HOUSE BILL No. 2352

AN ACT creating the revised Kansas code for care of children; amending K.S.A. 5-512, 28-170a, 38-140, 38-538, 38-1604, 38-1608, 38-1664, 38-1813, 39-754, 39-756, 39-756a, 39-1305, 59-2129, 59-3059, 59-3060, 60-452a, 60-460, 60-1610, 65-516, 65-6205, 72-1113, 72-53,106, 72-5427 and 75-7025 and K.S.A. 2005 Supp. 20-164, 20-302b, 20-319, 21-3604, 21-3612, 21-3721, as amended by section 6 of 2006 House Bill No. 2703, 21-3843, as amended by section 1 of 2006 House Bill No. 2617, 23-605, 28-170, 28-172b, 39-709, 44-817, 65-1626, 72-962, 75-4332, 75-7023 and 76-729 and repealing the existing sections; also repealing K.S.A. 38-1501, 38-1504, 38-1505a, 38-1510, 38-1511, 38-1512, 38-1513, 38-1513a, 38-1514, 38-1515, 38-1516, 38-1517, 38-1518, 38-1519, 38-1520, 38-1521, 38-1522b, 38-1523, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-1528, 38-1529, 38-1530, 38-1531, 38-1532, 38-1533, 38-1534, 38-1535, 38-1536, 38-1537, 38-1541, 38-1542, 38-1543, 38-1544, 38-1545, 38-1546, 38-1551, 38-1552, 38-1553, 38-1554, 38-1555, 38-1556, 38-1557, 38-1558, 38-1559, 38-1561, 38-1562, 38-1563, 38-1564, 38-1565, 38-1566, 38-1567, 38-1568, 38-1569, 38-1570, 38-1581, 38-1582, 38-1584, 38-1585, 38-1586, 38-1587, 38-1591, 38-1592, 38-1593, 38-1594, 38-1595, 38-1596, 38-1597, 38-1598, 38-1599 and 38-15,100 and K.S.A. 2005 Supp. 38-1502, 38-1503, 38-1505, 38-1513b, 38-1522, 38-1552a, 38-1583 and 38-15,101.

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

New Section 1. Sections 1 through 78 and amendments thereto, K.S.A. 2005 Supp. 38-1505b and 38-1505c, and amendments thereto, and K.S.A. 38-1506, 38-1507 and 38-1508, and amendments thereto, shall be known as and may be cited as the revised Kansas code for care of children.

(a) Proceedings pursuant to this code shall be civil in nature and all proceedings, orders, judgments and decrees shall be deemed to be pursuant to the parental power of the state.

(b) The code shall be liberally construed to carry out the policies of the state which are to:

(1) Consider the safety and welfare of a child to be paramount in all proceedings under the code;

(2) provide that each child who comes within the provisions of the code shall receive the care, custody, guidance control and discipline that will best serve the child's welfare and the interests of the state, preferably in the child's home and recognizing that the child's relationship with such child's family is important to the child's well being;

(3) make the ongoing physical, mental and emotional needs of the child decisive considerations in proceedings under this code;

(4) acknowledge that the time perception of a child differs from that of an adult and to dispose of all proceedings under this code without unnecessary delay;

(5) encourage the reporting of suspected child abuse and neglect;

(6) investigate reports of suspected child abuse and neglect thoroughly and promptly;

(7) provide for the protection of children who have been subject to physical, mental or emotional abuse or neglect or sexual abuse;

(8) provide preventative and rehabilitative services, when appropriate, to abused and neglected children and their families so, if possible, the families can remain together without further threat to the children;

(9) provide stability in the life of a child who must be removed from the home of a parent; and

(10) place children in permanent family settings, in absence of compelling reasons to the contrary.

(c) Nothing in this code shall be construed to permit discrimination on the basis of disability.

(1) The disability of a parent shall not constitute a basis for a determination that a child is a child in need of care, for the removal of custody of a child from the parent, or for the termination of parental rights without a specific showing that there is a causal relation between the disability and harm to the child.

(2) In cases involving a parent with a disability, determinations made under this code shall consider the availability and use of accommodations for the disability, including adaptive equipment and support services.

New Sec. 2. As used in the revised Kansas code for care of children, unless the context otherwise indicates:

(a) "Abandon" or "abandonment" means to forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.

(b) "Adult correction facility" means any public or private facility, secure or nonsecure, which is used for the lawful custody of accused or convicted adult criminal offenders.

(c) "Aggravated circumstances" means the abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

(d) "Child in need of care" means a person less than 18 years of age who:

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

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

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

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

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

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

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

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

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

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

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

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by sections 7 and 8, and amendments thereto.

(f) "Court-appointed special advocate" means a responsible adult other than an attorney guardian *ad litem* who is appointed by the court to represent the best interests of a child, as provided in section 6, and amendments thereto, in a proceeding pursuant to this code.

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

(h) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.

(i) "Educational institution" means all schools at the elementary and secondary levels.

(j) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03, and amendments thereto.

(k) "Harm" means physical or psychological injury or damage.

(l) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to section 36, and amendments thereto.

(m) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building or on the same grounds as an adult

jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(n) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

(o) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(p) "Kinship care" means the placement of a child in the home of the child's relative or in the home of another adult with whom the child or the child's parent already has a close emotional attachment.

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

(r) "Multidisciplinary team" means a group of persons, appointed by the court under section 23, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(s) "Neglect" means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:

(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of section 12, and amendments thereto.

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

(u) "Party" means the state, the petitioner, the child and any parent of the child.

(v) "Permanency goal" means the outcome of the permanency planning process which may be reintegration, adoption, appointment of a permanent custodian or another planned permanent living arrangement.

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to section 67, and amendments thereto.

(x) "Physical, mental or emotional abuse" means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.

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

(z) "Relative" means a person related by blood, marriage or adoption but, when referring to a relative of a child's parent, does not include the child's other parent.

(aa) "Secretary" means the secretary of social and rehabilitation services or the secretary's designee.

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

(cc) "Sexual abuse" means any contact or interaction with a child in which the child is being used for the sexual stimulation of the perpetrator, the child or another person. Sexual abuse shall include allowing, permitting or encouraging a child to engage in prostitution or to be photographed, filmed or depicted in pornographic material.

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

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

New Sec. 3. (a) Proceedings concerning any child who may be a child in need of care shall be governed by this code, except in those instances when the Indian child welfare act of 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child welfare act may apply to: The filing to initiate a child in need of care proceeding (section 29, and amendments thereto); ex parte custody orders (section 37, and amendments thereto); temporary custody hearing (section 38, and amendments thereto); adjudication (section 42, and amendments thereto); burden of proof (section 45, and amendments thereto); disposition (section 50, and amendments thereto); permanency hearings (section 59, and amendments thereto); termination of parental rights (sections 62, 63 and 64, and amendments thereto); establishment of permanent custodianship (sections 63 and 67, and amendments thereto); the placement of a child in any foster, pre-adoptive and adoptive home and the placement of a child in a guardianship arrangement under chapter 59, article 30 of the Kansas Statutes Annotated, and amendments thereto.

(b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 38-1336 through 38-1377, and amendments thereto, the district court shall have original jurisdiction of proceedings pursuant to this code.

(c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code or upon issuance of an *ex parte* order pursuant to section 37, and amendments thereto. When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Attained the age of 21 years; (2) been adopted; or (3) been discharged by the court. Any child 18 years of age or over may request, in writing to the court, that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction will cease.

(d) When it is no longer appropriate for the court to exercise jurisdiction over a child, the court, upon its own motion or the motion of a party or interested party at a hearing or upon agreement of all parties or interested parties, shall enter an order discharging the child. Except upon request of the child pursuant to subsection (c), the court shall not enter an order discharging a child until June 1 of the school year during which the child becomes 18 years of age if the child is in an out-of-home placement, is still attending high school and has not completed the child's high school education.

(e) When a petition is filed under this code, a person who is alleged to be under 18 years of age shall be presumed to be under that age for the purposes of this code, unless the contrary is proved.

New Sec. 4. (a) Venue of any case involving a child in need of care shall be in the county of the child's residence or in the county where the child is found.

(b) Upon application of any party or interested party and after notice to all other parties and interested parties, the court in which the petition

was originally filed alleging that a child is a child in need of care may order the proceedings transferred to the court of the county where: (1) The child is physically present; (2) the parent or parents reside; or (3) other proceedings are pending in this state concerning custody of the child. The judge of the court in which the case is pending shall consult with the judge of the proposed receiving court prior to transfer of the case. If the judges do not agree that the case should be transferred or if a hearing is requested, a hearing shall be held on the desirability of the transfer, with notice to parties or interested parties, the secretary and the proposed receiving court. If the judge of the transferring court orders the case transferred, the order of transfer shall include findings stating why the case is being transferred and, if available, the names and addresses of all interested parties to whom the receiving court should provide notice of any further proceedings. The receiving court shall accept the case. Upon a judge ordering a transfer of venue, the clerk shall transmit the contents of the official file and a complete copy of the social file to the court to which venue is transferred, and, upon receipt of the record, the receiving court shall assume jurisdiction as if the proceedings were originally filed in that court. The transferring judge, if an adjudicatory hearing has been held, shall also transmit recommendations as to disposition. The court may return the case to the court where it originated if the child is not present in the receiving county or, the receiving county is not the residence of the child's parent or parents.

New Sec. 5. (a) *Appointment of guardian ad litem and attorney for child; duties.* Upon the filing of a petition, the court shall appoint an attorney to serve as guardian *ad litem* for a child who is the subject of proceedings under this code. The guardian *ad litem* shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child. When the child's position is not consistent with the determination of the guardian *ad litem* as to the child's best interests, the guardian *ad litem* shall inform the court of the disagreement. The guardian *ad litem* or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

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

(1) If at any stage of the proceedings a parent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the parent. It shall not be necessary to appoint an attorney to represent a parent who fails or refuses to attend the hearing after having been properly served with process in accordance with section 32, and amendments thereto. A parent or custodian who is not a minor, a mentally ill person or a disabled person may waive counsel either in writing or on the record.

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

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

(c) *Attorney for interested parties.* A person who, pursuant to section 36, and amendments thereto, is an interested party in a proceeding involving a child alleged to be a child in need of care may be represented by an attorney in connection with all proceedings under this code. At the first hearing in connection with proceedings under this code, the court shall distribute a pamphlet, designed by the court, to interested parties in a proceeding involving a child alleged or adjudged to be a child in need of care, to advise interested parties of their rights in connection with all

proceedings under this code. It shall not be necessary to appoint an attorney to represent an interested party who fails or refuses to attend the hearing after having been properly served with process in accordance with section 32, and amendments thereto. If at any stage of the proceedings a person who is an interested party under subsection (d) of section 36, and amendments thereto, desires but is financially unable to employ an attorney, the court may appoint an attorney for the interested party.

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

(e) *Fees for counsel.* An attorney appointed pursuant to this section shall be allowed a reasonable fee for services, which may be assessed as an expense in the proceedings as provided in section 10, and amendments thereto.

New Sec. 6. (a) The court at any stage of a proceeding pursuant to this code may appoint a special advocate for the child who shall serve until discharged by the court and whose primary duties shall be to advocate the best interests of the child and assist the child in obtaining a permanent, safe and homelike placement. The court-appointed special advocate shall have such qualifications and perform such specific duties and responsibilities as prescribed by rule of the supreme court.

(b) Any person participating in a judicial proceeding as a court-appointed special advocate shall be presumed *prima facie* to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

New Sec. 7. (a) Subject to the availability of funds in the permanent families account of the family and children investment fund for citizen review boards, and subject to a request from a judicial district, there shall be citizen review boards in judicial districts, or portions of such districts.

(b) The chief judge of the judicial district, or another judge designated by the chief judge, shall appoint three to seven citizens from the community to serve on each citizen review board. Such members shall represent the various socioeconomic and ethnic groups of the judicial district, and shall have a special interest in children. Such judge may also appoint alternates when necessary.

(c) The term of appointment shall be two years and members may be reappointed.

(d) Members shall serve without compensation but may be reimbursed for mileage for out-of-county reviews.

(e) Each citizen review board shall meet quarterly and may meet monthly if the number of cases to review requires such meetings.

(f) Members and alternates appointed to citizen review boards shall receive at least six hours of training before reviewing a case.

New Sec. 8. (a) The citizen review board shall have the duty, authority and power to:

(1) Review each case referred to them, and such additional cases as the board deems appropriate, of a child who is the subject of a child in need of care petition or who has been adjudicated a child in need of care, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been made to acquire a permanent home for the child in need of care;

(3) suggest an alternative case goal if progress has been insufficient; and

(4) make recommendations to the judge regarding further actions on the case.

(b) The initial review by the citizen review board may take place any time after a petition is filed for a child in need of care.

(c) The citizen review board will review each referred case at least once each year.

(d) The judge shall consider the citizen review board recommendations in making an authorized dispositional order pursuant to section 50,

and amendments thereto, and may incorporate the citizen review board's recommendations into an order in lieu of a hearing.

(e) Three members of the citizen review board shall be present to review a case.

(f) The court shall provide a place for the reviews to be held. The citizen review board members shall travel to the county of the family residence of the child being reviewed to hold the review.

New Sec. 9. It shall be the duty of the county or district attorney or the county or district attorney's designee to prepare and file the petition alleging a child to be a child in need of care, and to appear at the hearing on the petition and to present evidence as necessary, at all stages of the proceedings, that will aid the court in making appropriate decisions. The county or district attorney or the county or district attorney's designee shall also have the other duties required by this code. Pursuant to a written agreement between the secretary and the county or district attorney, the attorneys for the secretary may perform the duties of the county or district attorney after disposition has been determined by the court.

New Sec. 10. (a) *Docket fee.* The docket fee for proceedings under this code, if one is assessed as provided in this section, shall be $25. Only one docket fee shall be assessed in each case.

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

(c) *Assessment of docket fee and expenses.* (1) *Docket fee.* The docket fee may be assessed or waived by the court conducting the initial dispositional hearing and the docket fee may be assessed against the complaining witness or person initiating the proceedings or a party or interested party other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state, or a person acting in the capacity of an employee of the state or of a political subdivision of the state. Any docket fee received shall be remitted to the state treasurer pursuant to K.S.A. 20-362, and amendments thereto.

(2) *Expenses.* Expenses may be assessed against the complaining witness, a person initiating the proceedings, a party or an interested party, other than the state, a political subdivision of the state, an agency of the state or of a political subdivision of the state or a person acting in the capacity of an employee of the state or of a political subdivision of the state. When expenses are recovered from a person against whom they have been assessed the general fund of the county shall be reimbursed in the amount of the recovery. If it appears to the court in any proceedings under this code that expenses were unreasonably incurred at the request of any party the court may assess that portion of the expenses against the party.

(d) *Cases in which venue is transferred.* If venue is transferred from one county to another, the court from which the case is transferred shall send to the receiving court a statement of expenses paid from the general fund of the sending county. If the receiving court collects any of the expenses owed in the case, the receiving court shall pay to the sending court an amount proportional to the sending court's share of the total expenses owed to both counties. The expenses of the sending county shall not be an obligation of the receiving county except to the extent that the sending county's proportion of the expenses is collected by the receiving court. All amounts collected shall first be applied toward payment of the docket fee.

New Sec. 11. (a) *How paid.* (1) If a child alleged or adjudged to be a child in need of care is not eligible for assistance under K.S.A. 39-709, and amendments thereto, expenses for the care and custody of the child shall be paid out of the general fund of the county in which the proceedings are brought. For the purpose of this section, a child who is a nonresident of the state of Kansas or whose residence is unknown shall have residence in the county where the proceedings are instituted.

(2) When a law enforcement officer has taken a child into custody as authorized by subsection (b) of section 26, and amendments thereto, and delivered the child to a person or facility designated by the secretary or when custody of a child is awarded to the secretary, the expenses of the care and custody of the child may be paid by the secretary, even though

the child does not meet the eligibility standards of K.S.A. 39-709, and amendments thereto.

(3) When the custody of a child is awarded to the secretary, the expenses of the care and custody of the child shall not be paid out of the county general fund.

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

(b) *Reimbursement to county general fund.* (1) When expenses for the care and custody of a child alleged or adjudged to be a child in need of care have been paid out of the county general fund, the court may fix a time and place for hearing on the question of requiring payment or reimbursement of all or part of the expenses by a person who by law is liable to maintain, care for or support the child.

(2) The court, after notice to the person who by law is liable to maintain, care for or support the child, may hear and dispose of the matter and may enter an order relating to payment of expenses for care and custody of the child. If the person willfully fails or refuses to pay the sum, the person may be adjudged in contempt of court and punished accordingly.

(3) The county may bring a separate action against a person who by law is liable to maintain, care for or support a child alleged or adjudged to be a child in need of care for the reimbursement of expenses paid out of the county general fund for the care and custody of the child.

(c) *Reimbursement to secretary.* (1) When expenses for the care and custody of a child alleged or adjudged to be a child in need of care have been paid by the secretary, the secretary may recover the expenses pursuant to K.S.A. 39-709, 39-718b or 39-755, and amendments thereto, or as otherwise provided by law, from any person who by law is liable to maintain, care for or support the child.

(2) The secretary shall have the power to compromise and settle any claim due or any amount claimed to be due to the secretary from any person who by law is liable to maintain, care for or support the child.

New Sec. 12. (a) *Physical or mental care and treatment.* (1) When a child less than 18 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, no consent shall be required to medically examine the child to determine whether the child has been abused or neglected. Unless the child is alleged or suspected to have been abused by the parent or guardian, the investigating officer shall notify or attempt to notify the parent or guardian of the medical examination of the child.

(2) When the health or condition of a child who is subject to jurisdiction of the court requires it, the court may consent to the performing and furnishing of hospital, medical, surgical or dental treatment or procedures, including the release and inspection of medical or dental records. A child, or parent of any child, who is opposed to certain medical procedures authorized by this subsection may request an opportunity for a hearing thereon before the court. Subsequent to the hearing, the court may limit the performance of matters provided for in this subsection or may authorize the performance of those matters subject to terms and conditions the court considers proper.

(3) The custodian is the personal representative for the purpose of consenting to disclosure of otherwise protected health information and may give consent to the following:

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

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

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

(D) immunizations for the child;

(E) administration of lawfully prescribed drugs to the child; and

(F) examinations of the child including, but not limited to, the withdrawal of blood or other body fluids or tissues for the purpose of determining the child's parentage.

(4) When the court has granted legal custody of a child in a dispositional hearing to any agency, association or individual, the custodian or an agent designated by the custodian is the personal representative for the purpose of consenting to disclosure of otherwise protected health

information and shall have authority to consent to the performance and furnishing of hospital, medical, surgical or dental treatment or procedures or mental care or treatment other than inpatient treatment at a state psychiatric hospital, including the release and inspection of medical or hospital records, subject to terms and conditions the court considers proper.

(5) Any health care provider who in good faith renders hospital, medical, surgical, mental or dental care or treatment to any child or discloses protected health information as authorized by this section shall not be liable in any civil or criminal action for failure to obtain consent of a parent.

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

(b) *Care and treatment requiring court action.* If it is brought to the court's attention, while the court is exercising jurisdiction over the person of a child under this code, that the child may be a mentally ill person as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem as defined in K.S.A. 59-29b46, and amendments thereto, the court may:

(1) Direct or authorize the county or district attorney or the person supplying the information to file the petition provided for in K.S.A. 59-2957, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for mentally ill persons or the petition provided for in K.S.A. 59-29b57, and amendments thereto, and proceed to hear and determine the issues raised by the application as provided in the care and treatment act for persons with an alcohol or substance abuse problem; or

(2) authorize that the child seek voluntary admission to a treatment facility as provided in K.S.A. 59-2949, and amendments thereto, or K.S.A 59-29b49, and amendments thereto.

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

New Sec. 13. (a) When the court has granted legal custody of a child in a hearing under the code to an agency, association or individual, the custodian or an agent designated by the custodian shall have authority to make educational decisions for the child if the parents of the child are unknown or unavailable. When the custodian of the child is the secretary, and the parents of the child are unknown or unavailable, and the child appears to be an exceptional child who requires special education, the secretary shall immediately notify the state board of education, or a designee of the state board, and the school district in which the child is residing that the child is in need of an education advocate. As used in this section, a parent is unavailable if:

(1) Repeated attempts have been made to contact the parent to provide notice of an IEP meeting and secure the parent's participation and such attempts have been unsuccessful;

(2) having been provided actual notice of an IEP meeting, the parent has failed or refused to attend and participate in the meeting; or

(3) the parent's whereabouts are unknown so that notice of an IEP meeting cannot be given to the parent. As soon as possible after notification, the state board of education, or its designee, shall appoint an education advocate for the child.

(b) If the secretary changes the placement of a pupil from one school district to another or to another school within the same district, it shall be the duty of the secretary to transfer, or make provision for the transfer, of all school records of such pupil to the district or school to which the pupil is transferred. Such school records shall be transferred at the same time that the pupil is transferred or as soon as possible thereafter.

(c) As used in this section, the terms "exceptional child", "special education", and "education advocate" have the meanings respectively ascribed thereto in the special education for exceptional children act, K.S.A.

72-961 et seq., and amendments thereto. The term "pupil" means a child living in a school district as a result of a placement therein by the secretary pursuant to this code.

New Sec. 14. (a) *Of the child.* (1) *Psychological or emotional.* During proceedings under this code, the court, on its own motion or the motion of the guardian *ad litem* for the child, a party or interested party, may order an evaluation and written report of the psychological or emotional development or needs of a child who is the subject of the proceedings. The court may refer the child to a state institution for the evaluation if the secretary advises the court that the facility is a suitable place to care for, treat or evaluate the child and that space is available. The expenses of transportation to and from the state facility may be paid as a part of the expenses of temporary care and custody. The child may be referred to a mental health center or qualified professional for evaluation and the expenses of the evaluation may be considered as expenses of the proceedings and assessed as provided in this code. If the court orders an evaluation as provided in this section, a parent of the child shall have the right to obtain an independent evaluation at the expense of the parent.

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

(3) *Educational.* During proceedings under this code, the court may order the chief administrative officer of the school which the child attends or attended to provide to the court information that is readily available which the school officials believe would properly indicate the educational needs of the child. The order may direct that the school conduct an educational needs assessment of the child and send a report of the assessment to the court. The educational needs assessment may include a meeting involving any of the following: The child's parents; the child's teachers; the school psychologist; a school special services representative; a representative of the secretary; the child's court-appointed special advocate; the child's foster parents, legal guardian and permanent custodian; a court services officer; and other persons that the chief administrative officer of the school or the officer's designee considers appropriate.

(b) *Physical, psychological or emotional status of parent or custodian.* During proceedings under this code, the court may order: (1) An examination, evaluation and report of the physical, mental or emotional status or needs of a parent, a person residing with a parent or any person being considered as one to whom the court may grant custody; and

(2) written reports from any qualified person concerning the parenting skills or ability to provide for the physical, mental or emotional needs and future development of a child by a parent or any person being considered as one to whom the court may grant custody.

(c) *Court consideration.* Written reports and other materials relating to the examinations and evaluations under subsections (a) and (b) may be considered by the court after an adjudication or entry of an order of informal supervision, if introduced as evidence. If requested by any party or interested party in attendance, the court shall require the person preparing the report or other material to appear and testify.

(d) *Confidentiality of reports.* (1) *Reports of court ordered examination or evaluation.* No confidential relationship of physician and patient, psychologist and client or social worker and client shall arise from an examination or evaluation ordered by the court.

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

New Sec. 15. (a) If the court determines that the information contained in the petition concerning parentage of the child may be incom-

plete or incorrect, the court shall determine whether the question has been previously adjudicated and whether service of process should be made on some additional person.

(b) If it appears that the issue of parentage needs to be adjudicated, the court shall stay child support proceedings, if any are pending in the case, with respect to that alleged parent and child relationship, until the dispute is resolved by agreement, by a separate action under the Kansas parentage act, K.S.A. 38-1110 et seq., and amendments thereto, or otherwise. Nothing in this subsection shall be construed to limit the power of the court to carry out the purposes of the code.

New Sec. 16. (a) Fingerprints or photographs of a person alleged or adjudicated to be a child in need of care may be taken:

(1) By a person authorized to investigate an allegation or suspicion of child abuse or neglect to obtain and preserve evidence or to determine the identity of a child;

(2) as authorized by K.S.A. 38-1611, and amendments thereto; or

(3) if authorized by a judge of the district court having jurisdiction.

(b) Fingerprints and photographs taken under subsection (a) (3): (1) Shall be kept separate from those of persons of the age of majority; and

(2) may be sent to a state or federal repository only if authorized by a judge of the district court having jurisdiction.

(c) Nothing in this section shall preclude the custodian of the child from authorizing photographs or fingerprints of the child to:

(1) Be used in any action under the Kansas parentage act;

(2) assist in the apprehension of a runaway child;

(3) assist in the adoption or other permanent placement of a child; or

(4) provide the child or the child's parents with a history of the child's life and development.

(d) For purposes of this section, the term photograph means an image or likeness of a child made or reproduced by any medium or means.

New Sec. 17. The secretary shall conduct a continuing public information and educational program concerning the reporting of suspected abuse or neglect for local staff of the department of social and rehabilitation services, for persons required to report under this code and for other appropriate persons.

New Sec. 18. (a) *Persons making reports.* (1) When any of the following persons has reason to suspect that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse, the person shall report the matter promptly as provided in subsections (b) and (c);

(A) The following persons providing medical care or treatment: Persons licensed to practice the healing arts, dentistry and optometry; persons engaged in postgraduate training programs approved by the state board of healing arts; licensed professional or practical nurses; and chief administrative officers of medical care facilities;

(B) the following persons licensed by the state to provide mental health services: Licensed psychologists, licensed masters level psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed clinical marriage and family therapists, licensed professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;

(C) teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed at the place where the child care services are being provided to the child; and

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers and community corrections officers, case managers appointed under K.S.A. 2005 Supp. 23-1001 et seq., and amendments thereto, and mediators appointed under K.S.A. 23-602, and amendments thereto.

