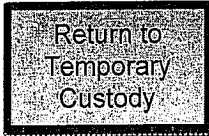
[Link to Notes for
Order of Temporary
Custody](#)





Notes-Order of Temporary Custody

K.S.A. 38-2243



1 Set time and place for Temporary Custody Hearing within 72 hours following protective custody, excluding Saturdays, Sundays and legal holidays.

2 Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice, or with the consent of the parent or interested party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waived appearance and requests a rehearing, the Court shall rehear the matter without unnecessary delay. Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice.

3 Notice of temporary custody hearing shall be given to all parties and interested parties.

4 All proceedings under this code shall be disposed of without unnecessary delay. Continuances shall not be granted unless good cause is shown.

5 At a first appearance, the following areas must be addressed:
1) Review petition and service
2) Appoint GAL
3) Appoint an Attorney for Parent
4) Verify if petition is stipulated/not contested
5) Appoint CASA
6) Determination of ICWA

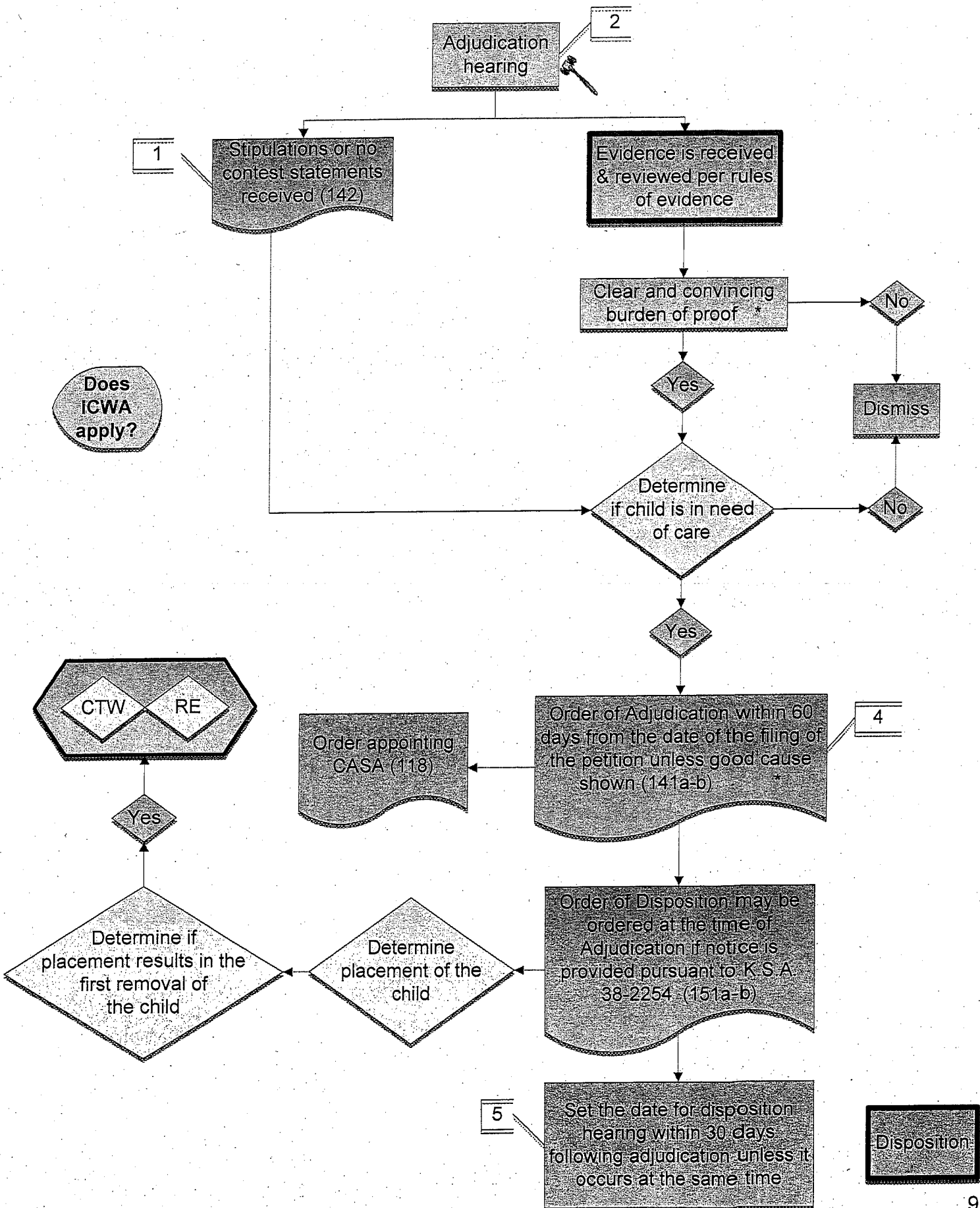
6 Evaluation of development or needs of child:
(a) Of the child.
1) Psychological or emotional;
2) Medical;
3) Educational.
(b) Physical, psychological or emotional status of parent or custodian. During proceedings under this code, the Court may order:
1) an examination, evaluation and report of the physical, mental or emotional status or needs of a parent, a person residing with a parent or any person being considered as one to whom the court may grant custody; and
2) written reports from any qualified person concerning the parenting skills or ability to provide for the physical, mental or emotional needs and future development of a child by a parent or any person being considered as one to whom the court may grant custody.

