

HOUSE BILL No. 2381

By Committee on Judiciary

2-9

1 AN ACT concerning children and minors; relating to the revised Kansas
2 code for care of children; requiring the court to appoint an attorney to
3 represent a child who is the subject of child in need of care
4 proceedings; making the guardian ad litem appointment optional;
5 granting such attorney access to all information and records necessary
6 for the representation of such child; amending K.S.A. 38-2202, 38-
7 2205, 38-2219, 38-2229, 38-2236, 38-2247, 38-2248, 38-2249, 38-
8 2258, 38-2260, 38-2268, 38-2275 and 38-2291 and K.S.A. 2022 Supp.
9 38-2211 and 38-2212 and repealing the existing sections.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 38-2202 is hereby amended to read as follows: 38-
13 2202. As used in the revised Kansas code for care of children, unless the
14 context otherwise indicates:

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

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

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

23 (d) "Child in need of care" means a person less than 18 years of age
24 at the time of filing of the petition or issuance of an ex parte protective
25 custody order pursuant to K.S.A. 38-2242, and amendments thereto, who:

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

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

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

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

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

35 (6) is not attending school as required by K.S.A. 72-3421 or 72-3120,
36 and amendments thereto;

1 (7) except in the case of a violation of K.S.A. 41-727, K.S.A. 74-
2 8810(j), K.S.A. 79-3321(m) or (n), or K.S.A. 2022 Supp. 21-6301(a)(14),
3 and amendments thereto, or, except as provided in paragraph (12), does an
4 act which, when committed by a person under 18 years of age, is
5 prohibited by state law, city ordinance or county resolution, but which is
6 not prohibited when done by an adult;

7 (8) while less than 10 years of age, commits any act that if done by an
8 adult would constitute the commission of a felony or misdemeanor as
9 defined by K.S.A. 2022 Supp. 21-5102, and amendments thereto;

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

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

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

20 (12) while less than 10 years of age commits the offense defined in
21 K.S.A. 2022 Supp. 21-6301(a)(14), and amendments thereto;

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

24 (14) has been subjected to an act that would constitute human
25 trafficking or aggravated human trafficking, as defined by K.S.A. 2022
26 Supp. 21-5426, and amendments thereto, or commercial sexual
27 exploitation of a child, as defined by K.S.A. 2022 Supp. 21-6422, and
28 amendments thereto, or has committed an act which, if committed by an
29 adult, would constitute selling sexual relations, as defined by K.S.A. 2022
30 Supp. 21-6419, and amendments thereto.

31 (e) "Citizen review board" is a group of community volunteers
32 appointed by the court and whose duties are prescribed by K.S.A. 38-2207
33 and 38-2208, and amendments thereto.

34 (f) "Civil custody case" includes any case filed under chapter 23 of
35 the Kansas Statutes Annotated, and amendments thereto, the Kansas
36 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
37 and amendments thereto, determination of parentage, article 21 of chapter
38 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
39 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
40 Annotated, and amendments thereto, guardians and conservators.

41 (g) "Court-appointed special advocate" means a responsible adult,
42 other than an *appointed* attorney or a guardian ad litem, who is appointed
43 by the court to represent the best interests of a child, as provided in K.S.A.

1 38-2206, and amendments thereto, in a proceeding pursuant to this code.

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

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

11 (j) "Educational institution" means all schools at the elementary and
12 secondary levels.

13 (k) "Educator" means any administrator, teacher or other professional
14 or paraprofessional employee of an educational institution who has
15 exposure to a pupil specified in K.S.A. 72-6143(a), and amendments
16 thereto.

17 (l) "Harm" means physical or psychological injury or damage.

18 (m) "Interested party" means the grandparent of the child, a person
19 with whom the child has been living for a significant period of time when
20 the child in need of care petition is filed, and any person made an
21 interested party by the court pursuant to K.S.A. 38-2241, and amendments
22 thereto, or Indian tribe seeking to intervene that is not a party.

23 (n) "Jail" means:

24 (1) An adult jail or lockup; or

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

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

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

42 (q) "Kinship care placement" means the placement of a child in the
43 home of an adult with whom the child or the child's parent already has

1 close emotional ties.

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

6 (s) "Multidisciplinary team" means a group of persons, appointed by
7 the court under K.S.A. 38-2228, and amendments thereto, that has
8 knowledge of the circumstances of a child in need of care.

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

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

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

20 (3) failure to use resources available to treat a diagnosed medical
21 condition if such treatment will make a child substantially more
22 comfortable, reduce pain and suffering, or correct or substantially diminish
23 a crippling condition from worsening. A parent legitimately practicing
24 religious beliefs who does not provide specified medical treatment for a
25 child because of religious beliefs shall, not for that reason, be considered a
26 negligent parent; however, this exception shall not preclude a court from
27 entering an order pursuant to K.S.A. 38-2217(a)(2), and amendments
28 thereto.

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

32 (v) "Party" means the state, the petitioner, the child, any parent of the
33 child and an Indian child's tribe intervening pursuant to the Indian child
34 welfare act.