(2) In addition to the reports required under subsection (a)(1), any person who has reason to suspect that a child may be a child in need of care may report the matter as provided in subsection (b) and (c).

(b) *Form of report.* (1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if

known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm.

(2) When reporting a suspicion that a child may be in need of care, the reporter shall disclose protected health information freely and cooperate fully with the secretary and law enforcement throughout the investigation and any subsequent legal process.

(c) *To whom made.* Reports made pursuant to this section shall be made to the secretary, except as follows:

(1) When the department of social and rehabilitation services is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to section 21, and amendments thereto. The reports may be made orally or, on request of the secretary, in writing.

(2) Reports of child abuse or neglect occurring in an institution operated by the secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(d) *Death of child.* Any person who is required by this section to report a suspicion that a child is in need of care and who knows of information relating to the death of a child shall immediately notify the coroner as provided by K.S.A. 22a-242, and amendments thereto.

(e) *Violations.* (1) Willful and knowing failure to make a report required by this section is a class B misdemeanor. It is not a defense that another mandatory reporter made a report.

(2) Intentionally preventing or interfering with the making of a report required by this section is a class B misdemeanor.

(3) Any person who willfully and knowingly makes a false report pursuant to this section or makes a report that such person knows lacks factual foundation is guilty of a class B misdemeanor.

(f) *Immunity from liability.* Anyone who, without malice, participates in the making of a report to the secretary or a law enforcement agency relating to a suspicion a child may be a child in need of care or who participates in any activity or investigation relating to the report or who participates in any judicial proceeding resulting from the report shall have immunity from any civil liability that might otherwise be incurred or imposed.

New Sec. 19. (a) No employer shall terminate the employment of, prevent or impair the practice or occupation of, or impose any other sanction on, any employee because the employee made an oral or written report to, or cooperated with an investigation by, a law enforcement agency or the secretary relating to harm inflicted upon a child which was suspected by the employee of having resulted from the physical, mental or emotional abuse or neglect or sexual abuse of the child.

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

New Sec. 20. The secretary shall adopt rules and regulations governing the reporting of suspected child abuse or neglect that occurs in an institution operated by the secretary. Such rules and regulations shall specify those types of incidents which are required to be reported.

New Sec. 21. (a) *Investigation for child abuse or neglect.* The secretary and law enforcement officers shall have the duty to receive and investigate reports of child abuse or neglect for the purpose of determining whether the report is valid and whether action is required to protect a child. Any person or agency which maintains records relating to the involved child which are relevant to any investigation conducted by the secretary or law enforcement agency under this code shall provide the secretary or law enforcement agency with the necessary records to assist

in investigations. In order to provide such records, the person or agency maintaining the records shall receive from the secretary or law enforcement: (1) A written request for information; and (2) a written notice that the investigation is being conducted by the secretary or law enforcement. If the secretary and such officers determine that no action is necessary to protect the child but that a criminal prosecution should be considered, such law enforcement officers shall make a report of the case to the appropriate law enforcement agency.

(b) *Joint investigations.* When a report of child abuse or neglect indicates: (1) That there is serious physical harm to, serious deterioration of or sexual abuse of the child; and (2) that action may be required to protect the child, the investigation shall be conducted as a joint effort between the secretary and the appropriate law enforcement agency or agencies, with a free exchange of information between them pursuant to K.S.A 2005 Supp. 38-1505c, and amendments thereto. If a statement of a suspect is obtained by either agency, a copy of the statement shall be provided to the other.

(c) *Investigation of certain cases.* Suspected child abuse or neglect which occurs in an institution operated by the secretary shall be investigated by the attorney general. Any other suspected child abuse or neglect by persons employed by the department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency.

(d) *Coordination of investigations by county or district attorney.* If a dispute develops between agencies investigating a reported case of child abuse or neglect, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.

(e) *Investigations concerning certain facilities.* Any investigation involving a facility subject to licensing or regulation by the secretary of health and environment shall be promptly reported to the state secretary of health and environment.

(f) *Cooperation between agencies.* Law enforcement agencies and the secretary shall assist each other in taking action which is necessary to protect a child regardless of which agency conducted the initial investigation.

(g) *Cooperation between school personnel and investigative agencies.* (1) Educational institutions, the secretary and law enforcement agencies shall cooperate with each other in the investigation of reports of suspected child abuse or neglect. The secretary and law enforcement agencies shall have access to a child in a setting designated by school personnel on the premises of an educational institution. Attendance at an interview conducted on such premises shall be at the discretion of the agency conducting the interview, giving consideration to the best interests of the child. To the extent that safety and practical considerations allow, law enforcement officers on such premises for the purpose of investigating a report of suspected child abuse or neglect shall not be in uniform.

(2) The secretary or a law enforcement officer may request the presence of school personnel during an interview if the secretary or officer determines that the presence of such person might provide comfort to the child or facilitate the investigation.

New Sec. 22. (a) A child advocacy center in this state shall:

(1) Be a private, nonprofit incorporated agency or a governmental entity.

(2) Have a neutral, child-focused facility where forensic interviews take place with children in appropriate cases of suspected or alleged physical, mental or emotional abuse or sexual abuse. All agencies shall have a place to interact with the child as investigative or treatment needs require.

(3) Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity.

(4) Have a multidisciplinary team that meets on a regularly scheduled basis or as the caseload of the community requires. The team shall include, but not be limited to, representatives from the state or local office prosecuting such case, law enforcement, child protective services, mental health services, a victim's advocate, child advocacy center staff and medical personnel.

(5) Provide case tracking of child abuse cases seen through the center. A center shall also collect data on the number of child abuse cases seen at the center, by sex, race, age, and other relevant data, the number

of cases referred for prosecution, and the number of cases referred for medical services or mental health therapy.

(6) Provide medical exam services or mental health therapy, or both, on site at the child advocacy center, or provide referrals for medical exams or mental health therapy, or both, to a facility not on the site of the child advocacy center.

(7) Have an interagency commitment, in writing, covering those aspects of agency participation in a multidisciplinary approach to the handling of cases involving physical, mental or emotional abuse.

(8) Provide that child advocacy center employees and volunteers at the center are trained and screened in accordance with K.S.A. 65-516, and amendments thereto.

(9) Provide training for child advocacy center staff who interview children in forensic children's interview technique.

(b) Any child advocacy center within this state that meets the standards prescribed by this section shall be eligible to receive state funds that are appropriated by the legislature.

New Sec. 23. The court on its own motion or upon request may, at any time, appoint a multidisciplinary team to assist in gathering information regarding a child who may be or is a child in need of care. The team may be a standing multidisciplinary team or may be appointed for a specific child. Any person appointed as a member of a multidisciplinary team may decline to serve and shall incur no civil liability as the result of declining to serve.

New Sec. 24. (a) The secretary, a law enforcement officer, or a multidisciplinary team appointed pursuant to section 23, and amendments thereto, may request disclosure of documents, reports or information in regard to a child, who is the subject of a report of abuse or neglect, by making a written verified application to the district court. Upon a finding by the court that there is probable cause to believe the information sought will assist in the investigation of a report of child abuse or neglect, the court may issue a subpoena, subpoena *duces tecum* or an order for the production of the requested documents, reports or information and directing the documents, reports or information to be delivered to the applicant at a specific time, date and place.

(b) The time and date of delivery shall not be sooner than five days after the service of the subpoena or order, excluding Saturdays, Sundays and holidays. The court issuing the subpoena or order shall keep all applications filed pursuant to this subsection and a copy of the subpoena or order in a special file maintained for that purpose. Upon receiving service of a subpoena, subpoena *duces tecum* or an order for production pursuant to this section, the person or agency served shall give oral or written notice of service to any person known to have a right to assert a privilege or assert a right of confidentiality in regard to the documents, reports or information sought at least three days before the date of delivery.

(c) Any parent, child, guardian *ad litem*, person or entity subpoenaed or subject to an order of production or person or entity who claims a privilege or right of confidentiality may request in writing that the court issuing the subpoena or order of production quash the subpoena, subpoena *duces tecum* or order for production issued pursuant to this section. The request shall automatically stay the operation of the subpoena, subpoena *duces tecum* or order for production and the documents, reports or information requested shall not be delivered until the issuing court has held a hearing to determine if the documents, reports or information are subject to the claimed privilege or right of confidentiality, and whether it is in the best interests of the child for the subpoena or order to produce to be honored. The request to quash shall be filed with the district court issuing the subpoena or order at least 24 hours prior to the specified time and date of delivery, excluding Saturdays, Sundays or holidays, and a copy of the written request must be given to the person subpoenaed or subject to the order for production at least 24 hours prior to the specified time and date of delivery.

New Sec. 25. Whenever any person furnishes information to the secretary that a child appears to be a child in need of care, the department shall make a preliminary inquiry to determine whether the interests of the child require further action be taken. Whenever practicable, the inquiry shall include a preliminary investigation of the circumstances which

were the subject of the information, including the home and environmental situation and the previous history of the child. If reasonable grounds to believe abuse or neglect exist, immediate steps shall be taken to protect the health and welfare of the abused or neglected child as well as that of any other child under the same care who may be harmed by abuse or neglect. After the inquiry, if the secretary determines it is not otherwise possible to provide those services necessary to protect the interests of the child, the secretary shall recommend to the county or district attorney that a petition be filed.

New Sec. 26. (a) A law enforcement officer or court services officer shall take a child under 18 years of age into custody when:

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

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

(b) A law enforcement officer shall take a child under 18 years of age into custody when:

(1) The law enforcement officer reasonably believes the child will be harmed if not immediately removed from the place or residence where the child has been found; or

(2) when the officer has probable cause to believe that the child is a missing person and a verified missing person entry for the child can be found in the national crime information center missing person system.

(c) (1) If a person provides shelter to a child whom the person knows is a runaway, such person shall promptly report the child's location either to a law enforcement agency or to the child's parent or other custodian.

(2) If a person reports a runaway's location to a law enforcement agency pursuant to this section and a law enforcement officer of the agency has reasonable grounds to believe that it is in the child's best interests, the child may be allowed to remain in the place where shelter is being provided, subject to subsection (b), in the absence of a court order to the contrary. If the child is allowed to so remain, the law enforcement agency shall promptly notify the secretary of the child's location and circumstances.

(d) A law enforcement officer may temporarily detain and assume temporary custody of any child subject to compulsory school attendance, pursuant to K.S.A. 72-1111, and amendments thereto, during the hours school is actually in session and shall deliver the child pursuant to subsection (g) of section 27, and amendments thereto.

New Sec. 27. (a) To the extent possible, when any law enforcement officer takes into custody a child under the age of 18 years without a court order, the child shall forthwith be delivered to the custody of the child's parent or other custodian unless there are reasonable grounds to believe that such action would not be in the best interests of the child. Except as provided in subsection (b), if the child is not delivered to the custody of the child's parent or other custodian, the child shall forthwith be delivered to a facility or person designated by the secretary, a shelter facility designated by the court, court services officer, juvenile intake and assessment worker, licensed attendant care center or other person. If, after delivery of the child to a shelter facility, the person in charge of the shelter facility at that time and the law enforcement officer determine that the child will not remain in the shelter facility and if the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of section 2, and amendments thereto, the law enforcement officer shall deliver the child to a juvenile detention facility or other secure facility, designated by the court, where the child shall be detained for not more than 24 hours, excluding Saturdays, Sundays and legal holidays. No child taken into custody pursuant to this code shall be placed in a juvenile detention facility or other secure facility, except as authorized by this section and by sections 37, 38 and 55, and amendments thereto. It shall be the duty of the law enforcement officer to furnish to the county or district attorney, without unnecessary delay, all the information in the possession of the officer pertaining to the child, the child's parents or other persons interested in or likely to be interested in the

child and all other facts and circumstances which caused the child to be taken into custody.

(b) When any law enforcement officer takes into custody any child as provided in subsection (b)(2) of section 26, and amendments thereto, proceedings shall be initiated in accordance with the provisions of the interstate compact on juveniles, K.S.A. 38-1001 et seq., and amendments thereto, or K.S.A. 2005 Supp. 38-1008, and amendments thereto, when effective. Any child taken into custody pursuant to the interstate compact on juveniles may be detained in a juvenile detention facility or other secure facility.

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

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

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

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

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

(e) The shelter facility or other person designated by the court who has custody of the child pursuant to this section shall discharge the child not later than 72 hours following admission, excluding Saturdays, Sundays and legal holidays, unless a court has entered an order pertaining to temporary custody or release.

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

(g) When any law enforcement officer takes into custody any child as provided in subsection (d) of section 26, and amendments thereto, the child shall forthwith be delivered to the school in which the child is enrolled, any location designated by the school in which the child is enrolled or the child's parent or other custodian.

New Sec. 28. (a) Whenever the secretary or any other person refers a case to the county or district attorney for the purpose of filing a petition alleging that a child is a child in need of care, the county or district attorney shall review the facts, recommendations and any other evidence available and determine if the circumstances warrant filing a petition.

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

(c) When a petition is filed alleging an infant surrendered pursuant to section 77, and amendments thereto, is a child in need of care, the petition shall include a request that the court find that reintegration is not a viable alternative. Such petition also shall include a request to terminate the parental rights of the parents of such infant. An expedited hearing shall be granted on any petition filed pursuant to this subsection.

New Sec. 29. (a) *Filing and contents of petition.* (1) A petition filed to commence an action pursuant to this code shall be filed with the clerk of the district court and shall state, if known:

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

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

(C) the name and address of the child's nearest known relative if no parent can be found;

(D) the name and residence address of any persons having custody or control of the child; and

(E) plainly and concisely in the language of the statutory definition, the basis for the petition.

(2) The petition shall also state the specific facts which are relied upon to support the allegation referred to in the preceding paragraph including any known dates, times and locations.

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

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

(5) The petition shall contain a request that the parent or parents be ordered to pay child support. The request for child support may be omitted with respect to a parent already ordered to pay child support for the child and shall be omitted with respect to one or both parents upon written request of the secretary.

(6) If the petition requests custody of the child to the secretary or a person other than the child's parent, the petition shall specify the efforts known to the petitioner to have been made to maintain the family and prevent the transfer of custody, or it shall specify the facts demonstrating that an emergency exists which threatens the safety to the child.

(7) If the petition requests removal of the child from the child's home, in addition to the information required by section 29 (a)(6), and amendments thereto, the petition shall specify the facts demonstrating that allowing the child to remain in the home would be contrary to the welfare of the child or that placement is in the best interests of the child and the child is likely to sustain harm if not removed from the home.

(8) The petition shall contain the following statement: "If you do not appear in court the court will be making decisions without your input which could result in:

(A) The permanent or temporary removal of the child from the custody of the parent or present legal guardian;

(B) an order requiring one or both parents to pay child support until the permanent termination of one or both of the parents parental rights;

(C) the permanent termination of one or both of the parents parental rights; and

(D) the appointment of a permanent custodian for the child.

If you cannot attend the hearing you may send a written response to the petition to the clerk of the court."

(9) The petition shall contain the following statement: "You may receive further notices of other hearings, proceedings and actions in this case which you may attend. These notices will be sent to you by first class mail to your last known address or an address you provide to the court. It is your responsibility to keep the court informed of your current address."

(b) *Motions.* Motions may be made orally or in writing. The motion shall state with particularity the grounds for the motion and shall state the relief or order sought.

New Sec. 30. (a) Upon the filing of a petition under this code the court shall proceed by one of the following methods:

(1) The court shall issue summons pursuant to section 31, and amendments thereto, setting the matter for hearing within 30 days of the date the petition is filed. The summons, with a copy of the petition attached, shall be served pursuant to section 32, and amendments thereto.

(2) If the child has been taken into protective custody under the provisions of section 37, and amendments thereto, and a temporary custody hearing is held as required by section 38, and amendments thereto, a copy of the petition shall be served at the hearing on each party and interested party in attendance and a record of service made a part of the proceedings. The court shall announce the time of the next hearing. Process shall be served on any party or interested party not at the temporary custody hearing pursuant to subsection (a)(1). Upon the written request of the petitioner or the county or district attorney, separate or additional summons shall be issued to any party and interested party.

(b) If the petition requests custody to the secretary, the court shall cause a copy of the petition to be provided to the secretary upon filing.

New Sec. 31. (a) *Persons to be served.* The summons and a copy of the petition shall be served on:

(1) The child alleged to be a child in need of care by serving the guardian *ad litem* appointed for the child;

(2) the parents or parent having legal custody or who may be ordered to pay child support by the court;

(3) the person with whom the child is residing; and

(4) any other person designated by the county or district attorney.

(b) A copy of the petition and notice of hearing shall be mailed by

first class mail to the child's grandparents with whom the child does not reside.

New Sec. 32. Summons, notice of hearings and other process may be served by one of the following methods:

(a) *Personal and residence service.* Personal and residence service is completed by service in substantial compliance with the provisions of K.S.A. 60-303, and amendments thereto. Personal service upon an individual outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308, and amendments thereto.

(b) *Service by return receipt delivery.* Service by return receipt delivery is completed upon mailing or sending only in accordance with the provisions of subsection (c) of K.S.A. 60-303, and amendments thereto.

(c) *First class mail service.* Service may be made by first class mail, addressed to the individual to be served at the usual place of residence of the person with postage prepaid, and is completed upon the person appearing before the court in response thereto. If the person fails to appear, the summons, notice or other process shall be delivered by personal service, residential service, certified mail service or publication service.

(d) *Service upon confined parent.* If a parent of a child who is the subject of proceedings under this code is confined in a state or federal penal institution, state or federal hospital or other institution, service shall be made by return receipt delivery to addressee only to both the confined parent and the person in charge of the institution. It shall be the duty of the person in charge of the institution to confer with the parent, if the parent's mental condition is such that a conference will serve any useful purpose, and advise the court in writing as to the wishes of the parent with regard to the child. Personal service on a confined parent who is present in the courtroom cures any defect in notice to the person in charge of the institution.

(e) *Service by publication.* If service cannot be completed after due diligence using any other method provided in this section, service may be made by publication in accordance with this subsection. Before service by publication, the petitioner, or someone on behalf of the petitioner, shall file an affidavit which shall state the affiant has made an attempt, but unsuccessful, with due diligence to ascertain the names or residences, or both, of the persons. The notice shall be published once a week for two consecutive weeks in the newspaper authorized to publish legal notices in the county where the petition is filed. In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found.

New Sec. 33. Proof of service shall be made as follows:

(a) *Personal or residential service.* (1) Every officer to whom summons or other process is delivered for service within the state shall make written report of the place, manner and date of service of the process.

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

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

(b) *Service by mail.* The clerk or a deputy clerk shall make a written report of service by mail.

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

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

New Sec. 34. (a) *Proceedings upon filing.* Upon the filing of a subsequent pleading, other than a petition, indicating the necessity for a hearing, the court shall fix the time and place for the hearing.

(b) *Notice.* The notice of hearing shall be given by the clerk, unless otherwise ordered by the court. The notice shall be dated the day it is issued, contain the name of the court and the caption in the case.

(c) *Notification by first class mail.* Unless other provisions of this code expressly require service of process, notice of motions and other pleadings filed subsequent to the petition in connection with the case and any hearings to be held on such motions or other pleadings may be provided by first class mail, postage prepaid, to any party or interested party who has been served in accordance with section 32, and amendments thereto. Such notice shall be sent to the last address provided to the court by the party or interested party in question. Failure to appear shall not invalidate notice by first class mail. Notice by mail is not required if the court orally notifies a party or interested party of the time and place of the hearing.

New Sec. 35. (a) Subject to section 36, and amendments thereto, a party or interested party shall be entitled to the use of subpoenas and other compulsory process to obtain the attendance of witnesses. Except as otherwise provided by this code, subpoenas and other compulsory processes shall be issued and served in the same manner and the disobedience thereof punished the same as in other civil cases.

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

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

New Sec. 36. (a) *Jurisdiction of the court.* Parties and interested parties in a child in need of care proceedings are subject to the jurisdiction of the court.

(b) *Rights of parties.* Subject to the authority of the court to rule on the admissibility of evidence and provide for the orderly conduct of the proceedings, the rights of parties to participate in a child in need of care proceeding include, but are not limited to:

(1) Notice in accordance with sections 31 and 34, and amendments thereto;

(2) present oral or written evidence and argument, to call and cross-examine witnesses; and

(3) representation by an attorney in accordance with section 5, and amendments thereto.

(c) *Grandparents as interested parties.* (1) A grandparent of the child shall be made an interested party to a child in need of care proceeding if the grandparent notifies the court of such grandparent's desire to become an interested party. Notification may be made in writing, orally or by appearance at the initial or a subsequent hearing on the child in need of care petition.

(2) Grandparents with interested party status shall have the participatory rights of parties pursuant to subsection (b), except that the court may restrict those rights if the court finds that it would be in the best interests of the child. A grandparent may not be prevented under this paragraph from attending the proceedings, having access to the child's official file in the court records or making a statement to the court.

(d) *Persons with whom the child has been residing as interested parties.* (1) Any person with whom the child has resided for a significant period of time within six months of the date the child in need of care petition is filed shall be made an interested party, if such person notifies the court of such person's desire to become an interested party. Notification may be made in writing, orally or by appearance at the initial or a subsequent hearing on the child in need of care petition.

(2) Persons with interested party status under this subsection shall have the participatory rights of parties pursuant to subsection (b), except that the court may restrict those rights if the court finds that it would be in the best interests of the child.

(e) *Other interested parties.* (1) Any person with whom the child has resided at any time, who is within the fourth degree of relationship to the child, or to whom the child has close emotional ties may, upon motion, be made an interested party if the court determines that it is in the best interests of the child.

(2) Any other person may, upon motion, be made an interested party if the court determines that the person has a sufficient relationship with the child to warrant interested party status or that the person's participation would be beneficial to the proceedings.

(3) The court may, upon its own motion, make any person an inter-

ested party if the court determines that interested party status would be in the best interests of the child.

(f) *Procedure for determining, denying or terminating interested party status.* (1) Upon the request of the court, the secretary shall investigate the advisability of granting interested party status under this section and report findings and recommendations to the court.

(2) The court may deny or terminate interested party status under this subsection if the court determines, after notice and a hearing, that a person does not qualify for interested party status or that there is good cause to deny or terminate interested party status.

(3) A person who is denied interested party status or whose status as an interested party has been terminated may petition for review of the denial or termination by the chief judge of the district in which the court having jurisdiction over the child in need of care proceeding is located, or a judge designated by the chief judge. The chief judge or the chief judge's designee shall review the denial or termination within 30 days of receiving the petition. The child in need of care proceeding shall not be stayed pending resolution of the petition for review.

New Sec. 37. (a) The court, upon verified application, may issue *ex parte* an order directing that a child be held in protective custody and, if the child has not been taken into custody, an order directing that the child be taken into custody. The application shall state for each child:

(1) The applicant's belief that the child is a child in need of care;

(2) that the child is likely to sustain harm if not immediately removed from the home;

(3) that allowing the child to remain in the home is contrary to the welfare of the child; and

(4) the facts relied upon to support the application, including efforts known to the applicant to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or the specific facts supporting that an emergency exists which threatens the safety of the child.

(b) (1) The order of protective custody may be issued only after the court has determined there is probable cause to believe the allegations in the application are true. The order shall remain in effect until the temporary custody hearing provided for in section 38, and amendments thereto, unless earlier rescinded by the court.

(2) No child shall be held in protective custody for more than 72 hours, excluding Saturdays, Sundays and legal holidays, unless within the 72-hour period a determination is made as to the necessity for temporary custody in a temporary custody hearing. The time spent in custody pursuant to section 27, and amendments thereto, shall be included in calculating the 72-hour period. Nothing in this subsection shall be construed to mean that the child must remain in protective custody for 72 hours. If a child is in the protective custody of the secretary, the secretary shall allow at least one supervised visit between the child and the parent or parents within such time period as the child is in protective custody. The court may prohibit such supervised visit if the court determines it is not in the best interest of the child.

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

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

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

(C) a youth residential facility;

(D) a shelter facility; or

(E) the secretary.

(2) If the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the protective custody of the secretary until the court finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. When the child is placed in the protective custody of the secretary, the secretary shall have the dis-

cretionary authority to place the child with a parent or to make other suitable placement for the child. When the child is presently alleged, but not yet adjudicated, to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of section 2, and amendments thereto, the child may be placed in a juvenile detention facility or other secure facility pursuant to an order of protective custody for a period of not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

(d) The order of protective custody shall be served pursuant to subsection (a) of section 32, and amendments thereto, on the child's parents and any other person having legal custody of the child. The order shall prohibit the removal of the child from the court's jurisdiction without the court's permission.

(e) If the court issues an order of protective custody, the court may also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of section 32, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

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

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

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

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

New Sec. 38. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

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

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

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

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

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

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

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

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

(C) a youth residential facility;

(D) a shelter facility; or

(E) the secretary.

(2) If the secretary presents the court with a plan to provide services to a child or family which the court finds will assure the safety of the child, the court may only place the child in the temporary custody of the secretary until the court finds the services are in place. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan. When the child is placed in the temporary custody of the secretary, the secretary shall have the discretionary authority to place the child with a parent or to make other suitable placement for the child. When the child is presently alleged, but not yet adjudicated to be a child in need of care solely pursuant to subsection (d)(9) or (d)(10) of section 2, and amendments thereto, the child may be placed in a juvenile detention facility or other secure facility, but the total amount of time that the child may be held in such facility under this section and section 37, and amendments thereto, shall not exceed 24 hours, excluding Saturdays, Sundays and legal holidays. The order of temporary custody shall remain in effect until modified or rescinded by the court or a disposition order is entered but not exceeding 60 days, unless good cause is shown and stated on the record.