7 1) Child is dangerous to self or to others.
2) Child is not likely to be available within the jurisdiction of the Court for future proceedings.
3) Health or welfare of the child may be endangered without further care.

8 The order of temporary custody shall remain in effect until modified or rescinded by the Court or an adjudication order is entered but not exceeding 60 days, unless good cause is shown and stated on the record.

Adjudication K.S.A. 38-2251

[Link to Notes for Adjudication](#)





Notes-Adjudication
K.S.A. 38-2251

Return to
Adjudication

1

Prior to the acceptance of any stipulation or no contest statement, other than to names, ages, parentage or other preliminary matters, the court shall ask each of the persons listed in subsection (a) the following questions:

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

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

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

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

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

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

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

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

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

2

Hearing to be held not more than 60 days following removal if out of home, unless good cause shown and stated on the record.

Relevant
Case

In the Interest of B.D.-Y., 286 Kan. 686, 187 P.3d 594, (2008)

Relevant
Case

In the Interest of L.C.W., _____ Kan. App. 2d _____, No. 1,1,528 (July 2009)

3

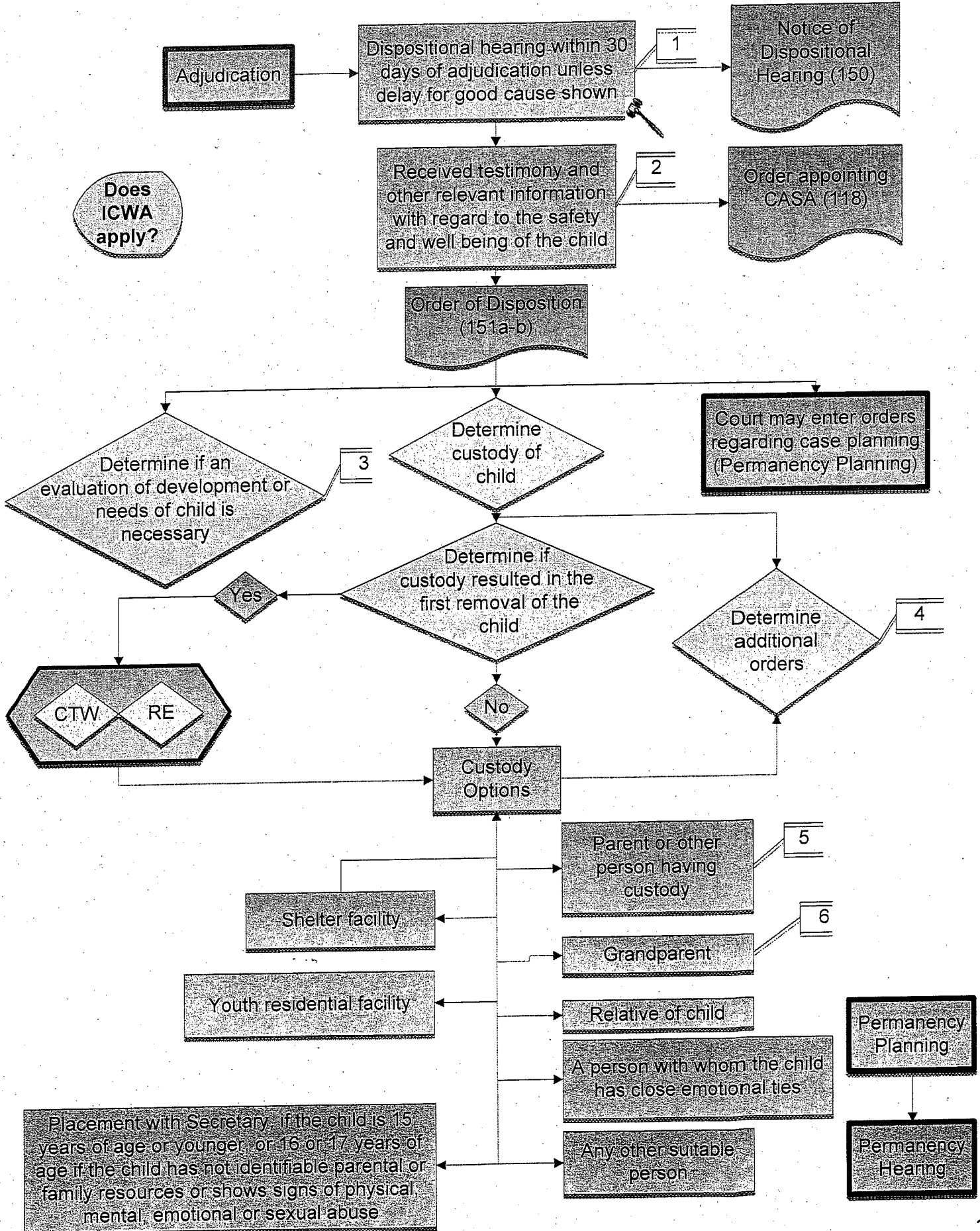
Unless an order of informal supervision or an order of continuance for good cause has been entered.