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

38 (x) "Permanent custodian" means a judicially approved permanent
39 guardian of a child pursuant to K.S.A. 38-2272, and amendments thereto.

40 (y) "Physical, mental or emotional abuse" means the infliction of
41 physical, mental or emotional harm or the causing of a deterioration of a
42 child and may include, but shall not be limited to, maltreatment or
43 exploiting a child to the extent that the child's health or emotional well-

1 being is endangered.

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

4 (aa) "Qualified residential treatment program" means a program
5 designated by the secretary for children and families as a qualified
6 residential treatment program pursuant to federal law.

7 (bb) "Reasonable and prudent parenting standard" means the standard
8 characterized by careful and sensible parental decisions that maintain the
9 health, safety and best interests of a child while at the same time
10 encouraging the emotional and developmental growth of the child, that a
11 caregiver shall use when determining whether to allow a child in foster
12 care under the responsibility of the state to participate in extracurricular,
13 enrichment, cultural and social activities.

14 (cc) "Relative" means a person related by blood, marriage or
15 adoption.

16 (dd) "Runaway" means a child who is willfully and voluntarily absent
17 from the child's home without the consent of the child's parent or other
18 custodian.

19 (ee) "Secretary" means the secretary for children and families or the
20 secretary's designee.

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

28 (gg) "Sexual abuse" means any contact or interaction with a child in
29 which the child is being used for the sexual stimulation of the perpetrator,
30 the child or another person. Sexual abuse shall include, but is not limited
31 to, allowing, permitting or encouraging a child to:

32 (1) Be photographed, filmed or depicted in pornographic material; or

33 (2) be subjected to aggravated human trafficking, as defined in
34 K.S.A. 2022 Supp. 21-5426(b), and amendments thereto, if committed in
35 whole or in part for the purpose of the sexual gratification of the offender
36 or another, or be subjected to an act that would constitute conduct
37 proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or
38 K.S.A. 2022 Supp. 21-6419 or 21-6422, and amendments thereto.

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

1 (ii) "Staff secure facility" means a facility described in K.S.A. 65-
2 535, and amendments thereto: (1) That does not include construction
3 features designed to physically restrict the movements and activities of
4 juvenile residents who are placed therein; (2) that may establish reasonable
5 rules restricting entrance to and egress from the facility; and (3) in which
6 the movements and activities of individual juvenile residents may, for
7 treatment purposes, be restricted or subject to control through the use of
8 intensive staff supervision. No staff secure facility shall be in a city or
9 county jail.

10 (jj) "Transition plan" means, when used in relation to a youth in the
11 custody of the secretary, an individualized strategy for the provision of
12 medical, mental health, education, employment and housing supports as
13 needed for the adult and, if applicable, for any minor child of the adult, to
14 live independently and specifically provides for the supports and any
15 services for which an adult with a disability is eligible including, but not
16 limited to, funding for home and community based services waivers.

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

21 Sec. 2. K.S.A. 38-2205 is hereby amended to read as follows: 38-
22 2205. (a) *Appointment of attorney for child. Upon the filing of a petition,*
23 *the court shall appoint an attorney to serve as counsel and represent a*
24 *child who is the subject of proceedings under this code. The attorney shall*
25 *consult with the child to direct such child's representation. If the child is*
26 *unable to direct representation, the attorney shall determine what the child*
27 *would decide if the child were capable of making an adequately*
28 *considered decision and represent the child in accordance with that*
29 *determination. The attorney shall take direction from the child as the child*
30 *develops the capacity to direct the attorney.*

31 (b) *Appointment of guardian ad litem*~~*and attorney for child; duties.*~~
32 *Upon the filing of a petition, or any time thereafter, the court shall may*
33 *appoint an attorney to serve as guardian ad litem for a child who is the*
34 *subject of proceedings under this code. If appointed, the guardian ad litem*
35 *shall make an independent investigation of the facts upon which the*
36 *petition is based and shall appear for and represent the best interests of the*
37 *child. When the child's position is not consistent with the determination of*
38 *the guardian ad litem as to the child's best interests, the guardian ad litem*
39 *shall inform the court of the disagreement. The guardian ad litem or the*
40 *child may request the court to appoint a second attorney to serve as*
41 *attorney for the child, and the court, on good cause shown, may appoint*
42 *such second attorney. The attorney for the child shall allow the child and*
43 *the guardian ad litem to communicate with one another but may require*

1 such communications to occur in the attorney's presence.

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

9 (1) If at any stage of the proceedings a parent desires but is
10 financially unable to employ an attorney, the court shall appoint an
11 attorney for the parent. It shall not be necessary to appoint an attorney to
12 represent a parent who fails or refuses to attend the hearing after having
13 been properly served with process in accordance with K.S.A. 38-2237, and
14 amendments thereto. A parent or custodian who is not a minor, a mentally
15 ill person or a disabled person may waive counsel either in writing or on
16 the record.