(h) If the court issues an order of temporary custody, the court may also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child, other family members or witnesses. Such restraining order shall be served by personal service pursuant to subsection (a) of section 32, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

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

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

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

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

(j) If the court enters an order of temporary custody that provides for placement of the child with a person other than the parent, the court shall make a child support determination pursuant to section 72, and amendments thereto.

New Sec. 39. (a) At any time after filing a petition, but prior to an adjudication, the court may enter an order for continuance and informal supervision without an adjudication if no party or interested party objects. Upon granting the continuance, the court shall include in the order any conditions with which the parties or interested parties are expected to comply and provide the parties or interested parties with a copy of the order. The conditions may include appropriate dispositional alternatives authorized by section 50, and amendments thereto.

(b) An order for informal supervision may remain in force for a period of up to six months and may be extended, upon hearing, for an additional six-month period for a total of one year. For a child under an order for informal supervision who remains in the custody of such child's parent, such one-year period may be extended if no party objects, upon hearing, for up to an additional one year, with reviews by the court occurring at least every six months.

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

(d) Persons subject to the order for informal supervision who successfully complete the terms and period of supervision shall not again be proceeded against in any court based solely upon the allegations in the original petition and the proceedings shall be dismissed.

(e) If the court issues an order for informal supervision pursuant to this section, the court may also enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home, visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. The restraining order shall be served by personal service pursuant to subsection (a) of section 32, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(f) Lack of service on a parent shall not preclude an informal supervision under the provisions of this section. If an order of informal supervision is entered which effects change in custody, any parent not served pursuant to section 32, and amendments thereto, who has not consented to the informal supervision, may request reconsideration of the order of informal supervision. The court shall hear the request without unnecessary delay. If the informal supervision order effects a change in custody, efforts to accomplish service pursuant to section 32, and amendments thereto, shall continue.

New Sec. 40. (a) After a hearing and a finding that discovery procedures, as described in K.S.A. 60-226 through 60-237, and amendments thereto, will expedite the proceedings, the judge may allow discovery subject to limitations.

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

New Sec. 41. All proceedings under this code shall be disposed of without unnecessary delay. Continuances shall not be granted unless good cause is shown.

New Sec. 42. (a) *Adjudication.* Proceedings pertaining to adjudications under this code shall be open to attendance by any person unless the court determines that closed proceedings or the exclusion of that person would be in the best interests of the child or is necessary to protect the privacy rights of the parents.

(1) The court may not exclude the guardian *ad litem*, parties and interested parties.

(2) Members of the news media shall comply with supreme court rule 10.01.

(b) *Disposition.* Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to all persons except the parties, the guardian *ad litem*, interested parties and their attorneys, officers of the court, a court appointed special advocate and the custodian.

(1) Other persons may be permitted to attend with the consent of the parties or by order of the court, if the court determines that it would be in the best interests of the child or the conduct of the proceedings, subject to such limitations as the court determines to be appropriate.

(2) The court may exclude any person if the court determines that such person's exclusion would be in the best interests of the child or the conduct of the proceedings.

(c) Not withstanding subsections (a) and (b) of this section, the court shall permit the attendance at the proceedings of up to two people designated by the parent of the child, both of whom have participated in a parent ally orientation program approved by the judicial administrator.

(1) Such parent ally orientation program shall include, but not be limited to, information concerning the confidentiality of the proceedings; the child and parent's right to counsel; the definitions and jurisdiction pursuant to the Kansas code for care of children; the types and purposes of the hearings; options for informal supervision and dispositions; placement options; the parents' obligation to financially support the child while

the child is in the state's custody; obligations of the secretary of social and rehabilitation services; obligations of entities that contract with the department of social and rehabilitation services for family preservation, foster care and adoption; the termination of parental rights; the procedures for appeals; and the basic rules regarding court procedure.

(2) The court may remove the parent's ally or allies from a proceeding if such ally becomes disruptive in the present proceeding or has been found disruptive in a prior proceeding.

(d) *Preservation of confidentiality.* If information required to be kept confidential by K.S.A. 2004 Supp. 38-1505b, and amendments thereto, is to be introduced into evidence and there are persons in attendance who are not authorized to receive the information, the court may exclude those persons during the presentation of the evidence or conduct an *in camera* inspection of the evidence.

New Sec. 43. (a) In any proceedings under this code, parents, persons with whom the child has been residing pursuant to subsection (d) of section 36, and amendments thereto, and guardians *ad litem* may stipulate or enter no contest statements to all or part of the allegations in the petition.

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

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

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

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

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

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

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

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

(e) If all persons listed in subsection (a) do not stipulate or enter no contest statements, the court shall hear evidence as to those persons, unless such persons are in default. If a person is in default, the matter may proceed by proffer as to that person.

New Sec. 44. (a) In all proceedings under this code, the rules of evidence of the code of civil procedure shall apply, except that no evidence relating to the condition of a child shall be excluded solely on the ground that the matter is or may be the subject of a physician-patient privilege, psychologist-client privilege or social worker-client privilege.

(b) The judge presiding at all hearings under this code shall not consider, read or rely upon any report not properly admitted according to the rules of evidence, except as provided by section 14, and amendments thereto.

(c) In any proceeding in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral statement of the child, or of any witness less than 13 years of age, made before the proceeding began, is admissible in evidence if:

(1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;

(2) no attorney for any party or interested party is present when the statement is made;

(3) the recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(4) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(5) the statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question;

(6) every voice on the recording is identified;

(7) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party or interested party; and

(8) each party or interested party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence.

(d) On motion of any party to a proceeding pursuant to the code in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, the court may order that the testimony of the child, or of any witness less than 13 years of age, be taken:

(1) In a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties and interested parties to the proceeding; or

(2) outside the courtroom and be recorded for showing in the courtroom before the court and the parties and interested parties to the proceeding if:

(A) The recording is both visual and aural and is recorded on film, videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(C) every voice on the recording is identified; and

(D) each party and interested party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

(e) At the taking of testimony under subsection (d):

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

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

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

(f) If the testimony of a child is taken as provided by subsection (d), the child shall not be compelled to testify in court during the proceeding.

(g)(1) Any objection to a recording under subsection (d)(2) that such proceeding is inadmissible must be made by written motion filed with the court at least seven days before the commencement of the adjudicatory hearing. An objection under this subsection shall specify the portion of the recording which is objectionable and the reasons for the objection. Failure to file an objection within the time provided by this subsection shall constitute waiver of the right to object to the admissibility of the recording unless the court, in its discretion, determines otherwise.

(2) The provisions of this subsection shall not apply to any objection to admissibility for the reason that the recording has been materially altered.

New Sec. 45. The petitioner must prove by clear and convincing evidence that the child is a child in need of care.

New Sec. 46. (a) If the court finds that the child is not a child in need of care, the court shall enter an order dismissing the proceedings.

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

(c) A finding that a child subject to this code is a child in need of care shall be entered without undue delay. If the child has been removed from

the child's home, an order of adjudication shall be entered as soon as practicable but not more than 60 days from the date of removal unless an order of informal supervision has been entered.

New Sec. 47. (a) Before placement pursuant to this code of a child with a person other than the child's parent, the secretary, the court or the court services officer, at the direction of the court, may convene a conference of persons determined by the court, the secretary or the court services officer to have a potential interest in determining a placement which is in the best interests of the child. Such persons shall be given any information relevant to the determination of the placement of the child, including the needs of the child and any other information that would be helpful in making a placement in the best interests of the child. After presentation of the information, such persons shall be permitted to discuss and recommend to the secretary or the court services officer the person or persons with whom it would be in the child's best interest to be placed. Unless the secretary or the court services officer determines that there is good cause to place the child with a person other than as recommended, the child shall be placed in accordance with the recommendations.

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

New Sec. 48. (a) At a dispositional hearing, the court shall receive testimony and other relevant information with regard to the safety and well being of the child and may enter orders regarding:

(1) Case planning which sets forth the responsibilities and timelines necessary to achieve permanency for the child; and

(2) custody of the child.

(b) An order of disposition may be entered at the time of the adjudication if notice has been provided pursuant to section 49, and amendments thereto, but shall be entered within 30 days following adjudication, unless delayed for good cause shown.

(c) If the dispositional hearing meets the requirements of section 60, and amendments thereto, the dispositional hearing may serve as a permanency hearing.

New Sec. 49. (a) Unless waived by the persons entitled to notice, the court shall require notice of the time and place of the dispositional hearing be given to the parties.

(b) The court shall require notice and opportunity to be heard as to proposals for living arrangements for the child, the services to be provided the child and the child's family, and the proposed permanency goal for the child to the following:

(1) The child's foster parent or parents or permanent custodian providing care for the child;

(2) preadoptive parents for the child, if any;

(3) the child's grandparents at their last known addresses or if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known;

(4) the person having custody of the child; and

(5) upon request, by any person having close emotional ties with the child and who is deemed by the court to be essential to the deliberations before the court.

(c) The notice required by this subsection shall be given by first class mail, not less than 10 business days before the hearing.

(d) Individuals receiving notice pursuant to subsection (b) shall not be made a party or interested party to the action solely on the basis of this notice and opportunity to be heard. Opportunity to be heard shall be at a time and in a manner determined by the court and does not confer an entitlement to appear in person.

(e) The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to section 34, and amendments thereto.

New Sec. 50. (a) *Considerations.* Prior to entering an order of disposition, the court shall give consideration to:

(1) The child's physical, mental and emotional condition;

(2) the child's need for assistance;

(3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;

(4) any relevant information from the intake and assessment process; and

(5) the evidence received at the dispositional hearing.

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

(1) Supervision of the child and the parent by a court services officer;

(2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and

(3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.

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

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

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

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

(d) *Custody of a child removed from the custody of a parent.* If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or to the secretary. Custody awarded under this subsection shall continue until further order of the court.

(1) When custody is awarded to the secretary, the secretary shall consider any placement recommendation by the court and notify the court of the placement or proposed placement of the child within 10 days of the order awarding custody.

(A) After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.

(B) The secretary may propose and the court may order the child to be placed in the custody of a parent or parents if the secretary has provided and the court has approved an appropriate safety action plan which includes services to be provided. The court may order the parent or parents and the child to perform tasks as set out in the safety action plan.

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

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

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsec-

tion (a) of section 32, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

(e) *Further determinations regarding a child removed from the home.* If custody has been awarded under subsection (d) to a person other than a parent, a permanency plan shall be provided or prepared pursuant to section 59, and amendments thereto. If a permanency plan is provided at the dispositional hearing, the court may determine whether reintegration is a viable alternative or, if reintegration is not a viable alternative, whether the child should be placed for adoption or a permanent custodian appointed. In determining whether reintegration is a viable alternative, the court shall consider:

(1) Whether a parent has been found by a court to have committed one of the following crimes or to have violated the law of another state prohibiting such crimes or to have aided and abetted, attempted, conspired or solicited the commission of one of these crimes: Murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or a felony battery that resulted in bodily injury;

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

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

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

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

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

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

(f) *Proceedings if reintegration is not a viable alternative.* If the court determines that reintegration is not a viable alternative, proceedings to terminate parental rights and permit placement of the child for adoption or appointment of a permanent custodian shall be initiated unless the court finds that compelling reasons have been documented in the case plan why adoption or appointment of a permanent custodian would not be in the best interests of the child. If compelling reasons have not been documented, the county or district attorney shall file a motion within 30 days to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall hold a hearing on the motion within 90 days of its filing. No hearing is required when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

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

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

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of the uniform controlled substances act by the child, a parent of the child, or another person responsible for the care of the child, the court may order the child, parent of the child or other person responsible for the care of the child to submit to and complete an alcohol and drug evaluation by a qualified person or agency and comply with any recommendations. If the evaluation is performed by a community-based alcohol and drug safety program certified pursuant to K.S.A. 8-1008, and amendments thereto, the child, parent of the child or other person responsible for the care of the child shall pay a fee not to exceed the fee established by that

statute. If the court finds that the child and those legally liable for the child's support are indigent, the fee may be waived. In no event shall the fee be assessed against the secretary.

(3) If child support has been requested and the parent or parents have a duty to support the child, the court may order one or both parents to pay child support and, when custody is awarded to the secretary, the court shall order one or both parents to pay child support. The court shall determine, for each parent separately, whether the parent is already subject to an order to pay support for the child. If the parent is not presently ordered to pay support for any child who is subject to the jurisdiction of the court and the court has personal jurisdiction over the parent, the court shall order the parent to pay child support in an amount determined under section 72, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 23-4,105 et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to section 74, and amendments thereto. The parent shall also be informed that, after registration, the income withholding order may be served on the parent's employer without further notice to the parent and the child support order may be enforced by any method allowed by law. Failure to provide this notice shall not affect the validity of the child support order.

New Sec. 51. After the entry of any dispositional order, the court may rehear the matter on its own motion or the motion of a party or interested party. Upon notice, pursuant to section 49, and amendments thereto, and after the rehearing, the court may enter any dispositional order authorized by this code, except that a child support order which has been registered under section 74, and amendments thereto, may only be modified pursuant to section 74, and amendments thereto.

New Sec. 52. If a child is placed outside the child's home at the dispositional hearing and no permanency plan is made a part of the record of the hearing, a written permanency plan shall be prepared pursuant to section 58, and amendments thereto.

New Sec. 53. (a) Except as provided in section 54, and amendments thereto, if a child has been in the same foster home or shelter facility for six months or longer, or has been placed by the secretary in the home of a parent or relative, the secretary shall give written notice of any plan to move the child to a different placement unless the move is to the selected preadoptive family for the purpose of facilitating adoption. The notice shall be given to: (1) The court having jurisdiction over the child; (2) each parent whose address is available; (3) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (4) the child, if 12 or more years of age; and (5) the child's guardian *ad litem*.

(b) The notice shall state the placement to which the secretary plans to transfer the child and the reason for the proposed action. The notice shall be mailed by first class mail 30 days in advance of the planned transfer, except that the secretary shall not be required to wait 30 days to transfer the child if all persons enumerated in subsection (a) (2) through (5) consent in writing to the transfer.

(c) Within 10 days after receipt of the notice, any person receiving notice as provided above may request, either orally or in writing, that the court conduct a hearing to determine whether or not the change in placement is in the best interests of the child concerned. When the request has been received, the court shall schedule a hearing and immediately notify the secretary of the request and the time and date the matter will be heard. The court shall give notice of the hearing to persons enumerated in subsection (a) (2) through (5). The secretary shall not change the placement of the child, except for the purpose of adoption, unless the change is approved by the court.

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

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

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

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

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

New Sec. 54. (a) When an emergency exists requiring immediate action to assure the safety and protection of the child or the secretary is notified that the foster parents or shelter facility refuse to allow the child to remain, the secretary may transfer the child to another foster home or shelter facility without prior court approval. The secretary shall notify the court of the action at the earliest practical time. When the child is removed from the home of a parent after having been placed in the home for a period of six months or longer, the secretary shall present to the court in writing the specific nature of the emergency and reasons why it is contrary to the welfare of the child to remain in the placement and request a finding by the court whether remaining in the home is contrary to the welfare of the child. If the court enters an order the court shall make a finding as to whether an emergency exists. The court shall provide the secretary with a copy of the order. In making the finding, the court may rely on documentation submitted by the secretary or may set the date for a hearing on the matter. If the secretary requests such a finding, the court shall provide the secretary with a written copy of the finding by the court not more than 45 days from the date of the request.

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

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

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

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

New Sec. 55. (a) *Valid court order.* During proceedings under this code, the court may enter an order directing a child who is the subject of the proceedings to remain in a present or future placement if:

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

(2) the court finds that the child has been adjudicated a child in need of care pursuant to subsections (d)(6), (d)(7), (d)(8), (d)(9), (d)(10) or (d)(12) of section 2, and amendments thereto, and that the child is not likely to be available within the jurisdiction of the court for future proceedings;

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

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

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

(c) *Ex parte order.* After reviewing the application filed pursuant to subsection (b), the court may enter an *ex parte* order directing that the child be taken into custody and held in a secure facility or juvenile detention facility designated by the court, if the court finds probable cause

that the child violated the courts order to remain in placement without good cause. Pursuant to section 32, and amendments thereto, the order shall be served on the child's parents, the child's legal custodian and the child's guardian *ad litem*.

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

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

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

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

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

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

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

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

(3) been informed of:

(A) The nature and consequences of the proceeding;

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

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

(D) the right to appeal.

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

(A) A parent or other legal custodian;

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

(C) a youth residential facility; or

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

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

(3) The authorization to place the child in a secure facility or juvenile

detention facility pursuant to this subsection shall expire 60 days, inclusive of weekend and legal holidays, after its issue. The court may grant extensions of such authorization for two additional periods, each not to exceed 60 days, upon rehearing pursuant to section 51, and amendments thereto.

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

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

(i) *Time limits, computation.* Except as otherwise specifically provided by subsection (f), Saturdays, Sundays and legal holidays shall not be counted in computing any time limit imposed by this section.

New Sec. 56. The secretary shall notify the foster parent or parents that the foster parent or parents have a right to submit a report. Copies of the report shall be available to the parties and interested parties. The report made by foster parents shall be on a form created and provided by the department of social and rehabilitation services.

New Sec. 57. At any hearing under the code, the court, if requested by the child, shall hear the testimony of the child as to the desires of the child concerning the child's placement, if the child is 10 years of age and of sound intellect.

New Sec. 58. (a) The goal of permanency planning is to assure, in so far as is possible, that children have permanency and stability in their living situations and that the continuity of family relationships and connections is preserved. In planning for permanency, the safety and well being of children shall be paramount.

(b) Whenever a child is subject to the jurisdiction of the court pursuant to the code, an initial permanency plan shall be developed for the child and submitted to the court within 30 days of the initial order of the court. If the child is in the custody of the secretary, or the secretary is providing services to the child, the secretary shall prepare the plan. Otherwise, the plan shall be prepared by the person who has custody or, if directed by the court, by a court services officer.

(c) A permanency plan is a written document prepared, where possible, in consultation with the child's parents and which:

(1) Describes the permanency goal which, if achieved, will most likely give the child a permanent and safe living arrangement;

(2) describes the child's level of physical health, mental and emotional health, and educational functioning;

(3) provides an assessment of the needs of the child and family;

(4) describes the services to be provided the child, the child's parents and the child's foster parents, if appropriate;

(5) includes a description of the tasks and responsibilities designed to achieve the plan and to whom assigned; and

(6) includes measurable objectives and time schedules for achieving the plan.

(d) In addition to the requirements of subsection (c), if the child is in an out of home placement, the permanency plan shall include:

(1) A plan for reintegration of the child's parent or parents or if reintegration is determined not to be a viable alternative, a statement for the basis of that conclusion and a plan for another permanent living arrangement;

(2) a description of the available placement alternatives;

(3) a justification for the placement selected, including a description of the safety and appropriateness of the placement; and

(4) a description of the programs and services which will help the child prepare to live independently as an adult.

(e) If there is a lack of agreement among persons necessary for the success of the permanency plan, the person or entity having custody of the child shall notify the court which shall set a hearing on the plan.

(f) A permanency plan may be amended at any time upon agreement of the plan participants. If a permanency plan requires amendment which changes the permanency goal, the person or entity having custody of the child shall notify the court which shall set a permanency hearing pursuant to sections 59 and 60, and amendments thereto.

New Sec. 59. (a) A permanency hearing is a proceeding conducted by the court or by a citizen review board for the purpose of determining progress toward accomplishment of a permanency plan as established by section 58, and amendments thereto.

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

(1) Reintegrated with the child's parents;

(2) placed for adoption;

(3) placed with a permanent custodian; or

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

(c) The court shall enter a finding as to whether the person or entity having custody of the child has made reasonable efforts to accomplish the permanency plan in place at the time of the hearing.

(d) A permanency hearing shall be held within 12 months of the date the child entered out of home placement and not less frequently than every 12 months thereafter.

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

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

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

(h) If the court enters an order terminating parental rights to a child, or an agency has accepted a relinquishment pursuant to K.S.A. 59-2124, and amendments thereto, the requirements for permanency hearings shall continue until an adoption or appointment of a permanent custodian has been accomplished. If the court determines that reasonable efforts or progress have not made toward finding an adoptive placement or appointment of a permanent custodian or placement with a fit and willing relative, the court may rescind its prior orders and make others regarding custody and adoption that are appropriate under the circumstances. Reports of a proposed adoptive placement need not contain the identity of the proposed adoptive parents.

New Sec. 60. (a) The court shall require notice of the time and place of the permanency hearing be given to the parties and interested parties. The notice shall state that the person receiving the notice shall have an opportunity to be heard at the hearing.

(b) The court shall require notice and opportunity to be heard to the following:

(1) The child's foster parent or parents or permanent custodian providing care for the child;

(2) preadoptive parents for the child, if any;

(3) the child's grandparents at their last known addresses or, if no

grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known;

(4) the person having custody of the child; and

(5) upon request, by any person having close emotional ties with the child and who is deemed by the court to be essential to the deliberations before the court.

(c) The notices required by this subsection shall be given by first class mail, not less than 10 business days before the hearing.

(d) Individuals receiving notice pursuant to subsection (b) shall not be made a party or interested party to the action solely on the basis of this notice and opportunity to be heard. Opportunity to be heard shall be at a time and in a manner determined by the court and does not confer an entitlement to appear in person.

(e) The provisions of this section shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to section 34, and amendments thereto.

New Sec. 61. (a) Either in the original petition filed under this code or in a motion made in an existing proceeding under this code, any party or interested party may request that either or both parents be found unfit and the parental rights of either or both parents be terminated or a permanent custodian be appointed.

(b) Whenever a pleading is filed requesting termination of parental rights or appointment of a permanent custodian, the pleading shall contain a statement of specific facts which are relied upon to support the request, including dates, times and locations to the extent known.

(c) In any case in which a parent of a child cannot be located by the exercise of due diligence, service by publication notice shall be ordered upon the parent.

New Sec. 62. (a) Upon receiving a petition or motion requesting termination of parental rights or appointment of permanent custodian, the court shall set the time and place for the hearing, which shall be held within 90 days. A continuance shall be granted only if the court finds it is in the best interests of the child. Upon motion of a party, the chief judge shall reassign a petition or motion requesting termination of parental rights from a district magistrate judge to a district judge pursuant to subsection (e) of K.S.A. 20-302b, and amendments thereto.

(b) (1) The court shall give notice of the hearing: (A) To the parties and interested parties, as provided in sections 31 and 32, and amendments thereto; (B) to all the child's grandparents at their last known addresses or, if no grandparent is living or if no living grandparent's address is known, to the closest relative of each of the child's parents whose address is known; (C) in any case in which a parent of a child cannot be located by the exercise of due diligence, to the parents nearest relative who can be located, if any; and (D) to the foster parents, preadoptive parents or relatives providing care.

(2) This notice shall be given by return receipt delivery not less than 10 business days before the hearing. Individuals receiving notice pursuant to this subsection shall not be made a party or interested party to the action solely on the basis of this notice.

(3) The provisions of this subsection shall not require additional service to any party or interested party who could not be located by the exercise of due diligence in the initial notice of the filing of a petition for a child in need of care.

(c) At the beginning of the hearing the court shall determine that due diligence has been used in determining the identity and location of the persons listed in subsection (b) and in accomplishing service of process.

(d) Prior to a hearing on a petition, a motion requesting termination of parental rights or a motion for appointment of a permanent custodian, the court shall appoint an attorney to represent any parent who fails to appear and may award a reasonable fee to the attorney for services. The fee may be assessed as an expense in the proceedings.

New Sec. 63. (a) Prior to a hearing to consider the termination of parental rights, if the child's permanency plan is either adoption or appointment of a custodian, with the consent of the guardian *ad litem* and the secretary, either or both parents may relinquish parental rights to the child, consent to an adoption or consent to appointment of a permanent custodian.

(b) *Relinquishment of child to secretary.* (1) Any parent or parents may relinquish a child to the secretary, and if the secretary accepts the relinquishment in writing, the secretary shall stand *in loco parentis* to the child and shall have and possess over the child all rights of a parent, including the power to place the child for adoption and give consent thereto.

(2) All relinquishments to the secretary shall be in writing, in substantial conformity with the form for relinquishment contained in the appendix of forms following K.S.A. 59-2143, and amendments thereto, and shall be executed by either parent of the child.

(3) The relinquishment shall be acknowledged before a judge of a court of record. It shall be the duty of the court to advise the relinquishing parent of the consequences of the relinquishment.

(4) Except as otherwise provided, in all cases where a parent has relinquished a child to the agency pursuant to K.S.A. 59-2111 through 59-2143, and amendments thereto, all the rights of the parent shall be terminated, including the right to receive notice in a subsequent adoption proceeding involving the child. Upon such relinquishment, all the rights of the parents to such child, including such parent's right to inherit from or through such child, shall cease.

(5) If a parent has relinquished a child to the secretary based on a belief that the child's other parent would relinquish the child to the secretary or would be found unfit, and this does not occur, the rights of the parent who has relinquished a child to the secretary shall not be terminated.

(6) A parent's relinquishment of a child shall not terminate the right of the child to inherit from or through the parent.

(c) *Permanent custody.* (1) A parent may consent to appointment of the secretary or an individual as permanent custodian and if the secretary or individual accepts the consent, the secretary or individual shall stand *in loco parentis* to the child and shall have and possess over the child all the rights of a legal guardian. When the consent is to the secretary, the secretary shall have the right to place the child in the permanent custody of an individual who is appointed permanent custodian.

(2) All consents to appointment of a permanent custodian shall be in writing and shall be executed by either parent of the child.

(3) The consent shall be acknowledged before a judge of a court of record. It shall be the duty of the court to advise the consenting parent of the consequences of the consent.

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

(d) *Adoption.* If the parental rights of one parent have been terminated or that parent has relinquished parental rights to the secretary, the other parent may consent to the adoption of the child by persons approved by the secretary or approved by the court. The consent shall follow the form contained in the appendix of forms following K.S.A. 59-2143, and amendments thereto.

New Sec. 64. (a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.

