

2
3 **As Amended by House Committee**

4 *Session of 2002*

5
6 **HOUSE BILL No. 2945**

7
8 By Representatives Landwehr, Ballard, Barnes, Campbell, Compton,
9 Dahl, DeCastro, DiVita, Faber, Freeborn, Gilbert, Henry, Horst,
10 Howell, Hutchins, Huy, Kauffman, Lightner, Loganbill, P. Long, Ma-
11 son, Mayans, McKinney, McLeland, Merrick, Miller, Jim Morrison,
12 Judy Morrison, Myers, Nichols, Novascone, Osborne, Ostmeyer, Pal-
13 mer, Patterson, Phelps, Pottorff, T. Powell, Powers, Pyle, Ruff,
14 Schwartz, Sharp, Spangler, Thimesch, Toelkes, Toplikar, Vickrey,
15 Wells, Welshimer and D. Williams

16
17 2-13

18
19 AN ACT concerning children in need of care; enacting the child abuse
20 and neglect central registry act, amending K.S.A. ~~22a-243, 38-1507,~~
21 ~~38-1508, 38-1513, 38-1514, 38-1521, 38-1523a, 38-1524, 38-1525,~~
22 ~~38-1526, 38-1527, 38-1542, 38-1543, 38-1544, 38-1557, 38-1558, 38-~~
23 ~~1563 and 38-1567 and K.S.A. 2001 Supp. 38-1502, 38-1522 and 38-~~
24 ~~1583 and repealing the existing sections: [concerning children; es-~~
25 ~~tablishing a children's advocate; providing for powers, duties~~
26 ~~and functions thereof.]~~
27

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

29 ~~New Section 1. Sections 1 through 8 and amendments thereto shall~~
30 ~~be known and may be cited as the child abuse and neglect central registry~~
31 ~~act. Proceedings pursuant to this act shall be civil in nature.~~

32 ~~— New Sec. 2. As used in this act:~~

33 ~~— (a) “Alleged perpetrator” means the person identified in the petition~~
34 ~~as the person suspected of perpetrating an act of abuse or neglect.~~

35 ~~— (b) “Substantiated abuse or neglect” means that a petition alleging~~
36 ~~abuse or neglect has been confirmed by a court order pursuant to this~~
37 ~~act by clear and convincing evidence.~~

38 ~~— (c) “Substantiated perpetrator” means a person who has been deter-~~
39 ~~mined by a judgment of the court pursuant to this act by clear and con-~~
40 ~~vincing evidence to have committed a substantiated act of abuse or~~
41 ~~neglect.~~

42 ~~— (d) “Validated” means a judgment by a district court of this state that~~
43 ~~a substantiated perpetrator poses a danger to children and should not be~~

1 permitted to operate, reside in, be employed by, or volunteer in a home
2 or facility for the care of children licensed under provisions of article 5
3 of chapter 65 of the Kansas statutes annotated, notwithstanding any other
4 provision of law to the contrary.

5 —(c) “Investigation” means the gathering and assessing of information
6 to determine if a child has been abused or neglected.

7 —(f) “Act” means the child abuse and neglect central registry act.

8 —(g) “Child abuse and neglect central registry” means a list maintained
9 by the department of social and rehabilitation services of persons vali-
10 dated as substantiated perpetrators of child abuse, neglect or sexual abuse
11 by court order pursuant to this act.

12 —(h) All other terms shall have the meanings as defined in K.S.A. 38-
13 1502, and amendments thereto.

14 —New Sec. 3. —(a) The district or county attorney may file in the district
15 court of the county of the residence or presence of the alleged perpetrator
16 a verified petition for an order stating that such perpetrator meets the
17 definition of a substantiated perpetrator and that such perpetrator’s name
18 be entered in the child abuse and neglect central registry.

19 —(b) The petition alleging the alleged perpetrator meets the definition
20 of a substantiated perpetrator shall state:

21 —(1) The belief that the alleged perpetrator has committed a significant
22 act or acts of abuse, sexual abuse or neglect, and stating sufficient facts
23 to support such allegation;

24 —(2) the name, age, residence and present address of the alleged
25 perpetrator;

26 —(3) the names and addresses of witnesses by whom the truth of the
27 petition may be proved;

28 —(4) to the extent known, whether or not the alleged perpetrator is
29 able to pay for medical services, or if not known, any information the
30 prosecutor might have about the alleged perpetrator’s financial circum-
31 stances or indigency;

32 —(5) to the extent known, the name and address of any person who
33 has custody of the alleged victim, and any known pending criminal charge
34 or charges or of any arrest warrant or warrants outstanding or, if there
35 are none, that fact or if not known, any information the prosecutor might
36 have about any current criminal justice system involvement with the al-
37 leged perpetrator; and

38 —(6) a request that the court make a determination that the alleged
39 perpetrator is a substantiated perpetrator and that such perpetrator’s
40 name be entered into the child abuse and neglect central registry.

41 —New Sec. 4. Upon the filing of the petition provided for in section
42 3, and amendments thereto, the district court shall issue the following:

43 —(a) An order fixing the time and place of the hearing on the petition.

1 The time designated in the order shall in no event be later than 60 days
2 after the date of the filing of the petition.

3 —(b)—An order that the alleged perpetrator appear at the time and place
4 of the hearing. If the alleged victim or any witness is a child less than 13
5 years of age, the court may order that the testimony of the child or witness
6 be taken pursuant to K.S.A. 38-1558, and amendments thereto.

7 —(c)—An order appointing an attorney to represent the alleged victim
8 at all stages of the proceedings. The court shall give preference, in the
9 appointment of the attorney, to any attorney who has represented the
10 alleged victim in other matters if the court has knowledge of the prior
11 relationship. The alleged victim shall have the right to choose and to
12 engage an attorney and, in such an event, the attorney appointed herein
13 shall be relieved of all duties by the court.

14 —(d)—An order appointing an attorney to represent the alleged perpe-
15 trator at all stages of the proceeding if the court finds the alleged perpe-
16 trator is indigent. Costs shall be paid by the county where the case is
17 being heard.

18 —(e)—A notice in the manner provided for in section 6, and amendments
19 thereto.

20 —(f)—An order for investigation. Such order shall be served on the al-
21 leged perpetrator at the same time or after notice is given. It shall be
22 served in the manner provided for in section 5, and amendments thereto.
23 It shall order the alleged perpetrator to submit to a mental evaluation
24 performed by a private psychiatrist, physician or other qualified mental
25 health professional, as defined in K.S.A. 59-2946, and amendments
26 thereto, designated by the court in the order. An institution within the
27 department of social and rehabilitation services shall receive and evaluate
28 any alleged perpetrator ordered evaluated therein. At the time designated
29 by the court in the order, the examiner shall submit to the court a report,
30 in writing, of the evaluation which report also shall be made available to
31 counsel for the parties. Such report shall state that the examiner has made
32 an independent evaluation and examination of the alleged perpetrator
33 and shall state the results of the mental health examination. There shall
34 be an investigation of pertinent facts and events related to the alleged
35 abuse. Such investigative findings shall be submitted to the court in the
36 form of a report. Copies of both reports shall be given to the alleged
37 perpetrator at least 72 hours prior to the hearing.

38 —New Sec. 5.—(a) The notice provided by section 4, and amendments
39 thereto, shall be given to the alleged perpetrator named in the petition,
40 the attorney of the alleged perpetrator, if any, and to such other persons
41 as the court shall direct. If the alleged perpetrator has a spouse, natural
42 guardian, custodian, guardian or conservator notice shall also be given to
43 them.

1 —(1)—The notice shall state:

2 —(A)—That a petition has been filed, alleging that the alleged perpetra-
3 tor is a substantiated perpetrator;

4 —(B)—the time and place of the hearing, **and**

5 —(C)—the name of the attorney, if any, appointed to represent the al-
6 leged perpetrator and the time and place where the alleged perpetrator
7 shall consult with such attorney; and

8 —(D)—that the alleged perpetrator has a right to demand a hearing be-
9 fore a jury.

10 —(2)—The court may order any of the following to serve the notice:

11 —(A)—The physician, psychiatrist or qualified mental health professional
12 currently administering to the alleged perpetrator provided such profes-
13 sional consents;

14 —(B)—any law enforcement officer; or

15 —(C)—the attorney of the alleged perpetrator.

16 —(b)—The notice shall be served personally on the alleged perpetrator
17 and the attorney of the alleged perpetrator, if any, not less than 20 days
18 prior to the date of the hearing and immediate return thereof shall be
19 made. If the alleged perpetrator may not be personally served within the
20 state, the court may direct notice be given to the alleged perpetrator in
21 such manner and for such a period of time as the court shall deem rea-
22 sonable. Notice required to be given to any other person shall be given
23 in such manner and for such a period of time as the court shall deem
24 reasonable. If the alleged perpetrator is a patient in any psychiatric hos-
25 pital notice by mail shall be given to the head of the hospital.

26 — New Sec. 6. —(a) Trial upon the petition shall be held at the time and
27 place specified in the court's order issued pursuant to section 5, and
28 amendments thereto. The hearing shall be held to the court only, unless
29 the alleged perpetrator at least four days prior to the time set for the
30 hearing, demands, in writing, a jury trial.

31 —(b)—The jury, if one is demanded, shall consist of six persons. The jury
32 panel shall be selected as provided by law. Notwithstanding the provision
33 within K.S.A. 43-166, and amendments thereto, otherwise, a panel of
34 prospective jurors may be assembled by the clerk upon less than 30 days'
35 notice in this circumstance. From such panel 12 qualified jurors, who
36 have been passed for cause, shall be empaneled. Prior service as a juror
37 in any court shall not exempt, for that reason alone, any person from jury
38 service hereunder. From the panel so obtained, the alleged perpetrator
39 or the alleged perpetrator's attorney shall strike one name, then the pros-
40 ecutor shall strike one name; and so on alternatively until each has
41 stricken three names so as to reach the jury of six persons. During this
42 process, if either party neglects or refuses to aid in striking the names,
43 the court shall strike a name on behalf of such party.

1 ~~—(c) (b) The alleged perpetrator shall be present at the hearing unless~~
2 ~~the attorney for the alleged perpetrator requests that the alleged perpe-~~
3 ~~trator's presence be waived. If the alleged victim or any witness is a child~~
4 ~~less than 13 years of age, the court may order that the testimony of the~~
5 ~~child or witness be taken pursuant to K.S.A. 38-1558, and amendments~~
6 ~~thereto. The alleged perpetrator shall be afforded an opportunity to ap-~~
7 ~~pear at the hearing, to testify and to present and cross-examine witnesses.~~
8 ~~All persons not necessary for the conduct of the proceedings may be~~
9 ~~excluded. The hearings shall be conducted in as informal a manner as~~
10 ~~may be consistent with orderly procedure and in a physical setting not~~
11 ~~likely to have a harmful effect on the welfare of the alleged victim. The~~
12 ~~court shall receive all relevant and material evidence which may be of-~~
13 ~~fered, including the testimony or written findings and recommendations~~
14 ~~of the examiner who evaluated the proposed patient pursuant to the~~
15 ~~court's order issued under section 5, and amendments thereto. Such evi-~~
16 ~~dence shall not be privileged for the purpose of this hearing.~~

17 ~~—(d) (c) The rules governing evidentiary and procedural matters at~~
18 ~~hearings under this section shall be applied in a manner so as to facilitate~~
19 ~~informal, efficient presentation of all relevant, probative evidence and~~
20 ~~resolution of issues with due regard to the interests of all parties.~~

21 ~~—(c) (d) The county or district attorney shall prepare all necessary pa-~~
22 ~~pers, appear at the hearing and present such evidence as the county or~~
23 ~~district attorney determines to be of aid to the court in determining~~
24 ~~whether or not the proposed alleged perpetrator is a substantiated per-~~
25 ~~petrator subject to having such perpetrator's name entered into the child~~
26 ~~abuse and neglect central registry.~~

27 ~~—New Sec. 7. (a) Upon completion of the trial, if the court or jury~~
28 ~~finds by clear and convincing evidence that the alleged perpetrator is~~
29 ~~validated as a substantiated perpetrator, the name of such validated per-~~
30 ~~petrator shall not be entered into the child abuse and neglect central~~
31 ~~registry until after the person has exhausted or failed to file an appeal to~~
32 ~~the state appellate courts in the manner provided in article 21 of chapter~~
33 ~~60 of the Kansas Statutes Annotated.~~

34 ~~—(b) If the court or jury finds from the evidence that the alleged per-~~
35 ~~petrator has not been shown to be a substantiated perpetrator under this~~
36 ~~act, the court shall terminate the proceedings. The department of social~~
37 ~~and rehabilitation services shall not further pursue the case.~~

38 ~~—(c) A copy of the judgment of each case filed under this act shall be~~
39 ~~provided to the secretary of social and rehabilitation services, or such~~
40 ~~secretary's designee.~~

41 ~~—New Sec. 8. (a) Any validated perpetrator of abuse or neglect on the~~
42 ~~registry pursuant to this act or a person on the registry prior to July 1,~~
43 ~~2002, may apply in writing to the district court of the county of residence~~

1 of the substantiated perpetrator to have the perpetrator's name expunged
2 from the central registry when three years have passed since the most
3 recent judgment was entered against the validated perpetrator.

4 —(b) A hearing shall be convened by the court, at which time the ap-
5 plicant may present evidence supporting expungement of the applicant's
6 name from the central registry. Evidence in support of or in opposition
7 to the application may be presented by the prosecutor in the original
8 action.

9 —(c) The following factors shall be considered by the court in making
10 the court's ruling:

11 —(1) The nature and severity of the confirmed act of abuse or neglect;

12 —(2) the number of confirmations of abuse or neglect involving the
13 applicant;

14 —(3) if the applicant was a child at the time of the validation for which
15 expungement is requested, the age of the applicant at the time of the
16 confirmed abuse or neglect;

17 —(4) circumstances that no longer exist which contributed to the find-
18 ing of abuse or neglect by the applicant; and

19 —(5) actions taken by the applicant to prevent the reoccurrence of acts
20 or abuse or neglect.

21 —(d) The hearing shall be set within 30 days from the date the appli-
22 cation for expungement is received by the district court. A written notice
23 shall be sent to the applicant, the prosecutor in the original action, the
24 child the applicant abused or neglected, the person or agency who rep-
25 resented the petitioner in the original action and the secretary of social
26 and rehabilitation services, or such secretary's designee, at least 10 days
27 prior to the hearing. The notice shall state the day, hour and place of the
28 hearing. Continuances may be granted only for good cause. Any party
29 given notice of the proceeding shall have the right to be heard and present
30 evidence at the hearing.

31 —(e) An order granting or denying the petition for expungement shall
32 be sent to the applicant, the secretary of social and rehabilitation services,
33 the prosecutor in the original action and the child the applicant abused
34 or neglected, and shall be rendered by the court within 60 days from the
35 date of the hearing. The order shall be in writing and shall set forth the
36 reasons for the decision.

37 —(f) Records may be expunged from the central registry by the district
38 court when 18 years have passed since the most recent confirmed
39 incident.