4

Unless delayed for good cause shown and on the record.

Disposition K.S.A. 38-2253 through 38-2255

Link to Notes for Disposition





Notes-Disposition
K.S.A. 38-2253 through 38-2255

Return to
Disposition

1 If dispositional hearing meets the requirement of K.S.A. 38-2265 it may serve as a permanency hearing.

2 Court shall consider the following:
1) the child's physical, mental and emotional condition;
2) the child's need for assistance;
3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
4) relevant information from the intake and assessment process.

3 K.S.A. 38-2219 Evaluation of development or needs of child:
(a) Of the child.
1) Psychological or emotional;
2) Medical;
3) Educational.
(b) Physical, psychological or emotional status of parent or custodian. During proceedings under this code, the Court may order:
1) An examination, evaluation and report of the physical, mental or emotional status or needs of a parent, a person residing with a parent or any person being considered as one to whom the Court may grant custody; and
2) written reports from any qualified person concerning the parenting skills or ability to provide for the physical, mental or emotional needs and future development of a child by a parent or any person being considered as one to whom the Court may grant custody.

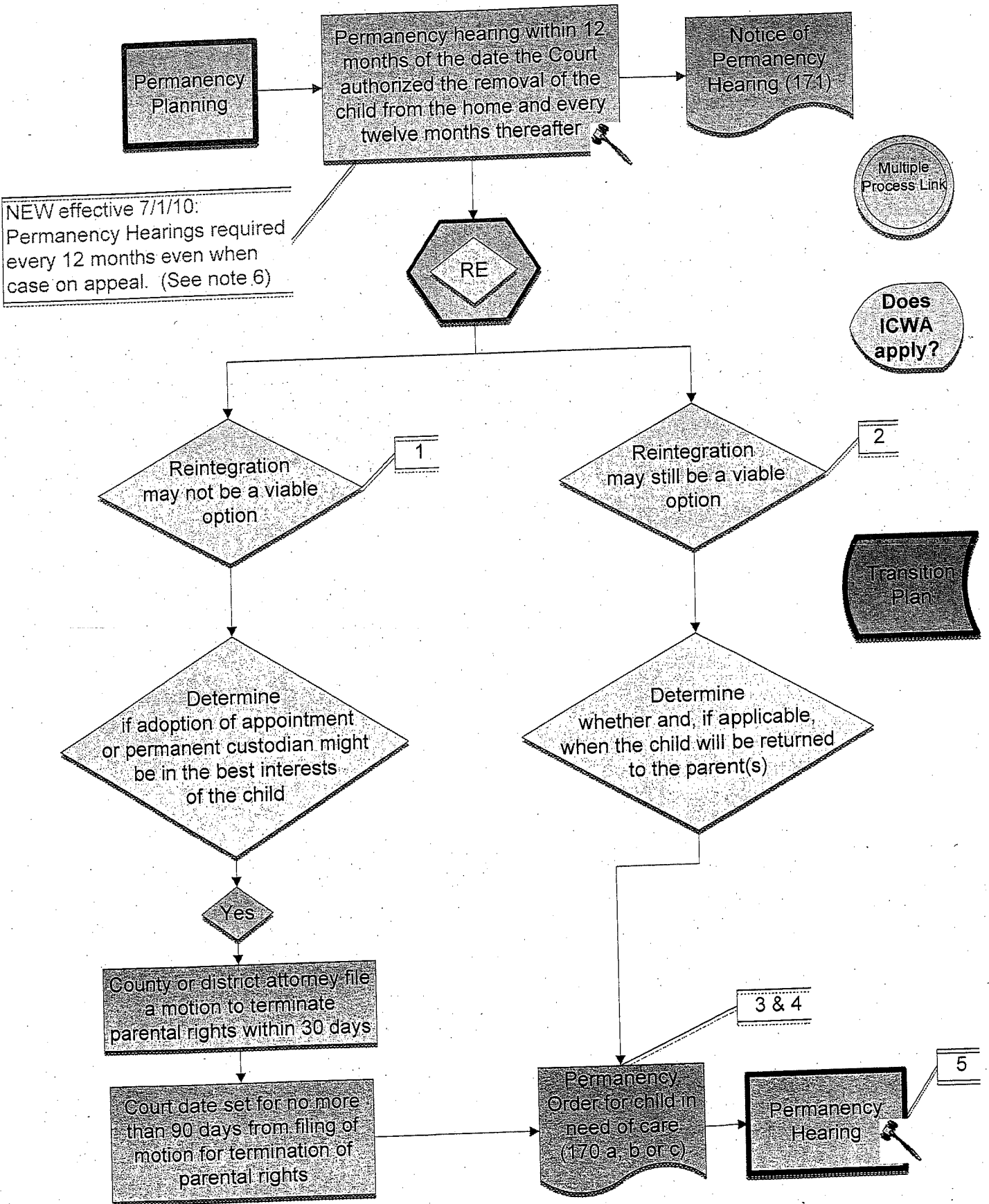
4 Additional Orders:
1) The Court may order the child and the parents of any child who has been adjudicated a child in need of care to attend counseling sessions.
2) If the Court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of the uniformed controlled substances act by the child, a parent of the child or other person responsible for the care of the child, the Court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug safety program.
3) If child support has been requested and the parent or parents have a duty to support the child, the Court may order one or both parents to pay child support and when custody is awarded to the Secretary, the Court shall order one or both parents to pay child support.