(b) In making a determination of unfitness the court shall consider, but is not limited to, the following, if applicable:

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

(2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;

(3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;

(4) physical, mental or emotional abuse or neglect or sexual abuse of a child;

(5) conviction of a felony and imprisonment;

(6) unexplained injury or death of another child or stepchild of the parent or any child in the care of the parent at the time of injury or death;

(7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family; and

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

(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, shall consider, but is not limited to, the following:

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

(2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;

(3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home; and

(4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.

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

(d) A finding of unfitness may be made as provided in this section if the court finds that the parents have abandoned the child, the custody of the child was surrendered pursuant to section 77, and amendments thereto, or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

(e) If a person is convicted of a felony in which sexual intercourse occurred, or if a juvenile is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is conceived, a finding of unfitness may be made.

(f) The existence of any one of the above factors standing alone may, but does not necessarily, establish grounds for termination of parental rights.

(g) (1) If the court makes a finding of unfitness, the court shall consider whether termination of parental rights as requested in the petition or motion is in the best interests of the child. In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order. A termination of parental rights under the code shall not terminate the right of a child to inherit from or through a parent. Upon such termination all rights of the parent to such child, including, such parent's right to inherit from or through such child, shall cease.

(2) If the court terminates parental rights, the court may authorize adoption pursuant to section 65, and amendments thereto, appointment of a permanent custodian pursuant to section 67, and amendments thereto, or continued permanency planning.

(3) If the court does not terminate parental rights, the court may authorize appointment of a permanent custodian pursuant to section 67, and amendments thereto, or continued permanency planning.

(h) If a parent is convicted of an offense as provided in subsection (a)(7) of section 66, and amendments thereto, or is adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in subsection (a)(7) of section 66, and amendments thereto, and if the victim was the other parent of a child, the court may disregard such convicted or adjudicated parent's opinions or wishes in regard to the placement of such child.

(i) A record shall be made of the proceedings.

(j) When adoption, proceedings to appoint a permanent custodian or continued permanency planning has been authorized, the person or agency awarded custody of the child shall within 30 days submit a written plan for permanent placement which shall include measurable objectives and time schedules.

New Sec. 65. (a) When parental rights have been terminated and it appears that adoption is a viable alternative, the court shall enter one of the following orders:

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

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

(b) In making an order under subsection (a), the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to granting such custody for adoption to a relative of the child and second to granting such custody to a person with whom the child has close emotional ties.

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

New Sec. 66. (a) It is presumed in the manner provided in K.S.A. 60-414, and amendments thereto, that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes, by clear and convincing evidence, that:

(1) A parent has previously been found to be an unfit parent in proceedings under section 61 et seq., and amendments thereto, or comparable proceedings under the laws of another jurisdiction;

(2) a parent has twice before been convicted of a crime specified in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of 18 years;

(3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by subsection (d)(1),(d)(3), (d)(5) or (d)(11) of section 2, and amendments thereto, or comparable proceedings under the laws of another jurisdiction.

(4) the parent has been convicted of causing the death of another child or stepchild of the parent;

(5) the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;

(6) (A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a substantial probability that the parent will not carry out such plan in the near future;

(7) a parent has been convicted of capital murder, K.S.A. 21-3439, and amendments thereto, murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, or voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;

(8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under subsection (b) of K.S.A. 21-3604, and amendments thereto; or

(9) a parent has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(10) a father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(11) a father abandoned the mother after having knowledge of the pregnancy;

(12) a parent has been convicted of rape, K.S.A. 21-3502, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or

(13) a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitations, contacts, communications or contributions.

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to section 61 et seq., and amendments thereto.

New Sec. 67. (a) A permanent custodian may be appointed:

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

(2) after a finding of unfitness pursuant to section 64, and amendments thereto; or

(3) after termination of parental rights pursuant to section 65, and amendments thereto.

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

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

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

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

(d) When the court retains jurisdiction after appointment of a permanent custodian, the court, in its order, may impose limitations or conditions upon the rights and responsibilities of the permanent custodian including, but not limited to, the right to:

(1) Determine contact with the biological parent;

(2) consent to marriage;

(3) consent to psychosurgery, removal of a bodily organ or amputation of a limb;

(4) consent to sterilization;

(5) consent to behavioral and medical experiments;

(6) consent to withholding life-prolonging medical treatment;

(7) consent to placement in a treatment facility; or

(8) consent to placement in a psychiatric hospital or an institution for the developmentally disabled.

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

(f) Parental consent to appointment of a permanent custodian shall be on the record or executed by the parent of the child and acknowledged before a judge of a court of record. It shall be the duty of the court before which the consent is acknowledged to advise the consenting parent of the consequences of the consent, including the following:

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

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

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

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

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

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

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

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

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

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

(2) the right to inherit from the child.

(3) The right to consent to adoption of the child.

All other parental rights transfer to the permanent custodian.

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

(j) Prior to appointing a permanent custodian, the court shall receive and consider an assessment of any potential permanent custodian as provided in K.S.A. 59-2132, and amendments thereto. In making an order appointing a permanent custodian the court shall give preference, to the extent that the court finds it in the child's best interests, to first appointing a permanent custodian who is a relative of the child or second a person with whom the child has close emotional ties.

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

New Sec. 68. (a) An appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights.

(b) An appeal from an order entered by a district magistrate judge shall be to a district judge. The appeal shall be heard on the basis of the record within 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo.

(c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(d) Notwithstanding any other provision of law to the contrary, appeals under this section shall have priority over all other cases.

(e) Every notice of appeal, docketing statement and brief shall be verified by the appellant if the appellant has been personally served at any time during the proceedings. Failure to have the required verification shall result in the dismissal of the appeal.

New Sec. 69. (a) Pending the determination of the appeal, any order appealed from shall continue in force unless modified by temporary orders as provided in subsection (b).

(b) The court on appeal, pending a hearing, may modify the order

appealed from and may make any temporary orders concerning the care and custody of the child that the court considers advisable.

New Sec. 70. (a) When an appeal is taken pursuant to this code, fees if the guardian *ad litem* or of an attorney appointed to represent a parent shall be fixed by the district court. The fees, together with the costs of transcripts and records on appeal, shall be taxed as expenses on appeal. The court on appeal may assess the fees and expenses against a party or interested party or order that they be paid from the general fund of the county.

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

New Sec. 71. No child under 18 years of age shall be detained or placed in any jail pursuant to the code.

New Sec. 72. (a) In determining the amount of a child support order under the code, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto.

(b) If the appropriate amount of support under the Kansas child support guidelines cannot be determined because any necessary fact is not proven by evidence or by stipulation of the appropriate parent, the court shall apply one or more of the following presumptions:

(1) Both parents have only gross earned income equal to 40 hours per week at the federal minimum wage then in effect;

(2) neither parent's income is subject to adjustment for any reason;

(3) the number of children is as alleged in the petition;

(4) the age of each child is as alleged in the petition or, if unknown, is between seven and 15 years;

(5) no adjustment for child care, health or dental insurance or income tax exemption is appropriate; or

(6) neither parent is entitled to any other credit or adjustment.

(c) If the county or district attorney determines that: (1) A parent will contest the amount of support resulting from application of the guidelines; (2) the parent is or may be entitled to an adjustment pursuant to the guidelines; and (3) it is in the child's best interests to resolve the support issue promptly and with minimal hostility, the county or district attorney may enter into a stipulation with the parent as to the amount of child support for that parent. The amount of support may be based upon one or more of the presumptions in subsection (b). Except for good cause or as otherwise provided in section 74, and amendments thereto, a stipulation under this subsection shall be binding upon the court and all parties or interested parties. The criteria for application of this subsection shall be incorporated into the journal entry or judgment form.

New Sec. 73. When child support is ordered pursuant to the code, a separate journal entry or judgment form shall be made for each parent ordered to pay child support. The journal entry or judgment form shall be entitled:

"In the matter of _____ and _____"
(obligee's name) (obligor's name)

and shall contain no reference to the privileged official file or social file in the case except the facts necessary to establish personal jurisdiction over the parent, the name and date of birth of each child, and findings of fact and conclusions of law directly related to the child support obligation. If the court issues an income withholding order for the parent, it shall be captioned in the same manner.

New Sec. 74. (a) A person entitled to receive child support under an order issued pursuant to the code may file with the clerk of the district court in the county in which the judgment was rendered the original child support order and the original income withholding order, if any. If the original child support or income withholding order is unavailable for any reason, a certified or authenticated copy of the order may be substituted. The clerk of the district court shall number the child support order as a case filed under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and enter the numbering of the case on the appearance

docket of the case. Registration of a child support order under this section shall be without cost or docket fee.

(b) If the number assigned to a case under the code appears in the caption of a document filed pursuant to this section, the clerk of the district court may obliterate that number and replace it with the new case number assigned pursuant to this section.

(c) The filing of the child support order shall constitute registration under this section. Upon registration of the child support order, all matters related to that order, including, but not limited to, modification of the order, shall proceed under the new case number. Registration of a child support order under this section does not confer jurisdiction in the registration case for custody or visitation issues.

(d) The person registering a child support order shall serve a copy of the registered child support order and income withholding order, if any, upon the party or interested parties by first-class mail. The person registering the child support order shall file, in the official file for each child affected, either a copy of the registered order showing the new case number or a statement that includes the caption, new case number and date of registration of the child support order.

(e) If the secretary is entitled to receive payment under an order which may be registered under this section, the county or district attorney shall take the actions permitted or required in subsections (a) and (d) on behalf of the secretary, unless otherwise requested by the secretary.

(f) A child support order registered pursuant to this section shall have the same force and effect as an original child support order entered under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, including, but not limited to:

(1) The registered order shall become a lien on the real estate of the judgment debtor in the county from the date of registration;

(2) execution or other action to enforce the registered order may be had from the date of registration;

(3) the registered order may itself be registered pursuant to any law, including, but not limited to, the uniform interstate family support act, K.S.A. 23-9,101 et seq., and amendments thereto;

(4) if any installment of support due under the registered order becomes a dormant judgment, it may be revived pursuant to K.S.A. 60-2404, and amendments thereto; and

(5) the court shall have continuing jurisdiction over the child support action and the parties thereto and subject matter and, except as otherwise provided in subsection (g), may modify any prior support order when a material change in circumstances is shown irrespective of the present domicile of the child or parents. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court.

(g) If a motion to modify the child support order is filed within three months after the date of registration pursuant to this section, if no motion to modify the order has previously been heard and if the moving party shows that the support order was based upon one or more of the presumptions provided in section 72, and amendments thereto, or upon a stipulation pursuant to subsection (c) of section 72, and amendments thereto, the court shall apply the Kansas child support guidelines adopted pursuant to K.S.A. 20-165, and amendments thereto, without requiring a showing that a material change of circumstances has occurred, without regard to any previous presumption or stipulation used to determine the amount of the child support order and irrespective of the present domicile of the child or parents. Nothing in this subsection shall prevent or limit enforcement of the support order during the three months after the date of registration.

New Sec. 75. The remedies provided in this code with respect to child support are in addition to and not in substitution for any other remedy.

New Sec. 76. There is hereby established in the state treasury the family services and community intervention fund which shall be administered by the secretary. The secretary may accept money from any source for the purposes for which money in the family services and community intervention fund may be expended. Moneys received shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215,

and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the family services and community intervention fund. All moneys in the family services and community intervention fund shall be used for the purpose of assisting state, county or local governments or political subdivisions thereof or community agencies to provide services, intervention and support services to children alleged or adjudged to be a child in need of care, especially those youth at risk because of such child's own actions or behaviors and not due to abuse or neglect by a parent, guardian or other person responsible for such child's care. The purpose of the family services and community intervention fund shall be to enhance the ability of families and children to resolve problems within the family and community by the collaboration of governmental and local service providers that might otherwise result in a child becoming subject to the jurisdiction of the court. All expenditures from the family services and community intervention fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

New Sec. 77. (a) This section shall be known and may be cited as the newborn infant protection act.

(b) A parent or other person having lawful custody of an infant which is 45 days old or younger and which has not suffered bodily harm may surrender physical custody of the infant to any employee who is on duty at a fire station, city or county health department or medical care facility as defined by K.S.A. 65-425, and amendments thereto. Such employee shall take physical custody of an infant surrendered pursuant to this section.

(c) As soon as possible after a person takes physical custody of an infant under this section, such person shall notify a local law enforcement agency that the person has taken physical custody of an infant pursuant to this section. Upon receipt of such notice a law enforcement officer from such law enforcement agency shall take custody of the infant as an abandoned child. The law enforcement agency shall deliver the infant to a facility or person designated by the secretary pursuant to section 27, and amendments thereto.

(d) Any person, city or county or agency thereof or medical care facility taking physical custody of an infant surrendered pursuant to this section shall perform any act necessary to protect the physical health or safety of the infant, and shall be immune from liability for any injury to the infant that may result therefrom.

(e) Upon request, all medical records of the infant shall be made available to the department of social and rehabilitation services and given to the person awarded custody of such infant. The medical facility providing such records shall be immune from liability for such records release.

New Sec. 78. (a) In addition to all actions concerning a child in need of care commenced on or after January 1, 2007, this code also applies to proceedings commenced before January 1, 2007, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of judicial proceedings or prejudice the rights of a party or an interested party, in which case the particular provision of this code does not apply and the previous code applies.

(b) If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2007, that statute continues to apply to the right, even if it has been repealed or superceded.

Sec. 79. K.S.A. 5-512 is hereby amended to read as follows: 5-512. (a) All verbal or written information transmitted between any party to a dispute and a neutral person conducting a proceeding under the dispute resolution act or the staff of an approved program shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A neutral person conducting a proceeding under the dispute resolution act shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party and the neutral person conducting the proceeding,

participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the neutral person or anyone the party or the neutral person authorized to claim the privilege.

(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to allow investigation of or action for ethical violations against the neutral person conducting the proceeding or for the defense of the neutral person or staff of an approved program conducting the proceeding in an action against the neutral person or staff of an approved program if the action is filed by a party to the proceeding;

(2) any information that the neutral person conducting the proceeding is required to report under ~~K.S.A. 38-1522~~ *section 18*, and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;

(4) any information that the neutral person conducting the proceeding is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court; or

(5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the mediator or an officer or employee of the court with the apparent intention of carrying out such threat.

Sec. 80. K.S.A. 2005 Supp. 20-164 is hereby amended to read as follows: 20-164. (a) The supreme court shall establish by rule an expedited judicial process which shall be used in the establishment, modification and enforcement of orders of support pursuant to the Kansas parentage act; K.S.A. 23-451 et seq., 39-718a, 39-755, 60-1610, and amendments thereto, or K.S.A. 39-718b, and amendments thereto; ~~K.S.A. 38-1542, 38-1543 or 38-1563~~ *section 38, 39 or 50*, and amendments thereto; or K.S.A. 23-4,105 through 23-4,118 and amendments thereto; or K.S.A. 23-4,125 through 23-4,137, and amendments thereto.

(b) The supreme court shall establish by rule an expedited judicial process for the enforcement of court orders granting visitation rights or parenting time.

Sec. 81. K.S.A. 2005 Supp. 20-302b is hereby amended to read as follows: 20-302b. (a) A district magistrate judge shall have the jurisdiction and power, in any case in which a violation of the laws of the state is charged, to conduct the trial of traffic infractions, cigarette or tobacco infractions or misdemeanor charges, to conduct the preliminary examination of felony charges and to hear felony arraignments subject to assignment pursuant to K.S.A. 20-329 and amendments thereto. Except as otherwise provided, in civil cases, a district magistrate judge shall have jurisdiction over actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seq., and amendments thereto, and concurrent jurisdiction, powers and duties with a district judge. Except as otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action, other than an action seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services or money, in which the amount in controversy, exclusive of interests and costs, exceeds $10,000. The provisions of this subsection shall not apply to actions filed under the code of civil procedure for limited actions, K.S.A. 61-2801 et seq., and amendments thereto. In actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code or to issue support orders as provided by paragraph (6) of this subsection;

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(3) actions for specific performance of contracts for real estate;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established. Nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in K.S.A. 61-3801 through 61-3808, and amendments thereto. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto;

(6) actions for divorce, separate maintenance or custody of minor children. Nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to: (A) Except as provided in subsection (e), hear any action pursuant to the *revised* Kansas code for care of children or the Kansas juvenile justice code; (B) establish, modify or enforce orders of support, including, but not limited to, orders of support pursuant to the Kansas parentage act, K.S.A. 23-9,101 et seq., 39-718b, 39-755 or 60-1610 or K.S.A. 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, ~~38-1542, 38-1543 or 38-1563~~ *section 38, 39 or 50*, and amendments thereto; or (C) enforce orders granting visitation rights or parenting time;

(7) habeas corpus;

(8) receiverships;

(9) change of name;

(10) declaratory judgments;

(11) mandamus and quo warranto;

(12) injunctions;

(13) class actions;

(14) rights of majority; and

(15) actions pursuant to K.S.A. 59-29a01 *et seq.* and amendments thereto.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge, a district magistrate judge may:

(1) Grant a restraining order, as provided in K.S.A. 60-902 and amendments thereto;

(2) appoint a receiver, as provided in K.S.A. 60-1301 and amendments thereto; and

(3) make any order authorized by K.S.A. 60-1607 and amendments thereto.

(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined *de novo* by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge.

(d) Except as provided in subsection (e), upon motion of a party, the chief judge may reassign an action from a district magistrate judge to a district judge.

(e) Upon motion of a party for a petition or motion filed under the *revised* Kansas code for care of children requesting termination of parental rights pursuant to ~~K.S.A. 38-1581 through 38-1587~~ *sections 61 through 67*, and amendments thereto, the chief judge shall reassign such action from a district magistrate judge to a district judge.

Sec. 82. K.S.A. 2005 Supp. 20-319 is hereby amended to read as follows: 20-319. (a) A justice assigned to each department shall:

(1) With the help and assistance of the judicial administrator, make a survey of the conditions of the dockets and business of the district courts in the justice's department and make a report and recommendations on the conditions and business to the chief justice.

(2) Assemble the judges of the district courts within the justice's department, at least annually, to discuss such recommendations and other business as will benefit the judiciary of the state. When so summoned, the judges of the district courts in the various departments shall attend such conferences at the expense of the state. Such judges shall be entitled

to their actual and necessary expenses while attending such conferences and shall be required to attend the conferences unless excused by the departmental justice for good cause.

(b) Departmental justices shall have authority within their departments to assign any district judge or district magistrate judge to hear any proceeding or try any cause, within the judge's jurisdiction, in other district courts. Any departmental justice may request the assistance of any district judge or district magistrate judge from another department.

(c) The departmental justices shall supervise all administrative matters relating to the district courts within their departments and require reports periodically, covering such matters and in such form as the supreme court may determine, on any such matter which will aid in promoting the efficiency or the speedy determination of causes now pending. Departmental justices shall have the power to examine the dockets, records and proceedings of any courts under their supervision. All judges and clerks of the several courts of the state shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

In order to properly advise the three branches of government on the operation of the juvenile justice system, each district court shall furnish the judicial administrator such information regarding juveniles coming to the attention of the court pursuant to the *revised* Kansas code for care of children as is determined necessary by the secretary of social and rehabilitation services and the director of the statistical analysis center of the Kansas bureau of investigation, on forms approved by the judicial administrator. Such information shall be confidential and shall not be disseminated or publicly disclosed in a manner which enables identification of any individual who is a subject of the information.

The departmental justice shall assign to each chief judge in the justice's department such duties as are necessary to carry out the intent of just, speedy and inexpensive litigation for the litigants of the state.

Sec. 83. K.S.A. 2005 Supp. 21-3604 is hereby amended to read as follows: 21-3604. (a) Abandonment of a child is the leaving of a child under the age of 16 years, in a place where such child may suffer because of neglect, by the parent, guardian or other person to whom the care and custody of such child shall have been entrusted, when done with intent to abandon such child.

Abandonment of a child is a severity level 8, person felony.

(b) No parent or other person having lawful custody of an infant shall be prosecuted for a violation of this section, if such parent or person surrenders custody of an infant in the manner provided by ~~K.S.A. 38-15,100~~ *section 77*, and amendments thereto, and if such infant has not suffered bodily harm.

Sec. 84. K.S.A. 2005 Supp. 21-3612 is hereby amended to read as follows: 21-3612. (a) Contributing to a child's misconduct or deprivation is:

(1) Causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the *revised* Kansas code for care of children;

(2) causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810 and amendments thereto;

(3) failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in the performance of such officer's duty, any information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension;

(4) sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers;

(5) causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony; or

(6) causing or encouraging a child to violate the terms or conditions of the child's probation or conditional release pursuant to subsection (a)(1) of K.S.A. 38-1663, and amendments thereto.

Contributing to a child's misconduct or deprivation as described in subsection (a)(1), (2), (3) or (6) is a class A nonperson misdemeanor.

Contributing to a child's misconduct or deprivation as described in subsection (a)(4) is a severity level 8, person felony. Contributing to a child's misconduct or deprivation as described in subsection (a)(5) is a severity level 7, person felony.

(b) A person may be found guilty of contributing to a child's misconduct or deprivation even though no prosecution of the child whose misconduct or deprivation the defendant caused or encouraged has been commenced pursuant to the *revised* Kansas code for care of children, Kansas juvenile justice code or Kansas criminal code.

(c) As used in this section, "runaway" means a child under 18 years of age who is willfully and voluntarily absent from:

(1) The child's home without the consent of the child's parent or other custodian; or

(2) a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 85. K.S.A. 2005 Supp. 21-3721, as amended by section 6 of 2006 House Bill No. 2703, is hereby amended to read as follows: 21-3721. (a) Criminal trespass is:

(1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft, other than railroad property as defined in K.S.A. 2005 Supp. 21-3761, and amendments thereto, or nuclear generating facility as defined in section 1 *of 2006 House Bill No. 2703,* and amendments thereto, by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. ~~60-31a05, 60-31a06, K.S.A.~~ 60-1607, 60-3105, 60-3106 ~~or~~*,* 60-3107 ~~or K.S.A. 38-1542, 38-1543 or 38-1563~~*, 60-31a05 or 60-31a06 or section 38, 39 or 50,* and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(2) "Health care provider" means any person: (A) Licensed to practice a branch of the healing arts; (B) licensed to practice psychology; (C) licensed to practice professional or practical nursing; (D) licensed to practice dentistry; (E) licensed to practice optometry; (F) licensed to practice pharmacy; (G) registered to practice podiatry; (H) licensed as a social worker; or (I) registered to practice physical therapy.

(c) (1) Criminal trespass is a class B nonperson misdemeanor.

(2) Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(d) This section shall not apply to a land surveyor, licensed pursuant

to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey.

Sec. 86. K.S.A. 2005 Supp. 21-3843, as amended by section 1 of 2006 House Bill No. 2617, is hereby amended to read as follows: 21-3843. (a) Violation of a protective order is knowingly or intentionally violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;

(3) a restraining order issued pursuant to ~~K.S.A. 38-1542, 38-1543, 38-1563 and~~ *sections 38, 39 and 50 and K.S.A.* 60-1607, and amendments thereto;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;

(5) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or

(6) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(b) As used in this section, "order" includes any order issued by a municipal or district court.

(c) Violation of a protective order is a class A person misdemeanor.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 87. K.S.A. 2005 Supp. 23-605 is hereby amended to read as follows: 23-605. (a) A mediator appointed under K.S.A. 23-602 and amendments thereto shall treat all verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.* and amendments thereto as confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party and the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the neutral person or anyone the party or the neutral person authorizes to claim the privilege. A neutral person conducting the proceeding shall not be subject to process requiring the disclosure of any matter discussed within the proceedings unless all parties consent to a waiver.

(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to allow investigation of or action for ethical violations against the neutral person conducting the proceeding or for the defense of the neutral person or staff of an approved program conducting the proceeding in an action against the neutral person or staff of an approved program if the action is filed by a party to the proceeding;

(2) any information that the mediator is required to report under ~~K.S.A. 38-1522~~ *section 18,* and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court; or

(5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the me-

diator or an officer or employee of the court with the apparent intention of carrying out such threat.

Sec. 88. K.S.A. 2005 Supp. 28-170 is hereby amended to read as follows: 28-170. (a) The docket fee prescribed by K.S.A. 60-2001 and amendments thereto and the fees for service of process, shall be the only costs assessed for services of the clerk of the district court and the sheriff in any case filed under chapter 60 or chapter 61 of the Kansas Statutes Annotated, and amendments thereto, except that no fee shall be charged for an action filed under K.S.A. 60-3101 et seq., and under K.S.A. 60-31a01 et seq., and amendments thereto. For services in other matters in which no other fee is prescribed by statute, the following fees shall be charged and collected by the clerk. Only one fee shall be charged for each bond, lien or judgment:

1. For filing, entering and releasing a bond, mechanic's lien, notice of intent to perform, personal property tax judgment or any judgment on which execution process cannot be issued $5
2. For filing, entering and releasing a judgment of a court of this state on which execution or other process can be issued 15
3. For a certificate, or for copying or certifying any paper or writ, such fee as shall be prescribed by the district court.

(b) The fees for entries, certificates and other papers required in naturalization cases shall be those prescribed by the federal government and, when collected, shall be disbursed as prescribed by the federal government. The clerk of the court shall remit to the state treasurer at least monthly all moneys received from fees prescribed by subsection (a) or (b) or received for any services performed which may be required by law. The state treasurer shall deposit the remittance in the state treasury and credit the entire amount to the state general fund.

(c) In actions pursuant to the *revised* Kansas code for care of children (~~K.S.A. 38-1501~~ *section 1 et seq.* and amendments thereto), the Kansas juvenile justice code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treatment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments thereto) or the care and treatment act for mentally ill persons (K.S.A. 59-2945 *et seq.* and amendments thereto), the clerk shall charge an additional fee of $1 which shall be deducted from the docket fee and credited to the prosecuting attorneys' training fund as provided in K.S.A. 28-170a and amendments thereto.