40 —New Sec. 9. Annually, on or before the first day of the regular session
41 of the legislature, the secretary of the department of social and rehabili-
42 tation services shall prepare and submit a report to the legislature con-
43 cerning family preservation services. Such report shall include statistics

1 concerning the number of referrals for family preservation services; the
2 outcome of all such referrals; the number and age of such children re-
3 ferred; the number of families; the number of family members; the num-
4 ber of successful family preservations defined as a child remaining with
5 a parent or parents for a period of 12 months after completion of the
6 program; and the number of failures including a brief description of why
7 the child or children were removed from the home. **The department of
8 social and rehabilitation services shall establish by rules and reg-
9 ulations the types of services that shall be available for family pres-
10 ervation. Such services shall include family mediation and the de-
11 partment assisting the abilities of families and children to resolve
12 problems within the family. Funds for these services shall be de-
13 rived from the family services and community intervention fund
14 established in K.S.A. 38-1509, and amendments thereto.**

15 —Sec. 10. K.S.A. 2001 Supp. 38-1502 is hereby amended to read as
16 follows: 38-1502. As used in this code, unless the context otherwise
17 indicates:

18 —(a) “Child in need of care” means a person less than 18 years of age
19 who:

20 —(1) Is without adequate parental care, control or subsistence and the
21 condition is not due solely to the lack of financial means of the child’s
22 parents or other custodian;

23 —(2) is without the care or control necessary for the child’s physical,
24 mental or emotional health;

25 —(3) has been physically, mentally or emotionally abused or neglected
26 or sexually abused;

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

28 —(5) has been abandoned or does not have a known living parent;

29 —(6) is not attending school as required by K.S.A. 72-977 or 72-1111,
30 and amendments thereto;

31 —(7) except in the case of a violation of K.S.A. 41-727, subsection (j)
32 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
33 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
34 4204a and amendments thereto, does an act which, when committed by
35 a person under 18 years of age, is prohibited by state law, city ordinance
36 or county resolution but which is not prohibited when done by an adult;

37 —(8) while less than 10 years of age, commits any act which if done by
38 an adult would constitute the commission of a felony or misdemeanor as
39 defined by K.S.A. 21-3105 and amendments thereto;

40 —(9) is willfully and voluntarily absent from the child’s home without
41 the consent of the child’s parent or other custodian;

42 —(10) is willfully and voluntarily absent at least a second time from a
43 court ordered or designated placement, or a placement pursuant to court

1 order, if the absence is without the consent of the person with whom the
2 child is placed or, if the child is placed in a facility, without the consent
3 of the person in charge of such facility or such person's designee;

4 —(11) has been residing in the same residence with a sibling or another
5 person under 18 years of age, who has been physically, mentally or emo-
6 tionally abused or neglected, or sexually abused; or

7 —(12) while less than 10 years of age commits the offense defined in
8 K.S.A. 21-4204a and amendments thereto.

9 —(b) “Physical, mental or emotional abuse” means the infliction of
10 physical, mental or emotional injury or the causing of a deterioration of
11 a child and may include, but shall not be limited to, maltreatment or
12 exploiting a child to the extent that the child's health or emotional well-
13 being is endangered. “Abuse” or “abused” includes the following acts or
14 omissions by a person:

15 —(1) ~~Mental or emotional injury to a child that results in an observable~~
16 ~~and material impairment in the child's growth, development or psycho-~~
17 ~~logical functioning as observed by a~~ **diagnosed by an independent,**
18 **court-appointed** ~~physician or psychiatrist;~~

19 —(2) ~~causing or permitting the child to be in a situation in which the~~
20 ~~child sustains a mental or emotional injury that results in an observable~~
21 ~~and material impairment in the child's growth, development or psycho-~~
22 ~~logical functioning as observed by a~~ **diagnosed by an independent,**
23 **court-appointed** ~~physician or psychiatrist;~~

24 —(3) ~~physical injury that results in substantial harm to the child, or the~~
25 ~~genuine threat of substantial harm from physical injury to the child, in-~~
26 ~~cluding an injury that is a variance with the history or explanation given~~
27 ~~and excluding an accident or reasonable discipline by a parent or guard-~~
28 ~~ian that does not expose the child to a substantial risk of harm;~~

29 —(4) ~~failure to make a reasonable effort to prevent an action by another~~
30 ~~person that results in physical injury that results in substantial harm to~~
31 ~~the child;~~

32 —(5) ~~sexual abuse.~~

33 —(c) “Sexual abuse” means any act committed with a child which is
34 described in article 35, chapter 21 of the Kansas Statutes Annotated and
35 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
36 thereto, regardless of the age of the child.

37 —(d) “Parent,” when used in relation to a child or children, includes a
38 guardian, conservator and every person who is by law liable to maintain,
39 care for or support the child.

40 —(e) “Interested party” means the state, the petitioner, the child, any
41 parent, any grandparent and any person found to be an interested party
42 pursuant to K.S.A. 38-1541 and amendments thereto.

43 —(f) “Law enforcement officer” means any person who by virtue of

1 office or public employment is vested by law with a duty to maintain
2 public order or to make arrests for crimes, whether that duty extends to
3 all crimes or is limited to specific crimes.

4 —(g) “Youth residential facility” means any home, foster home or struc-
5 ture which provides 24-hour-a-day care for children and which is licensed
6 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

7 —(h) “Shelter facility” means any public or private facility or home
8 other than a juvenile detention facility that may be used in accordance
9 with this code for the purpose of providing either temporary placement
10 for the care of children in need of care prior to the issuance of a dispo-
11 sitional order or longer term care under a dispositional order.

12 —(i) “Juvenile detention facility” means any secure public or private
13 facility used for the lawful custody of accused or adjudicated juvenile
14 offenders which must not be a jail.

15 —(j) “Adult correction facility” means any public or private facility, se-
16 cure or nonsecure, which is used for the lawful custody of accused or
17 convicted adult criminal offenders.

18 —(k) “Secure facility” means a facility which is operated or structured
19 so as to ensure that all entrances and exits from the facility are under the
20 exclusive control of the staff of the facility, whether or not the person
21 being detained has freedom of movement within the perimeters of the
22 facility, or which relies on locked rooms and buildings, fences or physical
23 restraint in order to control behavior of its residents. No secure facility
24 shall be in a city or county jail.

25 —(l) “Ward of the court” means a child over whom the court has ac-
26 quired jurisdiction by the filing of a petition pursuant to this code and
27 who continues subject to that jurisdiction until the petition is dismissed
28 or the child is discharged as provided in K.S.A. 38-1503 and amendments
29 thereto.

30 —(m) “Custody,” whether temporary, protective or legal, means the
31 status created by court order or statute which vests in a custodian,
32 whether an individual or an agency, the right to physical possession of
33 the child and the right to determine placement of the child, subject to
34 restrictions placed by the court.

35 —(n) “Placement” means the designation by the individual or agency
36 having custody of where and with whom the child will live.

37 —(o) “Secretary” means the secretary of social and rehabilitation
38 services.

39 —(p) “Relative” means a person related by blood, marriage or adoption
40 but, when referring to a relative of a child’s parent, does not include the
41 child’s other parent.

42 —(q) “Court-appointed special advocate” means a responsible adult
43 other than an attorney guardian *ad litem* who is appointed by the court

1 to represent the best interests of a child, as provided in K.S.A. 38-1505a
2 and amendments thereto, in a proceeding pursuant to this code.

3 —(r) “Multidisciplinary team” means a group of persons, appointed by
4 the court or by the state department of social and rehabilitation services
5 under K.S.A. 38-1523a and amendments thereto, which has knowledge
6 of the circumstances of a child in need of care. A multidisciplinary team
7 may serve as a community services team.

8 —(s) “Jail” means:

9 —(1) An adult jail or lockup; or

10 —(2) a facility in the same building or on the same grounds as an adult
11 jail or lockup, unless the facility meets all applicable standards and licen-
12 sure requirements under law and there is (A) total separation of the ju-
13 venile and adult facility spatial areas such that there could be no haphaz-
14 ard or accidental contact between juvenile and adult residents in the
15 respective facilities; (B) total separation in all juvenile and adult program
16 activities within the facilities, including recreation, education, counseling,
17 health care, dining, sleeping, and general living activities; and (C) separate
18 juvenile and adult staff, including management, security staff and direct
19 care staff such as recreational, educational and counseling.

20 —(t) “Kinship care” means the placement of a child in the home of the
21 child’s relative or in the home of another adult with whom the child or
22 the child’s parent already has a close emotional attachment.

23 —(u) “Juvenile intake and assessment worker” means a responsible
24 adult authorized to perform intake and assessment services as part of the
25 intake and assessment system established pursuant to K.S.A. 75-7023, and
26 amendments thereto.

27 —(v) “Abandon” means to forsake, desert or cease providing care for
28 the child without making appropriate provisions for substitute care.

29 —(w) “Permanent guardianship” means a judicially created relationship
30 between child and caretaker which is intended to be permanent and self-
31 sustaining without ongoing state oversight or intervention by the secre-
32 tary. The permanent guardian stands in loco parentis and exercises all the
33 rights and responsibilities of a parent. A permanent guardian may be
34 appointed after termination of parental rights or without termination of
35 parental rights, if the parent consents and agrees to the appointment of
36 a permanent guardian. Upon appointment of a permanent guardian, the
37 child shall be discharged from the custody of the secretary.

38 —(x) “Aggravated circumstances” means the abandonment, torture,
39 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

40 —(y) “Permanency hearing” means a notice and opportunity to be
41 heard is provided to interested parties, foster parents, preadoptive parents
42 or relatives providing care for the child. The court, after consideration of
43 the evidence, shall determine whether progress toward the case plan goal

1 is adequate or reintegration is a viable alternative, or if the case should
2 be referred to the county or district attorney for filing of a petition to
3 terminate parental rights or to appoint a permanent guardian.

4 —(z) “Extended out of home placement” means a child has been in the
5 custody of the secretary and placed with neither parent for 15 of the most
6 recent 22 months beginning 60 days after the date at which a child in the
7 custody of the secretary was removed from the home.

8 —(aa) “Educational institution” means all schools at the elementary and
9 secondary levels.

10 —(bb) “Educator” means any administrator, teacher or other profes-
11 sional or paraprofessional employee of an educational institution who has
12 exposure to a pupil specified in subsection (a) of K.S.A. 2001 Supp. 72-
13 89b03 and amendments thereto.

14 —(cc) “Neglect” means acts or omissions by a parent, guardian or per-
15 son responsible for the care of a child resulting in harm to a child or
16 presenting a likelihood of *substantial risk of substantial* harm and the acts
17 or omissions are not due solely to the lack of financial means of the child’s
18 parents or other custodian. Neglect may include but shall not be limited
19 to **shall include:**

20 —(1) Failure to provide the child with food, clothing or shelter neces-
21 sary to sustain the life or health of the child. **The mere presence of an**
22 **unclean house shall not constitute neglect;**

23 —(2) failure to provide adequate supervision of a child or to remove a
24 child from a situation which requires judgment or actions beyond the
25 child’s level of maturity, physical condition or mental abilities and that
26 results in bodily injury or a likelihood of *substantial risk of substantial*
27 harm to the child; or

28 —(3) failure to use resources available to treat a diagnosed medical
29 condition if such treatment will make a child substantially more com-
30 fortable, reduce pain and suffering, correct or substantially diminish a
31 crippling condition from worsening. A parent legitimately practicing re-
32 ligious beliefs who does not provide specified medical treatment for a
33 child because of religious beliefs shall not for that reason be considered
34 a negligent parent; however, this exception shall not preclude a court from
35 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
36 amendments thereto.

37 —(dd) “Community services team” means a group of persons, ap-
38 pointed by the court or by the state department of social and rehabilita-
39 tion services for the purpose of assessing the needs of a child who is
40 alleged to be a child in need of care.

41 —(ee) “Accident” means an unforeseen event that causes or threatens
42 physical injury despite prudent efforts to avoid the risk of injury.

43 —(ff) “Genuine threat” means a verbal or behavioral expression of in-

1 *tent that appears true or believable.*

2 ~~—(gg) “...Reasonable discipline...that does not expose the child to a sub-~~
 3 ~~stantial risk of harm...” means correction of a child’s behavior that does~~
 4 ~~not result in or risk substantial harm from physical injury. Spanking on~~
 5 ~~a child’s buttocks shall be considered reasonable discipline.~~

6 ~~—(hh) “...Reasonable effort to prevent...” means actions that an ordi-~~
 7 ~~nary and prudent person would take to stop an event from occurring.~~

8 ~~—(ii) (gg) “Substantial harm” means real and significant physical in-~~
 9 ~~jury or damage to a child including, but is not limited to, bruises, cuts,~~
 10 ~~welts, skull or other bone fractures, brain damage, subdural hemotoma,~~
 11 ~~internal injuries, burns, scalds, wounds, poisoning, human bites, concus-~~
 12 ~~sions and dislocations and sprains. **torturing, cruelly beating, shaking**~~
 13 ~~**which results in great bodily harm or inflicting cruel and inhuman**~~
 14 ~~**corporal punishment. Substantial harm does not include parents’**~~
 15 ~~**using reasonable force to discipline their children, including**~~
 16 ~~**spanking.**~~

17 ~~—(jj) (hh) “Substantial risk” means real and significant probability.~~

18 ~~—Sec. 11. K.S.A. 38-1513 is hereby amended to read as follows: 38-~~
 19 ~~1513. (a) *Physical or mental care and treatment.* (1) When a child less~~
 20 ~~than 18 years of age is alleged to have been physically, mentally or emo-~~
 21 ~~tionally abused or neglected or sexually abused, no consent shall be re-~~
 22 ~~quired to medically examine the child to determine whether the child has~~
 23 ~~been maltreated.~~

24 ~~—(2) When the health or condition of a child who is a ward of the court~~
 25 ~~requires it, the court may consent to the performing and furnishing of~~
 26 ~~hospital, medical, surgical or dental treatment or procedures, including~~
 27 ~~the release and inspection of medical or dental records. A child, or parent~~
 28 ~~of any child, who is opposed to certain medical procedures authorized by~~
 29 ~~this subsection may request an opportunity for a hearing thereon before~~
 30 ~~the court. Subsequent to the hearing, the court may limit the performance~~
 31 ~~of matters provided for in this subsection or may authorize the perform-~~
 32 ~~ance of those matters subject to terms and conditions the court considers~~
 33 ~~proper.~~

34 ~~—(3) Prior to disposition the person having custody of the child may~~
 35 ~~give consent to the following:~~

36 ~~—(A) Dental treatment for the child by a licensed dentist;~~

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

40 ~~—(C) releases and inspections of the child’s medical history records;~~

41 ~~—(D) immunizations for the child;~~

42 ~~—(E) administration of lawfully prescribed drugs to the child, and~~

43 ~~—(F) examinations of the child including, but not limited to, the with-~~

1 ~~drawal of blood or other body fluids or tissues, for the purpose of deter-~~
2 ~~mining the child's parentage.~~

3 ~~—(4) When the court has granted legal custody of a child in a disposi-~~
4 ~~tional hearing to any agency, association or individual, the custodian or~~
5 ~~an agent designated by the custodian shall have authority to consent to~~
6 ~~the performance and furnishing of hospital, medical, surgical or dental~~
7 ~~treatment or procedures or mental care or treatment other than inpatient~~
8 ~~treatment at a state psychiatric hospital, including the release and in-~~
9 ~~spection of medical or hospital records, subject to terms and conditions~~
10 ~~the court considers proper.~~

11 ~~—(5) If a child is in the custody of the secretary, the secretary may~~
12 ~~consent to the mental care and treatment of the child, without court~~
13 ~~approval, so long as such care and treatment do not include inpatient~~
14 ~~treatment at a state psychiatric hospital.~~

15 ~~—(6) Any health care provider who in good faith renders hospital, med-~~
16 ~~ical, surgical, mental or dental care or treatment to any child after a con-~~
17 ~~sent has been obtained as authorized by this section shall not be liable in~~
18 ~~any civil or criminal action for failure to obtain consent of a parent.~~

19 ~~—(7) Nothing in this section shall be construed to mean that any person~~
20 ~~shall be relieved of legal responsibility to provide care and support for a~~
21 ~~child.~~

22 ~~—(b) *Mental care and treatment requiring court action.* If it is brought~~
23 ~~to the court's attention, while the court is exercising jurisdiction over the~~
24 ~~person of a child under this code, that the child may be a mentally ill~~
25 ~~person as defined in K.S.A. 2000 2001 Supp. 59-2946 and amendments~~
26 ~~thereto, the court may:~~

27 ~~—(1) Direct or authorize the county or district attorney or the person~~
28 ~~supplying the information to file the petition provided for in K.S.A. 2000~~
29 ~~2001 Supp. 59-2957 and amendments thereto and proceed to hear and~~
30 ~~determine the issues raised by the application as provided in the care and~~
31 ~~treatment act for mentally ill persons; or~~

32 ~~—(2) authorize that the child seek voluntary admission to a treatment~~
33 ~~facility as provided in K.S.A. 2000 2001 Supp. 59-2949 and amendments~~
34 ~~thereto.~~

35 ~~—The application to determine whether the child is a mentally ill person~~
36 ~~may be filed in the same proceedings as the petition alleging the child to~~
37 ~~be a child in need of care, or may be brought in separate proceedings. In~~
38 ~~either event the court may enter an order staying any further proceedings~~
39 ~~under this code until all proceedings have been concluded under the care~~
40 ~~and treatment act for mentally ill persons.~~

41 ~~—Sec. 12. K.S.A. 38-1514 is hereby amended to read as follows: 38-~~
42 ~~1514. (a) *Of child.* (1) *Psychological or emotional.* During proceedings~~
43 ~~under this code, the court, on its own motion or the motion of the guard-~~

1 ian *ad litem* for the child, may order an evaluation and written report of
2 the psychological or emotional development or needs of a child who is
3 the subject of the proceedings. The court may refer the child to a state
4 institution for the evaluation if the secretary advises the court that the
5 facility is a suitable place to care for, treat or evaluate the child and that
6 space is available. The expenses of transportation to and from the state
7 facility may be paid as a part of the expenses of temporary care and
8 custody. The child may be referred to a mental health center or qualified
9 professional for evaluation and the expenses of the evaluation may be
10 considered as expenses of the proceedings and assessed as provided in
11 this code. If the court orders an evaluation as provided in this section, a
12 parent of the child shall have the right to obtain an independent evalua-
13 tion at the expense of the parent.