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

21 (3) As used in this subsection: (A) "Mentally ill person" ~~shall have~~
22 ~~the meaning ascribed thereto~~ means the same as defined in K.S.A. 59-
23 2946, and amendments thereto; and (B) "disabled person" ~~shall have the~~
24 ~~meaning ascribed thereto~~ means the same as defined in K.S.A. 77-201, and
25 amendments thereto.

26 (c) *Attorney for interested parties.* A person who, pursuant to K.S.A.
27 38-2241, and amendments thereto, is an interested party in a proceeding
28 involving a child alleged to be a child in need of care may be represented
29 by an attorney in connection with all proceedings under this code. At the
30 first hearing in connection with proceedings under this code, the court
31 shall distribute a pamphlet, designed by the court, to interested parties in a
32 proceeding involving a child alleged or adjudged to be a child in need of
33 care, to advise interested parties of their rights in connection with all
34 proceedings under this code. It shall not be necessary to appoint an
35 attorney to represent an interested party who fails or refuses to attend the
36 hearing after having been properly served with process in accordance with
37 K.S.A. 38-2237, and amendments thereto. If at any stage of the
38 proceedings a person who is an interested party under subsection (d) of
39 K.S.A. 38-2241, and amendments thereto, desires but is financially unable
40 to employ an attorney, the court may appoint an attorney for the interested
41 party.

42 (d) *Continuation of representation.* An attorney appointed for a child,
43 a guardian ad litem appointed to represent the best interests of a child or a

1 ~~second attorney appointed for a child as provided in subsection (a);~~ or an
 2 attorney appointed for a parent or custodian shall continue to represent the
 3 client at all subsequent hearings in proceedings under this code, including
 4 any appellate proceedings, unless relieved by the court upon a showing of
 5 good cause or upon transfer of venue.

6 (e) *Fees for counsel.*—~~An~~ Any attorney appointed pursuant to this
 7 section shall be allowed a reasonable fee for services, which may be
 8 assessed as an expense in the proceedings as provided in K.S.A. 38-2215,
 9 and amendments thereto.

10 Sec. 3. K.S.A. 2022 Supp. 38-2211 is hereby amended to read as
 11 follows: 38-2211. (a) *Access to the official file.* The following persons or
 12 entities shall have access to the official file of a child in need of care
 13 proceeding pursuant to this code:

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

16 (2) The parties to the proceedings and their attorneys.

17 (3) *The child's attorney.*

18 (4) A guardian ad litem for a child who is the subject of the
 19 proceeding.

20 ~~(4)~~(5) A court appointed special advocate for a child who is the
 21 subject of the proceeding or a paid staff member of a court appointed
 22 special advocate program.

23 ~~(5)~~(6) Any individual, or any public or private agency or institution,
 24 having custody of the child under court order or providing educational,
 25 medical or mental health services to the child or any placement provider or
 26 potential placement provider as determined by the secretary or court
 27 services officer.

28 ~~(6)~~(7) A citizen review board.

29 ~~(7)~~(8) The secretary of corrections or any agents designated by the
 30 secretary of corrections.

31 ~~(8)~~(9) Any county or district attorney from another jurisdiction with a
 32 pending child in need of care matter regarding any of the same parties.

33 ~~(9)~~(10) Any other person when authorized by a court order, subject to
 34 any conditions imposed by the order.

35 ~~(10)~~(11) The commission on judicial performance in the discharge of
 36 the commission's duties pursuant to article 32 of chapter 20 of the Kansas
 37 Statutes Annotated, and amendments thereto.

38 ~~(11)~~(12) An investigating law enforcement agency.

39 (b) *Access to the social file.* The following persons or entities shall
 40 have access to the social file of a child in need of care proceeding pursuant
 41 to this code:

42 (1) The court having jurisdiction over the proceeding, including the
 43 presiding judge and any court personnel designated by the judge.

1 (2) The attorney for a party to the proceeding or the person or persons
2 designated by an Indian tribe that is a party.

3 (3) The *child's attorney*.

4 (4) A guardian ad litem for a child who is the subject of the
5 proceeding.

6 ~~(4)~~(5) A court appointed special advocate for a child who is the
7 subject of the proceeding or a paid staff member of a court appointed
8 special advocate program.

9 ~~(5)~~(6) A citizen review board.

10 ~~(6)~~(7) The secretary.

11 ~~(7)~~(8) The secretary of corrections or any agents designated by the
12 secretary of corrections.

13 ~~(8)~~(9) Any county or district attorney from another jurisdiction with a
14 pending child in need of care matter regarding any of the same parties or
15 interested parties.

16 ~~(9)~~(10) Any other person when authorized by a court order, subject to
17 any conditions imposed by the order.

18 ~~(10)~~(11) An investigating law enforcement agency.

19 (c) *Preservation of records*. The Kansas state historical society shall
20 be allowed to take possession for preservation in the state archives of any
21 court records related to proceedings under the Kansas code for care of
22 children whenever such records otherwise would be destroyed. No such
23 records in the custody of the Kansas state historical society shall be
24 disclosed directly or indirectly to anyone for 70 years after creation of the
25 records, except as provided in subsections (a) and (b). Pursuant to
26 subsections (a)(9) and (b)(9), a judge of the district court may allow
27 inspection for research purposes of any court records in the custody of the
28 Kansas state historical society related to proceedings under the Kansas
29 code for care of children.