(d) In actions pursuant to the *revised* Kansas code for care of children (~~K.S.A. 38-1501~~ *section 1 et seq.* and amendments thereto), the Kansas juvenile justice code (K.S.A. 38-1601 *et seq.* and amendments thereto), the act for treatment of alcoholism (K.S.A. 65-4001 *et seq.* and amendments thereto), the act for treatment of drug abuse (K.S.A. 65-5201 *et seq.* and amendments thereto) or the care and treatment act for mentally ill persons (K.S.A. 59-2945 *et seq.* and amendments thereto), the clerk shall charge an additional fee of $.50 which shall be deducted from the docket fee and credited to the indigents' defense services fund as provided in K.S.A. 28-172b and amendments thereto.

Sec. 89. K.S.A. 28-170a is hereby amended to read as follows: 28-170a. (a) There is hereby established a prosecuting attorneys' training fund. The clerk of the district court shall charge a fee of $1 in each criminal case, to be deducted from the docket fee as provided in K.S.A. 28-172a and amendments thereto and shall charge a fee of $1 in each case pursuant to the *revised* Kansas code for care of children or the Kansas juvenile justice code and each mental illness, drug abuse or alcoholism treatment action as provided by subsection (c) of K.S.A. 28-170 and amendments thereto. The clerk of the district court, at least monthly, shall pay all such fees received to the county treasurer who shall credit the same to the prosecuting attorneys' training fund.

(b) Expenditures from the prosecuting attorneys' training fund shall be paid by the county treasurer upon the order of the county or district attorney and shall be used exclusively for the training of personnel in such attorney's office and costs related thereto. Annually, on or before March 15, each county and district attorney shall submit to the attorney general

and the chairperson of the judiciary committee of each house, an accounting that shows for the preceding year the amount of fees paid into the prosecuting attorneys' training fund, the amounts and purpose of each expenditure from such fund and the balance in such fund on December 31 of the preceding year. The purpose for each expenditure shall specifically identify the person or persons for whom the expenditure was made and, where applicable, the time and place where the training was received. If any expenditure was paid to a nonprofit organization organized in this state of which the county or district attorney is a member, the county or district attorney shall include information on the training received for such expenditure which information shall show the persons receiving the training and the time and place thereof.

Sec. 90. K.S.A. 2005 Supp. 28-172b is hereby amended to read as follows: 28-172b. (a) There is hereby established in the state treasury an indigents' defense services fund.

(b) The clerk of the district court shall charge a fee of $.50 in each criminal case, to be deducted from the docket fee as provided in K.S.A. 28-172a, and amendments thereto, and shall charge a fee of $.50 in each case pursuant to the *revised* Kansas code for care of children or the Kansas juvenile justice code and each mental illness, drug abuse or alcoholism treatment action as provided by subsection (d) of K.S.A. 28-170, and amendments thereto. The clerk of the district court shall remit all such fees received to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the indigents' defense services fund.

(c) Moneys in the indigents' defense services fund shall be used exclusively to provide counsel and related services for indigent defendants. Expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state board of indigents' defense services or a person designated by the chairperson.

Sec. 91. K.S.A. 38-140 is hereby amended to read as follows: 38-140. The provisions of K.S.A. 38-135 through 38-140 shall not affect authority to consent to immunization of a minor pursuant to ~~K.S.A. 38-1513 or~~ *section 12 or K.S.A.* 38-1614, and amendments thereto, or pursuant to any other law.

Sec. 92. K.S.A. 38-538 is hereby amended to read as follows: 38-538. The parental detention or juvenile home or school or youth center shall be under the supervision of a superintendent or a director and other staff and employees, who shall be selected by and under the direction and supervision of the detention or parental home or youth center board of directors. The board of directors shall consist of six citizens of the county appointed and qualified as provided by this section. The judges of the district court of the county shall appoint three members of the board of directors as follows: A person expert in the care and treatment of both physical and emotional illnesses of children, a member of the board of education of the school system of the city of the first class within the county and a practicing member of the bar of the county. The board of county commissioners shall appoint three persons as follows: A person expert in law enforcement within the county; a person expert in business methods, bookkeeping, record keeping and accounting; and a representative or citizen at large. The members of the board of directors shall serve terms of three years commencing July 1 of the year of their appointment and ending at the expiration of three years unless terminated by resignation or inability to serve, the inability to be determined by the appointing authority. The board of directors shall establish program principles for the care and treatment of children committed to the center and shall generally supervise the operation of the center consistent with the *revised* Kansas code for care of children and the Kansas juvenile *justice* code ~~of this state~~ and good child care principles.

Sec. 93. K.S.A. 38-1604 is hereby amended to read as follows: 38-1604. (a) Except as provided in K.S.A. 38-1636, and amendments thereto, proceedings concerning a juvenile who appears to be a juvenile offender shall be governed by the provisions of this code.

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

(c) When jurisdiction is acquired by the district court over an alleged juvenile offender it may continue until: (1) Sixty days after sentencing, if the juvenile is committed directly to a juvenile correctional facility; (2) the juvenile has attained the age of 23 years, if committed to the custody of the commissioner pursuant to subsection (c) of K.S.A. 38-1665, and amendments thereto, unless an adult sentence is imposed pursuant to an extended jurisdiction juvenile prosecution. If such adult sentence is imposed, jurisdiction shall continue until discharged by the court or other process for the adult sentence; (3) the juvenile has been discharged by the court; or (4) the juvenile has been discharged under the provisions of K.S.A. 38-1675, and amendments thereto.

(d) (1) If a juvenile offender, at the time of sentencing, is in an out of home placement in the custody of the secretary of social and rehabilitation services under the *revised* Kansas code for care of children ~~code~~, the sentencing court may order the continued placement of the juvenile as a child in need of care unless the offender was adjudicated for a felony or a second, or subsequent, misdemeanor. If the adjudication was for a felony or a second, or subsequent misdemeanor, the continued placement cannot be ordered unless the court finds there are compelling circumstances which require, in the best interest of the juvenile, that the placement should be continued. In considering whether compelling circumstances exist, the court shall consider the reports and recommendations of the foster placement, the contract provider, the secretary of social and rehabilitation services, the presentence investigation and all other relevant factors. If the foster placement refuses to continue the juvenile in the foster placement the court shall not order continued placement as a child in need of care.

(2) If a placement with the secretary of social and rehabilitation services is continued after sentencing, the secretary shall not be responsible for any costs of sanctions imposed under this code.

(3) If such a juvenile offender is placed in the custody of the juvenile justice authority, the secretary of social and rehabilitation services shall not be responsible for furnishing services ordered in the child in need of care proceeding during the time of the placement pursuant to the Kansas juvenile justice code. Nothing in this subsection shall preclude such juvenile offender from accessing services provided by the department of social and rehabilitation services or any other state agency if such juvenile is eligible for such services.

(e) The *revised* Kansas code for care of children shall apply when necessary to carry out the provisions of subsection (d) of K.S.A. 38-1664, and amendments thereto.

(f) The provisions of this code shall govern with respect to offenses committed on or after July 1, 1997.

Sec. 94. K.S.A. 38-1608 is hereby amended to read as follows: 38-1608. (a) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile under 14 years of age shall be kept readily distinguishable from criminal and other records and shall not be disclosed to anyone except:

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

(2) parties to the proceedings and their attorneys;

(3) the department of social and rehabilitation services;

(4) any individual, or any officer of a public or private agency or institution, having custody of the juvenile under court order or providing

educational, medical or mental health services to the juvenile or a court-approved advocate for the juvenile;

(5) any educational institution to the extent necessary to enable the educational institution to provide the safest possible environment for its pupils and employees;

(6) any educator to the extent necessary to enable the educator to protect the personal safety of the educator and the educator's pupils;

(7) law enforcement officers or county or district attorneys or their staff when necessary for the discharge of their official duties;

(8) the central repository, as defined by K.S.A. 22-4701 and amendments thereto, for use only as a part of the juvenile offender information system established under K.S.A. 38-1618 and amendments thereto;

(9) juvenile intake and assessment workers;

(10) juvenile justice authority;

(11) any other person when authorized by a court order, subject to any conditions imposed by the order; and

(12) as provided in subsection (c).

(b) The provisions of this section shall not apply to records concerning:

(1) A violation, by a person 14 or more years of age, of any provision of chapter 8 of the Kansas Statutes Annotated or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind;

(2) a violation, by a person 16 or more years of age, of any provision of chapter 32 of the Kansas Statutes Annotated; or

(3) an offense for which the juvenile is prosecuted as an adult.

(c) All records of law enforcement officers and agencies and municipal courts concerning a public offense committed or alleged to have been committed by a juvenile 14 or more years of age shall be subject to the same disclosure restrictions as the records of adults. Information identifying victims and alleged victims of sex offenses, as defined in K.S.A. chapter 21, article 35, shall not be disclosed or open to public inspection under any circumstances. Nothing in this section shall prohibit the victim or any alleged victim of any sex offense from voluntarily disclosing such victim's identity.

(d) Relevant information, reports and records shall be made available to the department of corrections upon request and a showing that the former juvenile has been convicted of a crime and placed in the custody of the secretary of the department of corrections.

(e) All records, reports and information obtained as a part of the juvenile intake and assessment process for juvenile offenders shall be confidential and shall not be disclosed except as provided in this section or by rules and regulations established by the commissioner of juvenile justice.

(1) Any court of record may order the disclosure of such records, reports and other information to any person or entity.

(2) The head of any juvenile intake and assessment program, certified pursuant to the commissioner of juvenile justice, may authorize disclosure of such records, reports and other information to:

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

(B) a court-appointed special advocate for a child, which advocate reports to the court, or an agency having the legal responsibility or authorization to care for, treat or supervise a child;

(C) a parent or other person responsible for the welfare of a child, or such person's legal representative, with protection for the identity of persons reporting and other appropriate persons;

(D) the child or the guardian ad litem for such child;

(E) the police or other law enforcement agency;

(F) an agency charged with the responsibility of preventing or treat-

ing physical, mental or emotional abuse or neglect or sexual abuse of children, if the agency requesting the information has standards of confidentiality as strict or stricter than the requirements of the *revised* Kansas code for care of children or the Kansas juvenile justice code, whichever is applicable;

(G) a person who is a member of a multidisciplinary team;

(H) an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect;

(I) any individual, or public or private agency authorized by a properly constituted authority to diagnose, care for, treat or supervise a child who is the subject of a report or record of child abuse or neglect and specifically includes the following: Physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physicians' assistants, community mental health workers, alcohol and drug abuse counselors and licensed or registered child care providers;

(J) a citizen review board;

(K) an educational institution if related to a juvenile offender that attends such educational institution; and

(L) educators who have exposure to the juvenile offender or who are responsible for pupils who have exposure to the juvenile offender.

(3) To any juvenile intake and assessment worker of another certified juvenile intake and assessment program.

Sec. 95. K.S.A. 38-1664 is hereby amended to read as follows: 38-1664. (a) Prior to placing a juvenile offender in the custody of the commissioner and recommending out-of-home placement, the court shall consider and determine that, where consistent with the need for protection of the community:

(1) Reasonable efforts have been made to maintain the family unit and prevent unnecessary removal of a juvenile offender from the juvenile offender's home, as long as the juvenile offender's safety is assured, or an emergency exists which threatens the safety of the juvenile offender. If the juvenile offender is in the custody of the secretary of social and rehabilitation services under the Kansas code for the care of children, the secretary shall prepare a report for the court documenting such reasonable efforts. If the juvenile offender is in the custody of the commissioner, the commissioner shall prepare a report for the court documenting such reasonable efforts. Otherwise, the predisposition investigation writer shall prepare a report to the court documenting such reasonable efforts. Reasonable efforts are not required prior to removal if the court finds:

(A) A court of competent jurisdiction has determined that the parent has subjected the juvenile offender to aggravated circumstances;

(B) a court of competent jurisdiction has determined that the parent has been convicted of a murder of another child of the parent; voluntary manslaughter of another child of the parent; aiding or abetting, attempting, conspiring or soliciting to commit such a murder of such a voluntary manslaughter; or a felony assault that results in serious bodily injury to the juvenile offender or another child of the parent; or

(C) the parental rights of the parent with respect to a sibling have been terminated involuntarily.

Such findings must be included in the court's order.

(2) The juvenile offender's removal from the home must be the result of a judicial determination to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interests, of the juvenile offender. The contrary to the welfare determination must be made in the first court ruling that sanctions the removal of a juvenile offender from the home.

(3) A permanency plan must be presented at disposition or within 30 days thereafter. If a permanency plan is in place under a child in need of care proceeding, the court may adopt the plan under the present proceeding. If the juvenile offender is placed in the custody of the commissioner, the commissioner shall prepare the plan. The plan must comply

with the requirements of ~~subsection (a) of K.S.A. 38-1565~~ *section 58*, and amendments thereto. The court shall have the authority to require any person or entity agreeing to participate in the plan to perform as set out in the plan.

(4) The court must determine that reasonable efforts have been made and what progress has been made to finalize the permanency plan that is in effect within 12 months of the date the juvenile offender is considered to have entered foster care and at least once every 12 months thereafter while the juvenile offender is in foster care.

(5) The court must reflect reasonable efforts and contrary to the welfare findings in orders awarding custody to the commissioner temporarily, at sentencing and at modification hearings. If the juvenile offender is placed in the custody of the commissioner, the court shall provide the commissioner with a written copy of any orders entered upon making the order for the purpose of documenting the orders.

(6) If the juvenile offender is placed in the commissioner's custody, the commissioner shall document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan, before each hearing reviewing the plan.

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

(c) During the time a juvenile offender remains in the custody of the commissioner, the commissioner shall report to the court at least each six months as to the current living arrangement and social and mental development of the juvenile offender and document in writing the reasonable efforts that have been made and the progress made to finalize the permanency plan.

(d) If the juvenile offender is placed outside the juvenile offender's home, a permanency hearing shall be held not more than 12 months after the juvenile offender is placed outside the juvenile offender's home and, if reintegration is a viable alternative, every 12 months thereafter. The court may appoint a guardian ad litem to represent the juvenile offender at the permanency hearing. Juvenile offenders who have been in extended out of home placement shall be provided a permanency hearing within 30 days of a request from the commissioner. If reintegration is not a viable alternative and either adoption or permanent guardianship might be in the best interests of the juvenile offender the county or district attorney shall file a petition alleging the juvenile is a child in need of care and requesting termination of parental rights or the appointment of a permanent ~~guardian~~ *custodian* pursuant to the *revised* Kansas code for care of children. If the juvenile offender is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the juvenile offender's adjustment, progress and condition. The juvenile justice authority shall notify the foster parent or parents of the foster parents' or parent's duty to submit such report, on a form provided by the juvenile justice authority, at least two weeks prior to the date when the report is due, and the name of the judge and the address of the court to which the report is to be submitted. Such report shall be confidential and shall only be reviewed by the court and the child's attorney.

(e) The report made by foster parents and provided by the commissioner of juvenile justice, pursuant to this section, shall be in substantially the following form:

REPORT FROM FOSTER PARENTS
CONFIDENTIAL

Child's Name	Current Address
Parent's Name	Foster Parents
Primary Social Worker	

Please circle the word which best describes the child's progress

1. Child's adjustment in the home
   excellent good satisfactory needs improvement
2. Child's interaction with foster parents and family members
   excellent good satisfactory needs improvement
3. Child's interaction with others
   excellent good satisfactory needs improvement
4. Child's respect for property
   excellent good satisfactory needs improvement
5. Physical and emotional condition of the child
   excellent good satisfactory needs improvement
6. Social worker's interaction with the child and foster family
   excellent good satisfactory needs improvement
7. School status of child:

School	Grade

Grades	Good _____	Fair _____	Poor _____
Attendance	Good _____	Fair _____	Poor _____
Behavior	Good _____	Fair _____	Poor _____

8. If visitation with parents has occurred, describe the frequency of visits, with whom, supervised or unsupervised, and any significant events which have occurred. _____

9. Your opinion regarding the overall adjustment, progress and condition of the child:

10. Do you have any special concerns or comments with regard to the child not addressed by this form? Please specify. _____

Sec. 96. K.S.A. 38-1813 is hereby amended to read as follows: 38-1813. (a) The local citizen review board shall have the duty, authority and power to:

(1) Review each case of a child who is the subject of a child in need of care petition or who has been adjudicated a child in need of care or who is a juvenile offender referred by the judge, receive verbal information from all persons with pertinent knowledge of the case and have access to materials contained in the court's files on the case;

(2) determine the progress which has been made to acquire a permanent home for the child in need of care or toward rehabilitation for the juvenile offender;

(3) suggest an alternative case goal if progress has been insufficient; and

(4) make recommendations to the judge regarding further actions on the case.

(b) The initial review by the local citizen review board may take place any time after a petition is filed for a child in need of care and after adjudication for a juvenile offender. A review must occur within six months after the initial disposition hearing.

(c) The local citizen review board will review each referred case at least once each year.

(d) The judge shall consider the local citizen review board recommendations in making an authorized disposition pursuant to ~~K.S.A. 38-1563~~ *section 50*, and amendments thereto, or in issuing a sentence pursuant to 38-1663, and amendments thereto, and may incorporate the citizen review board's recommendations into an order in lieu of the six-

month review hearing. ~~The local citizen review board review shall not replace the 18-month hearing or the successive 12-month hearings pursuant to K.S.A. 38-1563, and amendments thereto in child in need of care cases.~~

(e) Three members of the local citizen review board must be present to review a case.

(f) The court shall provide a place for the reviews to be held. The local citizen review board members shall travel to the county of the family residence of the child being reviewed to hold the review.

Sec. 97. K.S.A. 2005 Supp. 39-709 is hereby amended to read as follows: 39-709. (a) *General eligibility requirements for assistance for which federal moneys are expended.* Subject to the additional requirements below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the department of social and rehabilitation services under which federal moneys are expended, the secretary of social and rehabilitation services shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted to the United States and who is residing in the state of Kansas.

(b) *Assistance to families with dependent children.* Assistance may be granted under this act to any dependent child, or relative, subject to the general eligibility requirements as set out in subsection (a), who resides in the state of Kansas or whose parent or other relative with whom the child is living resides in the state of Kansas. Such assistance shall be known as aid to families with dependent children. Where husband and wife are living together both shall register for work under the program requirements for aid to families with dependent children in accordance with criteria and guidelines prescribed by rules and regulations of the secretary.

(c) *Aid to families with dependent children; assignment of support rights and limited power of attorney.* By applying for or receiving aid to families with dependent children such applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. In any case in which an order for child support has been established and the legal custodian and obligee under the order surrenders physical custody of the child to a caretaker relative without obtaining a modification of legal custody and support rights on behalf of the child are assigned pursuant to this section, the surrender of physical custody and the assignment shall transfer, by operation of law, the child's support rights under the order to the secretary on behalf of the state. Such assignment shall be of all accrued, present or future rights to support of the child surrendered to the caretaker relative. The assignment of support rights

shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant, recipient or obligee. By applying for or receiving aid to families with dependent children, or by surrendering physical custody of a child to a caretaker relative who is an applicant or recipient of such assistance on the child's behalf, the applicant, recipient or obligee is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full.

(d) *Eligibility requirements for general assistance, the cost of which is not shared by the federal government.* (1) General assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d).

(A) To qualify for general assistance in any form a needy person must have insufficient income or resources to provide a reasonable subsistence compatible with decency and health and, except as provided for transitional assistance, be a member of a family in which a minor child or a pregnant woman resides or be unable to engage in employment. The secretary shall adopt rules and regulations prescribing criteria for establishing when a minor child may be considered to be living with a family and whether a person is able to engage in employment, including such factors as age or physical or mental condition. Eligibility for general assistance, other than transitional assistance, is limited to families in which a minor child or a pregnant woman resides or to an adult or family in which all legally responsible family members are unable to engage in employment. Where a husband and wife are living together the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary in determining need of any applicant for or recipient of general assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of general assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or a minor stepchild if the stepchild is living with such individual. In determining the need of an individual, the secretary may provide for income and resource exemptions.

(B) To qualify for general assistance in any form a needy person must be a citizen of the United States or an alien lawfully admitted to the United States and must be residing in the state of Kansas.

(2) General assistance in the form of transitional assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d), but who do not meet the criteria prescribed by rules and regulations of the secretary relating to inability to engage in employment or are not a member of a family in which a minor or a pregnant woman resides.

(3) In addition to the other requirements prescribed under this subsection (d), the secretary shall adopt rules and regulations which establish community work experience program requirements for eligibility for the receipt of general assistance in any form and which establish penalties to be imposed when a work assignment under a community work experience program requirement is not completed without good cause. The secretary may adopt rules and regulations establishing exemptions from any such community work experience program requirements. A first time failure to complete such a work assignment requirement shall result in ineligibility to receive general assistance for a period fixed by such rules and regulations of not more than three calendar months. A subsequent failure

to complete such a work assignment requirement shall result in a period fixed by such rules and regulations of ineligibility of not more than six calendar months.

(4) If any person is found guilty of the crime of theft under the provisions of K.S.A. 39-720, and amendments thereto, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the provisions of K.S.A. 39-720, and amendments thereto, or the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction. If any person is found guilty by a court of competent jurisdiction of any state other than the state of Kansas of a crime involving welfare fraud, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction.

(e) *Requirements for medical assistance for which federal moneys or state moneys or both are expended.* (1) When the secretary has adopted a medical care plan under which federal moneys or state moneys or both are expended, medical assistance in accordance with such plan shall be granted to any person who is a citizen of the United States or who is an alien lawfully admitted to the United States and who is residing in the state of Kansas, whose resources and income do not exceed the levels prescribed by the secretary. In determining the need of an individual, the secretary may provide for income and resource exemptions and protected income and resource levels. Resources from inheritance shall be counted. A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amendments thereto, shall constitute a transfer of resources. The secretary shall exempt principal and interest held in irrevocable trust pursuant to subsection (c) of K.S.A. 16-303, and amendments thereto, from the eligibility requirements of applicants for and recipients of medical assistance. Such assistance shall be known as medical assistance.

(2) For the purposes of medical assistance eligibility determinations on or after July 1, 2004, if an applicant or recipient owns property in joint tenancy with some other party and the applicant or recipient of medical assistance has restricted or conditioned their interest in such property to a specific and discrete property interest less than 100%, then such designation will cause the full value of the property to be considered an available resource to the applicant or recipient.

(3) Resources from trusts shall be considered when determining eligibility of a trust beneficiary for medical assistance. Medical assistance is to be secondary to all resources, including trusts, that may be available to an applicant or recipient of medical assistance. If a trust has discretionary language, the trust shall be considered to be an available resource to the extent, using the full extent of discretion, the trustee may make any of the income or principal available to the applicant or recipient of medical assistance. Any such discretionary trust shall be considered an available resource unless: (1) The trust is funded exclusively from resources of a person who, at the time of creation of the trust, owed no duty of support to the applicant or recipient; and (2) the trust contains specific contemporaneous language that states an intent that the trust be

supplemental to public assistance and the trust makes specific reference to medicaid, medical assistance or title XIX of the social security act.

(4) (A) When an applicant or recipient of medical assistance is a party to a contract, agreement or accord for personal services being provided by a nonlicensed individual or provider and such contract, agreement or accord involves health and welfare monitoring, pharmacy assistance, case management, communication with medical, health or other professionals, or other activities related to home health care, long term care, medical assistance benefits, or other related issues, any moneys paid under such contract, agreement or accord shall be considered to be an available resource unless the following restrictions are met: (i) The contract, agreement or accord must be in writing and executed prior to any services being provided; (ii) the moneys paid are in direct relationship with the fair market value of such services being provided by similarly situated and trained nonlicensed individuals; (iii) if no similarly situated nonlicensed individuals or situations can be found, the value of services will be based on federal hourly minimum wage standards; (iv) such individual providing the services will report all receipts of moneys as income to the appropriate state and federal governmental revenue agencies; (v) any amounts due under such contract, agreement or accord shall be paid after the services are rendered; (vi) the applicant or recipient shall have the power to revoke the contract, agreement or accord; and (vii) upon the death of the applicant or recipient, the contract, agreement or accord ceases.

(B) When an applicant or recipient of medical assistance is a party to a written contract for personal services being provided by a licensed health professional or facility and such contract involves health and welfare monitoring, pharmacy assistance, case management, communication with medical, health or other professionals, or other activities related to home health care, long term care, medical assistance benefits or other related issues, any moneys paid in advance of receipt of services for such contracts shall be considered to be an available resource.

(f) *Eligibility for medical assistance of resident receiving medical care outside state.* A person who is receiving medical care including long-term care outside of Kansas whose health would be endangered by the postponement of medical care until return to the state or by travel to return to Kansas, may be determined eligible for medical assistance if such individual is a resident of Kansas and all other eligibility factors are met. Persons who are receiving medical care on an ongoing basis in a long-term medical care facility in a state other than Kansas and who do not return to a care facility in Kansas when they are able to do so, shall no longer be eligible to receive assistance in Kansas unless such medical care is not available in a comparable facility or program providing such medical care in Kansas. For persons who are minors or who are under guardianship, the actions of the parent or guardian shall be deemed to be the actions of the child or ward in determining whether or not the person is remaining outside the state voluntarily.