14 —(2)—*Medical*. During proceedings under this code, the court may or-
15 der an examination and report of the medical condition and needs of a
16 child who is the subject of the proceedings. The court may also order a
17 report from any physician who has been attending the child stating the
18 diagnosis, condition and treatment afforded the child.

19 —(3)—*Educational*. The court may order the chief administrative officer
20 of the school which the child attends or attended to provide to the court
21 information that is readily available which the school officials believe
22 would properly indicate the educational needs of the child. The order
23 may direct that the school conduct an educational needs assessment of
24 the child and send a report of the assessment to the court. The educa-
25 tional needs assessment may include a meeting involving any of the fol-
26 lowing: The child's parents, the child's teachers, the school psychologist,
27 a school special services representative, a representative of the secretary,
28 the child's C.A.S.A., the child's foster parents or legal guardian, a court
29 services officer, and other persons that the chief administrative officer of
30 the school or the officer's designee considers appropriate.

31 —(b)—*Of parent or custodian*. (1) *Physical, psychological or emotional*.
32 During proceedings under this code, the court may order an examination,
33 evaluation and report of the physical, mental or emotional status or needs
34 of a parent or any other relative being considered as one to whom the
35 court may grant custody. Written reports and other materials relating to
36 the examination and evaluation may be considered by the court but, if
37 requested by any interested party in attendance, the court shall require
38 the person preparing the report or other material to appear and testify.

39 —(2)—*Parenting skills*. At any dispositional hearing, the court may re-
40 ceive and consider written reports from any physician or qualified person
41 concerning the parenting skills or ability to provide for the physical, men-
42 tal or emotional needs and future development of a child by a parent or
43 other relative being considered for custody. If requested by any interested

1 party in attendance at the dispositional hearing, the court shall require
2 the person preparing the report to appear and testify.

3 —(3) ~~If the court orders an evaluation under this subsection, the court
4 may order that expenses of the evaluation shall be paid by the department
5 of social and rehabilitation services if the court finds that the parent or
6 other relative being considered for custody is indigent.~~

7 —(c) ~~Confidentiality of reports. (1) Reports of court ordered examina-
8 tion or evaluation. No confidential relationship of physician and patient,
9 psychologist and client or social worker and client shall arise from an
10 examination or evaluation ordered by the court.~~

11 —(2) ~~Report from private physician, psychologist or therapist. When
12 any interested party to proceedings under this code wishes the court to
13 have the benefit of information or opinion from a physician, psychologist,
14 registered marriage and family therapist or social worker with whom there
15 is a confidential relationship, the interested party may waive the confi-
16 dential relationship but restrict the information to be furnished or testi-
17 mony to be given to those matters material to the issues before the court.
18 If requested, the court may make an *in camera* examination of the pro-
19 posed witness or the file of the proposed witness and excise any matters
20 that are not material to the issues before the court.~~

21 —Sec. 13. K.S.A. 38-1521 is hereby amended to read as follows: 38-
22 1521. It is the policy of this state to provide for the protection of children
23 who have been subject to physical, mental or emotional abuse or neglect
24 or sexual abuse by encouraging the reporting of suspected child abuse
25 and neglect, insuring the thorough and prompt investigation of these re-
26 ports and providing preventive and rehabilitative services when appro-
27 priate to abused or neglected children and their families so that, if pos-
28 sible, the families can remain together without further threat to the
29 children.

30 —The secretary, within the limit of appropriations therefor, shall conduct
31 a continuing publicity and educational program for local staff of the de-
32 partment of social and rehabilitation services, persons required to report
33 under this code and other appropriate persons. The program shall include
34 courses which encourage the reporting of cases of children suspected of
35 having been injured as a result of physical, mental or emotional abuse or
36 neglect or sexual abuse. In addition, the courses shall include an analysis
37 of the powers and duties granted under this code, the methods of diag-
38 nosing injuries inflicted as a result of abuse, the procedures followed by
39 the department of social and rehabilitation services in carrying out its
40 duties under this code and the role of the courts in this area of the law.

41 —Sec. 14. K.S.A. 2001 Supp. 38-1522 is hereby amended to read as
42 follows: 38-1522. (a) When any of the following persons has reason to
43 suspect that a child has been injured as a result of physical, mental or

1 emotional abuse or neglect or sexual abuse, the person shall report the
2 matter promptly as provided in subsection (c) or (e). Persons licensed to
3 practice the healing arts or dentistry; persons licensed to practice optom-
4 etry; persons engaged in postgraduate training programs approved by the
5 state board of healing arts; licensed psychologists; licensed masters level
6 psychologists; licensed clinical psychotherapists; licensed professional or
7 practical nurses examining, attending or treating a child under the age of
8 18; teachers, school administrators or other employees of a school which
9 the child is attending; chief administrative officers of medical care facil-
10 ities; licensed marriage and family therapists; licensed clinical marriage
11 and family therapists; licensed professional counselors; licensed clinical
12 professional counselors; registered alcohol and drug abuse counselors;
13 persons licensed by the secretary of health and environment to provide
14 child care services or the employees of persons so licensed at the place
15 where the child care services are being provided to the child; licensed
16 social workers; firefighters; emergency medical services personnel; me-
17 diators appointed under K.S.A. 23-602 and amendments thereto; juvenile
18 intake and assessment workers; and law enforcement officers. The report
19 may be made orally and shall be followed by a written report if requested.
20 When the suspicion is the result of medical examination or treatment of
21 a child by a member of the staff of a medical care facility or similar
22 institution, that staff member shall immediately notify the superinten-
23 dent, manager or other person in charge of the institution who shall make
24 a written report forthwith. Every written report shall contain, if known,
25 the names and addresses of the child and the child's parents or other
26 persons responsible for the child's care, the child's age, the nature and
27 extent of the child's injury (including any evidence of previous injuries)
28 and any other information that the maker of the report believes might be
29 helpful in establishing the cause of the injuries and the identity of the
30 persons responsible for the injuries.

31 — (b) — Any other person who has reason to suspect that a child has been
32 injured as a result of physical, mental or emotional abuse or neglect or
33 sexual abuse may report the matter as provided in subsection (c) or (e).

34 — (c) — Except as provided by subsection (e), reports made pursuant to
35 this section shall be made to the state department of social and rehabil-
36 itation services. When the department is not open for business, the re-
37 ports shall be made to the appropriate law enforcement agency. On the
38 next day that the state department of social and rehabilitation services is
39 open for business, the law enforcement agency shall report to the de-
40 partment any report received and any investigation initiated pursuant to
41 subsection (a) of K.S.A. 38-1524 and amendments thereto. The reports
42 may be made orally or, on request of the department, in writing.

43 — (d) — Any person who is required by this section to report an injury to

1 a child and who knows of the death of a child shall notify immediately
2 the coroner as provided by K.S.A. 22a-242, and amendments thereto.

3 —(c) Reports of child abuse or neglect occurring in an institution op-
4 erated by the secretary of social and rehabilitation services or the com-
5 missioner of juvenile justice shall be made to the attorney general. All
6 other reports of child abuse or neglect by persons employed by or of
7 children of persons employed by the state department of social and re-
8 habilitation services or the juvenile justice authority shall be made to the
9 appropriate law enforcement agency.

10 —(f) Willful and knowing failure to make a report required by this sec-
11 tion is a class B misdemeanor.

12 —(g) Preventing or interfering with, with the intent to prevent, the
13 making of a report required by this section is a class B misdemeanor.

14 —Sec. 15. K.S.A. 38-1523a is hereby amended to read as follows: 38-

15 1523a. (a) Upon recommendation of the state department of social and
16 rehabilitation services or the county or district attorney, the court may
17 appoint a multidisciplinary team to assist in gathering information re-
18 garding a child alleged to be a child in need of care by reason of physical,
19 mental or emotional abuse or neglect or sexual abuse. The team may be
20 a standing multidisciplinary team or may be appointed for a specific child.

21 —(b) Any person appointed as a member of a multidisciplinary team
22 may decline to serve and shall incur no civil liability as the result of de-
23 clining to serve.

24 —(c) This section shall be part of and supplemental to the Kansas code
25 for care of children.

26 —(d) The multidisciplinary team may request disclosure of information
27 in regard to a child alleged to be a child in need of care, or a child who
28 has been adjudged to be a child in need of care, by making a written
29 verified application to the district court. Upon a finding by the court there
30 is probable cause to believe the information sought may assist in deter-
31 mining if a child is a child in need of care as defined in K.S.A. 38-1502
32 and amendments thereto, or in assisting a child who has been adjudicated
33 a child in need of care, then the court may issue a subpoena, subpoena
34 duces tecum or enter an order for the production of the requested doc-
35 uments, reports or information and directing the document, reports or
36 information to be delivered to the applicant at a specified time, date and
37 place. The time and date of delivery shall not be sooner than five days
38 after the service of the subpoena or order, excluding Saturdays, Sundays
39 or holidays. The court issuing the subpoena or order shall keep all appli-
40 cations filed pursuant to this subsection and a copy of the subpoena or
41 order in a special file maintained for such purpose or in the official court
42 file for the child. Upon receiving service of a subpoena, subpoena duces
43 tecum or an order for production pursuant to this subsection, the party

1 claimed privilege or right of confidentiality, and whether it is in the best
2 interests of the child for the subpoena or order to produce to be honored.
3 The request to withdraw shall be filed with the district court issuing the
4 subpoena or order at least 24 hours prior to the specified time and date
5 of delivery, excluding Saturdays, Sundays or holidays, and a copy of the
6 written request must be given to the person subpoenaed or subject to
7 the order for production at least 24 hours prior to the specified time and
8 date of delivery.

9 — Sec. 16. — K.S.A. 38-1525 is hereby amended to read as follows: 38-
10 1525. (a) No employer shall terminate the employment of, prevent or
11 impair the practice or occupation of or impose any other sanction on any
12 employee because the employee made an oral or written report to, or
13 cooperated with an investigation by, a law enforcement agency or the
14 department of social and rehabilitation services relating to injury inflicted
15 upon a child which was suspected by the employee of having resulted
16 from the physical, mental or emotional abuse or neglect or sexual abuse
17 of the child.

18 — (b) — Violation of this section is a class B misdemeanor.

19 — Sec. 17. — K.S.A. 38-1526 is hereby amended to read as follows: 38-
20 1526. Anyone participating without malice in the making of an oral or
21 written report to a law enforcement agency or the department of social
22 and rehabilitation services relating to injury inflicted upon a child under
23 18 years of age as a result of physical, mental or emotional abuse or
24 neglect or sexual abuse or in any follow-up activity to or investigation of
25 the report shall have immunity from any civil liability that might otherwise
26 be incurred or imposed. Any such participant shall have the same im-
27 munity with respect to participation in any judicial proceedings resulting
28 from the report.

29 — Sec. 18. — K.S.A. 38-1542 is hereby amended to read as follows: 38-
30 1542. (a) The court upon verified application may issue *ex parte* an order
31 directing that a child be held in protective custody and, if the child has
32 not been taken into custody, an order directing that the child be taken
33 into custody. The application shall state for each child:

34 — (1) — The applicant's belief that the child is a child in need of care and
35 that allowing the child to remain in the home is contrary to the welfare
36 of the child or placement is in the best interest of the child and that the
37 child is likely to sustain harm if not immediately afforded protective cus-
38 tody; and

39 — (2) — the facts which are relied upon to support the application, in-
40 cluding efforts known to the applicant, to maintain the family unit and
41 prevent the unnecessary removal of the child from the child's home, or
42 the specific facts supporting that an emergency exists which threatens the
43 safety of the child.