5 The Court may order:
1) supervision of the child and the parent by a court services officer;
2) participation by the child and the parent in available programs;
3) special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

6 K.S.A. 38-2286 Grandparent custody, visitation and residency;
(a) Notwithstanding the provisions of other setatues, when a child is removed from the custody of a parent and not placed with the child's other parent, a grandparent who requests custody shall receive substantial consideration when evaluating what custody, visitation or residency arrangements are in the best interests of the child. Such evaluation of custody, visitation, or residency arrangements shall be stated on the record.
(b) In deciding whether to give cusstody to a grandparent, the court should be guided by the best interests of the ch ild and should consider all relevant factors, including, but not limited to, the following: (1) the wishes of the parents, child and grandparent; (2) the extent to which the grandparent has cared for, nurtured and supported the child; (3) the intent and circumstances under which the child is placed with the grandparent, including whether domestic violence is a factor and whether the child is placed to allow the parent to sek work or attend school; and (4) the physical and mental health of all individuals involved.
(c) applies to requirements of the Secretary if the court does not give custody of the child to a grandparent.

Permanency Hearing K.S.A. 38-2264

Link to notes for
Permanency
Hearing



Notes-Permanency Hearing
K.S.A. 38-2264

Return to
Permanency
Hearing

- 1 Court shall consider whether:
 - 1) the child is in a stable placement with a relative;
 - 2) services set out in the case plan necessary for safe return of the child have been available to the parent with whom reintegration is planned; or
 - 3) compelling reasons are documented in case plan to support a finding that neither adoption or appointment of a permanent custodian are in the best interests of the child.
- 2 If reasonable efforts or progress have not been made toward adoption or custodianship, the Court may rescind prior orders and make others regarding custody or adoption.
- 3 Court or Citizen Review Board may hear the case.
- 4
 - 1) Reintegrated with the child's parents;
 - 2) Placed for adoption;
 - 3) Placed with a permanent custodian; orIf Secretary has documented compelling reasons why a placement with one through three would not be in the child's best interest then:
 - 4) another planned permanent arrangement.
- 5 If Court enters an order terminating parental rights to a child or an agency has accepted a relinquishment, requirements for permanency hearing shall continue until adoption or appointment of a permanent custodian. The permanency hearing shall be held with 12 months of the date the Court authorized the child's removal from the home and not less frequently than every 12 months thereafter.
- 6 While a case is on appeal from the district court, the district court or magistrate court shall continue to have jurisdiction over all issues not specifically appealed and shall conduct timely permanency hearings.