30 Sec. 4. K.S.A. 2022 Supp. 38-2212 is hereby amended to read as
31 follows: 38-2212. (a) *Principle of appropriate access*. Information
32 contained in confidential agency records concerning a child alleged or
33 adjudicated to be in need of care may be disclosed as provided in this
34 section and shall be disclosed as provided in subsection (e). Disclosure
35 shall in all cases be guided by the principle of providing access only to
36 persons or entities with a need for information that is directly related to
37 achieving the purposes of this code.

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

42 (c) *Necessary access*. The following persons or entities shall have
43 access to information from agency records. Access shall be limited to

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

7 (1) A child named in the report or records;

8 (2) *The child's attorney.*

9 (3) A guardian ad litem ~~appointed for the a child and the child's~~
10 ~~attorney.~~

11 ~~(2)(4)~~ A parent or other person responsible for the welfare of a child,
12 or such person's legal representative.

13 ~~(3)(5)~~ A court-appointed special advocate for a child, a citizen review
14 board or other advocate that reports to the court.

15 ~~(4)(6)~~ A person licensed to practice the healing arts or mental health
16 profession in order to diagnose, care for, treat or supervise:

17 (A) A child whom such service provider reasonably suspects may be
18 in need of care;

19 (B) a member of the child's family; or

20 (C) a person who allegedly abused or neglected the child.

21 ~~(5)(7)~~ A person or entity licensed or registered by the secretary of
22 health and environment or approved by the secretary for children and
23 families to care for, treat or supervise a child in need of care.

24 ~~(6)(8)~~ A coroner or medical examiner when such person is
25 determining the cause of death of a child.

26 ~~(7)(9)~~ The state child death review board established under K.S.A.
27 22a-243, and amendments thereto.

28 ~~(8)(10)~~ An attorney for a private party who files a petition pursuant to
29 K.S.A. 38-2233(b), and amendments thereto.

30 ~~(9)(11)~~ A foster parent, prospective foster parent, permanent
31 custodian, prospective permanent custodian, adoptive parent or
32 prospective adoptive parent. In order to assist such persons in making a
33 informed decision regarding acceptance of a particular child, to help the
34 family anticipate problems that may occur during the child's placement,
35 and to help the family meet the needs of the child in a constructive manner,
36 the secretary shall seek and shall provide the following information to such
37 persons as the information becomes available to the secretary:

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

39 (B) circumstances that necessitated placement;

40 (C) information about the child's family and the child's relationship to
41 the family that may affect the placement;

42 (D) important life experiences and relationships that may affect the
43 child's feelings, behavior, attitudes or adjustment;

1 (E) medical history of the child, including third-party coverage that
2 may be available to the child; and

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

5 ~~(10)~~(12) The state protection and advocacy agency as provided by
6 K.S.A. 65-5603(a)(10) or ~~K.S.A. 74-5515(a)(2)(A)~~ and (B), and
7 amendments thereto.

8 ~~(11)~~(13) Any educational institution to the extent necessary to enable
9 the educational institution to provide the safest possible environment for
10 its pupils and employees.

11 ~~(12)~~(14) Any educator to the extent necessary to enable the educator
12 to protect the personal safety of the educator and the educator's pupils.

13 ~~(13)~~(15) Any other federal, state or local government executive
14 branch entity or any agent of such entity, having a need for such
15 information in order to carry out such entity's responsibilities under the
16 law to protect children from abuse and neglect.

17 (d) *Specified access.* The following persons or entities shall have
18 access to information contained in agency records as specified.
19 Information authorized to be disclosed pursuant to this subsection shall not
20 contain information that identifies a reporter of a child who is alleged or
21 adjudicated to be a child in need of care.

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

39 (2) The secretary for children and families may summarize the
40 outcome of department actions regarding a child alleged to be a child in
41 need of care to a person having made such report.

42 (3) Information from confidential reports or records of a child alleged
43 or adjudicated to be a child in need of care may be disclosed to the public

1 when:

2 (A) The individuals involved or their representatives have given
3 express written consent; or

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

9 (e) *Law enforcement access.* The secretary shall disclose confidential
10 agency records of a child alleged or adjudicated to be a child in need of
11 care, as described in K.S.A. 38-2209, and amendments thereto, to the law
12 enforcement agency investigating the alleged or substantiated report or
13 investigation of abuse or neglect, regardless of the disposition of such
14 report or investigation. Such records shall include, but not be limited to,
15 any information regarding such report or investigation, records of past
16 reports or investigations concerning such child and such child's siblings
17 and the perpetrator or alleged perpetrator and the name and contact
18 information of the reporter or persons alleging abuse or neglect and case
19 managers, investigators or contracting agency employees assigned to or
20 investigating such report. Such records shall only be used for the purposes
21 of investigating the alleged or substantiated report or investigation of
22 abuse or neglect.