1 ~~—(b) (1) The order of protective custody may be issued only after the~~
2 ~~court has determined there is probable cause to believe the allegations~~
3 ~~in the application are true. The order shall remain in effect until the~~
4 ~~temporary custody hearing provided for in K.S.A. 38-1543, and amend-~~
5 ~~ments thereto, unless earlier rescinded by the court.~~

6 ~~—(2) No child shall be held in protective custody for more than 72~~
7 ~~hours, excluding Saturdays, Sundays and legal holidays, unless within the~~
8 ~~72-hour period a determination is made as to the necessity for temporary~~
9 ~~custody in a temporary custody hearing. Nothing in this subsection (b)(2)~~
10 ~~shall be construed to mean that the child must remain in protective cus-~~
11 ~~tody for 72 hours.~~

12 ~~—(c) Whenever the court determines the necessity for an order of pro-~~
13 ~~TECTIVE CUSTODY, the court may place the child in the protective custody~~
14 ~~of: (1) A parent or other person having custody of the child and may enter~~
15 ~~a restraining order pursuant to subsection (c); (2) a person, other than~~
16 ~~the parent or other person having custody, who shall not be required to~~
17 ~~be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-~~
18 ~~tated; (3) a youth residential facility; or (4) the secretary if the child is~~
19 ~~alleged to be a child in need of care the court may award custody to the~~
20 ~~secretary. However, if the secretary presents the court with a plan to~~
21 ~~provide services to a child or family which the court finds will assure the~~
22 ~~safety of the child, the court may only place the child in the protective~~
23 ~~custody of the secretary until the court finds the services are in place.~~
24 ~~The court shall have the authority to require any person or entity agreeing~~
25 ~~to participate in the plan to perform as set out in the plan. When the~~
26 ~~child is placed in the protective custody of the secretary, the secretary~~
27 ~~shall have the discretionary authority to place the child with a parent or~~
28 ~~to make other suitable placement for the child. When circumstances re-~~
29 ~~quire, a child in protective custody may be placed in a juvenile detention~~
30 ~~facility or other secure facility pursuant to an order of protective custody~~
31 ~~for not to exceed 24 hours, excluding Saturdays, Sundays and legal holi-~~
32 ~~days.~~

33 ~~—(d) The order of protective custody shall be served on the child's~~
34 ~~parents and any other person having legal custody of the child. The order~~
35 ~~shall prohibit all parties from removing the child from the court's juris-~~
36 ~~isdiction without the court's permission.~~

37 ~~—(e) If the court issues an order of protective custody, the court may~~
38 ~~also enter an order restraining any alleged perpetrator of physical, sexual,~~
39 ~~mental or emotional abuse of the child from residing in the child's home;~~
40 ~~visiting, contacting, harassing or intimidating the child, other family mem-~~
41 ~~ber or witness; or attempting to visit, contact, harass or intimidate the~~
42 ~~child, other family member or witness. Such restraining order shall be~~
43 ~~served on any alleged perpetrator to whom the order is directed.~~

1 —(f) The court shall not enter an order removing a child from the
 2 custody of a parent pursuant to this section unless the court first finds
 3 from evidence presented by the petitioner that reasonable efforts have
 4 been made to maintain the family unit and prevent the unnecessary re-
 5 moval of the child from the child's home or that an emergency exists
 6 which threatens the safety of the child and that remaining in the home is
 7 contrary to the welfare of the child or that immediate placement is in the
 8 best interest of the child. **reasonable efforts have been made to main-**
 9 **tain the family unit and prevent the unnecessary removal of the**
 10 **child from the child's home by utilizing** *family preservation services*
 11 *have been utilized in an attempt to keep the child from being removed*
 12 *from the home. If a parent or parents refuse, in writing, to participate in*
 13 *family preservation, such child or children may be removed from the*
 14 *home. Family preservation services need not be utilized if there is evidence*
 15 *of physical abandonment, physical abuse, sexual abuse or when a parent*
 16 *has been convicted of murder in the first degree, K.S.A. 21-3401 and*
 17 *amendments thereto, murder in the second degree, K.S.A. 21-3402 and*
 18 *amendments thereto, capital murder, K.S.A. 21-3439 and amendments*
 19 *thereto, voluntary manslaughter K.S.A. 21-3403 and amendments thereto,*
 20 *or violated a law of another state which prohibits such murder or man-*
 21 *slaughter of the child's sibling. Such findings shall be included in any*
 22 *order entered by the court. If the child is placed in the custody of the*
 23 *secretary, the court shall provide the secretary with a written copy of any*
 24 *orders entered for the purpose of documenting these orders upon making*
 25 *the order.*

26 —Sec. 19. K.S.A. 38-1543 is hereby amended to read as follows: 38-
 27 1543. (a) Upon notice and hearing, the court may issue an order directing
 28 who shall have temporary custody and may modify the order during the
 29 pendency of the proceedings as will best serve the child's welfare.

30 —(b) A hearing pursuant to this section shall be held within 72 hours,
 31 excluding Saturdays, Sundays and legal holidays, following a child having
 32 been taken into protective custody.

33 —(c) Whenever it is determined that a temporary custody hearing is
 34 required, the court shall immediately set the time and place for the hear-
 35 ing. Notice of a temporary custody hearing shall be in substantially the
 36 following form:

37 (Name of Court)

38 (Caption of Case)

39 NOTICE OF TEMPORARY CUSTODY HEARING

40 TO:

41 (Names) (Relationship) (Addresses)

42 _____
 43 _____

1 _____
 2 On _____, _____, (year), at _____ o'clock _____ m.
 3 _____ (day) _____ (date)
 4 the court will conduct a hearing at _____ to determine if the above
 5 named child or children should be in the temporary custody of some person or agency other
 6 than the parent or other person having legal custody prior to the hearing on the petition
 7 filed in the above captioned case. The court may order one or both parents to pay child
 8 support:

9 _____, an attorney, has been appointed as guardian *ad litem* for the child or
 10 children. Each parent or other legal custodian has the right to appear and be heard person-
 11 ally, either with or without an attorney. An attorney will be appointed for a parent who can
 12 show that the parent is not financially able to hire one:

13 Date _____, (year) _____ Clerk of the District Court
 14 by _____
 15 _____ (Seal) _____

REPORT OF SERVICE

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

19 Name	Location of Service	Manner of Service	Date	Time
20 _____	(other than above)	_____	_____	_____
21 _____	_____	_____	_____	_____
22 _____	_____	_____	_____	_____
23 _____	_____	_____	_____	_____

24 Date Returned _____, _____(year)
 25 _____
 26 _____ (Signature) _____
 27 _____
 28 _____ (Title) _____

29 ~~(d) Notice of the temporary custody hearing shall be given at least~~
 30 ~~24 hours prior to the hearing. The court may continue the hearing to~~
 31 ~~afford the 24 hours prior notice or, with the consent of the party, proceed~~
 32 ~~with the hearing at the designated time. If an order of temporary custody~~
 33 ~~is entered and the parent or other person having custody of the child has~~
 34 ~~not been notified of the hearing, did not appear or waive appearance and~~
 35 ~~requests a rehearing, the court shall rehear the matter without unnee-~~
 36 ~~essary delay.~~

37 ~~(c) Oral notice may be used for giving notice of a temporary custody~~
 38 ~~hearing where there is insufficient time to give written notice. Oral notice~~
 39 ~~is completed upon filing a certificate of oral notice in substantially the~~
 40 ~~following form:~~

41 _____ (Name of Court)
 42 _____ (Caption of Case)
 43 CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

1 I gave oral notice that the court will conduct a hearing at _____ o'clock _____ m.
2 on _____, _____ (year), to the persons listed, in the manner and at the times
3 indicated below:

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

6 _____
7 _____
8 _____

9 I advised each of the above persons that:

- 10 ~~(1) The hearing is to determine if the above child or children should be in the temporary~~
- 11 ~~custody of a person or agency other than a parent;~~
- 12 ~~(2) the court will appoint an attorney to serve as guardian *ad litem* for the child or~~
- 13 ~~children named above;~~
- 14 ~~(3) each parent or legal custodian has the right to appear and be heard personally either~~
- 15 ~~with or without an attorney;~~
- 16 ~~(4) an attorney will be appointed for a parent who can show that the parent is not~~
- 17 ~~financially able to hire an attorney; and~~
- 18 ~~(5) the court may order one or both parents to pay child support.~~

19 _____
20 (Signature) _____

21 _____
22 (Name Printed) _____

23 _____
24 (Title) _____

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

30 ~~(g) Whenever the court determines the necessity for an order of tem-~~
31 ~~porary custody the court may place the child in the temporary custody~~
32 ~~of: (1) A parent or other person having custody of the child and may enter~~
33 ~~a restraining order pursuant to subsection (h); (2) a person, other than~~
34 ~~the parent or other person having custody, who shall not be required to~~
35 ~~be licensed under article 5 of chapter 65 of the Kansas Statutes Anno-~~
36 ~~tated; (3) a youth residential facility; or (4) the secretary if the child is~~
37 ~~alleged to be a child in need of care, the court may award custody to the~~
38 ~~secretary. However, if the secretary presents the court with a plan to~~
39 ~~provide services to a child or family which the court finds will assure the~~
40 ~~safety of the child, the court may only place the child in the temporary~~
41 ~~custody of the secretary until the court finds the services are in place.~~
42 ~~The court shall have the authority to require any person or entity agreeing~~
43 ~~to participate in the plan to perform as set out in the plan. When the~~

1 child is placed in the temporary custody of the secretary, the secretary
2 shall have the discretionary authority to place the child with a parent or
3 to make other suitable placement for the child. When circumstances re-
4 quire, a child may be placed in a juvenile detention facility or other secure
5 facility, but the total amount of time that the child may be held in such
6 facility under this section and K.S.A. 38-1542 and amendments thereto
7 shall not exceed 24 hours, excluding Saturdays, Sundays and legal holi-
8 days. The order of temporary custody shall remain in effect until modified
9 or rescinded by the court or a disposition order is entered but not ex-
10 ceeding 60 days, unless good cause is shown and stated on the record.

11 —(h) If the court issues an order of temporary custody, the court may
12 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.

16 —(i) The court shall not enter an order removing a child from the cus-
17 tody of a parent pursuant to this section unless the court first finds from
18 evidence presented by the petitioner that reasonable efforts have been
19 made to maintain the family unit and prevent the unnecessary removal
20 of the child from the child's home or that an emergency exists which
21 threatens the safety of the child and that remaining in the home is con-
22 trary to the welfare of the child or that placement is in the best interest
23 of the child. Such findings shall be included in any order entered by the
24 court. ~~reasonable efforts have been made to maintain the family
25 unit and prevent the unnecessary removal of the child from the
26 child's home by utilizing family preservation services have been utilized
27 in an attempt to keep the child from being removed from the home. If a
28 parent or parents refuse, in writing, to participate in family preservation,
29 such child or children may be removed from the home. Family preser-
30 vation services need not be utilized if there is evidence of physical aban-
31 donment, physical abuse, sexual abuse or when a parent has been con-
32 victed of murder in the first degree, K.S.A. 21-3401 and amendments
33 thereto, murder in the second degree, K.S.A. 21-3402 and amendments
34 thereto, capital murder, K.S.A. 21-3439 and amendments thereto, vol-
35 untary manslaughter, K.S.A. 21-3403 and amendments thereto, or vio-
36 lated a law of another state which prohibits such murder or manslaughter
37 of the child's sibling.~~ If the child is placed in the custody of the secretary,
38 the court shall provide the secretary with a written copy of any orders
39 entered for the purpose of documenting these orders upon making the
40 order.

41 —Sec. 20. K.S.A. 38-1544 is hereby amended to read as follows: 38-
42 1544. (a) At any time after filing a petition, but prior to an adjudication,
43 the court may enter an order for continuance and informal supervision

1 without an adjudication if no interested party objects. Upon granting the
2 continuance, the court shall include in the order any conditions with
3 which the interested parties are expected to comply and provide the parties
4 with a copy of the order. The conditions may include appropriate
5 dispositional alternatives authorized by K.S.A. 38-1563 and amendments
6 thereto.

7 —(b)—An order for informal supervision may remain in force for a period
8 of up to six months and may be extended, upon hearing, for an additional
9 six-month period for a total of one year.

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

16 —(d)—Parties to the order for informal supervision who successfully
17 complete the terms and period of supervision shall not again be pro-
18 ceeded against in any court based solely upon the allegations in the orig-
19 inal petition and the proceedings shall be dismissed.

20 —(e)—If the court issues an order for informal supervision pursuant to
21 this section, the court may enter an order restraining any alleged perpe-
22 trator of physical, sexual, mental or emotional abuse of the child from
23 residing in the child's home, visiting, contacting, harassing or intimidating
24 the child, other family member or witness, or attempting to visit, contact,
25 harass or intimidate the child, other family member or witness.

26 —Sec. 21. K.S.A. 38-1557 is hereby amended to read as follows: 38-
27 1557. In any proceeding pursuant to the Kansas code for care of children
28 in which a child less than 13 years of age is alleged to have been physically,
29 mentally or emotionally abused or neglected or sexually abused, a re-
30 cording of an oral statement of the child, or of any witness less than 13
31 years of age, made before the proceeding began, is admissible in evidence
32 if:

33 —(a)—The court determines that the time, content and circumstances
34 of the statement provide sufficient indicia of reliability;

35 —(b)—no attorney for any party is present when the statement is made;

36 —(c)—the recording is both visual and aural and is recorded on film or
37 videotape or by other electronic means;

38 —(d)—the recording equipment is capable of making an accurate re-
39 cording, the operator of the equipment is competent and the recording
40 is accurate and has not been altered;

41 —(e)—the statement is not made in response to questioning calculated
42 to lead the child to make a particular statement or is clearly shown to be
43 the child's statement and not made solely as a result of a leading or sug-

1 gestive question;

2 ~~—(f) every voice on the recording is identified;~~

3 ~~—(g) the person conducting the interview of the child in the recording~~
4 ~~is present at the proceeding and is available to testify or be cross-examined~~
5 ~~by any party; and~~

6 ~~—(h) each party to the proceeding is afforded an opportunity to view~~
7 ~~the recording before it is offered into evidence, and a copy of a written~~
8 ~~transcript is provided to the parties.~~

9 ~~—Sec. 22. K.S.A. 38-1558 is hereby amended to read as follows: 38-~~
10 ~~1558. (a) On motion of any party to a proceeding pursuant to the Kansas~~
11 ~~code for care of children in which a child less than 13 years of age is~~
12 ~~alleged to have been physically, mentally or emotionally abused or ne-~~
13 ~~glected or sexually abused, the court may order that the testimony of the~~
14 ~~child, or of any witness less than 13 years of age, be taken:~~

15 ~~—(1) In a room other than the courtroom and be televised by closed-~~
16 ~~circuit equipment in the courtroom to be viewed by the court, the finder~~
17 ~~of fact and the parties to the proceeding; or~~

18 ~~—(2) outside the courtroom and be recorded for showing in the court-~~
19 ~~room before the court, the finder of fact and the parties to the proceeding~~
20 ~~if: (A) The recording is both visual and aural and is recorded on film or~~
21 ~~videotape or by other electronic means; (B) the recording equipment is~~
22 ~~capable of making an accurate recording, the operator of the equipment~~
23 ~~is competent and the recording is accurate and has not been altered; (C)~~
24 ~~every voice on the recording is identified; and (D) each party to the~~
25 ~~proceeding is afforded an opportunity to view the recording before it is~~
26 ~~shown in the courtroom, and a copy of a written transcript is provided to~~
27 ~~the parties.~~

28 ~~—(b) At the taking of testimony under this section:~~

29 ~~—(1) Only an attorney for each party, the guardian *ad litem* for the~~
30 ~~child or other person whose presence would contribute to the welfare~~
31 ~~and well-being of the child and persons necessary to operate the recording~~
32 ~~or closed-circuit equipment may be present in the room with the child~~
33 ~~during the child's testimony;~~

34 ~~—(2) only the attorneys for the parties may question the child; and~~

35 ~~—(3) the persons operating the recording or closed-circuit equipment~~
36 ~~shall be confined to an adjacent room or behind a screen or mirror that~~
37 ~~permits them to see and hear the child during the child's testimony, but~~
38 ~~does not permit the child to see or hear them.~~

39 ~~—(c) If the testimony of a child is taken as provided by this section, the~~
40 ~~child shall not be compelled to testify in court during the proceeding.~~

41 ~~—(d) (1) Any objection by any party to the proceeding to a recording~~
42 ~~under subsection (a)(2) is inadmissible must be made by written motion~~
43 ~~filed with the court at least seven days before the commencement of the~~

1 adjudicatory hearing. An objection under this subsection shall specify the
2 portion of the recording which is objectionable and the reasons for the
3 objection. Failure to file an objection within the time provided by this
4 subsection shall constitute waiver of the right to object to the admissibility
5 of the recording unless the court, in its discretion, determines otherwise.

6 —(2)—The provisions of this subsection (d) shall not apply to any objec-
7 tion to admissibility for the reason that the recording has been materially
8 altered.

9 —Sec. 23. —K.S.A. 38-1563 is hereby amended to read as follows: 38-

10 1563. (a) After consideration of any evidence offered relating to disposi-
11 tion, the court may retain jurisdiction and place the child in the custody
12 of the child's parent subject to terms and conditions which the court
13 prescribes to assure the proper care and protection of the child, including
14 supervision of the child and the parent by a court services officer, or may
15 order the child and the parent to participate in programs operated by the
16 secretary or another appropriate individual or agency. The terms and
17 conditions may require any special treatment or care which the child
18 needs for the child's physical, mental or emotional health.