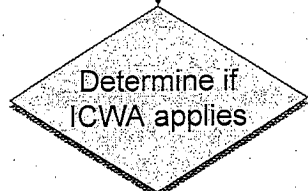
Indian Child Welfare Act 25 U.S.C. § 1901 *et seq.*

Link to Notes for
ICWA

Jurisdiction K.S.A. 38-2203

Does
ICWA
apply?

Indian Child Welfare Act of 1978:
An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.



Refer to the NCJFCJ Indian Child Welfare Act Checklists for Juvenile and Family Court Judges*

Refer to 25 U.S.C. § 1901 *et seq.*

Jurisdiction & Venue *

Refer to Judicial Council Website for applicable forms for Indian Child Welfare Act

Process for Consolidating Multiple Orders of Custody In CINC and Civil Custody Cases



START HERE

Permanency Hearing

38-2264 (i)
Permanency with one parent achieved without terminating the other parent's rights

OPTIONAL
Residency and Parenting Time Orders

REQUIRED
Complete a parenting plan pursuant to K.S.A. 60-1625

K.S.A. 60-3107
Filing CINC Custody Order in Protection from Abuse Cases
Maintaining confidentiality.

Inquire whether a custody order has been entered or is pending in a civil custody case.

NO

YES

Court may direct parties to file a civil custody case and file orders from the CINC case in the civil custody case.

File certified copy of custody, residency and parenting time orders in civil case

- 2010 Supp. K.S.A. 38-2264 (i) Consolidating CINC cases with civil custody cases
- 2010 Supp. K.S.A. 60-6107 Filing CINC custody orders in protection from abuse cases
Maintaining Confidentiality

If court directs parties to file civil custody case

Judge in civil case may, after consulting with judge in CINC case, enter an order declaring custody order in CINC case shall become the custody order in civil custody case

OPTIONAL
Motion to consolidate the CINC case with any open civil custody case involving the child and both parents.

Order to consolidate CINC and civil custody cases

YES

Maintaining confidentiality in CINC matters when consolidating CINC with civil custody case and closing the CINC case. Suggested language for Order.

NO

Permanency Achieved to satisfaction of the Court

Dismiss CINC case and return civil custody to original court having jurisdiction over it.

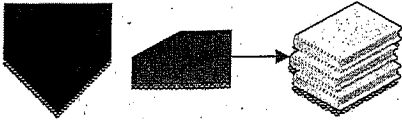
Close Case terminate court's jurisdiction

2

3



Notes on the Multiple Process



1

K.S.A. 2009 Supp 60-3107 (c) Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for the care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under the protection from abuse act, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated. Any inconsistent custody or parenting order issued in the revised Kansas code for care of children or the Kansas juvenile justice code shall be specific in its terms, reference any preexisting protection from abuse order and the custody being modified, and a copy of such order shall be filed in the preexisting protection from abuse case.

Suggested language for the order: "Pursuant to 2010 Supp. 60-3107 (c) the court hereby orders the custody or parenting time orders in re: [child's initials], in case no [CINC case number] the minor child of [parent's names] be filed by reference of this order in case no. [protection from abuse case] and shall be preserved as confidential as per K.S.A. 38-2209. Confidential documents found in the CINC case shall not be transferred to the protection from abuse case.

2

K.S.A. 2009 Supp 38-2264 (5) Nothing in this subsection shall operate to expand access to information that is confidential under K.S.A. 38-2209, and amendments thereto, and the confidentiality of such information shall be preserved in all filings in a civil custody case. Civil custody cases are open to the public. Orders consolidating the CINC and civil custody cases will be placed in the civil custody file. The order should be limited to findings and orders necessary to consolidate the cases and dismiss the CINC case.

Suggested language for the order: "Pursuant to 2010 Supp. 38-2264 (i) (3) the court hereby orders the matter of [child's initials] in case no [CINC case number] be consolidated by reference of this order into case number [civil custody case number]. Information in the court record for case number [CINC case number] shall be preserved as confidential pursuant to K.S.A. 38-2209. Confidential documents found in the CINC case shall not be transferred to the civil case. Costs of the civil custody case are assessed to the parties in [civil case number.] The CINC case in the interest of [child's initials, CINC case number] is closed and the courts jurisdiction in [CINC case number] is terminated."

3

K.S.A. 2009 Supp 38-2264(i) (3) Custody, residency and parenting time orders entered in consolidated child in need of care and civil custody cases take precedence over any previous orders affecting both parents and the child that were entered in the civil custody case regarding the same or related issues.