23 (f) *Court order.* Notwithstanding the provisions of this section, a
24 court of competent jurisdiction, after in camera inspection, may order
25 disclosure of confidential agency records pursuant to a determination that
26 the disclosure is in the best interests of the child who is the subject of the
27 reports or that the records are necessary for the proceedings of the court.
28 The court shall specify the terms of disclosure and impose appropriate
29 limitations.

30 (g) (1) Notwithstanding any other provision of law to the contrary,
31 except as provided in paragraph (6), in the event that child abuse or
32 neglect results in a child fatality or near fatality, reports or records of a
33 child alleged or adjudicated to be in need of care received by the secretary,
34 a law enforcement agency or any juvenile intake and assessment worker
35 shall become a public record and subject to disclosure pursuant to K.S.A.
36 45-215, and amendments thereto.

37 (2) Within seven days of receipt of a request in accordance with the
38 procedures adopted under K.S.A. 45-220, and amendments thereto, the
39 secretary shall notify any affected individual that an open records request
40 has been made concerning such records. The secretary or any affected
41 individual may file a motion requesting the court to prevent disclosure of
42 such record or report, or any select portion thereof. Notice of the filing of
43 such motion shall be provided to all parties requesting the records or

1 reports, and such party or parties shall have a right to hearing, upon
2 request, prior to the entry of any order on such motion. If the affected
3 individual does not file such motion within seven days of notification, and
4 the secretary has not filed a motion, the secretary shall release the reports
5 or records. If such motion is filed, the court shall consider the effect such
6 disclosure may have upon an ongoing criminal investigation, a pending
7 prosecution, or the privacy of the child, if living, or the child's siblings,
8 parents or guardians, and the public's interest in the disclosure of such
9 records or reports. The court shall make written findings on the record
10 justifying the closing of the records and shall provide a copy of the journal
11 entry to the affected parties and the individual requesting disclosure
12 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and
13 amendments thereto.

14 (3) Notwithstanding the provisions of paragraph (2), in the event that
15 child abuse or neglect results in a child fatality, the secretary shall release
16 the following information in response to an open records request made
17 pursuant to the Kansas open records act, within seven business days of
18 receipt of such request, as allowed by applicable law:

- 19 (A) Age and sex of the child;
- 20 (B) date of the fatality;
- 21 (C) a summary of any previous reports of abuse or neglect received
22 by the secretary involving the child, along with the findings of such
23 reports; and
- 24 (D) any department recommended services provided to the child.

25 (4) Notwithstanding the provisions of paragraph (2), in the event that
26 a child fatality occurs while such child was in the custody of the secretary
27 for children and families, the secretary shall release the following
28 information in response to an open records request made pursuant to the
29 Kansas open records act, within seven business days of receipt of such
30 request, as allowed by applicable law:

- 31 (A) Age and sex of the child;
- 32 (B) date of the fatality; and
- 33 (C) a summary of the facts surrounding the death of the child.

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

40 (6) Nothing in this subsection shall allow the disclosure of reports,
41 records or documents concerning the child and such child's biological
42 parents that were created prior to such child's adoption. Nothing herein is
43 intended to require that an otherwise privileged communication lose its

1 privileged character.

2 Sec. 5. K.S.A. 38-2219 is hereby amended to read as follows: 38-
3 2219. (a) *Of the child.* (1) *Psychological or emotional.* During proceedings
4 under this code, the court, on its own motion or the motion of the *child's*
5 *attorney, the* guardian ad litem for the child, a party or interested party,
6 may order an evaluation and written report of the psychological or
7 emotional development or needs of a child who is the subject of the
8 proceedings. The court may refer the child to a state institution for the
9 evaluation if the secretary advises the court that the facility is a suitable
10 place to care for, treat or evaluate the child and that space is available. The
11 expenses of transportation to and from the state facility may be paid as a
12 part of the expenses of temporary care and custody. The child may be
13 referred to a mental health center or qualified professional for evaluation
14 and the expenses of the evaluation may be considered as expenses of the
15 proceedings and assessed as provided in this code. If the court orders an
16 evaluation as provided in this section, a parent of the child shall have the
17 right to obtain an independent evaluation at the expense of the parent.

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

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

37 (b) *Physical, psychological or emotional status of parent or*
38 *custodian.* During proceedings under this code, the court may order:

39 (1) An examination, evaluation and report of the physical, mental or
40 emotional status or needs of a parent, a person residing with a parent or
41 any person being considered as one to whom the court may grant custody;
42 and

43 (2) written reports from any qualified person concerning the

1 parenting skills or ability to provide for the physical, mental or emotional
2 needs and future development of a child by a parent or any person being
3 considered as one to whom the court may grant custody.

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

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

18 (d) *Reports prepared by a court-appointed special advocate or by the*
19 *secretary.* All reports prepared by a court-appointed special advocate or by
20 the secretary shall be filed with the court and shall be made available as
21 provided in subsection (e).

22 (e) *Availability of reports.* (1) All reports provided for in this section
23 shall be filed with the court and shall be made available to counsel for any
24 party or interested party prior to any scheduled hearing on any matter
25 addressed by the report. If any party or interested party is not represented
26 by counsel, the report shall be made available to that party.