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

24 —(c)—The court may order the child and the parents of any child who
25 has been adjudged a child in need of care to attend counseling sessions
26 as the court directs. The expense of the counseling may be assessed as
27 an expense in the case. No mental health center shall charge a greater
28 fee for court-ordered counseling than the center would have charged to
29 the person receiving counseling if the person had requested counseling
30 on the person's own initiative.

31 —(d)—If the court finds that placing the child in the custody of a parent
32 will not assure protection from physical, mental or emotional abuse or
33 neglect or sexual abuse or is contrary to the welfare of the child or that
34 placement would be in the best interests of the child, the court shall enter
35 an order awarding custody of the child, until the further order of the
36 court, to one of the following:

37 —(1)—A relative of the child or a person with whom the child has close
38 emotional ties;

39 —(2)—any other suitable person;

40 —(3)—a shelter facility; or

41 —(4)—the secretary.

42 —If the child is adjudged to be a child in need of care, the court shall
43 not place the child in the custody of the secretary if the court has received

1 from the secretary, written documentation of the services and/or com-
2 munity services plan offered or delivered to prevent the need for such
3 custody unless the court finds that the services documented by the sec-
4 retary are insufficient to protect the safety of the child and that being in
5 the custody of the parent with such services in place is contrary to the
6 welfare or that placement is in the best interests of the child. The court
7 shall have the authority to require any person or entity agreeing to par-
8 ticipate in the plan to perform as set out in the plan. The secretary shall
9 present to the court in writing the specific actions taken to maintain the
10 family unit and prevent the unnecessary removal of the child from the
11 child's home.

12 — In making such a custody order, the court shall give preference, to the
13 extent that the court finds it is in the best interests of the child, first to
14 granting custody to a relative of the child and second to granting custody
15 of the child to a person with whom the child has close emotional ties. If
16 the court has awarded legal custody based on the finding specified by this
17 subsection, the legal custodian shall not return the child to the home of
18 that parent without the written consent of the court.

19 — (c) — When the custody of the child is awarded to the secretary:

20 — (1) — The court may recommend to the secretary where the child
21 should be placed.

22 — (2) — The secretary shall notify the court in writing of any placement
23 of the child or, within 10 days of the order awarding the custody of the
24 child to the secretary, any proposed placement of the child, whichever
25 occurs first.

26 — (3) — The court may determine if such placement is contrary to the
27 welfare or in the best interests of the child, and if the court determines
28 that such placement is not in the best interests of the child, the court
29 shall notify the secretary who shall then make an alternative placement
30 subject to the procedures established in this paragraph. In determining
31 if such placement is in the best interests of the child, the court, after
32 providing the parties with an opportunity to be heard, shall consider the
33 health and safety needs of the child and the resources available to meet
34 the needs of children in the custody of the secretary.

35 — (4) — When the secretary provides the court with a plan to provide
36 services to a child or family which the court finds is in place and which
37 will assure the safety of the child, the court shall approve the return of
38 the child to the child's home. The court shall have the authority to require
39 any person or entity agreeing to participate in the plan to perform as set
40 out in the plan.

41 — (f) — If custody of a child is awarded under this section to a person
42 other than the child's parent, the court may grant any individual reason-
43 able rights to visit the child upon motion of the individual and a finding

1 that the visitation rights would be in the best interests of the child.

2 —(g)—If the court issues an order of custody pursuant to this section,
3 the court may enter an order restraining any alleged perpetrator of phys-
4 ical, sexual, mental or emotional abuse of the child from residing in the
5 child's home; visiting, contacting, harassing or intimidating the child,
6 other family member or witness; or attempting to visit, contact, harass or
7 intimidate the child, other family member or witness.

8 —(h)—The court shall not enter an order removing a child from the
9 custody of a parent pursuant to this section unless the court first finds
10 from evidence presented by the petitioner that reasonable efforts have
11 been made to maintain the family unit and prevent the unnecessary re-
12 moval of the child from the child's home or that reasonable efforts are
13 not necessary because reintegration is not a viable alternative; or that an
14 emergency exists which threatens the safety of the child and that allowing
15 the child to remain in the home is contrary to the welfare of the child or
16 that placement would be in the best interest of the child. **reasonable**
17 **efforts have been made to maintain the family unit and prevent**
18 **the unnecessary removal of the child from the child's home by**
19 **utilizing** *family preservation services have been utilized in an attempt to*
20 *keep the child from being removed from the home. If a parent or parents*
21 *refuse, in writing, to participate in family preservation, such child or*
22 *children may be removed from the home. Family preservation services*
23 *need not be utilized if there is evidence of physical abandonment, physical*
24 *abuse, sexual abuse or when a parent has been convicted of murder in*
25 *the first degree, K.S.A. 21-3401 and amendment thereto, murder in the*
26 *second degree, K.S.A. 21-3402 and amendments thereto, capital murder,*
27 *K.S.A. 21-3439 and amendments thereto, voluntary manslaughter, K.S.A.*
28 *21-3403 and amendments thereto, or violated a law of another state which*
29 *prohibits such murder or manslaughter of the child's sibling. If the child*
30 *is placed in the custody of the secretary, the court shall provide the sec-*
31 *retary with a copy of any orders entered for the purpose of documenting*
32 *these orders within 10 days of making the order. Reintegration may not*
33 *be a viable alternative when the: (1) Parent has been found by a court to*
34 *have committed murder in the first degree, K.S.A. 21-3401, and amend-*
35 *ments thereto, murder in the second degree, K.S.A. 21-3402, and amend-*
36 *ments thereto, capital murder, K.S.A. 21-3439, and amendments thereto,*
37 *voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or vi-*
38 *olated a law of another state which prohibits such murder or manslaughter*
39 *of a child; (2) parent aided or abetted, attempted, conspired or solicited*
40 *to commit such murder or voluntary manslaughter of a child as provided*
41 *in subsection (h)(1); (3) parent committed a felony battery that resulted*
42 *in bodily injury to the child or another child; (4) parent has subjected the*
43 *child or another child to aggravated circumstances as defined in K.S.A.*

1 38-1502, and amendments thereto; (5) parental rights of the parent to
2 another child have been terminated involuntarily or (6) the child has been
3 in extended out of home placement as defined in K.S.A. 38-1502, and
4 amendments thereto. Such findings shall be included in any order entered
5 by the court.

6 —(i) In addition to or in lieu of any other order authorized by this
7 section, if a child is adjudged to be a child in need of care by reason of a
8 violation of the uniform controlled substances act (K.S.A. 65-4101 *et seq.*,
9 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
10 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
11 order the child to submit to and complete an alcohol and drug evaluation
12 by a community-based alcohol and drug safety action program certified
13 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
14 to exceed the fee established by that statute for such evaluation. If the
15 court finds that the child and those legally liable for the child's support
16 are indigent, the fee may be waived. In no event shall the fee be assessed
17 against the secretary or the department of social and rehabilitation serv-
18 ices.

19 —(j) In addition to any other order authorized by this section, if child
20 support has been requested and the parent or parents have a duty to
21 support the child, the court may order one or both parents to pay child
22 support and, when custody is awarded to the secretary, the court shall
23 order one or both parents to pay child support. The court shall determine,
24 for each parent separately, whether the parent is already subject to an
25 order to pay support for the child. If the parent is not presently ordered
26 to pay support for any child who is a ward of the court and the court has
27 personal jurisdiction over the parent, the court shall order the parent to
28 pay child support in an amount determined under K.S.A. 38-1505, and
29 amendments thereto. Except for good cause shown, the court shall issue
30 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
31 *seq.*, and amendments thereto, for each parent ordered to pay support
32 under this subsection, regardless of whether a payor has been identified
33 for the parent. A parent ordered to pay child support under this subsec-
34 tion shall be notified, at the hearing or otherwise, that the child support
35 order may be registered pursuant to K.S.A. 38-1507, and amendments
36 thereto. The parent shall also be informed that, after registration, the
37 income withholding order may be served on the parent's employer with-
38 out further notice to the parent and the child support order may be en-
39 forced by any method allowed by law. Failure to provide this notice shall
40 not affect the validity of the child support order.

41 —Sec. 24. K.S.A. 38-1567 is hereby amended to read as follows: 38-
42 1567. (a) (1) When an emergency exists requiring immediate action to
43 assure the safety and protection of the child, or (2) the secretary is notified

1 that the foster parents or shelter facility refuse to allow the child to re-
2 main, the secretary may transfer the child to another foster home or
3 shelter facility without prior court approval, but the secretary shall notify
4 the court of the action at the earliest practical time. When the child is
5 removed from the home of a parent after having been placed in the home
6 or facility for a period of six months or longer, the secretary shall present
7 to the court in writing the specific nature of the emergency and request
8 a finding by the court whether remaining in the home was contrary to
9 the welfare or not in the best interests of the child. In making the finding,
10 the court may rely on documentation submitted by the secretary or may
11 set the date for a hearing on the matter. If the secretary requests such a
12 finding, the court shall provide the secretary with a written copy of the
13 finding by the court not more than 45 days from the date of the request.

14 ~~—(b) In order to assist in ensuring accountability in department deci-~~
15 ~~sions to remove a child or children from the home of a foster parent or~~
16 ~~foster parents for purposes of an emergency change of placement, the~~
17 ~~secretary of social and rehabilitation services shall present to such foster~~
18 ~~parents a written explanation which shall include, but is not limited to,~~
19 ~~each of the following:~~

20 ~~—(1) The specific reason for emergency removal of the child or children;~~

21 ~~—(2) the legal basis for emergency removal of the child or children,~~
22 ~~including statutory citations which support such basis;~~

23 ~~—(3) the name, phone number and address of an employee or employees~~
24 ~~of the department of social and rehabilitation services who are available~~
25 ~~to provide further information concerning removal of the child or chil-~~
26 ~~dren; and~~

27 ~~—(4) the explanation prescribed by this subsection shall be written in~~
28 ~~a nontechnical style, understandable by laymen, and shall be presented~~
29 ~~by the department to the foster parent or parents of the child or children~~
30 ~~removed for emergency placement at the time of such removal.~~

31 ~~—(c) The court upon a verified application for review by a foster parent~~
32 ~~of the child removed pursuant to subsection (a) (1), shall set a date for~~
33 ~~hearing on the issue of whether an emergency existed requiring immediate~~
34 ~~action to assure the safety and protection of the removed child. The ap-~~
35 ~~plication shall state for each child:~~

36 ~~—(1) The applicant's belief that no emergency existed requiring imme-~~
37 ~~diante action to assure the safety and protection of the removed child; and~~

38 ~~—(2) the facts which are relied upon to support the application, includ-~~
39 ~~ing efforts known to the applicant, to maintain the family and prevent~~
40 ~~unnecessary removal of the child from the child's home, or specific facts~~
41 ~~supporting the applicant's belief that no emergency existed which required~~
42 ~~immediate action to assure the safety and protection of the removed child.~~

43 ~~—(d) If the court fails to find clear and convincing evidence that an~~

1 ~~emergency existed requiring immediate action to assure the safety and~~
2 ~~protection of the removed child, supporting the department of social and~~
3 ~~rehabilitation services' decision to remove the child, the court shall place~~
4 ~~the child back into the custody of the foster parent or parents from whom~~
5 ~~the child was removed unless the court finds that this placement is not in~~
6 ~~the best interest of the child.~~

7 ~~—(c) If an application for review is filed pursuant to subsection (b), no~~
8 ~~child removed pursuant to subsection (a) (1) shall remain in the emer-~~
9 ~~gency placement for more than 72 hours after the petition was filed, ex-~~
10 ~~cluding Saturdays, Sundays and legal holidays, unless within the 72-hour~~
11 ~~period a determination that an emergency existed requiring immediate~~
12 ~~action to assure the safety and protection of the removed child.~~

13 ~~—Sec. 25. K.S.A. 2001 Supp. 38-1583 is hereby amended to read as~~
14 ~~follows: 38-1583. (a) When the child has been adjudicated to be a child~~
15 ~~in need of care, the court may terminate parental rights when the court~~
16 ~~finds by clear and convincing evidence that the parent is unfit by reason~~
17 ~~of conduct or condition which renders the parent unable to care properly~~
18 ~~for a child and the conduct or condition is unlikely to change in the~~
19 ~~foreseeable future.~~

20 ~~—(b) In making a determination hereunder the court shall consider,~~
21 ~~but is not limited to, the following, if applicable:~~

22 ~~—(1) Emotional illness, mental illness, mental deficiency or physical~~
23 ~~disability of the parent, of such duration or nature as to render the parent~~
24 ~~unlikely to care for the ongoing physical, mental and emotional needs of~~
25 ~~the child;~~

26 ~~—(2) conduct toward a child of a physically, emotionally or sexually~~
27 ~~eruel nature or abusive nature;~~

28 ~~—(3) excessive use of intoxicating liquors or narcotic or dangerous~~
29 ~~drugs;~~

30 ~~—(4) physical, mental or emotional neglect of the child;~~

31 ~~—(5) conviction of a felony and imprisonment;~~

32 ~~—(6) unexplained injury or death of another child or stepchild of the~~
33 ~~parent;~~

34 ~~—(7) reasonable efforts by appropriate public or private child caring~~
35 ~~agencies have been unable to rehabilitate the family; and~~

36 ~~—(8) lack of effort on the part of the parent to adjust the parent's cir-~~
37 ~~cumstances, conduct or conditions to meet the needs of the child.~~

38 ~~—(c) In addition to the foregoing, when a child is not in the physical~~
39 ~~custody of a parent, the court, in proceedings concerning the termination~~
40 ~~of parental rights, shall also consider, but is not limited to the following:~~

41 ~~—(1) Failure to assure care of the child in the parental home when able~~
42 ~~to do so;~~

43 ~~—(2) failure to maintain regular visitation, contact or communication~~

1 with the child or with the custodian of the child;
2 —(3)—failure to carry out a reasonable plan approved by the court di-
3 rected toward the integration of the child into the parental home; and
4 —(4)—failure to pay a reasonable portion of the cost of substitute physical
5 care and maintenance based on ability to pay.
6 —In making the above determination, the court may disregard incidental
7 visitations, contacts, communications or contributions.
8 —(d)—The rights of the parents may be terminated as provided in this
9 section if the court finds that the parents have abandoned the child, the
10 custody of the child was surrendered pursuant to K.S.A. 2001 Supp. 38-
11 15,100, and amendments thereto, or the child was left under such cir-
12 cumstances that the identity of the parents is unknown and cannot be
13 ascertained, despite diligent searching, and the parents have not come
14 forward to claim the child within three months after the child is found.
15 —(e)—The existence of any one of the above standing alone may, but
16 does not necessarily, establish grounds for termination of parental rights.
17 The determination shall be based on an evaluation of all factors which
18 are applicable. In considering any of the above factors for terminating the
19 rights of a parent, the court shall give primary consideration to the phys-
20 ical, mental or emotional condition and needs of the child. If presented
21 to the court and subject to the provisions of K.S.A. 60-419, and amend-
22 ments thereto, the court shall consider as evidence testimony from a
23 person licensed to practice medicine and surgery, a licensed psychologist
24 or a licensed social worker expressing an opinion relating to the physical,
25 mental or emotional condition and needs of the child. The court shall
26 consider any such testimony only if the licensed professional providing
27 such testimony is subject to cross-examination.
28 —(f)—A termination of parental rights under the Kansas code for care
29 of children shall not terminate the right of the child to inherit from or
30 through the parent. Upon such termination, all the rights of birth parents
31 to such child, including their right to inherit from or through such child,
32 shall cease.
33 —(g)—If, after finding the parent unfit, the court determines a compel-
34 ling reason why it is contrary to the welfare or not in the best interests
35 of the child to terminate parental rights or upon agreement of the parents,
36 the court may award permanent guardianship to an individual providing
37 care for the child, a relative or other person with whom the child has a
38 close emotional attachment. Prior to awarding permanent guardianship,
39 the court shall receive and consider an assessment as provided in K.S.A.
40 59-2132 and amendments thereto of any potential permanent guardian.
41 Upon appointment of a permanent guardian, the court shall discharge
42 the child from the custody of the secretary.
43 —(h)—If a parent is convicted of an offense as provided in subsection

1 (7) of K.S.A. 38-1585 and amendments thereto or is adjudicated a juvenile
2 offender because of an act which if committed by an adult would be an
3 offense as provided in subsection (7) of K.S.A. 38-1585 and amendments
4 thereto, and if the victim was the other parent of a child, the court may
5 disregard such convicted or adjudicated parent's opinions or wishes in
6 regard to the placement of such child.