(g) *Medical assistance; assignment of rights to medical support and limited power of attorney; recovery from estates of deceased recipients.* (1) Except as otherwise provided in K.S.A. 39-786 and 39-787, and amendments thereto, or as otherwise authorized on and after September 30, 1989, under section 303 and amendments thereto of the federal medicare catastrophic coverage act of 1988, whichever is applicable, by applying for or receiving medical assistance under a medical care plan in which federal funds are expended, any accrued, present or future rights to support and any rights to payment for medical care from a third party of an applicant or recipient and any other family member for whom the applicant is applying shall be deemed to have been assigned to the secretary on behalf of the state. The assignment shall automatically become effective upon the date of approval for such assistance without the requirement that any document be signed by the applicant or recipient. By applying for or receiving medical assistance the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee,

as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments, representing payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for assistance and shall remain in effect until the assignment has been terminated in full. The assignment of any rights to payment for medical care from a third party under this subsection shall not prohibit a health care provider from directly billing an insurance carrier for services rendered if the provider has not submitted a claim covering such services to the secretary for payment. Support amounts collected on behalf of persons whose rights to support are assigned to the secretary only under this subsection and no other shall be distributed pursuant to subsection (d) of K.S.A. 39-756, and amendments thereto, except that any amounts designated as medical support shall be retained by the secretary for repayment of the unreimbursed portion of assistance. Amounts collected pursuant to the assignment of rights to payment for medical care from a third party shall also be retained by the secretary for repayment of the unreimbursed portion of assistance.

(2) The amount of any medical assistance paid after June 30, 1992, under the provisions of subsection (e) is (A) a claim against the property or any interest therein belonging to and a part of the estate of any deceased recipient or, if there is no estate, the estate of the surviving spouse, if any, shall be charged for such medical assistance paid to either or both, and (B) a claim against any funds of such recipient or spouse in any account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and amendments thereto. There shall be no recovery of medical assistance correctly paid to or on behalf of an individual under subsection (e) except after the death of the surviving spouse of the individual, if any, and only at a time when the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. Transfers of real or personal property by recipients of medical assistance without adequate consideration are voidable and may be set aside. Except where there is a surviving spouse, or a surviving child who is under 21 years of age or is blind or permanently and totally disabled, the amount of any medical assistance paid under subsection (e) is a claim against the estate in any guardianship or conservatorship proceeding. The monetary value of any benefits received by the recipient of such medical assistance under long-term care insurance, as defined by K.S.A. 40-2227, and amendments thereto, shall be a credit against the amount of the claim provided for such medical assistance under this subsection (g). The secretary is authorized to enforce each claim provided for under this subsection (g). The secretary shall not be required to pursue every claim, but is granted discretion to determine which claims to pursue. All moneys received by the secretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration of the medical assistance recovery program under this subsection (g).

(3) By applying for or receiving medical assistance under the provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, such individual or such individual's agent, fiduciary, guardian conservator, representative payee or other person acting on behalf of the individual consents to the following definitions of estate and the results therefrom:

(A) If an individual receives any medical assistance before July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim is limited to the individual's probatable estate as defined by applicable law; and

(B) if an individual receives any medical assistance on or after July 1, 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated, which forms the basis for a claim under subsection (g)(2), such claim shall apply to the individual's medical assistance estate. The medical assistance

estate is defined as including all real and personal property and other assets in which the deceased individual had any legal title or interest immediately before or at the time of death to the extent of that interest or title. The medical assistance estate includes, without limitation assets conveyed to a survivor, heir or assign of the deceased recipient through joint tenancy, tenancy in common, survivorship, transfer-on-death deed, payable-on-death contract, life estate, trust, annuities or similar arrangement.

(4) The secretary of social and rehabilitation services or the secretary's designee is authorized to file and enforce a lien against the real property of a recipient of medical assistance in certain situations, subject to all prior liens of record. The lien must be filed in the office of the register of deeds of the county where the real property is located and must contain the legal description of all real property in the county subject to the lien. This lien is for payments of medical assistance made by the department of social and rehabilitation services to the recipient who is an inpatient in a nursing home or other medical institution. Such lien may be filed only after notice and an opportunity for a hearing has been given. Such lien may be enforced only upon competent medical testimony that the recipient cannot reasonably be expected to be discharged and returned home. A six-month period of compensated inpatient care at a nursing home, nursing homes or other medical institution shall constitute a determination by the department of social and rehabilitation services that the recipient cannot reasonably be expected to be discharged and returned home. To return home means the recipient leaves the nursing or medical facility and resides in the home on which the lien has been placed for a period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. The amount of the lien shall be for the amount of assistance paid by the department of social and rehabilitation services after the expiration of six months from the date the recipient became eligible for compensated inpatient care at a nursing home, nursing homes or other medical institution until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient.

(5) The lien filed by the secretary or the secretary's designee for medical assistance correctly received may be enforced before or after the death of the recipient by the filing of an action to foreclose such lien in the Kansas district court or through an estate probate court action in the county where the real property of the recipient is located. However, it may be enforced only:

(A) After the death of the surviving spouse of the recipient;

(B) when there is no child of the recipient, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the recipient, natural or adopted, who is blind or disabled residing in the home; or

(D) when no brother or sister of the recipient is lawfully residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the nursing or medical facility, and has resided there on a continuous basis since that time.

(6) The lien remains on the property even after a transfer of the title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The recipient, the heirs, personal representative or assigns of the recipient may discharge such lien at any time by paying the amount of the lien to the secretary or the secretary's designee;

(B) The lien is terminated by foreclosure of prior lien of record or settlement action taken in lieu of foreclosure;

(C) the value of the real property is consumed by the lien, at which time the secretary or the secretary's designee may force the sale for the real property to satisfy the lien; or

(D) after a lien is filed against the real property, it will be dissolved if the recipient leaves the nursing or medical facility and resides in the

property to which the lien is attached for a period of more than 90 days without being readmitted as an inpatient to a nursing or medical facility, even though there may have been no reasonable expectation that this would occur. If the recipient is readmitted to a nursing or medical facility during this period, and does return home after being released, another 90 days must be completed before the lien can be dissolved.

(7) If the secretary of social and rehabilitation services or the secretary's designee has not filed an action to foreclose the lien in the Kansas district court in the county where the real property is located within 10 years from the date of the filing of the lien, then the lien shall become dormant, and shall cease to operate as a lien on the real estate of the recipient. Such dormant lien may be revived in the same manner as a dormant judgment lien is revived under K.S.A. 60-2403 *et seq.*, and amendments thereto.

(h) *Placement under the revised Kansas code for care of children or juvenile* ~~offenders~~ *justice code; assignment of support rights and limited power of attorney.* In any case in which the secretary of social and rehabilitation services pays for the expenses of care and custody of a child pursuant to ~~K.S.A. 38-1501~~ *section 1 et seq.* or 38-1601 *et seq.*, and amendments thereto, including the expenses of any foster care placement, an assignment of all past, present and future support rights of the child in custody possessed by either parent or other person entitled to receive support payments for the child is, by operation of law, conveyed to the secretary. Such assignment shall become effective upon placement of a child in the custody of the secretary or upon payment of the expenses of care and custody of a child by the secretary without the requirement that any document be signed by the parent or other person entitled to receive support payments for the child. When the secretary pays for the expenses of care and custody of a child or a child is placed in the custody of the secretary, the parent or other person entitled to receive support payments for the child is also deemed to have appointed the secretary, or the secretary's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary on behalf of the child. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(i) No person who voluntarily quits employment or who is fired from employment due to gross misconduct as defined by rules and regulations of the secretary or who is a fugitive from justice by reason of a felony conviction or charge shall be eligible to receive public assistance benefits in this state. Any recipient of public assistance who fails to timely comply with monthly reporting requirements under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations.

(j) If the applicant or recipient of aid to families with dependent children is a mother of the dependent child, as a condition of the mother's eligibility for aid to families with dependent children the mother shall identify by name and, if known, by current address the father of the dependent child except that the secretary may adopt by rules and regulations exceptions to this requirement in cases of undue hardship. Any recipient of aid to families with dependent children who fails to cooperate with requirements relating to child support enforcement under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations which penalty shall progress to ineligibility for the family after three months of noncooperation.

(k) By applying for or receiving child care benefits or food stamps, the applicant or recipient shall be deemed to have assigned, pursuant to K.S.A. 39-756 and amendments thereto, to the secretary on behalf of the state only accrued, present or future rights to support from any other

person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant or recipient. By applying for or receiving child care benefits or food stamps, the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full. An applicant or recipient who has assigned support rights to the secretary pursuant to this subsection shall cooperate in establishing and enforcing support obligations to the same extent required of applicants for or recipients of aid to families with dependent children.

Sec. 98. K.S.A. 39-754 is hereby amended to read as follows: 39-754. (a) If an assignment of support rights is deemed to have been made pursuant to K.S.A. 39-709 or 39-756, and amendments thereto, support payments shall be made to the department of social and rehabilitation services.

(b) If a court has ordered support payments to be made to an applicant for or recipient of financial assistance or other person whose support rights are assigned, the secretary of social and rehabilitation services shall file a notice of the assignment with the court ordering the payments without the requirement that a copy of the notice be provided to the obligee or obligor. The notice shall not require the signature of the applicant, recipient or obligee on any accompanying assignment document. The notice shall include:

(1) A statement that the assignment is in effect;

(2) the name of any child and the caretaker or other adult for whom support has been ordered by the court;

(3) the number of the case in which support was ordered; and

(4) a request that the payments ordered be made to the secretary of social and rehabilitation services.

(c) Upon receipt of the notice and without the requirement of a hearing or order, the court shall forward all support payments, including those made as a result of any garnishment, contempt, attachment, income withholding, income assignment or release of lien process, to the secretary of social and rehabilitation services until the court receives notification of the termination of the assignment.

(d) If the claim of the secretary for repayment of the unreimbursed portion of aid to families with dependent children, medical assistance or the child's share of the costs of care and custody of a child under ~~K.S.A. 38-1501~~ *section 1 et seq.* or *K.S.A.* 38-1601 *et seq.*, and amendments thereto, is not satisfied when such aid is discontinued, the secretary shall file a notice of partial termination of assignment of support rights with the court which will preserve the assignment in regard to unpaid support rights which were due and owing at the time of the discontinuance of such aid. A copy of the notice of the partial termination of the assignment need not be provided to the obligee or obligor. The notice shall include:

(1) A statement that the assignment has been partially terminated;

(2) the name of any child and the caretaker or other adult for whom support has been ordered by the court;

(3) the number of the case in which support was ordered; and

(4) the date the assignment was partially terminated.

(e) Upon receipt of the notice and without the requirement of a hearing or order, the court shall forward all payments made to satisfy support arrearages due and owing as of the date the assignment of support rights was partially terminated to the secretary of social and rehabilitation serv-

ices until the court receives notification of the termination of the assignment.

(f) If the secretary of social and rehabilitation services or the secretary's designee has on file with the court ordering support payments, a notice of assignment of support rights pursuant to subsection (b) or a notice of partial termination of assignment of support rights pursuant to subsection (d), the secretary shall be considered a necessary party in interest concerning any legal action to enforce, modify, settle, satisfy or discharge an assigned support obligation and, as such, shall be given notice by the party filing such action in accordance with the rules of civil procedure.

(g) Upon written notification by the secretary's designee that assigned support has been collected pursuant to K.S.A. 44-718 or 75-6201 *et seq.*, and amendments thereto, or section 464 of title IV, part D, of the federal social security act, or any other method of direct payment to the secretary, the clerk of the court or other record keeper where the support order was established, shall enter the amounts collected by the secretary of social and rehabilitation services in the court's payment ledger or other record to insure that the obligor is credited for the amounts collected.

Sec. 99. K.S.A. 39-756 is hereby amended to read as follows: 39-756. (a) (1) The secretary of social and rehabilitation services shall make support enforcement services required under part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), or acts amendatory thereof or supplemental thereto, and federal regulations promulgated pursuant thereto, including but not limited to the location of parents, the establishment of paternity and the enforcement of child support obligations, available to persons not subject to the requirements of K.S.A. 39-709 and amendments thereto and not receiving support enforcement services pursuant to subsection (b). Persons who previously received public assistance but who are not receiving support enforcement services pursuant to subsection (b) may apply for or receive support enforcement services pursuant to this subsection.

(2) By applying for or receiving support enforcement services pursuant to subsection (a)(1), the applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in behalf of any family member, including the applicant, for whom the applicant is applying for or receiving support enforcement services. The assignment shall automatically become effective upon the date of application for or receipt of support enforcement services, whichever is earlier, and shall remain in full force and effect so long as the secretary provides support enforcement services on behalf of the applicant, recipient or child. By applying for or receiving support enforcement services pursuant to subsection (a)(1), the applicant, recipient or obligee is also deemed to have appointed the secretary or the secretary's designee as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person for whom the secretary is providing support enforcement services. This limited power of attorney shall be effective from the date support rights are assigned and shall remain in effect until the assignment is terminated in full.

(3) Nothing in this subsection shall affect or limit any existing assignment or claim for repayment of any unreimbursed portion of assistance pursuant to K.S.A. 39-709 and amendments thereto or affect or limit any subsequent assignment of support rights.

(b) (1) Upon discontinuance of all public assistance in accordance with a plan under which federal moneys are expended on behalf of the applicant, recipient or child for: (A) Aid to families with dependent children, (B) medical assistance, or (C) the expenses of a child in the secretary's care or custody pursuant to ~~K.S.A. 38-1501~~ *section 1 et seq.*, and amendments thereto, or K.S.A. 38-1601 *et seq.*, and amendments thereto,

the secretary shall continue to provide all appropriate support enforcement services required under title IV-D of the federal social security act for the persons who were receiving assistance, unless the recipient requests that support enforcement services be discontinued.

(2) When support enforcement services are provided pursuant to subsection (b)(1), the assignment of support rights and limited power of attorney pursuant to K.S.A. 39-709 and amendments thereto shall remain in full force and effect. When the secretary is no longer providing support enforcement services related to support obligations accruing after the date assistance was discontinued, the assignment of support rights shall remain in effect to the extent provided in K.S.A. 39-756a.

(3) Nothing in this subsection shall affect or limit any existing assignment or claim for repayment of any unreimbursed portion of assistance pursuant to K.S.A. 39-709 and amendments thereto or affect or limit any subsequent assignment of support rights.

(c) The secretary shall fix by rules and regulations a fee or fees for services rendered pursuant to this section as required by federal law or federal regulations, or both.

(d) Subject to subsection (g) of K.S.A. 39-709 and amendments thereto, amounts collected on behalf of persons receiving services pursuant to subsection (a) or (b) shall be paid to them unless the secretary of social and rehabilitation services retains an assignment of support rights pursuant to K.S.A. 39-709 and amendments thereto. Except as otherwise provided in subsection (g) of K.S.A. 39-709 and amendments thereto if such an assignment is retained by the secretary, current support payments shall be paid to the obligee and the secretary may retain any support arrearage to which social and rehabilitation services has a claim. Any support arrearage collected in excess of the amount assigned to social and rehabilitation services shall be paid to the obligee.

(e) In any action brought pursuant to this section or pursuant to subsection (g) of K.S.A. 39-709 and amendments thereto, or any action brought by a governmental agency or contractor, to establish paternity or to establish or enforce a support obligation, the social and rehabilitation services' attorney or the attorneys with whom such agency contracts to provide such services shall represent the state department of social and rehabilitation services. Nothing in this section shall be construed to modify statutory mandate, authority or confidentiality required by any governmental agency. Any representation by such attorney shall not be construed to create an attorney-client relationship between the attorney and any party, other than the state department of social and rehabilitation services.

Sec. 100. K.S.A. 39-756a is hereby amended to read as follows: 39-756a. An assignment of support rights pursuant to K.S.A. 39-709 and amendments thereto shall remain in full force and effect so long as the secretary is providing public assistance in accordance with a plan under which federal moneys are expended on behalf of the applicant, recipient or child for: (a) Aid to families with dependent children, (b) medical assistance or (c) the expenses of a child in the secretary's care or custody pursuant to ~~K.S.A. 38-1501~~ *section 1 et seq.*, and amendments thereto, or K.S.A. 38-1601 *et seq.*, and amendments thereto, or so long as the secretary is providing support enforcement services pursuant to K.S.A. 39-756 and amendments thereto. Upon discontinuance of all such assistance and support enforcement services, the assignment shall remain in effect as to unpaid support obligations due and owing at the time of the discontinuance of assistance until the claim of the secretary for repayment of the unreimbursed portion of any assistance is satisfied. If the secretary's claim for reimbursement is only for medical assistance, the assignment shall only remain in effect as to unpaid support obligations due and owing at the time of the discontinuance of medical assistance that are designated as medical support. Nothing herein shall affect or limit the rights of the secretary under an assignment of rights to payment for medical care from

a third party pursuant to subsection (g) of K.S.A. 39-709 and amendments thereto.

Sec. 101. K.S.A. 39-1305 is hereby amended to read as follows: 39-1305. "Community based group boarding homes for children and youth" means any shelter facility, juvenile detention facility or youth residential facility, as defined by ~~K.S.A. 38-1502~~ *section 2* and *K.S.A.* 38-1602*, and amendments thereto*.

Sec. 102. K.S.A. 2005 Supp. 44-817 is hereby amended to read as follows: 44-817. (a) The secretary of labor shall have power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon the secretary's own initiative or upon the request of one of the parties to the dispute. It shall be the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the secretary of labor shall have any power of compulsion in mediation proceedings. The secretary of labor or the secretary's designee shall be authorized to charge fees to the parties for mediation, conflict resolution services or training programs contracted for to be provided by the agency and shall prescribe reasonable rules of procedure for such mediators. The costs for such mediation services shall be allocated by the secretary or the secretary's designee.

(b) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.* and amendments thereto, shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(c) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under ~~K.S.A. 38-1522~~ *section 18,* and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

Sec. 103. K.S.A. 59-2129 is hereby amended to read as follows: 59-2129. (a) Consent to an independent adoption shall be given by: (1) The living parents of the child; or

(2) one of the parents of the child, if the other's consent is found unnecessary under K.S.A. 59-2136*, and amendments thereto*; or

(3) the legal guardian of the child, if both parents are dead or if their consent is found to be unnecessary under K.S.A. 59-2136*, and amendments thereto*; or

(4) the court entering an order under ~~subsection (b)(1)(B) of K.S.A. 38-1584~~ *section 65,* and amendments thereto; and

(5) the judge of any court having jurisdiction over the child pursuant

to the *revised Kansas* code for care of children, if parental rights have not been terminated; and

(6) the child sought to be adopted, if over 14 years of age and of sound intellect.

(b) Consent to an agency adoption shall be given by: (1) The authorized representative of the agency having authority to consent to the adoption of the child; and

(2) the child sought to be adopted, if over 14 years of age and of sound intellect.

(c) The provisions of subsection (a) shall apply to consent in a stepparent adoption, except that subsections (a)(3) and (4) shall not apply.

(d) A consent given by a parent, legal guardian or agency shall be deemed sufficient if in substantial compliance with the form for consent set forth by the judicial council.

(e) A consent given by a legal guardian, judge or agency shall set forth the authority to execute the consent and shall be accompanied by documents supporting that authority.

Sec. 104. K.S.A. 59-3059 is hereby amended to read as follows: 59-3059. (a) (1) Any person may file in the district court of the county of residence of the proposed ward or proposed conservatee or of any county wherein the proposed ward or proposed conservatee may be found, a verified petition requesting the appointment of a guardian or a conservator, or both, for a minor in need of a guardian or conservator, or both. If the proposed conservatee is not a resident of or present within the state of Kansas, such petition may be filed in the district court of any county in which any property of the proposed conservatee is situated.

(2) If a petition is filed in the district court of a county other than the county of residence of the minor, the court may consider whether it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county.

(3) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a nonresident of the state of Kansas, the court may dismiss the matter immediately, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the state of residence. After the expiration of that period of time, or upon the filing of proceedings in the state of residence, the court shall dismiss the petition without prejudice.

(4) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a resident of a different county in Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of residence, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the county of residence. After the expiration of that period of time, or upon the filing of proceedings in the county of residence, the court shall dismiss the petition without prejudice.

(b) The petition shall include:

(1) The petitioner's name and address;

(2) the minor's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the minor's permanent residence;

(3) if the minor is a nonresident of the county in which the petition is filed, a statement of why it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county;

(4) a statement that it is the petitioner's belief that the proposed ward or proposed conservatee is a minor in need of a guardian or conservator, or both;

(5) the factual basis upon which the petitioner makes that allegation;

(6) the names and addresses of any spouse of the minor, any natural guardian, any grandparent, any person nominated by a natural guardian to be the guardian or conservator, or both, any child or children of the

minor, any permanent ~~guardian~~ *custodian* appointed for the minor pursuant to ~~K.S.A. 38-1584~~ *section 64*, and amendments thereto, any fiduciary appointed for the minor by any court order, and any other person or agency having or claiming a right to legal or physical custody of or visitation with the minor or who has assumed responsibility for or care of the minor, and the circumstances under which the minor came into such person's or agency's care or control. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(7) a list and description of all court proceedings in which the minor is or has recently been a party, or is or has recently been the subject of, or was or may be a beneficiary of, or in which any rights of the minor were or may be determined or affected, including any proceedings concerning the custody of or visitation with the minor, any domestic relations matters, juvenile proceedings or adoptions, and the name and address of any attorney who represents or has represented the minor in any such matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(8) in general terms, the location, type, and value of any real or personal property of the minor, including the amount and sources of any income of the minor. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(9) the names and addresses of witnesses by whom the truth of the petition may be proved;

(10) the name, address, and relationship to the minor, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the guardian or as the conservator, or both;

(11) if the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-guardians or co-conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters; and

(12) a request that the court make a determination that the proposed ward or proposed conservatee is a minor in need of a guardian or a conservator, or both, that the court enter one or more of the orders provided for in K.S.A. 59-3063 and 59-3065, and amendments thereto, and that the court appoint a guardian or a conservator, or both, for the minor.

(c) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto, or both.

Sec. 105. K.S.A. 59-3060 is hereby amended to read as follows: 59-3060. (a) (1) Any person may file in the district court of the county of residence of the proposed ward or proposed conservatee or of any county wherein the proposed ward or proposed conservatee may be found, a verified petition requesting the appointment of a guardian or a conservator, or both, for a minor with an impairment in need of a guardian or conservator, or both. If the proposed conservatee is not a resident of or present within the state of Kansas, such petition may be filed in the district court of any county in which any property of the proposed conservatee is situated. If a petition is filed in the district court of a county other than the county of residence of the minor, the court may consider whether it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county.

(2) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a nonresident of the state of Kansas, the court may dismiss the matter immediately, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the

state of residence. After the expiration of that period of time, or upon the filing of proceedings in the state of residence, the court shall dismiss the petition without prejudice.

(3) If the court finds it is not in the best interests of the minor or in the interests of justice that the proceedings take place in that county and the minor is a resident of a different county in Kansas, the court may dismiss the matter immediately, or may transfer venue to the county of residence, or may continue the matter for a specific period of time not to exceed 60 days to allow for the filing of proceedings in the county of residence. After the expiration of that period of time, or upon the filing of proceedings in the county of residence, the court shall dismiss the petition without prejudice.

(b) The petition shall include:

(1) The petitioner's name and address;

(2) the minor's name, age, date of birth, address of permanent residence, and present address or whereabouts, if different from the minor's permanent residence;

(3) if the minor is a nonresident of the county in which the petition is filed, a statement of why it is in the best interests of the minor or in the interests of justice for the proceedings to take place in that county;

(4) a statement that it is the petitioner's belief that the proposed ward or proposed conservatee is a minor with an impairment in need of a guardian or conservator, or both;

(5) the factual basis upon which the petitioner makes this allegation;

(6) the names and addresses of any spouse of the minor, any natural guardian, any grandparent, any person nominated by a natural guardian to be the guardian or conservator, or both, any child or children of the minor, any permanent ~~guardian~~ *custodian* appointed for the minor pursuant to ~~K.S.A. 38-1584~~ *section 64*, and amendments thereto, any fiduciary appointed for the minor by any court order, and any other person or agency having or claiming a right to legal or physical custody of or visitation with the minor or who has assumed responsibility for or care of the minor, and the circumstances under which the minor came into such person's or agency's care or control. If no such names or addresses are known to the petitioner, but the petitioner has reason to believe such persons exist, then the petition shall state that fact and that the petitioner has made diligent inquiry to learn those names and addresses;

(7) a list and description of all court proceedings in which the minor is or has recently been a party, or is or has recently been the subject of, or was or may be a beneficiary of, or in which any rights of the minor were or may be determined or affected, including any proceeding concerning the custody of or visitation with the minor, any domestic relations matters, juvenile proceedings or adoptions, and the name and address of any attorney who represents or has represented the minor in any such matter. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(8) in general terms, the location, type, and value of any real or personal property of the minor, including the amount and sources of any income of the minor. If not known, the petition shall state that the petitioner has made diligent inquiry to learn this information;

(9) the names and addresses of witnesses by whom the truth of the petition may be proved;

(10) the name, address, and relationship to the minor, if any, of the individual or corporation whom the petitioner suggests that the court appoint as the guardian or as the conservator, or both;

(11) if the petitioner suggests the appointment of co-guardians or co-conservators, or both, a statement of the reasons why such appointment is sought and whether the petitioner suggests that the co-guardians or co-conservators, if appointed, should be able to act independently or whether they should be required to act only in concert or only in concert with regard to specified matters; and

(12) a request that the court make a determination that the proposed

ward or proposed conservatee is a minor with an impairment in need of a guardian or conservator, or both, that the court enter one or more of the orders provided for in K.S.A. 59-3063, 59-3064 and 59-3065, and amendments thereto, that the court appoint a guardian or a conservator, or both, for the minor and that the court order that this appointment shall extend beyond the minor's 18th birthday.

(c) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a report of an examination and evaluation which meets the requirements of K.S.A. 59-3064, and amendments thereto. In such case, the petition may include a request that the court accept this report in lieu of ordering any additional examination and evaluation pursuant to K.S.A. 59-3064, and amendments thereto.

(d) Any such petition may be accompanied by, or the court may require that such petition be accompanied by, a proposed guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, or a proposed conservatorship plan as provided for in K.S.A. 59-3079, and amendments thereto, or both.

Sec. 106. K.S.A. 60-452a is hereby amended to read as follows: 60-452a. (a) All verbal or written information transmitted between any party to a dispute and a neutral person conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.* and amendments thereto shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A neutral person shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party and the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the neutral person or anyone the party or the neutral person authorizes to claim the privilege.