27 (2) All reports provided for in this section may be read by the court at
28 any stage of a proceeding under this code, but no fact or conclusion
29 derived from a report shall be used as the basis for an order of the court
30 unless the information has been admitted into evidence following an
31 opportunity for any party or interested party to examine, under oath, the
32 person who prepared the report. If the court is in possession of a report that
33 has not been offered into evidence, the court shall inquire whether there is
34 an objection to admitting the report into evidence. If there is no objection,
35 the court may admit the report into evidence.

36 Sec. 6. K.S.A. 38-2229 is hereby amended to read as follows: 38-
37 2229. (a) The secretary, a law enforcement officer, or a multidisciplinary
38 team appointed pursuant to K.S.A. 38-2228, and amendments thereto, may
39 request disclosure of documents, reports or information in regard to a
40 child, who is the subject of a report of abuse or neglect, by making a
41 written verified application to the district court. Upon a finding by the
42 court that there is probable cause to believe the information sought will
43 assist in the investigation of a report of child abuse or neglect, the court

1 may issue a subpoena, subpoena duces tecum or an order for the
2 production of the requested documents, reports or information and
3 directing the documents, reports or information to be delivered to the
4 applicant at a specific time, date and place.

5 (b) The time and date of delivery shall not be sooner than five days
6 after the service of the subpoena or order, excluding Saturdays, Sundays,
7 holidays, and days on which the office of the clerk of the court is not
8 accessible. The court issuing the subpoena or order shall keep all
9 applications filed pursuant to this subsection and a copy of the subpoena or
10 order in a special file maintained for that purpose. Upon receiving service
11 of a subpoena, subpoena duces tecum or an order for production pursuant
12 to this section, the person or agency served shall give oral or written notice
13 of service to any person known to have a right to assert a privilege or
14 assert a right of confidentiality in regard to the documents, reports or
15 information sought at least seven days before the date of delivery.

16 (c) Any parent, child, *child's attorney*, guardian ad litem, person or
17 entity subpoenaed or subject to an order of production or person or entity
18 who claims a privilege or right of confidentiality may request in writing
19 that the court issuing the subpoena or order of production quash the
20 subpoena, subpoena duces tecum or order for production issued pursuant
21 to this section. The request shall automatically stay the operation of the
22 subpoena, subpoena duces tecum or order for production and the
23 documents, reports or information requested shall not be delivered until
24 the issuing court has held a hearing to determine if the documents, reports
25 or information are subject to the claimed privilege or right of
26 confidentiality, and whether it is in the best interests of the child for the
27 subpoena or order to produce to be honored. The request to quash shall be
28 filed with the district court issuing the subpoena or order at least 24 hours
29 prior to the specified time and date of delivery, excluding Saturdays,
30 Sundays, holidays, or days on which the office of the clerk of the court is
31 not accessible, and a copy of the written request must be given to the
32 person subpoenaed or subject to the order for production at least 24 hours
33 prior to the specified time and date of delivery.

34 Sec. 7. K.S.A. 38-2236 is hereby amended to read as follows: 38-
35 2236. (a) *Persons to be served*. The summons and a copy of the petition
36 shall be served on:

37 (1) The child alleged to be a child in need of care by serving the
38 *child's attorney*;

39 (2) *the guardian ad litem, if appointed for the child*;

40 ~~(2)~~(3) the parents or parent having legal custody or who may be
41 ordered to pay child support by the court;

42 ~~(3)~~(4) the person with whom the child is residing; and

43 ~~(4)~~(5) any other person designated by the county or district attorney.

1 (b) A copy of the petition and notice of hearing shall be mailed by
2 ~~first-class~~ *first-class* mail to the child's grandparents with whom the child
3 does not reside.

4 Sec. 8. K.S.A. 38-2247 is hereby amended to read as follows: 38-
5 2247. (a) *Adjudication*. Proceedings prior to and including adjudication
6 under this code shall be open to attendance by any person unless the court
7 determines that closed proceedings or the exclusion of that person would
8 be in the best interests of the child or is necessary to protect the privacy
9 rights of the parents.

10 (1) The court may not exclude the *child's attorney*, a guardian ad
11 litem, parties and interested parties.

12 (2) Members of the news media shall comply with supreme court rule
13 1001.

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

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

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

26 (c) Notwithstanding subsections (a) and (b) of this section, the court
27 shall permit the attendance at the proceedings of up to two people
28 designated by the parent of the child, both of whom have participated in a
29 parent ally orientation program approved by the judicial administrator.

30 (1) Such parent ally orientation program shall include, but not be
31 limited to, information concerning the confidentiality of the proceedings;
32 the child and parent's right to counsel; the definitions and jurisdiction
33 pursuant to the Kansas code for care of children; the types and purposes of
34 the hearings; options for informal supervision and dispositions; placement
35 options; the parents' obligation to financially support the child while the
36 child is in the state's custody; obligations of the secretary for children and
37 families; obligations of entities that contract with the Kansas department
38 for children and families for family preservation, foster care and adoption;
39 the termination of parental rights; the procedures for appeals; and the basic
40 rules regarding court procedure.