7 —(i) If the secretary has documented to the court a compelling reason
8 why custody for adoption, custody for permanent guardianship, nor cus-
9 tody for placement with a fit and willing relative are currently a viable
10 option, the court may order custody to remain with the secretary for
11 continued permanency planning and another planned permanent living
12 arrangement.

13 ~~—New Sec. 26. The secretary of social and rehabilitation serv-~~
14 ~~ices shall review all rules and regulations and adopt new or amend~~
15 ~~current rules and regulations to conform with the provisions of~~
16 ~~this act.~~

17 ~~—Sec. 27. K.S.A. 22a-243 is hereby amended to read as follows:~~
18 ~~22a-243. (a) There is hereby established a state child death review~~
19 ~~board, which shall be composed of:~~

20 ~~—(1) One member appointed by each of the following officers to~~
21 ~~represent the officer's agency: The attorney general, the director~~
22 ~~of the Kansas bureau of investigation, the secretary of social and~~
23 ~~rehabilitation services, the secretary of health and environment~~
24 ~~and the commissioner of education;~~

25 ~~—(2) three members appointed by the state board of healing arts,~~
26 ~~one of whom shall be a district coroner and two of whom shall be~~
27 ~~physicians licensed to practice medicine and surgery, one special-~~
28 ~~izing in pathology and the other specializing in pediatrics;~~

29 ~~—(3) one person appointed by the attorney general to represent~~
30 ~~advocacy groups which focus attention on child abuse awareness~~
31 ~~and prevention; and~~

32 ~~—(4) one county or district attorney appointed by the Kansas~~
33 ~~county and district attorneys association.~~

34 ~~—(b) The chairperson of the state review board shall be the~~
35 ~~member appointed by the attorney general to represent the office~~
36 ~~of the attorney general.~~

37 ~~—(c) The state child death review board shall be within the office~~
38 ~~of the attorney general as a part thereof. All budgeting, purchasing~~
39 ~~and related management functions of the board shall be adminis-~~
40 ~~tered under the direction and supervision of the attorney general.~~
41 ~~All vouchers for expenditures and all payrolls of the board shall be~~
42 ~~approved by the chairperson of the board and by the attorney gen-~~
43 ~~eral. The state review board shall establish and maintain an office~~

1 ~~in Topeka.~~

2 ~~—(d) The state review board shall meet at least annually to re-~~
3 ~~view all reports submitted to the board. The chairperson of the~~
4 ~~state review board may call a special meeting of the board at any~~
5 ~~time to review any report of a child death.~~

6 ~~—(e) Within the limits of appropriations therefor, the state re-~~
7 ~~view board shall appoint an executive director who shall be in the~~
8 ~~unclassified service of the Kansas civil service act and shall receive~~
9 ~~an annual salary fixed by the state review board.~~

10 ~~—(f) Within the limits of appropriations therefor, the state re-~~
11 ~~view board may employ other persons who shall be in the classified~~
12 ~~service of the Kansas civil service act.~~

13 ~~—(g) Members of the state review board shall not receive com-~~
14 ~~pen-sation, subsistence allowanecs, mileage and expenses as pro-~~
15 ~~vided by K.S.A. 75-3223 and amendments thereto for attending~~
16 ~~meetings or subcommittee meetings of the board.~~

17 ~~—(h) The state review board shall develop a protocol to be used~~
18 ~~by the state review board. The protocol shall include written~~
19 ~~guidelines for coroners to use in identifying any suspicious deaths,~~
20 ~~procedures to be used by the board in investigating child deaths,~~
21 ~~methods to ensure coordination and cooperation among all agen-~~
22 ~~cies involved in child deaths and procedures for facilitating pros-~~
23 ~~ecution of perpetrators when it appears the cause of a child's death~~
24 ~~was from abuse or neglect. The protocol shall be adopted by the~~
25 ~~state review board by rules and regulations.~~

26 ~~—(i) The state review board shall submit an annual report to the~~
27 ~~governor and the legislature on or before October 1 of each year,~~
28 ~~commencing October 1993. Such report shall include the findings~~
29 ~~of the board regarding reports of child deaths, including specifically~~
30 ~~the statistics concerning the deaths of children in state or court custody~~
31 ~~and at state institutions, the board's analysis and the board's re-~~
32 ~~commenda-tions for improving child protection, including recom-~~
33 ~~men-dations for modifying statutes, rules and regulations, policies~~
34 ~~and procedures.~~

35 ~~—(j) Information acquired by, and records of, the state review~~
36 ~~board shall be confidential, shall not be disclosed and shall not be~~
37 ~~subject to subpoena, discovery or introduction into evidence in any~~
38 ~~civil or criminal proceeding, except that such information and re-~~
39 ~~records may be disclosed to any member of the legislature or any~~
40 ~~legislative committee which has legislative responsibility of the en-~~
41 ~~abling or appropriating legislation, carrying out such member's or~~
42 ~~committee's official functions. The legislative committee, in ac-~~
43 ~~cordance with K.S.A. 75-4319 and amendments thereto, shall re-~~

~~cess for a closed or executive meeting to receive and discuss information received by the committee pursuant to this subsection.~~

~~—(k) The state review board may adopt rules and regulations as necessary to carry out the provisions of K.S.A. 22a-241 through 22a-244 and amendments thereto.~~

~~—Sec. 28. K.S.A. 38-1507 is hereby amended to read as follows:~~

~~38-1507. (a) Except as otherwise provided, in order to protect the privacy of children who are the subject of a child in need of care record or report, all records and reports concerning children in need of care, including the juvenile intake and assessment report, received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker shall be kept confidential except: (1) To those persons or entities with a need for information that is directly related to achieving the purposes of this code, or (2) upon an order of a court of competent jurisdiction pursuant to a determination by the court that disclosure of the reports and records is in the best interests of the child or are necessary for the proceedings before the court, or both, and are otherwise admissible in evidence. Such access shall be limited to in camera inspection unless the court otherwise issues an order specifying the terms of disclosure.~~

~~—(b) The provisions of subsection (a) shall not prevent disclosure of information to an educational institution or to individual educators about a pupil specified in subsection (a) of K.S.A. 2000 Supp. 72-89b03 and amendments thereto.~~

~~—(c) When a report is received by the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker which indicates a child may be in need of care, the following persons and entities shall have a free exchange of information between and among them:~~

~~—(1) The department of social and rehabilitation services;~~

~~—(2) the commissioner of juvenile justice;~~

~~—(3) the law enforcement agency receiving such report;~~

~~—(4) members of a court appointed multidisciplinary team;~~

~~—(5) an entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected to be in need of care;~~

~~—(6) a military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care;~~

~~—(7) a county or district attorney;~~

~~—(8) a court services officer who has taken a child into custody pursuant to K.S.A. 38-1527, and amendments thereto;~~

- 1 ~~—(9)—a guardian ad litem appointed for a child alleged to be in~~
2 ~~need of care;~~
3 ~~—(10)—an intake and assessment worker;~~
4 ~~—(11)—any community corrections program which has the child~~
5 ~~under court ordered supervision;~~
6 ~~—(12)—the department of health and environment or persons au-~~
7 ~~thorized by the department of health and environment pursuant~~
8 ~~to K.S.A. 59-512-65-512, and amendments thereto, for the purpose~~
9 ~~of carrying out responsibilities relating to licensure or registration~~
10 ~~of child care providers as required by chapter 65 of article 5 of~~
11 ~~the Kansas Statutes Annotated, and amendments thereto; and~~
12 ~~—(13)—members of a duly appointed community services team.~~
13 ~~—(d)—The following persons or entities shall have access to infor-~~
14 ~~mation, records or reports received by the department of social~~
15 ~~and rehabilitation services, a law enforcement agency or any ju-~~
16 ~~venile intake and assessment worker. Access shall be limited to~~
17 ~~information reasonably necessary to carry out their lawful respon-~~
18 ~~sibilities to maintain their personal safety and the personal safety~~
19 ~~of individuals in their care or to diagnose, treat, care for or protect~~
20 ~~a child alleged to be in need of care.~~
21 ~~—(1)—A child named in the report or records.~~
22 ~~—(2)—A parent or other person responsible for the welfare of a~~
23 ~~child, or such person's legal representative.~~
24 ~~—(3)—A court-appointed special advocate for a child, a citizen re-~~
25 ~~view board or other advocate which reports to the court.~~
26 ~~—(4)—A person licensed to practice the healing arts or mental~~
27 ~~health profession in order to diagnose, care for, treat or supervise:~~
28 ~~(A) A child whom such service provider reasonably suspects may~~
29 ~~be in need of care; (B) a member of the child's family; or (C) a~~
30 ~~person who allegedly abused or neglected the child.~~
31 ~~—(5)—A person or entity licensed or registered by the secretary~~
32 ~~of health and environment or approved by the secretary of social~~
33 ~~and rehabilitation services to care for, treat or supervise a child in~~
34 ~~need of care. In order to assist a child placed for care by the sec-~~
35 ~~retary of social and rehabilitation services in a foster home or child~~
36 ~~care facility, the secretary shall provide relevant information to~~
37 ~~the foster parents or child care facility prior to placement and as~~
38 ~~such information becomes available to the secretary.~~
39 ~~—(6)—A coroner or medical examiner when such person is deter-~~
40 ~~mining the cause of death of a child.~~
41 ~~—(7)—The state child death review board established under K.S.A.~~
42 ~~22a-243, and amendments thereto.~~
43 ~~—(8)—A prospective adoptive parent prior to placing a child in~~

1 **their care.**

2 ~~—(9) The department of health and environment or person au-~~
3 ~~thorized by the department of health and environment pursuant~~
4 ~~to K.S.A. 59-512, 65-512, and amendments thereto, for the purpose~~
5 ~~of carrying out responsibilities relating to licensure or registration~~
6 ~~of child care providers as required by chapter 65 of article 5 of~~
7 ~~the Kansas Statutes Annotated, and amendments thereto.~~

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

11 ~~—(11) Any educational institution to the extent necessary to en-~~
12 ~~able the educational institution to provide the safest possible en-~~
13 ~~vironment for its pupils and employees.~~

14 ~~—(12) Any educator to the extent necessary to enable the edu-~~
15 ~~cator to protect the personal safety of the educator and the edu-~~
16 ~~cator's pupils.~~

17 ~~—(13) The secretary of social and rehabilitation services.~~

18 ~~—(14) A law enforcement agency.~~

19 ~~—(15) A juvenile intake and assessment worker.~~

20 ~~—(16) The commissioner of juvenile justice.~~

21 ~~—(c) Information from a record or report of a child in need of~~
22 ~~care shall be available to members of the standing house or senate~~
23 ~~committee on judiciary, house committee on appropriations, sen-~~
24 ~~ate committee on ways and means, and legislative post audit com-~~
25 ~~mittee and joint committee on children and families, carrying out such~~
26 ~~member's or committee's official functions in accordance with~~
27 ~~K.S.A. 75-4319 and amendments thereto, in a closed or executive~~
28 ~~meeting. Except in limited conditions established by 2/3 of the~~
29 ~~members of such committee, records and reports received by the~~
30 ~~committee shall not be further disclosed. Further, if individual mem-~~
31 ~~bers of the legislature are given written authority by the parents or guard-~~
32 ~~ian of the child, the department of social and rehabilitation services shall~~
33 ~~allow the legislator to review the file and records concerning the child.~~
34 ~~Such review shall take place within 10 business days of the request and~~
35 ~~shall be at a location requested by the legislator. Prior to reviewing the~~
36 ~~file and records, the legislator shall be required to sign a form stating the~~
37 ~~confidentiality laws governing the file and records and the penalties for~~
38 ~~further release of the information. Unauthorized disclosure may sub-~~
39 ~~ject such member to discipline or censure from the house of rep-~~
40 ~~resentatives or senate.~~

41 ~~—(f) Nothing in this section shall be interpreted to prohibit the~~
42 ~~secretary of social and rehabilitation services from summarizing~~
43 ~~the outcome of department actions regarding a child alleged to be~~

1 a child in need of care to a person having made such report.

2 ~~—(g) Disclosure of information from reports or records of a child~~
3 ~~in need of care to the public shall be limited to confirmation of~~
4 ~~factual details with respect to how the case was handled that do~~
5 ~~not violate the privacy of the child, if living, or the child's siblings,~~
6 ~~parents or guardians. Further, confidential information may be~~
7 ~~released to the public only with the express written permission of~~
8 ~~the individuals involved or their representatives or upon order of~~
9 ~~the court having jurisdiction upon a finding by the court that pub-~~
10 ~~lic disclosure of information in the records or reports is necessary~~
11 ~~for the resolution of an issue before the court.~~

12 ~~—(h) Nothing in this section shall be interpreted to prohibit a~~
13 ~~court of competent jurisdiction from making an order disclosing~~
14 ~~the findings or information pursuant to a report of alleged or sus-~~
15 ~~spected child abuse or neglect which has resulted in a child fatality~~
16 ~~or near fatality if the court determines such disclosure is necessary~~
17 ~~to a legitimate state purpose. In making such order, the court shall~~
18 ~~give due consideration to the privacy of the child, if, living, or the~~
19 ~~child's siblings, parents or guardians.~~

20 ~~—(i) Information authorized to be disclosed in subsections (d)~~
21 ~~through (g) shall not contain information which identifies a re-~~
22 ~~porter of a child in need of care.~~

23 ~~—(j) Records or reports authorized to be disclosed in this section~~
24 ~~shall not be further disclosed, except that the provisions of this~~
25 ~~subsection shall not prevent disclosure of information to an edu-~~
26 ~~cational institution or to individual educators about a pupil speci-~~
27 ~~fied in subsection (a) of K.S.A. 2000 2001 Supp. 72-89b03 and~~
28 ~~amendments thereto.~~

29 ~~—(k) Anyone who participates in providing or receiving infor-~~
30 ~~mation without malice under the provisions of this section shall~~
31 ~~have immunity from any civil liability that might otherwise be in-~~
32 ~~curring or imposed. Any such participant shall have the same im-~~
33 ~~munity with respect to participation in any judicial proceedings~~
34 ~~resulting from providing or receiving information.~~

35 ~~—(l) No individual, association, partnership, corporation or other~~
36 ~~entity shall willfully or knowingly disclose, permit or encourage~~
37 ~~disclosure of the contents of records or reports concerning a child~~
38 ~~in need of care received by the department of social and rehabil-~~
39 ~~itation services, a law enforcement agency or a juvenile intake and~~
40 ~~assessment worker except as provided by this code. Violation of~~
41 ~~this subsection is a class B misdemeanor.~~