(b) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to allow investigation of or action for ethical violations against the neutral person conducting the proceeding or for the defense of the neutral person or staff of an approved program conducting the proceeding in an action against the neutral person or staff of an approved program if the action is filed by a party to the proceeding;

(2) any information that the neutral person is required to report under ~~K.S.A. 38-1522~~ *section 18,* and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;

(4) any information that the neutral person is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court; or

(5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the mediator or an officer or employee of the court with the apparent intention of carrying out such threat.

Sec. 107. K.S.A. 60-460 is hereby amended to read as follows: 60-460. Evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is hearsay evidence and inadmissible except:

(a) *Previous statements of persons present.* A statement previously made by a person who is present at the hearing and available for cross-examination with respect to the statement and its subject matter, provided

the statement would be admissible if made by declarant while testifying as a witness.

(b) *Affidavits.* Affidavits, to the extent admissible by the statutes of this state.

(c) *Depositions and prior testimony.* Subject to the same limitations and objections as though the declarant were testifying in person, (1) testimony in the form of a deposition taken in compliance with the law of this state for use as testimony in the trial of the action in which offered or (2) if the judge finds that the declarant is unavailable as a witness at the hearing, testimony given as a witness in another action or in a preliminary hearing or former trial in the same action, or in a deposition taken in compliance with law for use as testimony in the trial of another action, when (A) the testimony is offered against a party who offered it in the party's own behalf on the former occasion or against the successor in interest of such party or (B) the issue is such that the adverse party on the former occasion had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the testimony is offered, but the provisions of this subsection (c) shall not apply in criminal actions if it denies to the accused the right to meet the witness face to face.

(d) *Contemporaneous statements and statements admissible on ground of necessity generally.* A statement which the judge finds was made (1) while the declarant was perceiving the event or condition which the statement narrates, describes or explains, (2) while the declarant was under the stress of a nervous excitement caused by such perception or (3) if the declarant is unavailable as a witness, by the declarant at a time when the matter had been recently perceived by the declarant and while the declarant's recollection was clear and was made in good faith prior to the commencement of the action and with no incentive to falsify or to distort.

(e) *Dying declarations.* A statement by a person unavailable as a witness because of the person's death if the judge finds that it was made (1) voluntarily and in good faith and (2) while the declarant was conscious of the declarant's impending death and believed that there was no hope of recovery.

(f) *Confessions.* In a criminal proceeding as against the accused, a previous statement by the accused relative to the offense charged, but only if the judge finds that the accused (1) when making the statement was conscious and was capable of understanding what the accused said and did and (2) was not induced to make the statement (A) under compulsion or by infliction or threats of infliction of suffering upon the accused or another, or by prolonged interrogation under such circumstances as to render the statement involuntary or (B) by threats or promises concerning action to be taken by a public official with reference to the crime, likely to cause the accused to make such a statement falsely, and made by a person whom the accused reasonably believed to have the power or authority to execute the same.

(g) *Admissions by parties.* As against a party, a statement by the person who is the party to the action in the person's individual or a representative capacity and, if the latter, who was acting in such representative capacity in making the statement.

(h) *Authorized and adoptive admissions.* As against a party, a statement (1) by a person authorized by the party to make a statement or statements for the party concerning the subject of the statement or (2) of which the party with knowledge of the content thereof has, by words or other conduct, manifested the party's adoption or belief in its truth.

(i) *Vicarious admissions.* As against a party, a statement which would be admissible if made by the declarant at the hearing if (1) the statement concerned a matter within the scope of an agency or employment of the declarant for the party and was made before the termination of such relationship, (2) the party and the declarant were participating in a plan to commit a crime or a civil wrong and the statement was relevant to the

plan or its subject matter and was made while the plan was in existence and before its complete execution or other termination or (3) one of the issues between the party and the proponent of the evidence of the statement is a legal liability of the declarant, and the statement tends to establish that liability.

(j) *Declarations against interest.* Subject to the limitations of exception (f), a statement which the judge finds was at the time of the assertion so far contrary to the declarant's pecuniary or proprietary interest or so far subjected the declarant to civil or criminal liability or so far rendered invalid a claim by the declarant against another or created such risk of making the declarant an object of hatred, ridicule or social disapproval in the community that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true.

(k) *Voter's statements.* A statement by a voter concerning the voter's qualifications to vote or the fact or content of the voter's vote.

(l) *Statements of physical or mental condition of declarant.* Unless the judge finds it was made in bad faith, a statement of the declarant's (1) then existing state of mind, emotion or physical sensation, including statements of intent, plan, motive, design, mental feeling, pain and bodily health, but not including memory or belief to prove the fact remembered or believed, when such a mental or physical condition is in issue or is relevant to prove or explain acts or conduct of the declarant or (2) previous symptoms, pain or physical sensation, made to a physician consulted for treatment or for diagnosis with a view to treatment, and relevant to an issue of declarant's bodily condition.

(m) *Business entries and the like.* Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that (1) they were made in the regular course of a business at or about the time of the act, condition or event recorded and (2) the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness.

If the procedure specified by subsection (b) of K.S.A. 60-245a for providing business records has been complied with and no party has required the personal attendance of a custodian of the records or the production of the original records, the affidavit of the custodian shall be prima facie evidence that the records satisfy the requirements of this subsection.

(n) *Absence of entry in business records.* Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if the judge finds that it was the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter and to preserve them.

(o) *Content of official record.* Subject to K.S.A. 60-461 and amendments thereto, (1) if meeting the requirements of authentication under K.S.A. 60-465 and amendments thereto, to prove the content of the record, a writing purporting to be a copy of an official record or of an entry therein or (2) to prove the absence of a record in a specified office, a writing made by the official custodian of the official records of the office, reciting diligent search and failure to find such record.

(p) *Certificate of marriage.* Subject to K.S.A. 60-461 and amendments thereto, certificates that the maker thereof performed marriage ceremonies, to prove the truth of the recitals thereof, if the judge finds that (1) the maker of the certificates, at the time and place certified as the times and places of the marriages, was authorized by law to perform marriage ceremonies and (2) the certificate was issued at that time or within a reasonable time thereafter.

(q) *Records of documents affecting an interest in property.* Subject to K.S.A. 60-461 and amendments thereto, the official record of a document purporting to establish or affect an interest in property, to prove the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the

judge finds that (1) the record is in fact a record of an office of a state or nation or of any governmental subdivision thereof and (2) an applicable statute authorized such a document to be recorded in that office.

(r) *Judgment of previous conviction.* Evidence of a final judgment adjudging a person guilty of a felony, to prove any fact essential to sustain the judgment.

(s) *Judgment against persons entitled to indemnity.* To prove the wrong of the adverse party and the amount of damages sustained by the judgment creditor, evidence of a final judgment if offered by a judgment debtor in an action in which the debtor seeks to recover partial or total indemnity or exoneration for money paid or liability incurred by the debtor because of the judgment, provided the judge finds that the judgment was rendered for damages sustained by the judgment creditor as a result of the wrong of the adverse party to the present action.

(t) *Judgment determining public interest in land.* To prove any fact which was essential to the judgment, evidence of a final judgment determining the interest or lack of interest of the public or of a state or nation or governmental division thereof in land, if offered by a party in an action in which any such fact or such interest or lack of interest is a material matter.

(u) *Statement concerning one's own family history.* A statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race-ancestry or other similar fact of the declarant's family history, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the judge finds that the declarant is unavailable.

(v) *Statement concerning family history of another.* A statement concerning the birth, marriage, divorce, death, legitimacy, race-ancestry, relationship by blood or marriage or other similar fact of the family history of a person other than the declarant if the judge finds that the declarant (1) was related to the other by blood or marriage, or was otherwise so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared, and made the statement as upon information received from the other or from a person related by blood or marriage to the other or as upon repute in the other's family and (2) is unavailable as a witness.

(w) *Statement concerning family history based on statement of another declarant.* A statement of a declarant that a statement admissible under exceptions (u) or (v) was made by another declarant, offered as tending to prove the truth of the matter declared by both declarants, if the judge finds that both declarants are unavailable as witnesses.

(x) *Reputation in family concerning family history.* Evidence of reputation among members of a family, if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry or other fact of the family history of a member of the family by blood or marriage.

(y) *Reputation—boundaries, general history, family history.* Evidence of reputation in a community as tending to prove the truth of the matter reputed, if the reputation concerns (1) boundaries of or customs affecting, land in the community and the judge finds that the reputation, if any, arose before controversy, (2) an event of general history of the community or of the state or nation of which the community is a part and the judge finds that the event was of importance to the community or (3) the birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, or race-ancestry of a person resident in the community at the time of the reputation, or some other similar fact of the person's family history or of the person's personal status or condition which the judge finds likely to have been the subject of a reliable reputation in that community.

(z) *Reputation as to character.* If a trait of a person's character at a specified time is material, evidence of the person's reputation with reference thereto at a relevant time in the community in which the person

then resided or in a group with which the person then habitually associated, to prove the truth of the matter reputed.

(aa) *Recitals in documents affecting property.* Evidence of a statement relevant to a material matter, contained in a deed of conveyance or a will or other document purporting to affect an interest in property, offered as tending to prove the truth of the matter stated, if the judge finds that (1) the matter stated would be relevant upon an issue as to an interest in the property and (2) the dealings with the property since the statement was made have not been inconsistent with the truth of the statement.

(bb) *Commercial lists and the like.* Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical or other published compilation, to prove the truth of any relevant matter so stated, if the judge finds that the compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them.

(cc) *Learned treatises.* A published treatise, periodical or pamphlet on a subject of history, science or art, to prove the truth of a matter stated therein, if the judge takes judicial notice, or a witness expert in the subject testifies, that the treatise, periodical or pamphlet is a reliable authority in the subject.

(dd) *Actions involving children.* In a criminal proceeding or a proceeding pursuant to the Kansas juvenile justice code or in a proceeding to determine if a child is a child in need of care under the *revised* Kansas code for care of children, a statement made by a child, to prove the crime or that a child is a juvenile offender or a child in need of care, if:

(1) The child is alleged to be a victim of the crime or offense or a child in need of care; and

(2) the trial judge finds, after a hearing on the matter, that the child is disqualified or unavailable as a witness, the statement is apparently reliable and the child was not induced to make the statement falsely by use of threats or promises.

If a statement is admitted pursuant to this subsection in a trial to a jury, the trial judge shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, the nature of the statement, the circumstances under which the statement was made, any possible threats or promises that might have been made to the child to obtain the statement and any other relevant factor.

(ee) *Certified motor vehicle certificate of title history.* Subject to K.S.A. 60-461, and amendments thereto, a certified motor vehicle certificate of title history prepared by the division of vehicles of the Kansas department of revenue.

Sec. 108. K.S.A. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) *Minor children.* (1) *Child support and education.* The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown. The court may make a modification of child support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202 and amendments thereto. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall ter-

minate unless: (A) The parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age; (B) the child reaches 18 years of age before completing the child's high school education in which case the support shall not terminate automatically, unless otherwise ordered by the court, until June 30 of the school year during which the child became 18 years of age if the child is still attending high school; or (C) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to subsection (a)(1)(C), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992. If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (a)(1)(B), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(B). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (a)(1)(C), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (a)(1)(C). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Except for good cause shown, every order requiring payment of child support under this section shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(2) *Child custody and residency.* (A) *Changes in custody.* Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency

of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

(B) *Examination of parties.* The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235 and amendments thereto.

(3) *Child custody or residency criteria.* The court shall determine custody or residency of a child in accordance with the best interests of the child.

(A) If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

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

(i) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

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

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

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

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

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

(vii) evidence of spousal abuse;

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

(ix) whether a parent has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto;

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

(xi) whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

(C) Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(D) There shall be a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent who:

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

(ii) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

(4) *Types of legal custodial arrangements.* Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference: (A) *Joint legal custody.* The court may order the joint legal custody

of a child with both parties. In that event, the parties shall have equal rights to make decisions in the best interests of the child.

(B) *Sole legal custody.* The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.

(5) *Types of residential arrangements*. After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

(A) *Residency*. The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

(B) *Divided residency*. In an exceptional case, the court may order a residential arrangement in which one or more children reside with each parent and have parenting time with the other.

(C) *Nonparental residency.* If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections ~~(a)(1), (2) or (3) of K.S.A. 38-1502~~ *(d)(1), (d)(2), (d)(3) or (d)(11) of section 2,* and amendments thereto*,* or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or, another person or agency if the court finds ~~the award of custody to such person or agency is in the best interests of the child~~ *by written order that: (i) (a) The child is likely to sustain harm if not immediately removed from the home;*

(b) allowing the child to remain in home is contrary to the welfare of the child; or

(c) immediate placement of the child is in the best interest of the child; and

(ii) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in ~~K.S.A. 38-1542 and 38-1543~~ *sections 38 and 39*, and amendments thereto, and shall remain in effect until there is a final determination under the *revised* Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in ~~K.S.A. 38-1531~~ *section 29,* and amendments thereto*,* and may request termination of parental rights pursuant to ~~K.S.A. 38-1581~~ *section 61,* and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court

in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the *revised* Kansas code for care of children shall be binding and shall supersede any order under this section.

(b) *Financial matters.* (1) *Division of property.* The decree shall divide the real and personal property of the parties, including any retirement and pension plans, whether owned by either spouse prior to marriage, acquired by either spouse in the spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) a division of the property in kind; (B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. Upon request, the trial court shall set a valuation date to be used for all assets at trial, which may be the date of separation, filing or trial as the facts and circumstances of the case may dictate. The trial court may consider evidence regarding changes in value of various assets before and after the valuation date in making the division of property. In dividing defined-contribution types of retirement and pension plans, the court shall allocate profits and losses on the nonparticipant's portion until date of distribution to that nonparticipant. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; the tax consequences of the property division upon the respective economic circumstances of the parties; and such other factors as the court considers necessary to make a just and reasonable division of property. The decree shall provide for any changes in beneficiary designation on: (A) Any insurance or annuity policy that is owned by the parties, or in the case of group life insurance policies, under which either of the parties is a covered person; (B) any trust instrument under which one party is the grantor or holds a power of appointment over part or all of the trust assets, that may be exercised in favor of either party; or (C) any transfer on death or payable on death account under which one or both of the parties are owners or beneficiaries. Nothing in this section shall relieve the parties of the obligation to effectuate any change in beneficiary designation by the filing of such change with the insurer or issuer in accordance with the terms of such policy.

(2) *Maintenance.* The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis.

At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Except for good cause shown, every order requiring payment of maintenance under this section shall require that the maintenance be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 23-4,118, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.

(3) *Separation agreement.* If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name.

(2) *Effective date as to remarriage.* Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

Sec. 109. K.S.A. 65-516 is hereby amended to read as follows: 65-516. (a) No person shall knowingly maintain a child care facility or maintain a family day care home if, in the child care facility or family day care home, there resides, works or regularly volunteers any person who:

(1) (A) Has a felony conviction for a crime against persons, (B) has a felony conviction under the uniform controlled substances act, (C) has a conviction of any act which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto or a conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any such act, or (D) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or is any act described in K.S.A. 21-4301 or 21-

4301a and amendments thereto or similar statutes of other states or the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to ~~K.S.A. 38-1523~~ *section 21,* and amendments thereto and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or ~~K.S.A. 38-1581 through 38-1584~~ *sections 61 through 65*, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 *et seq.*, and amendments thereto, or an immediate intervention agreement pursuant to K.S.A. 38-1635 and amendments thereto involving a charge of child abuse or a sexual offense; or

(7) has an infectious or contagious disease.

(b) No person shall maintain a child care facility or a family day care home if such person has been found to be a person in need of a guardian or a conservator, or both, as provided in K.S.A. ~~2002~~ 59-3050 through 59-3095, and amendments thereto.

(c) Any person who resides in a child care facility or family day care home and who has been found to be in need of a guardian or a conservator, or both, shall be counted in the total number of children allowed in care.

(d) In accordance with the provisions of this subsection (d), the secretary shall have access to any court orders or adjudications of any court of record, any records of such orders or adjudications, criminal history record information in the possession of the Kansas bureau of investigation and any report of investigations as authorized by subsection (e) of ~~K.S.A. 38-1523~~ *section 21,* and amendments thereto in the possession of the department of social and rehabilitation services or court of this state concerning persons working, regularly volunteering or residing in a child care facility or a family day care home. The secretary shall have access to these records for the purpose of determining whether or not the home meets the requirements of K.S.A. 65-516 and 65-519 and amendments thereto.

(e) No child care facility or family day care home or the employees thereof, shall be liable for civil damages to any person refused employment or discharged from employment by reason of such facility's or home's compliance with the provisions of this section if such home acts in good faith to comply with this section.

(f) For the purpose of subsection (a)(3), an act of abuse or neglect shall not be considered to have been validated by the department of social and rehabilitation services unless the alleged perpetrator has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.

Sec. 110. K.S.A. 2005 Supp. 65-1626 is hereby amended to read as follows: 65-1626. For the purposes of this act:

(a) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(1) A practitioner or pursuant to the lawful direction of a practitioner;

(2) the patient or research subject at the direction and in the presence of the practitioner; or

(3) a pharmacist as authorized in K.S.A. 65-1635a and amendments thereto.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser but shall not include a common carrier, public warehouseman or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

(c) "Board" means the state board of pharmacy created by K.S.A. 74-1603 and amendments thereto.

(d) "Brand exchange" means the dispensing of a different drug product of the same dosage form and strength and of the same generic name than the brand name drug product prescribed.

(e) "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

(f) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of any drug whether or not an agency relationship exists.

(g) "Direct supervision" means the process by which the responsible pharmacist shall observe and direct the activities of a pharmacy student or pharmacy technician to a sufficient degree to assure that all such activities are performed accurately, safely and without risk or harm to patients, and complete the final check before dispensing.

(h) "Dispense" means to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner.

(i) "Dispenser" means a practitioner or pharmacist who dispenses prescription medication.

(j) "Distribute" means to deliver, other than by administering or dispensing, any drug.

(k) "Distributor" means a person who distributes a drug.

(l) "Drug" means: (1) Articles recognized in the official United States pharmacopoeia, or other such official compendiums of the United States, or official national formulary, or any supplement of any of them; (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; (3) articles, other than food, intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection; but does not include devices or their components, parts or accessories, except that the term "drug" shall not include amygdalin (laetrile) or any livestock remedy, if such livestock remedy had been registered in accordance with the provisions of article 5 of chapter 47 of the Kansas Statutes Annotated prior to its repeal.

(m) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(n) "Generic name" means the established chemical name or official name of a drug or drug product.

(o) (1) "Institutional drug room" means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed and which is maintained or operated for the purpose of providing the drug needs of:

(A) Inmates of a jail or correctional institution or facility;

(B) residents of a juvenile detention facility, as defined by the *revised* Kansas code for care of children and the Kansas juvenile justice code;

(C) students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;

(D) employees of a business or other employer; or

(E) persons receiving inpatient hospice services.

(2) "Institutional drug room" does not include:

(A) Any registered pharmacy;

(B) any office of a practitioner; or

(C) a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

(p) "Medical care facility" shall have the meaning provided in K.S.A. 65-425 and amendments thereto, except that the term shall also include facilities licensed under the provisions of K.S.A. 75-3307b and amendments thereto except community mental health centers and facilities for the mentally retarded.

(q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term shall not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a drug by: (1) A practitioner or a practitioner's authorized agent incident to such practitioner's administering or dispensing of a drug in the course of the practitioner's professional practice; (2) a practitioner, by a practitioner's authorized agent or under a practitioner's supervision for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale; or (3) a pharmacist or the pharmacist's authorized agent acting under the direct supervision of the pharmacist for the purpose of, or incident to, the dispensing of a drug by the pharmacist.

(r) "Person" means individual, corporation, government, governmental subdivision or agency, partnership, association or any other legal entity.

(s) "Pharmacist" means any natural person licensed under this act to practice pharmacy.

(t) "Pharmacist in charge" means the pharmacist who is responsible to the board for a registered establishment's compliance with the laws and regulations of this state pertaining to the practice of pharmacy, manufacturing of drugs and the distribution of drugs. The pharmacist in charge shall supervise such establishment on a full-time or a part-time basis and perform such other duties relating to supervision of a registered establishment as may be prescribed by the board by rules and regulations. Nothing in this definition shall relieve other pharmacists or persons from their responsibility to comply with state and federal laws and regulations.

(u) "Pharmacy," "drug store" or "apothecary" means premises, laboratory, area or other place: (1) Where drugs are offered for sale where the profession of pharmacy is practiced and where prescriptions are compounded and dispensed; or (2) which has displayed upon it or within it the words "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries" or any of these words or combinations of these words or words of similar import either in English or any sign containing any of these words; or (3) where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" may be exhibited. As used in this subsection, premises refers only to the portion of any building or structure leased, used or controlled by the licensee in the conduct of the business registered by the board at the address for which the registration was issued.

(v) "Pharmacy student" means an individual, registered with the board of pharmacy, enrolled in an accredited school of pharmacy.

(w) "Pharmacy technician" means an individual who, under the direct supervision and control of a pharmacist, may perform packaging, manipulative, repetitive or other nondiscretionary tasks related to the processing of a prescription or medication order and who assists the pharmacist in the performance of pharmacy related duties, but who does not perform duties restricted to a pharmacist.

(x) "Practitioner" means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the

optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a prescription-only drug in teaching or chemical analysis or to conduct research with respect to a prescription-only drug.

(y) "Preceptor" means a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises students obtaining the pharmaceutical experience required by law as a condition to taking the examination for licensure as a pharmacist.

(z) "Prescription" means, according to the context, either a prescription order or a prescription medication.

(aa) "Prescription medication" means any drug, including label and container according to context, which is dispensed pursuant to a prescription order.

(bb) "Prescription-only drug" means any drug whether intended for use by man or animal, required by federal or state law (including 21 United States Code section 353, as amended) to be dispensed only pursuant to a written or oral prescription or order of a practitioner or is restricted to use by practitioners only.

(cc) "Prescription order" means: (1) An order to be filled by a pharmacist for prescription medication issued and signed by a practitioner or a mid-level practitioner in the authorized course of professional practice; or (2) an order transmitted to a pharmacist through word of mouth, note, telephone or other means of communication directed by such practitioner or mid-level practitioner.

(dd) "Probation" means the practice or operation under a temporary license, registration or permit or a conditional license, registration or permit of a business or profession for which a license, registration or permit is granted by the board under the provisions of the pharmacy act of the state of Kansas requiring certain actions to be accomplished or certain actions not to occur before a regular license, registration or permit is issued.

(ee) "Professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of pharmaceutical care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of pharmacy practice or other behavior which demonstrates a manifest incapacity or incompetence to practice pharmacy.

(ff) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include: (1) A controlled substance; (2) a prescription-only drug; or (3) a drug intended for human use by hypodermic injection.

(gg) "Secretary" means the executive secretary of the board.

(hh) "Unprofessional conduct" means:

(1) Fraud in securing a registration or permit;

(2) intentional adulteration or mislabeling of any drug, medicine, chemical or poison;

(3) causing any drug, medicine, chemical or poison to be adulterated or mislabeled, knowing the same to be adulterated or mislabeled;

(4) intentionally falsifying or altering records or prescriptions;

(5) unlawful possession of drugs and unlawful diversion of drugs to others;

(6) willful betrayal of confidential information under K.S.A. 65-1654 and amendments thereto;

(7) conduct likely to deceive, defraud or harm the public;

(8) making a false or misleading statement regarding the licensee's professional practice or the efficacy or value of a drug;

(9) commission of any act of sexual abuse, misconduct or exploitation related to the licensee's professional practice; or

(10) performing unnecessary tests, examinations or services which have no legitimate pharmaceutical purpose.

(ii) "Mid-level practitioner" means an advanced registered nurse practitioner issued a certificate of qualification pursuant to K.S.A. 65-1131 and amendments thereto who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-1130 and amendments thereto or a physician assistant licensed pursuant to the physician assistant licensure act who has authority to prescribe drugs pursuant to a written protocol with a responsible physician under K.S.A. 65-28a08 and amendments thereto.

(jj) "Vaccination protocol" means a written protocol, agreed to by a pharmacist and a person licensed to practice medicine and surgery by the state board of healing arts, which establishes procedures and recordkeeping and reporting requirements for administering a vaccine by the pharmacist for a period of time specified therein, not to exceed two years.

(kk) "Veterinary medical teaching hospital pharmacy" means any location where prescription-only drugs are stored as part of an accredited college of veterinary medicine and from which prescription-only drugs are distributed for use in treatment of or administration to a non-human.

Sec. 111. K.S.A. 65-6205 is hereby amended to read as follows: 65-6205. (a) A community service provider as defined in K.S.A. 39-1803 and amendments thereto, a mental health center as defined in K.S.A. 65-4432 and amendments thereto and an independent living agency as defined in K.S.A. 65-5101 and amendments thereto may request for the purpose of obtaining background information on applicants for employment with such entity information:

(1) From the department of social and rehabilitation services as to whether such applicant has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to ~~K.S.A. 38-1523~~ *section 21*, and amendments thereto;

(2) from the department of social and rehabilitation services as to whether such applicant has been found to have committed an act of abuse, neglect or exploitation of a resident as contained in the register of reports under K.S.A. 39-1404 and amendments thereto or an act of abuse, neglect or exploitation of an adult as contained in the register of reports under K.S.A. 39-1434 and amendments thereto;

(3) from the department of health and environment as to whether such applicant has been found to have committed an act of abuse, neglect or exploitation of a resident as contained in the register of reports under K.S.A. 39-1411 and amendments thereto;

(4) from the department of health and environment any information concerning the applicant in the state registry which contains information about unlicensed employees of adult care homes under K.S.A. 39-936 and amendments thereto.

(b) No community service provider, mental health center or independent living agency shall be liable for civil damages to any person refused employment, discharged from employment or whose terms of employment are affected because of actions taken by the community service provider, mental health center or independent living agency in good faith based on information received under this section.