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

1 (d) *Preservation of confidentiality.* If information required to be kept
2 confidential by K.S.A. 38-2209, and amendments thereto, is to be
3 introduced into evidence and there are persons in attendance who are not
4 authorized to receive the information, the court may exclude those persons
5 during the presentation of the evidence or conduct an in camera inspection
6 of the evidence.

7 Sec. 9. K.S.A. 38-2248 is hereby amended to read as follows: 38-
8 2248. (a) In any proceedings under this code, parents, persons with whom
9 the child has been residing pursuant to ~~subsection (d)~~ of K.S.A. 38-
10 2241(d), and amendments thereto, *the child's attorneys* and guardians ad
11 litem may stipulate or enter no contest statements to all or part of the
12 allegations in the petition.

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

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

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

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

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

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

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

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

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

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

4 Sec. 10. K.S.A. 38-2249 is hereby amended to read as follows: 38-
5 2249. (a) In all proceedings under this code, the rules of evidence of the
6 code of civil procedure shall apply, except that no evidence relating to the
7 condition of a child shall be excluded solely on the ground that the matter
8 is or may be the subject of a physician-patient privilege, psychologist-
9 client privilege or social worker-client privilege.

10 (b) (1) The judge presiding at all hearings under this code shall not
11 consider or rely upon any report not properly admitted according to the
12 rules of evidence, except as provided by K.S.A. 38-2219, and amendments
13 thereto.

14 (2) In all proceedings under this code, a report concerning the results
15 and analysis of a court-ordered test of a person's blood, breath, urine or
16 other bodily substance to determine the presence of alcohol or drugs shall
17 be admissible in evidence if the report is prepared and attested to by the
18 person conducting the test or an authorized employee of the facility that
19 conducted the test. Such person shall prepare a certificate that includes an
20 attestation as to the result and analysis of the test and sign the certificate
21 under oath. Nothing in this section shall prevent a party from calling such
22 person as a witness.

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

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

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

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

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

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

41 (6) every voice on the recording is identified;

42 (7) the person conducting the interview of the child in the recording is
43 present at the proceeding and is available to testify or be cross-examined

1 by any party or interested party; and

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

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

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

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

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

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

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

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

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

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

29 (2) only the attorneys for the parties *or the child's attorney* may
30 question the child; and

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

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

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

1 unless the court, in its discretion, determines otherwise.

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

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

19 (b) The notice shall state the placement to which the secretary plans
20 to transfer the child and the reason for the proposed action. The notice
21 shall be mailed by first class mail 30 days in advance of the planned
22 transfer, except that the secretary shall not be required to wait 30 days to
23 transfer the child if all persons enumerated in subsection (a)(2) through (8)
24 consent in writing to the transfer.

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

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

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

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

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

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

14 Sec. 12. K.S.A. 38-2260 is hereby amended to read as follows: 38-
15 2260. (a) *Valid court order.* During proceedings under this code, the court
16 may enter an order directing a child who is the subject of the proceedings
17 to remain in a present or future placement if:

18 (1) The child, *the child's attorney* and, *if appointed*, the child's
19 guardian ad litem are present in court when the order is entered;

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

24 (3) the child, *the child's attorney* and, *if appointed*, the *child's*
25 guardian ad litem receive oral and written notice of the consequences of
26 violation of the order; and

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

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

34 (c) *Ex parte order.* After reviewing the application filed pursuant to
35 subsection (b), the court may enter an ex parte order directing that the
36 child be taken into custody and held in a secure facility designated by the
37 court, if the court finds probable cause that the child violated the court's
38 order to remain in placement without good cause. Pursuant to K.S.A. 38-
39 2237, and amendments thereto, the order shall be served on the child's
40 parents, the child's legal custodian, *the child's attorney* and, *if appointed*,
41 the child's guardian ad litem.

42 (d) *Preliminary hearing.* Within 24 hours following a child's being
43 taken into custody pursuant to an order issued under subsection (c), the

1 court shall hold a preliminary hearing to determine whether the child
2 admits or denies the allegations of the application and, if the child denies
3 the allegations, to determine whether probable cause exists to support the
4 allegations.

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

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

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

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

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

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

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

34 (3) been informed of:

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

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

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

39 (D) the right to appeal.

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

1 custody of the child to:

2 (A) A parent or other legal custodian;

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

6 (C) a youth residential facility; or

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

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

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

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

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

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

32 Sec. 13. K.S.A. 38-2268 is hereby amended to read as follows: 38-
33 2268. (a) Prior to a hearing to consider the termination of parental rights, if
34 the child's permanency plan is either adoption or appointment of a
35 custodian, with the approval of the *child's attorney and, if appointed, the*
36 *child's* guardian ad litem and acceptance and approval of the secretary,
37 either or both parents may: (1) Relinquish parental rights to the child to the
38 secretary; (2) consent to an adoption; or (3) consent to appointment of a
39 permanent custodian.