42 ~~—Sec. 29. K.S.A. 38-1508 is hereby amended to read as follows:~~
43 ~~38-1508. All records and reports concerning child abuse or neglect~~

1 ~~received by law enforcement agencies shall be kept separate from~~
2 ~~all other records and shall not be disclosed to anyone except:~~

3 ~~—(a) The judge and members of the court staff designated by the~~
4 ~~judge of the court having the child before it in any proceedings;~~

5 ~~—(b) the guardian *ad litem* and the parties to the proceedings and~~
6 ~~their attorneys, subject to the restrictions imposed by subsection~~
7 ~~(a)(2)(C) of K.S.A. 38-1507 and amendments thereto;~~

8 ~~—(c) the department of social and rehabilitation services;~~

9 ~~—(d) any individual, or public or private agency authorized by a~~
10 ~~properly constituted authority to diagnose, care for, treat or su-~~
11 ~~pervise a child who is the subject of a report or record of child~~
12 ~~abuse or neglect and specifically includes the following: Physi-~~
13 ~~cians, psychiatrists, nurses, nurse practitioners, psychologists, li-~~
14 ~~icensed social workers, child development specialists, physician as-~~
15 ~~stants, community mental health workers, alcohol and drug~~
16 ~~abuse counselors, and licensed or registered child care providers.~~
17 ~~Teachers, administrators and school paraprofessionals shall have~~
18 ~~access but shall not copy materials in the file;~~

19 ~~—(e) law enforcement officers or county or district attorneys or~~
20 ~~their staff when necessary for the discharge of their official duties~~
21 ~~in investigating or prosecuting a report of known or suspected~~
22 ~~child abuse or neglect;~~

23 ~~—(f) any member of the standing house or senate committee on~~
24 ~~judiciary, house committee on appropriations, senate committee~~
25 ~~on ways and means, and legislative post audit committee and joint~~
26 ~~committee on children and families, carrying out such member's or~~
27 ~~committee's official functions. Further, if individual members of the~~
28 ~~legislature are given written authority by the parents or guardian of the~~
29 ~~child, the law enforcement agency shall allow the legislator to review the~~
30 ~~records and reports concerning the child. Such review shall take place~~
31 ~~within 10 business days of the request and shall be at a location requested~~
32 ~~by the legislator. Prior to reviewing the records and reports, the legislator~~
33 ~~shall be required to sign a form stating the confidentiality laws governing~~
34 ~~the file and records and the penalties for further release of the informa-~~
35 ~~tion; and~~

36 ~~—(g) any juvenile intake and assessment worker.~~

37 ~~—Sec. 30. K.S.A. 38-1524 is hereby amended to read as follows:~~

38 ~~38-1524. (a) When a report to a law enforcement agency indicates~~
39 ~~that a child may be harmed, the law enforcement agency shall~~
40 ~~promptly initiate an investigation. If the law enforcement officer~~
41 ~~reasonably believes the child will be *there is substantial risk that the*~~
42 ~~*child will be substantially* harmed, the officer shall remove the child~~
43 ~~from the location where the child is found as authorized by K.S.A.~~

1 ~~38-1527 and amendments thereto.~~

2 ~~—(b) Whenever any person furnishes information to the state de-~~
3 ~~partment of social and rehabilitation services that a child appears~~
4 ~~to be a child in need of care, the department shall make a prelim-~~
5 ~~inary inquiry to determine whether the interests of the child re-~~
6 ~~quire further action be taken. Whenever practicable, the inquiry~~
7 ~~shall include a preliminary investigation of the circumstances~~
8 ~~which were the subject of the information, including the home and~~
9 ~~environmental situation and the previous history of the child. If~~
10 ~~reasonable grounds to believe abuse or neglect exist, immediate~~
11 ~~steps shall be taken to protect the health and welfare of the abused~~
12 ~~or neglected child as well as that of any other child under the same~~
13 ~~care who may be harmed by abuse or neglect. After the inquiry, if~~
14 ~~the department determines it is not possible to provide otherwise~~
15 ~~those services necessary to protect the interests of the child, the~~
16 ~~department shall recommend to the county or district attorney~~
17 ~~that a petition be filed.~~

18 ~~—Sec. 31. K.S.A. 38-1527 is hereby amended to read as follows:~~

19 ~~38-1527. (a) A law enforcement officer or court services officer~~
20 ~~may take a child under 18 years of age into custody when:~~

21 ~~—(1) The law enforcement officer or court services officer has a~~
22 ~~court order commanding that the child be taken into custody as a~~
23 ~~child in need of care; or~~

24 ~~—(2) the law enforcement officer or court services officer has~~
25 ~~probable cause to believe that a court order commanding that the~~
26 ~~child be taken into custody as a child in need of care has been~~
27 ~~issued in this state or in another jurisdiction.~~

28 ~~—(b) A law enforcement officer may take a child under 18 years~~
29 ~~of age into custody when the officer has probable cause to believe~~
30 ~~that the child is a child in need of care and that there are reason-~~
31 ~~able grounds to believe that the circumstances or condition of the~~
32 ~~child is such that continuing in the place or residence in which the~~
33 ~~child has been found or in the care and custody of the person who~~
34 ~~has care or custody of the child would be harmful to *put* the child~~
35 ~~*at substantial risk of substantial harm.*~~

36 ~~—(c) A law enforcement officer shall take a child under 18 years~~
37 ~~of age into custody when the officer has probable cause to believe~~
38 ~~that the child is a missing person from another state and a verified~~
39 ~~missing person entry for such child can be found in the national~~
40 ~~crime information center missing person system.~~

41 ~~—(d) A law enforcement officer may temporarily detain and as-~~
42 ~~sume temporary custody of any child subject to compulsory school~~
43 ~~attendance, pursuant to K.S.A. 72-1111, and amendments thereto;~~

1 ~~during the hours school is actually in session who is found away~~
2 ~~from home or school without a valid excuse.~~

3 ~~— Sec. 26. 32. — K.S.A. 22a-243, 38-1507, 38-1508, 38-1513, 38-1514,~~
4 ~~38-1521, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-1542, 38-~~
5 ~~1543, 38-1544, 38-1557, 38-1558, 38-1563 and 38-1567 and K.S.A. 2001~~
6 ~~Supp. 38-1502, 38-1522 and 38-1583 are hereby repealed.~~

7 [Section 1. This act shall be known and cited as the children’s
8 advocate act.

9 [Sec. 2. As used in this act:

10 (a) “Administrative act” means an action, omission, decision,
11 recommendation, practice or other procedure of the department
12 of social and rehabilitation services related to foster care services
13 and services provided by the Kansas payment center as established
14 by subsection (m) of section 20 of chapter 183 of the 2000 Session
15 Laws of Kansas.

16 (b) “Advocate” means the children’s advocate or any individ-
17 ual designated as an advocate who has received the training re-
18 quired under subsection (f) of section 6, and amendments thereto,
19 and who has been designated by the children’s advocate to carry
20 out the powers, duties and functions of the office of the children’s
21 advocate.

22 (c) “Child” means a person who is less than 19 years of age.

23 (d) “Conflict of interest” means (1) having a pecuniary or
24 other interest in a child placement agency, child care resource and
25 referral agency or child care facility; and (2) being actively em-
26 ployed or otherwise having active involvement in representation
27 of or advocacy for any child placement agency, child care resource
28 and referral agency or child care facility, whether or not such rep-
29 resentation or advocacy is individual or through an association or
30 other entity.

31 (e) “Family foster home” means a private home in which care
32 is given for 24 hours a day for a small number of children away
33 from their parent or guardian and which is licensed under K.A.R.
34 28-4-311 *et seq.* and shall not include a family day care home as
35 defined in K.S.A. 65-517, and amendments thereto.

36 (f) “Foster child” means a child under 16 years of age who is
37 living away from such child’s parent or guardian with persons who
38 are neither such child’s relative nor legal guardian.

39 (g) “Kansas payment center” means the central unit for the
40 collection and disbursement of support payments established in
41 subsection (m) of section 20 of chapter 183 of the 2000 Session
42 Laws of Kansas.

43 (h) “Office” means the office of the children’s advocate.

1 [(i) “Person” means any individual, association, partnership,
2 corporation, government, governmental subdivision or other en-
3 tity.

4 [(j) “Volunteer advocate” means an individual who has satis-
5 factorily completed the training prescribed by the children’s ad-
6 vocate under section 6, and amendments thereto, who is a volun-
7 teer assisting in providing advocate services and who receives no
8 payment for such service other than reimbursement for expenses
9 incurred in accordance with guidelines adopted therefor by the
10 children’s advocate.

11 [Sec. 3. (a) There is hereby established the office of children’s
12 advocate within the legislative branch of government. The advo-
13 cate shall be elected by a $\frac{2}{3}$ vote in each house of the legislature.
14 The office of children’s advocate shall be under the direct super-
15 vision of the legislative coordinating council.

16 [(b) The children’s advocate shall serve for a term of two years
17 and until such advocate’s successor is appointed and qualified.
18 Such advocate may be reappointed for additional terms. The initial
19 children’s advocate shall be appointed to serve until the January
20 2003 session during which the first two-year term children’s ad-
21 vocate shall be appointed with subsequent appointments being
22 made every two years.

23 [(c) The legislature by a $\frac{2}{3}$ vote in each house may remove the
24 children’s advocate from office but only for mental or physical in-
25 capacity to perform the duties of the office or other grounds suf-
26 ficient for removal of a judge from state court. If the position of
27 children’s advocate becomes vacant for some reason, the deputy
28 children’s advocate shall serve as acting children’s advocate until
29 a children’s advocate is appointed and qualified.

30 [Sec. 4. (a) No person shall be eligible to be appointed to or
31 to hold, the office of children’s advocate if such person is subject
32 to a conflict of interest. No person shall be eligible for appointment
33 as children’s advocate unless such person has:

34 [(1) A baccalaureate or higher degree from an accredited col-
35 lege or university;

36 [(2) demonstrated abilities to analyze problems of law, admin-
37 istration and public policy; and

38 [(3) experience in investigation and conflict resolution proce-
39 dures.

40 [(b) The children’s advocate shall administer the office of the
41 children’s advocate in accordance with the provisions of this act.

42 [(c) Upon appointment as children’s advocate, such advocate
43 shall select and appoint a person as deputy children’s advocate.

1 [(d) The children's advocate may delegate to staff members
2 any authority, power or duty except this power of delegation and
3 such children's advocate's duty to make any report to the legisla-
4 ture or governor under this act. However, the children's advocate
5 may authorize the deputy children's advocate to act in the chil-
6 dren's advocate's stead in the event of illness, absence, leave or
7 disability or when, in the children's advocate's sole discretion, an
8 appearance of impropriety or partiality or a conflict of interest
9 prevents such advocate from discharging such advocate's duty in
10 a particular matter.

11 [(e) The office of the children's advocate shall oversee and in-
12 vestigate complaints regarding foster care of children in the cus-
13 tody of the state and complaints regarding the Kansas payment
14 center, as defined in section 2, and amendments thereto, and shall
15 perform such other duties as may be provided.

16 [Sec. 5. (a) Employees in the office of children's advocate shall
17 be in the unclassified service, shall receive such compensation as
18 is provided under this act and shall be covered by the state group
19 health plan and Kansas public employees retirement system to the
20 same extent as other state employees. Employees of the office of
21 children's advocate shall receive travel expenses and subsistence
22 expenses and allowances as provided for other state employees.

23 [(b) Employees in the office of children's advocate shall be em-
24 ployed by and be responsible to the children's advocate who shall
25 fix the compensation of each employee subject to the approval of
26 the legislative coordinating council and within budget and appro-
27 priations therefor. The annual budget request of the office shall
28 be prepared by the children's advocate and presented to the leg-
29 islative coordinating council. Such council shall make any changes
30 it desires in the budget request and upon approval of the budget
31 request by the council, the children's advocate shall submit such
32 budget to the director of the budget as other budget requests are
33 submitted.

34 [(c) All officers and employees of the office of children's ad-
35 vocate shall serve at the pleasure of the children's advocate.

36 [Sec. 6. The children's advocate shall:

37 [(a) Establish procedures for receiving and processing com-
38 plaints from complainants, conducting investigations, holding
39 hearings and reporting findings resulting from investigation;

40 [(b) investigate and resolve complaints made by or on behalf
41 of a foster child relating to action, inaction or decisions of the fos-
42 ter home or an administrative act of an agency, without regard to
43 the finality of the act;

1 [(c) develop continuing programs to inform children, their
2 family members or other persons of the rights and responsibilities
3 of the child, family members or other persons regarding such fos-
4 ter children and the Kansas payment center;

5 [(d) provide the legislature and the governor with an annual
6 report containing data, findings and outcomes regarding the types
7 of problems experienced and complaints received by or on behalf
8 of foster children, person's sending or receiving support checks
9 through the Kansas payment center and containing policy, regu-
10 latory and legislative recommendations to solve such problems,
11 resolve such complaints and improve the quality of care and life
12 of a foster child when placed under the state's care and shall pres-
13 ent such report and other appropriate information and recom-
14 mendations to the senate committee on public health and welfare,
15 the senate committee on ways and means, the house of represen-
16 tatives committee on health and human services and the house of
17 representatives committee on appropriations during each regular
18 session of the legislature;

19 [(e) analyze and monitor the development and implementation
20 of federal, state and local government laws, rules and regulations,
21 resolutions, ordinances and policies with respect to foster children
22 in the care of the state, payments processed through the Kansas
23 payment center and services provided in this state, and recom-
24 mend any changes in such laws, rules and regulations, resolutions,
25 ordinances and policies deemed by the office to be appropriate;

26 [(f) prescribe and provide for the training of each children's
27 advocate and any individual designated as an avocate under sub-
28 section (h) of this section, and any individual who is an advocate
29 volunteer in (1) federal, state and local laws, rules and regulations,
30 resolutions, ordinances and policies with respect to foster children
31 and the Kansas payment center in Kansas, (2) investigative tech-
32 niques, and (3) such other matters as the state children's advocate
33 deems appropriate;

34 [(g) authorize an individual, who is an employee of the office
35 and who has satisfactorily completed the training prescribed by
36 the children's advocate under subsection (g), to be an advocate or
37 a volunteer advocate and to be a representative of the office and
38 such an authorized individual shall be deemed to be a represen-
39 tative of the office for the purposes of and subject to the provisions
40 of the children's advocate act;

41 [(h) establish and maintain a system to recruit and train indi-
42 viduals to become volunteer advocates;

43 [(i) develop and implement procedures for authorizing and for

1 withdrawing the authorization of individuals to be advocates or
2 volunteer advocates to represent the office in providing advocate
3 services;

4 [(j) provide services to foster children in the care of the state
5 and persons seeking services regarding the Kansas payment center
6 throughout the state directly or through service providers to meet
7 needs for advocate services;

8 [(k) collaborate with the department of health and environ-
9 ment and the department of social and rehabilitation services to
10 establish a statewide system to collect and analyze information on
11 complaints about the state foster care system or the Kansas pay-
12 ment center;

13 [(l) undertake, participate in or cooperate with persons and
14 agencies in such conferences, inquiries, meetings or studies which
15 might improve the functioning of agencies regarding state foster
16 care and the Kansas payment center or lessen the risks that objec-
17 tionable administrative acts will occur;

18 [(m) have access to and examine and copy, without payment of
19 a fee, any agency records, including records that are confidential
20 by state law;

21 [(n) enter and inspect the premises of any agency, including
22 the Kansas payment center, and foster care home or facility;

23 [(o) subpoena any person to appear, to give sworn testimony
24 or to produce documentary or other evidence that is reasonably
25 relevant to the matters under investigation;

26 [(p) maintain confidentiality regarding any matter related to
27 complaints and investigations, including the identities of the com-
28 plaints and witnesses, except as the children's advocate deems nec-
29 essary to fulfill the duties of such advocate's office;

30 [(q) adopt, promulgate, amend and rescind rules and regula-
31 tions required for the discharge of the office of children's advo-
32 cate's duties; and

33 [(r) perform such other duties and functions as may be pro-
34 vided.