Sec. 112. K.S.A. 2005 Supp. 72-962 is hereby amended to read as follows: 72-962. As used in this act:

(a) "School district" means any public school district.

(b) "Board" means the board of education of any school district.

(c) "State board" means the state board of education.

(d) "Department" means the state department of education.

(e) "State institution" means any institution under the jurisdiction of a state agency.

(f) "State agency" means the department of social and rehabilitation services, the department of corrections and the juvenile justice authority.

(g) "Exceptional children" means persons who are children with disabilities or gifted children and are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-1111, and amendments thereto.

(h) "Gifted children" means exceptional children who are determined to be within the gifted category of exceptionality as such category is defined by the state board.

(i) "Special education" means specially designed instruction provided at no cost to parents to meet the unique needs of an exceptional child, including:

(1) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(2) instruction in physical education.

(j) "Special teacher" means a person, employed by or under contract with a school district or a state institution to provide special education or related services, who is: (1) Qualified to provide special education or related services to exceptional children as determined pursuant to standards established by the state board; or (2) qualified to assist in the provision of special education or related services to exceptional children as determined pursuant to standards established by the state board.

(k) "State plan" means the state plan for special education and related services authorized by this act.

(l) "Agency" means boards and the state agencies.

(m) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as parent; (4) a legal guardian; (5) an education advocate; or (6) a foster parent, if the foster parent has been appointed the education advocate of an exceptional child.

(n) "Person acting as parent" means a person such as a grandparent, stepparent or other relative with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.

(o) "Education advocate" means a person appointed by the state board in accordance with the provisions of ~~K.S.A. 38-1513a~~ *section 13*, and amendments thereto. A person appointed as an education advocate for a child shall not be: (1) An employee of the agency which is required by law to provide special education or related services for the child; (2) an employee of the state board, the department, or any agency which is directly involved in providing educational services for the child; or (3) any person having a professional or personal interest which would conflict with the interests of the child.

(p) "Free appropriate public education" means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program.

(q) "Federal law" means the individuals with disabilities education act, as amended.

(r) "Individualized education program" or "IEP" means a written statement for each exceptional child that is developed, reviewed, and revised in accordance with the provisions of K.S.A. 72-987, and amendments thereto.

(s) (1) "Related services" means transportation, and such developmental, corrective, and other supportive services, including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the child's IEP, counseling services, including rehabilitation counseling, orientation and mobility services, and

medical services, except that such medical services shall be for diagnostic and evaluation purposes only, as may be required to assist an exceptional child to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(2) "Related services" shall not mean any medical device that is surgically implanted or the replacement of any such device.

(t) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(u) "Individualized education program team" or "IEP team" means a group of individuals composed of: (1) The parents of a child; (2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment; (3) at least one special education teacher or, where appropriate, at least one special education provider of the child; (4) a representative of the agency directly involved in providing educational services for the child who: (A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children; (B) is knowledgeable about the general curriculum; and (C) is knowledgeable about the availability of resources of the agency; (5) an individual who can interpret the instructional implications of evaluation results; (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) whenever appropriate, the child.

(v) "Evaluation" means a multisourced and multidisciplinary examination, conducted in accordance with the provisions of K.S.A. 72-986, and amendments thereto, to determine whether a child is an exceptional child.

(w) "Independent educational evaluation" means an examination which is obtained by the parent of an exceptional child and performed by an individual or group of individuals who meet state and local standards to conduct such an examination.

(x) "Elementary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades kindergarten through nine.

(y) "Secondary school" means any nonprofit institutional day or residential school that offers instruction in any or all of the grades nine through 12.

(z) "Children with disabilities" means: (1) Children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities and who, by reason thereof, need special education and related services; and (2) children experiencing one or more developmental delays and, by reason thereof, need special education and related services if such children are ages three through nine.

(aa) "Substantial change in placement" means the movement of an exceptional child, for more than 25% of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(bb) "Material change in services" means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service or a supplementary aid or a service specified on the IEP of an exceptional child.

(cc) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas, as determined by appropriate diagnostic instruments and procedures, as indicates that special education and related services are required: (1) Physical; (2) cognitive; (3) adaptive behavior; (4) communication; or (5) social or emotional development.

(dd) "Homeless children" means "homeless children and youths" as defined in the federal McKinney-Vento homeless assistance act, 42 U.S.C. 11434a.

(ee) "Limited English proficient" means an individual who meets the qualifications specified in section 9101 of the federal elementary and secondary education act of 1965, as amended.

Sec. 113. K.S.A. 72-1113 is hereby amended to read as follows: 72-1113. (a) Each board of education shall designate one or more employees who shall report to the secretary of social and rehabilitation services, or a designee thereof, or to the appropriate county or district attorney pursuant to an agreement as provided in this section, all cases of children who are less than 13 years of age and are not attending school as required by law, and to the appropriate county or district attorney, or a designee thereof, all cases of children who are 13 or more years of age but less than 18 years of age and are not attending school as required by law. The designation shall be made no later than September 1 of each school year and shall be certified no later than 10 days thereafter by the board of education to the secretary of social and rehabilitation services, or the designee thereof, to the county or district attorney, or the designee thereof, and to the commissioner of education. The commissioner of education shall compile and maintain a list of the designated employees of each board of education. The local area office of the department of social and rehabilitation services may enter into an agreement with the appropriate county or district attorney to provide that the designated employees of such board of education shall make the report as provided in this section for all cases of children who are less than 13 years of age and are not attending school as provided by law to the county or district attorney in lieu of the secretary, or the secretary's designee. If such agreement is made, the county or district attorney shall carry out all duties as otherwise provided by this subsection conferred on the secretary or the secretary's designee. A copy of such agreement shall be provided to the director of such area office of the department of social and rehabilitation services and to the school districts affected by the agreement.

(b) Whenever a child is required by law to attend school, and the child is not enrolled in a public or nonpublic school, the child shall be considered to be not attending school as required by law and a report thereof shall be made in accordance with the provisions of subsection (a) by a designated employee of the board of education of the school district in which the child resides. The provisions of this subsection are subject to the provisions of subsection (d).

(c) (1) Whenever a child is required by law to attend school and is enrolled in school, and the child is inexcusably absent therefrom on either three consecutive school days or five school days in any semester or seven school days in any school year, whichever of the foregoing occurs first, the child shall be considered to be not attending school as required by law. A child is inexcusably absent from school if the child is absent therefrom all or a significant part of a school day without a valid excuse acceptable to the school employee designated by the board of education to have responsibility for the school attendance of such child.

(2) Each board of education shall adopt rules for determination of valid excuse for absence from school and for determination of what shall constitute a "significant part of a school day" for the purpose of this section.

(3) Each board of education shall designate one or more employees, who shall each be responsible for determining the acceptability and validity of offered excuses for absence from school of specified children, so that a designee is responsible for making such determination for each child enrolled in school.

(4) Whenever a determination is made in accordance with the provisions of this subsection that a child is not attending school as required by law, the designated employee who is responsible for such determina-

tion shall make a report thereof in accordance with the provisions of subsection (a).

(5) The provisions of this subsection are subject to the provisions of subsection (d).

(d) (1) Prior to making any report under this section that a child is not attending school as required by law, the designated employee of the board of education shall serve written notice thereof, by personal delivery or by first class mail, upon a parent or person acting as parent of the child. The notice shall inform the parent or person acting as parent that continued failure of the child to attend school without a valid excuse will result in a report being made to the secretary of social and rehabilitation services or to the county or district attorney. Upon failure, on the school day next succeeding personal delivery of the notice or within three school days after the notice was mailed, of attendance at school by the child or of an acceptable response, as determined by the designated employee, to the notice by a parent or person acting as parent of the child, the designated employee shall make a report thereof in accordance with the provisions of subsection (a). The designated employee shall submit with the report a certificate verifying the manner in which notice was provided to the parent or person acting as parent.

(2) Whenever a law enforcement officer assumes temporary custody of a child who is found away from home or school without a valid excuse during the hours school is actually in session, and the law enforcement officer delivers the child to the school in which the child is enrolled or to a location designated by the school in which the child is enrolled to address truancy issues, the designated employee of the board of education shall serve notice thereof upon a parent or person acting as parent of the child. The notice may be oral or written and shall inform the parent or person acting as parent of the child that the child was absent from school without a valid excuse and was delivered to school by a law enforcement officer.

(e) Whenever the secretary of social and rehabilitation services receives a report required under this section, the secretary shall investigate the matter. If, during the investigation, the secretary determines that the reported child is not attending school as required by law, the secretary shall institute proceedings under the *revised Kansas* code for care of children. If, during the investigation, the secretary determines that a criminal prosecution should be considered, the secretary shall make a report of the case to the appropriate law enforcement agency.

(f) Whenever a county or district attorney receives a report required under this section, the county or district attorney shall investigate the matter. If, during the investigation, the county or district attorney determines that the reported child is not attending school as required by law, the county or district attorney shall prepare and file a petition alleging that the child is a child in need of care. If, during the investigation, the county or district attorney determines that a criminal prosecution is necessary, the county or district attorney shall commence such action.

(g) As used in this section, "board of education" means the board of education of a school district or the governing authority of a nonpublic school. The provisions of this act shall apply to both public and nonpublic schools.

Sec. 114. K.S.A. 72-53,106 is hereby amended to read as follows: 72-53,106. (a) As used in this section:

(1) "School" means every school district and every nonpublic school operating in this state.

(2) "School board" means the board of education of a school district or the governing authority of a nonpublic school.

(3) "Proof of identity" means (A) in the case of a child enrolling in kindergarten or first grade, a certified copy of the birth certificate of the child or, as an alternative, for a child who is in the custody of the secretary of social and rehabilitation services, a certified copy of the court order placing the child in the custody of the secretary and, in the case of a child

enrolling in any of the grades two through 12, a certified transcript or other similar pupil records or data; or (B) any documentary evidence which a school board deems to be satisfactory proof of identity.

(b) Whenever a child enrolls or is enrolled in a school for the first time, the school board of the school in which the child in enrolling or being enrolled shall require, in accordance with a policy adopted by the school board, presentation of proof of identity of the child. If proof of identity of the child is not presented to the school board within 30 days after enrollment, the school board shall immediately give written notice thereof to a law enforcement agency having jurisdiction within the home county of the school. Upon receipt of the written notice, the law enforcement agency shall promptly conduct an investigation to determine the identity of the child. No person or persons claiming custody of the child shall be informed of the investigation while it is being conducted.

(c) Schools and law enforcement agencies shall cooperate with each other in the conducting of any investigation required by this section. School personnel shall provide law enforcement agencies with access on school premises to any child whose identity is being investigated. School personnel shall be present at all times any law enforcement agency personnel are on school premises for the purpose of conducting any such investigation unless the school personnel and the law enforcement agency personnel agree that their joint presence is not in the best interests of the child. School personnel who are present during the conducting by a law enforcement agency of an investigation on school premises to determine the identity of a child in accordance with the requirements of this section are subject to the confidentiality requirements of the *revised* Kansas code for care of children.

(d) Upon receipt by a school of a notice from a law enforcement agency that a child who is or has been enrolled in the school has been reported as a missing child, the school shall make note of the same in a conspicuous manner on the school records of the child and shall keep such school records separate from the school records of all other children enrolled in the school. Upon receipt by the school of a request for the school records of the child, the school shall notify the law enforcement agency of the request.

(e) Each school board may designate and authorize one or more of its school personnel to act on behalf of the school board in complying with the requirements of this section.

(f) Information gathered in the course of the investigation to establish the identity of a child pursuant to this section shall be confidential and shall be used only to establish the identity of the child or in support of any criminal prosecution emanating from the investigation.

Sec. 115. K.S.A. 72-5427 is hereby amended to read as follows: 72-5427. (a) Upon finding that an impasse exists in professional negotiation or upon receipt of a joint notice of the existence of impasse filed by the parties under subsection (d) of K.S.A. 72-5426 and amendments thereto, the secretary shall appoint a mediator to assist in resolving the impasse, from a list maintained by the secretary of qualified and impartial individuals who are representative of the public. To the extent practicable, the secretary shall utilize the services of the federal mediation and conciliation service for mediation under this section.

(b) The mediator shall meet with the parties or their representatives, or both, either jointly or separately, and shall take such other steps as appropriate in order to assist the parties to resolve the impasse and to proceed with professional negotiation.

(c) If either party determines, after the seven-day period immediately succeeding the appointment of the mediator, that mediation has failed to resolve the impasse, such party may within 10 days after the unsuccessful conclusion of mediation file a written request with the secretary to appoint a fact-finding board to assist in resolving the impasse and the secretary shall immediately notify the other party of the request. Within three days thereafter, each of the parties shall prepare and submit to the

secretary a written memorandum containing a description of the issues upon which the impasse exists and shall include therein a specific description of the final position of the party on each issue.

(d) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.* and amendments thereto shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(e) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under ~~K.S.A. 38-1522~~ *section 18,* and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

Sec. 116. K.S.A. 2005 Supp. 75-4332 is hereby amended to read as follows: 75-4332. (a) Public employers may include in memoranda of agreement concluded with recognized employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. Such memorandum shall define conditions under which an impasse exists, and if the employer is bound by the budget law set forth in K.S.A. 79-2925 *et seq.*, and amendments thereto, the memorandum shall provide that an impasse is deemed to exist if the parties fail to achieve agreement at least 14 days prior to budget submission date.

(b) In the absence of such memorandum of procedures, or upon the failure of such procedures resulting in an impasse, either party may request the assistance of the public employee relations board, or the board may render such assistance on its own motion. In either event, if the board determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute, and request the appointment of a mediator or mediators, representative of the public, from a list of qualified persons maintained by the secretary of labor, and such appointment of a mediator or mediators shall be made forthwith by the secretary.

(c) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.*, and amendments thereto, shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and

to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(d) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under ~~K.S.A. 38-1522~~ *section 18,* and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

(e) If the impasse persists seven days after the mediators have been appointed, the board shall request the appointment of a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the secretary of labor. The fact-finding board shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. It shall make written findings of facts and recommendations for resolution of the dispute and, not later than 21 days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public seven days after it is submitted to the parties. If the dispute continues 14 days after the report is submitted to the parties, the report shall be made public.

(f) If the parties have not resolved the impasse by the end of a 40-day period, commencing with the appointment of the fact-finding board, or by a date not later than 14 days prior to the budget submission date, whichever date occurs first: (1) The representative of the public employer involved shall submit to the governing body of the public employer involved a copy of the findings of fact and recommendations of the fact-finding board, together with the representative's recommendations for settling the dispute; (2) the employee organization may submit to such governing body its recommendations for settling the dispute; (3) the governing body or a duly authorized committee thereof shall forthwith conduct a hearing at which the parties shall be required to explain their positions; and (4) thereafter, the governing body shall take such action as it deems to be in the public interest, including the interest of the public employees involved. The provisions of this subsection shall not be applicable to the state and its agencies and employees.

(g) The cost for the mediation and fact-finding services provided by the secretary of labor upon request of the board shall be borne by the secretary of labor. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties to a dispute.

Sec. 117. K.S.A. 2005 Supp. 75-7023 is hereby amended to read as follows: 75-7023. (a) The supreme court through administrative orders shall provide for the establishment of a juvenile intake and assessment system and for the establishment and operation of juvenile intake and assessment programs in each judicial district. On and after July 1, 1997, the secretary of social and rehabilitation services may contract with the commissioner of juvenile justice to provide for the juvenile intake and assessment system and programs for children in need of care. Except as provided further, on and after July 1, 1997, the commissioner of juvenile justice shall promulgate rules and regulations for the juvenile intake and assessment system and programs concerning juvenile offenders. If the commissioner contracts with the office of judicial administration to administer the juvenile intake and assessment system and programs con-

cerning juvenile offenders, the supreme court administrative orders shall be in force until such contract ends and the rules and regulations concerning juvenile intake and assessment system and programs concerning juvenile offenders have been adopted.

(b) No records, reports and information obtained as a part of the juvenile intake and assessment process may be admitted into evidence in any proceeding and may not be used in a child in need of care proceeding except for diagnostic and referral purposes and by the court in considering dispositional alternatives. However, if the records, reports or information are in regard to abuse or neglect, which is required to be reported under ~~K.S.A. 38-1522~~ *section 18*, and amendments thereto, such records, reports or information may then be used for any purpose in a child in need of care proceeding pursuant to the *revised* Kansas code for care of children.

(c) Upon a juvenile being taken into custody pursuant to K.S.A. 38-1624, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process as required by supreme court administrative order or district court rule prior to July 1, 1997, or except as provided above rules and regulations established by the commissioner of juvenile justice on and after July 1, 1997.

(d) Except as provided in subsection (g) and in addition to any other information required by the supreme court administrative order, the secretary, the commissioner or by the district court of such district, the juvenile intake and assessment worker shall collect the following information:

(1) A standardized risk assessment tool, such as the problem oriented screening instrument for teens;

(2) criminal history, including indications of criminal gang involvement;

(3) abuse history;

(4) substance abuse history;

(5) history of prior community services used or treatments provided;

(6) educational history;

(7) medical history; and

(8) family history.

(e) After completion of the intake and assessment process for such child, the intake and assessment worker may:

(1) Release the child to the custody of the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that it would be in the best interest of the child and it would not be harmful to the child to do so.

(2) Conditionally release the child to the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the child's best interest to release the child to such child's parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such child's parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to:

(A) Participation of the child in counseling;

(B) participation of members of the child's family in counseling;

(C) participation by the child, members of the child's family and other relevant persons in mediation;

(D) provision of inpatient treatment for the child;

(E) referral of the child and the child's family to the secretary of social and rehabilitation services for services and the agreement of the child and family to accept and participate in the services offered;

(F) referral of the child and the child's family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;

(G) requiring the child and members of the child's family to enter

into a behavioral contract which may provide for regular school attendance among other requirements; or

(H) any special conditions necessary to protect the child from future abuse or neglect.

(3) Deliver the child to a shelter facility or a licensed attendant care center along with the law enforcement officer's written application. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to ~~K.S.A. 38-1528~~ *section 27*, and amendments thereto.

(4) Refer the child to the county or district attorney for appropriate proceedings to be filed or refer the child and family to the secretary of social and rehabilitation services for investigations in regard to the allegations.

(5) Make recommendations to the county or district attorney concerning immediate intervention programs which may be beneficial to the juvenile.

(f) The commissioner may adopt rules and regulations which allow local juvenile intake and assessment programs to create a risk assessment tool, as long as such tool meets the mandatory reporting requirements established by the commissioner.

(g) Parents, guardians and juveniles may access the juvenile intake and assessment programs on a voluntary basis. The parent or guardian shall be responsible for the costs of any such program utilized.

Sec. 118. K.S.A. 75-7025 is hereby amended to read as follows: 75-7025. On and after July 1, 1997:

(a) The commissioner of juvenile justice may establish, maintain and improve throughout the state, within the limits of funds appropriated therefor and any grants or funds received from federal agencies and other sources, regional youth care, evaluation and rehabilitation facilities, not to exceed 10 in number, for the purpose of: (1) Providing local authorities with facilities for the detention and rehabilitation of juvenile offenders, including, but not limited to juvenile offenders who are 16 and 17 years of age; (2) providing local authorities with facilities for the temporary shelter and detention of juveniles pending any examination or study to be made of the juveniles or prior to the disposition of such juveniles pursuant to the *revised* Kansas code for care of children or the Kansas juvenile justice code; and (3) providing short-term treatment and rehabilitation service for juveniles.

(b) Each such facility shall be staffed by a superintendent and such other officers and employees considered necessary by the commissioner for the proper management and operation of the center. The commissioner shall appoint the superintendent of each regional facility and fix the superintendent's compensation with the approval of the governor. Each superintendent shall appoint all other officers and employees for such regional facility, subject to the approval of the commissioner.

(c) The commissioner may adopt rules and regulations relating to the operation and management of any regional youth care facility established pursuant to the provisions of K.S.A. 75-7025 through 75-7028, and amendments thereto.

Sec. 119. K.S.A. 2005 Supp. 76-729 is hereby amended to read as follows: 76-729. (a) Persons enrolling at the state educational institutions under the control and supervision of the state board of regents who, if such persons are adults, have been domiciliary residents of the state of Kansas or, if such persons are minors, whose parents have been domiciliary residents of the state of Kansas for at least 12 months prior to enrollment for any term or session at a state educational institution are residents for fee purposes. A person who has been a resident of the state of Kansas for fee purposes and who leaves the state of Kansas to become a resident of another state or country shall retain status as a resident of the state of Kansas for fee purposes if the person returns to domiciliary

residency in the state of Kansas within 12 months of departure. All other persons are nonresidents of the state of Kansas for fee purposes.

(b) The state board of regents may authorize the following persons, or any class or classes thereof, and their spouses and dependents to pay an amount equal to resident fees:

(1) Persons who are employees of a state educational institution;

(2) persons who are in military service;

(3) persons who are domiciliary residents of the state, who were in active military service prior to becoming domiciliary residents of the state, who were present in the state for a period of not less than two years during their tenure in active military service, whose domiciliary residence was established in the state within 30 days of discharge or retirement from active military service under honorable conditions, but whose domiciliary residence was not timely enough established to meet the residence duration requirement of subsection (a);

(4) persons having special domestic relations circumstances;

(5) persons who have lost their resident status within six months of enrollment;

(6) persons who are not domiciliary residents of the state, who have graduated from a high school accredited by the state board of education within six months of enrollment, who were domiciliary residents of the state at the time of graduation from high school or within 12 months prior to graduation from high school, and who are entitled to admission at a state educational institution pursuant to K.S.A. 72-116, and amendments thereto;

(7) persons who are domiciliary residents of the state, whose domiciliary residence was established in the state for the purpose of accepting, upon recruitment by an employer, or retaining, upon transfer required by an employer, a position of full-time employment at a place of employment in Kansas, but the domiciliary residence of whom was not timely enough established to meet the residence duration requirement of subsection (a), and who are not otherwise eligible for authorization to pay an amount equal to resident fees under this subsection; and

(8) persons who have graduated from a high school accredited by the state board of education within six months of enrollment and who, at the time of graduation from such a high school or while enrolled and in attendance at such a high school prior to graduation therefrom, were dependents of a person in military service within the state; if the person, whose dependent is eligible for authorization to pay an amount equal to resident fees under this provision, does not establish domiciliary residence in the state upon retirement from military service, eligibility of the dependent for authorization to pay an amount equal to resident fees shall lapse.

(c) (1) The state board of regents shall authorize the following class of persons to pay an amount equal to resident fees: Any dependent or spouse of a person in military service who is reassigned from Kansas to another duty station so long as such dependent or spouse continues to reside in Kansas.

(2) So long as a person remains continuously enrolled, exclusive of summer sessions, a person who qualifies to pay resident fees by virtue of being a spouse or dependent of a person in military service shall not lose such status because of a divorce or the death of a spouse.

(d) As used in this section:

(1) "Parents" means and includes natural parents, adoptive parents, stepparents, guardians and custodians.

(2) "Guardian" has the meaning ascribed thereto by K.S.A. 59-3051, and amendments thereto.

(3) "Custodian" means a person, agency or association granted legal custody of a minor under the *revised* Kansas code for care of children.

(4) "Domiciliary resident" means a person who has present and fixed residence in Kansas where the person intends to remain for an indefinite period and to which the person intends to return following absence.

(5) "Full-time employment" means employment requiring at least 1,500 hours of work per year.

(6) "Dependent" means: (A) A birth child, adopted child or stepchild; or

(B) any child other than the foregoing who is actually dependent in whole or in part on the person in military service and who is related to such individual by marriage or consanguinity.

(7) "Military service" means any active service in any armed service of the United States and any active state or federal service in the Kansas army or air national guard.

Sec. 120. K.S.A. 5-512, 28-170a, 38-140, 38-538, 38-1501, 38-1504, 38-1505a, 38-1510, 38-1511, 38-1512, 38-1513, 38-1513a, 38-1514, 38-1515, 38-1516, 38-1517, 38-1518, 38-1519, 38-1520, 38-1521, 38-1522b, 38-1523, 38-1523a, 38-1524, 38-1525, 38-1526, 38-1527, 38-1528, 38-1529, 38-1530, 38-1531, 38-1532, 38-1533, 38-1534, 38-1535, 38-1536, 38-1537, 38-1541, 38-1542, 38-1543, 38-1544, 38-1545, 38-1546, 38-1551, 38-1552, 38-1553, 38-1554, 38-1555, 38-1556, 38-1557, 38-1558, 38-1559, 38-1561, 38-1562, 38-1563, 38-1564, 38-1565, 38-1566, 38-1567, 38-1568, 38-1569, 38-1570, 38-1581, 38-1582, 38-1584, 38-1585, 38-1586, 38-1587, 38-1591, 38-1592, 38-1593, 38-1594, 38-1595, 38-1596, 38-1597, 38-1598, 38-1599, 38-15,100, 38-1604, 38-1608, 38-1664, 38-1813, 39-754, 39-756, 39-756a, 39-1305, 59-2129, 59-3059, 59-3060, 60-452a, 60-460, 60-1610, 65-516, 65-6205, 72-1113, 72-53,106, 72-5427 and 75-7025 and K.S.A. 2005 Supp. 20-164, 20-302b, 20-319, 21-3604, 21-3612, 21-3721, as amended by section 6 of 2006 House Bill No. 2703, 21-3843, as amended by section 1 of 2006 House Bill No. 2617, 23-605, 28-170, 28-172b, 38-1502, 38-1503, 38-1505, 38-1513b, 38-1522, 38-1552a, 38-1583, 38-15,101, 39-709, 44-817, 65-1626, 72-962, 75-4332, 75-7023 and 76-729 are hereby repealed.

Sec. 121. This act shall take effect and be in force from and after January 1, 2007, and its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

_____

HOUSE adopted
Conference Committee Report _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.