40 (b) *Relinquishment of child to secretary.* (1) Any parent or parents
41 may relinquish a child to the secretary, and if the secretary accepts the
42 relinquishment in writing, the secretary shall stand in loco parentis to the
43 child and shall have and possess over the child all rights of a parent,

1 including the power to place the child for adoption and give consent
2 thereto.

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

7 (3) The relinquishment shall be in writing and shall be acknowledged
8 before a judge of a court of record or before an officer authorized by law
9 to take acknowledgments. If the relinquishment is acknowledged before a
10 judge of a court of record, it shall be the duty of the court to advise the
11 relinquishing parent of the consequences of the relinquishment.

12 (4) Except as otherwise provided, in all cases where a parent has
13 relinquished a child to the agency pursuant to K.S.A. 59-2111 through 59-
14 2143, and amendments thereto, all the rights of the parent shall be
15 terminated, including the right to receive notice in a subsequent adoption
16 proceeding involving the child. Upon such relinquishment, all the rights of
17 the parents to such child, including such parent's right to inherit from or
18 through such child, shall cease.

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

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

26 (c) *Permanent custody.* (1) A parent may consent to appointment of
27 an individual as permanent custodian and if the individual accepts the
28 consent, such individual shall stand in loco parentis to the child and shall
29 have and possess over the child all the rights of a legal guardian.

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

32 (3) The consent shall be in writing and shall be acknowledged before
33 a judge of a court of record or before an officer authorized by law to take
34 acknowledgments. If the consent is acknowledged before a judge of a
35 court of record, it shall be the duty of the court to advise the consenting
36 parent of the consequences of the consent.

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

40 (d) *Adoption.* If the child is in the custody of the secretary and the
41 parental rights of both parents have been terminated or the parental rights
42 of one parent have been terminated or that parent has relinquished parental
43 rights to the secretary, the child may be adopted by persons approved by

1 the secretary and the court. If the child is no longer in the custody of the
2 secretary, the court may approve adoption of the child by persons who: (1)
3 Both parents consent to adopt; or (2) one parent consents to adopt, if the
4 parental rights of the other parent have been terminated. The consent shall
5 follow the form contained in the appendix of forms following K.S.A. 59-
6 2143, and amendments thereto.

7 Sec. 14. K.S.A. 38-2275 is hereby amended to read as follows: 38-
8 2275. (a) When an appeal is taken pursuant to this code, fees—~~if~~ of the
9 *child's attorney, the child's* guardian ad litem or of an attorney appointed to
10 represent a parent shall be fixed by the district court. The fees, together
11 with the costs of transcripts and records on appeal, shall be taxed as
12 expenses on appeal. The court on appeal may assess the fees and expenses
13 against a party or interested party or order that they be paid from the
14 general fund of the county.

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

21 Sec. 15. K.S.A. 38-2291 is hereby amended to read as follows: 38-
22 2291. (a) Whenever a child is placed in a qualified residential treatment
23 program, the secretary shall notify the court in writing within seven days
24 of placement. Written notice shall also be given to: (1) The petitioner; (2)
25 the attorney for the parents, if any; (3) each parent at the last known
26 address; (4) the child, if 12 or more years of age; (5) *the child's attorney;*
27 ~~(6)~~ the child's guardian ad litem; ~~(6)~~(7) any other party or interested party;
28 and ~~(7)~~(8) the child's court-appointed special advocate.

29 (b) Within 30 days after a child is placed in a qualified residential
30 treatment program, any person enumerated in subsection (a)(1) through~~(7)~~
31 (8) receiving notice as provided above may request, in writing, that the
32 court conduct a hearing. If a hearing is requested, the court shall conduct
33 the hearing within 60 days of placement. The court shall give notice of the
34 hearing to all persons enumerated in subsection (a)(1) through~~(7)~~ (8).

35 (c) The secretary shall provide to the court in writing an assessment
36 and documentation of the need for placement in a qualified residential
37 treatment program.

38 (d) Within 60 days after a child is placed in a qualified residential
39 treatment program, the court shall:

40 (1) Consider the assessment and documentation provided by the
41 secretary pursuant to subsection (c);

42 (2) determine whether the needs of the child can be met through
43 placement in a foster family home or, if not, whether placement of the

1 child in a qualified residential treatment program provides the most
2 effective and appropriate level of care for the child in the least restrictive
3 environment and whether that placement is consistent with the short-term
4 and long-term goals for the child as specified in the permanency plan for
5 the child; and

6 (3) approve or disapprove the placement.

7 (e) This section shall be a part of and supplemental to the revised
8 Kansas code for care of children.

9 Sec. 16. K.S.A. 38-2202, 38-2205, 38-2219, 38-2229, 38-2236, 38-
10 2247, 38-2248, 38-2249, 38-2258, 38-2260, 38-2268, 38-2275 and 38-
11 2291 and K.S.A. 2022 Supp. 38-2211 and 38-2212 are hereby repealed.

12 Sec. 17. This act shall take effect and be in force from and after its
13 publication in the statute book.