35 [Sec. 7. For the purposes of carrying out the powers and du-
36 ties of the office of the children's advocate, such advocate may
37 request and accept a grant or donation from any person, firm,
38 association or corporation or from any federal, state or local gov-
39 ernmental agency and may enter into contracts or other transac-
40 tions with any such person or entity in connection with the grant
41 or donation.

42 [Sec. 8. Upon receipt of a complaint or on its own initiative,
43 the advocate may:

1 [(a) Investigate an administrative act that is alleged to be con-
2 trary to law, rules and regulations, policy of a foster care home or
3 Kansas payment center, imposed without an adequate statement
4 of reason or based on irrelevant, immaterial or erroneous grounds;

5 [(b) decide, in its discretion, whether to investigate a com-
6 plaint;

7 [(c) conduct a preliminary investigation to determine whether
8 the foster care home or the Kansas payment center may have com-
9 mitted an act that is alleged to be contrary to law; and

10 [(d) hold informal hearings and request that persons appear
11 before the advocate and give testimony or produce documentary
12 or other evidence the advocate considers relevant to the matter
13 under investigation.

14 [Sec. 9. (a) Upon rendering a decision to investigate a com-
15 plaint the advocate shall notify the complainant of the decision to
16 investigate and shall notify the state foster care home or the Kansas
17 payment center and any other pertinent state entity referred to in
18 the complaint and the decision to investigate the matter. If the
19 advocate declines to investigate a complaint or continue an inves-
20 tigation, the advocate shall notify the complainant and the other
21 person involved in the decision and the reasons for the decision.

22 [(b) The advocate may advise a complainant to pursue all ad-
23 ministrative remedies or channels of complaint open to the com-
24 plainant before pursuing a complaint with the advocate's office.
25 Subsequent to the administrative processing of a complaint, the
26 advocate may conduct further investigations of any complaint
27 upon the request of the complainant or on the advocate's own in-
28 itiative.

29 [(c) If the advocate finds in the course of an investigation that
30 a person's action is in violation of state or federal criminal law, the
31 advocate shall report that fact to the county prosecutor or the at-
32 torney general. If the complaint is against a state foster care home,
33 the advocate shall refer the matter to the department of social and
34 rehabilitation services for further action with respect to licensing.

35 [Sec. 10. (a) The department of social and rehabilitation serv-
36 ices and a foster care home shall:

37 [(1) Upon the advocate's request, grant the advocate or advo-
38 cate's designee access to all relevant information, records, includ-
39 ing the child's medical records, and documents in the possession
40 of such entities that the advocate considers necessary in an inves-
41 tigation;

42 [(2) assist the advocate upon request with progress reports con-
43 cerning the administrative processing of a complaint; and

1 [(3) provide the advocate upon request with progress reports
2 concerning the administrative processing of a complaint.

3 [(b) The department of social and rehabilitation services, foster
4 care home or Kansas payment center shall provide information to
5 a biological parent, child support payor or payee, prospective
6 adoptive parent or foster parent regarding the provisions of this
7 act.

8 [Sec. 11. (a) The advocate shall prepare a report of the find-
9 ings of an investigation and make recommendations to the de-
10 partment of social and rehabilitation services, Kansas payment
11 center or foster care home if the advocate finds one or more of
12 the following:

13 [(1) A matter should be further considered by the department,
14 foster care home or Kansas payment center;

15 [(2) an administrative act should be modified or canceled;

16 [(3) reasons should be given for an administrative act; or

17 [(4) other actions should be taken by the department, foster
18 care home or Kansas payment center.

19 [(b) Before announcing a finding or recommendation that ex-
20 pressly or by implication criticizes a person as defined in section
21 2 and amendments thereto, the advocate shall consult with that
22 person. When publishing an opinion adverse to the department,
23 foster care home or the Kansas payment center, the advocate shall
24 include in the opinion any statement made to the advocate by the
25 department, foster care home, Kansas payment center or other
26 state entity in defense or mitigation of the action. The advocate
27 may request to be notified by the department, foster care home,
28 Kansas payment center or other state entity, within a specified
29 time, of any action taken on any recommendation presented.

30 [(c) The advocate shall notify the complainant of the actions
31 taken by the advocate and the department, foster care home, Kan-
32 sas payment center or other state entity.

33 [(d) The advocate shall provide the complainant with a copy of
34 the advocate's recommendations on a complaint.

35 [Sec. 12. (a) No person shall willfully interfere with any lawful
36 action or activity of an advocate or a volunteer advocate, including
37 the request for immediate entry into a foster care home, Kansas
38 payment center or other state entity.

39 [(b) No person shall take any discriminatory, disciplinary or
40 retaliatory action against any foster parent, person, officer, em-
41 ployee of a foster care home or the Kansas payment center or
42 against any child or any guardian or family member thereof for
43 any communication by any such individual with an advocate or a

1 volunteer advocate or for any information given or disclosed by
2 such individual in good faith to aid the office in carrying out its
3 duties and responsibilities.

4 [(c) Any person that violates the provisions of subsection (a) or
5 (b) shall be guilty of a class C misdemeanor.

6 [Sec. 13. The following persons may make a complaint to the
7 advocate concerning a child alleging that an administrative act is
8 contrary to law, rules and regulations, policy, imposed without an
9 adequate statement of reason or based on irrelevant, immaterial
10 or erroneous grounds:

11 [(a) The foster child or child for whom child support is pro-
12 cessed by the Kansas payment center if such child is able to artic-
13 ulate a complaint;

14 [(b) a biological or adoptive parent of the foster child or child
15 for whom child support is processed by the Kansas payment center;

16 [(c) a foster parent of the foster child;

17 [(d) a person having residential custody of a child for whom
18 child support is processed by the Kansas payment center;

19 [(e) a prospective adoptive parent of the foster child or child
20 for whom child support is processed by the Kansas payment center;

21 [(f) a legally appointed guardian or conservator of the foster
22 child or child for whom child support is processed by the Kansas
23 payment center;

24 [(g) a guardian ad litem of the foster child or child for whom
25 child support is processed by the Kansas payment center;

26 [(h) an adult who is related to the foster child or child to the
27 fifth degree by marriage, blood or adoption;

28 [(i) a payee, payor or such person's attorney in child support
29 matters whose support moneys are processed through the Kansas
30 payment center;

31 [(j) a Kansas legislator;

32 [(k) an attorney for any person described in subsection (a)
33 through (i); or

34 [(l) the advocate upon the advocate's own initiative.

35 [Sec. 14. No individual shall investigate any complaint filed
36 with the office of the children's advocate unless the individual has
37 received the training required and designated by the children's
38 advocate as an advocate or a voluntary advocate qualified to in-
39 vestigate such complaints.

40 [Sec. 15. A volunteer advocate shall have access to the plan of
41 care and other records or documents kept for or concerning the
42 resident to the same extent and under the same circumstances as
43 an advocate under this section, except that a volunteer advocate

1 shall not have access to any such other records and documents that
2 are privileged medical records.

3 [Sec. 16. (a) An advocate or a volunteer advocate is hereby
4 authorized to enter any foster care home and any area within such
5 home at any time with or without prior notice and shall have access
6 to the child of a foster care home at all times.

7 [(b) An advocate or a volunteer advocate shall notify immedi-
8 ately the person in charge of a foster care home upon arrival and
9 shall present appropriate identification.

10 [(c) A foster child shall have the right to request, deny or ter-
11minate visits with an advocate or a volunteer advocate.

12 [Sec. 17. All information, records and reports received by or
13 developed by an advocate or a volunteer advocate which relate to
14 a foster child in a foster care home or other state entity, including
15 written material identifying a foster child or other complainant,
16 are confidential and not subject to the provisions of K.S.A. 45-216
17 to 45-220, inclusive, and amendments thereto, and shall not be
18 disclosed or released by an advocate or a volunteer advocate, ei-
19 ther by name of the foster child or other complainant or of facts
20 which allow the identity of the foster child or other complainant
21 to be inferred, except upon the order of a court or unless the foster
22 child's legal representative or other complainant consents in writ-
23 ing to such disclosure or release by an advocate or a volunteer
24 advocate, except the children's advocate shall forward to the sec-
25 retary of health and environment and the secretary of social and
26 rehabilitation services copies of reports received by the children's
27 advocate relating to the health and safety of a foster child. A sum-
28 mary report and findings shall be forwarded to the appropriate
29 person, exclusive of information or material that identifies a foster
30 child or any other individuals.

31 [Sec. 18. An advocate shall have access to all records and doc-
32 uments kept by the department of health and environment, the
33 department of social and rehabilitation services and foster care
34 home concerning the following matters: (a) Licensure of foster
35 care homes dealing with foster children in state care; (b) certifi-
36 cation of such homes dealing with foster children in state care; (c)
37 public funding reimbursement for the care of foster children of
38 such homes dealing with foster children; (d) utilization and medi-
39 cal review records; and (e) complaints regarding care of foster chil-
40 dren of such foster care homes. The provisions of this section shall
41 not apply to a volunteer advocate.

42 [Sec. 19. An advocate shall have access to all records and doc-
43 uments of the Kansas payment center concerning complaints in-

1 involving such center.

2 [Sec. 20. The authority granted the advocate under this act is
3 in addition to the authority granted under the provisions of any
4 rule and regulation or other act or rule and regulation under which
5 the remedy or right of appeal or objection is provided for a person,
6 or any procedure provided for the inquiry into or investigation of
7 any matter. The authority granted the advocate does not limit or
8 affect the remedy or right of appeal or objection and is not an
9 exclusive remedy or procedure.

10 [Sec. 21. (a) On the effective date of this act, all of the powers,
11 duties, functions, records and property of the office of the secre-
12 tary of social and rehabilitation services, which are prescribed for
13 the office of the children's advocate by this act, are hereby trans-
14 ferred to and conferred and imposed upon the office of the chil-
15 dren's advocate, including the power to expend funds now or here-
16 after made available in accordance with appropriation acts, are
17 hereby transferred to and conferred and imposed upon the office
18 of the children's advocate established by this act, except as is oth-
19 erwise specifically provided by this act.

20 [(b) The office of the children's advocate established by this
21 section shall be the successor in every way to the powers, duties
22 and functions of the office of the secretary of social and rehabili-
23 tation services in which such powers, duties and functions were
24 vested prior to the effective date of this act, except as otherwise
25 specifically provided by this act. Every act performed under the
26 authority of the office of the children's advocate established by
27 this act shall be deemed to have the same force and effect as if
28 performed by the office of the secretary of social and rehabilitation
29 services in which such powers, duties and functions were vested
30 prior to the effective date of this act.

31 [(c) Subject to the provisions of this act, whenever the office of
32 the secretary of social and rehabilitation services or words of like
33 effect, is referred to or designated by a statute, contract or other
34 document, and such reference or designation relates to a power,
35 duty or function which is transferred to and conferred and im-
36 posed upon the office of the children's advocate that is established
37 by this act, such reference or designation shall be deemed to apply
38 to the office of the children's advocate established by this act.

39 [(d) All policies, orders or directives of the office of the secre-
40 tary of social and rehabilitation services transferred to and con-
41 ferred and imposed upon the children's advocate which are in ex-
42 istence on the effective date of this act shall continue to be
43 effective and shall be deemed to be the policies, orders or direc-

1 tives of the children's advocate established by this act, until re-
2 vised, amended or revoked or nullified pursuant to law. The office
3 of the children's advocate established by this act shall be deemed
4 to be a continuation of the secretary of social and rehabilitation
5 services concerning children which are transferred, conferred and
6 imposed upon the children's advocate.

7 [(e) (1) The children's advocate and the secretary of adminis-
8 tration shall provide that all officers and employees of the secre-
9 tary of social and rehabilitation services, who are engaged in the
10 exercise and performance of the powers, duties and functions of
11 the programs of the office of the children's advocate that are trans-
12 ferred by this act, are transferred to the office of the children's
13 advocate established by this section.

14 [(2) Officers and employees of the department of social and
15 rehabilitation services transferred under this act shall retain all
16 retirement benefits and leave rights which had accrued or vested
17 prior to each date of transfer. The service of each officer or em-
18 ployee so transferred shall be deemed to be continuous. All trans-
19 fers, layoffs and abolition of classified service positions under the
20 Kansas civil service act which may result from program transfers
21 under this act shall be made in accordance with the civil service
22 laws and any rules and regulations adopted thereunder. Nothing
23 in this act shall affect the classified status of any person transferred
24 to the office of the children's advocate prior to the date of transfer.

25 [(3) If the children's advocate and the secretary of social and
26 rehabilitation services cannot agree as to how any transfer of an
27 officer or employee is to take place under this section, the chil-
28 dren's advocate and the secretary of administration shall be re-
29 sponsible for administering any layoff that is part of the transfer
30 in accordance with this act.

31 [(4) Notwithstanding the effective date of this act, the provi-
32 sions of this act prescribing the transfer of officers and employees
33 between the office of the children's advocate established by this
34 section and the department of social and rehabilitation services,
35 the date of transfer of each such officer or employee shall com-
36 mence at the start of a payroll period.

37 [Sec. 22. (a) The children's advocate shall ensure that:

38 [(1) No individual involved in the authorization of any individ-
39 ual to represent the office as an advocate or a volunteer advocate
40 is subject to a conflict of interest;

41 [(2) no officer, employee or other representative of the office
42 is subject to a conflict of interest;

43 [(3) policies and procedures are in place to identify and rem-

1 edy all conflicts of interest specified under paragraphs (1) and (2);

2 [(4) legal counsel is available to the office for advice and con-
3 sultation and that legal representation is provided to any advocate
4 against whom suit or other legal action is brought in connection
5 with the performance of the advocate's official duties; and

6 [(5) the office has the ability to pursue administrative, legal and
7 other appropriate remedies on behalf of a child or such child's
8 parent who receives support payments through the Kansas pay-
9 ment center or whose child is in the custody of the state and subject
10 to the processes of a foster care facility or home, or other pro-
11 grams, office or process involving children whose welfare has been
12 placed under the state's jurisdiction.

13 [(b) The children's advocate may enter into contracts with serv-
14 ice providers to provide investigative, legal, public education,
15 training or other services as may be required to assist the chil-
16 dren's advocate in providing advocate services to foster children
17 whose welfare has been assumed by the state or as otherwise re-
18 quired to carry out the powers, duties and functions of the office.
19 Contracts entered into under this subsection shall not be subject
20 to the competitive bidding requirements of K.S.A. 75-3739 and
21 amendments thereto. No contract may be entered into by the chil-
22 dren's advocate to privatize the office or to otherwise provide that
23 all or substantially all of the advocate services or functions of the
24 office are to be performed by one or more service providers.

25 [Sec. 23. (a) Records of the office of children's advocate in-
26 cluded under the provisions of this act shall not be disclosed di-
27 rectly or indirectly to any person except as authorized by the chil-
28 dren's advocate or such person's designee.

29 [(b) No documents relating to complaints, investigations or
30 studies in the possession of the children's advocate or any em-
31 ployee of the children's advocate shall be read, copied or taken by
32 any officer or employee of the state of Kansas except as authorized
33 by the children's advocate or such person's designee.]

34 Sec. ~~27. 33.~~ [24] This act shall take effect and be in force from and
35 after its publication in the ~~statute book~~ **Kansas register**.

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