

# **Child in Need of Care Code Book**

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REVISED KANSAS CODE FOR THE CARE OF CHILDREN

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**Chapter 38.—MINORS**

**Article 22.—REVISED KANSAS CODE FOR CARE OF CHILDREN**

**38-2201. Citation; construction of code; policy of state.**

K.S.A. 2017 Supp. 38-2201 through 38-2283, 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. Any orders pursuant to this code shall take precedence over any similar order under chapter 23 of the Kansas Statutes Annotated, and amendments thereto, the Kansas family law code, article 11 of chapter 38 of the Kansas Statutes Annotated, and amendments thereto, determination of parentage, article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, adoption and relinquishment act, article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, guardians and conservators, or article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, protection from abuse act, until jurisdiction under this code is terminated.

(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.

(d) (1) Nothing in this code shall be construed to permit any person to compel a parent to medicate a child if the parent is acting in accordance with medical advice from a physician. The actions of a parent in such circumstances 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 actions and harm to the child.

(2) As used in this subsection, "physician" means a person licensed to practice medicine and surgery by the state board of healing arts or by an equivalent licensing board or entity in any state.

**History:** L. 2006, ch. 200, § 1; L. 2010, ch. 75, § 4; L. 2011, ch. 24, § 3; L. 2012, ch. 162, § 59; L. 2016, ch. 102, § 8; July 1.

### Source or Prior Law:

38-1501, 38-1521, 38-1584.

### CASE ANNOTATIONS

1. Father dismisses court appointed attorney, requests pro se representation then requests counsel on trial day, denial not error. In re J.A.H., 285 K. 375, 382, 172 P.3d 1 (2007).

2. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 744, 172 P.3d 63 (2007).

3. Termination of parental rights of imprisoned father upheld; Indian child welfare act construed and applied. In re M.B., 39 K.A.2d 31, 44 to 47, 176 P.3d 977 (2008).

4. Indian child welfare act was not followed in child in need of care case; case remanded. In re M.F., 41 K.A.2d 927, 206 P.3d 57 (2009).

5. 60-day adjudication requirement of 38-2251 held directory, not mandatory. In re L.C.W., 42 K.A.2d 293, 211 P.3d 829 (2009).

6. Balancing test weighing the interests of the state, parent and child discussed. In re L.B., 42 K.A.2d 837, 217 P.3d 1004 (2009).

### 38-2202. Definitions. [See Revisor's Note]

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 at the time of filing of the petition or issuance of an ex parte protective custody order pursuant to K.S.A. 2017 Supp. 38-2242, and amendments thereto, 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. 41-727, K.S.A. 74-8810(j), K.S.A. 79-3321(m) or (n), or K.S.A. 2017 Supp. 21-6301(a)(14), 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. 2017 Supp. 21-5102, 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. 2017 Supp. 21-6301(a)(14), and amendments thereto;

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

(14) has been subjected to an act which would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or has committed an act which, if committed by an adult, would constitute selling sexual relations, as defined by K.S.A. 2017 Supp. 21-6419, and amendments thereto.

(e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2017 Supp. 38-2207 and 38-2208, and amendments thereto.

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

(g) "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 K.S.A. 2017 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.

(h) "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.

(i) "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.

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

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

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

(m) "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 K.S.A. 2017 Supp. 38-2241, and amendments thereto, or Indian tribe seeking to intervene that is not a party.

(n) "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.

(o) "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.

(p) "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.

(q) "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.

(r) "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.

(s) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2017 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

(t) "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 K.S.A. 2017 Supp. 38-2217(a)(2), and amendments thereto.

(u) "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.

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

(w) "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.

(x) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2017 Supp. 38-2272, and amendments thereto.

(y) "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.

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

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

(bb) "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.

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

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

(ee) "Secure facility" means a facility, other than a staff secure 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.

(ff) "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, but is not limited to, allowing, permitting or encouraging a child to:

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

(2) be subjected to aggravated human trafficking, as defined in K.S.A. 2017 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the offender or another, or be subjected to an act which would constitute conduct proscribed by article 55 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 2017 Supp. 21-6419 or 21-6422, and amendments thereto.

(gg) "Shelter facility" means any public or private facility or home, other than a juvenile detention facility or staff secure 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.

(hh) "Staff secure facility" means a facility described in K.S.A. 2017 Supp. 65-535, and amendments thereto: (1) That does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein; (2) that may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. No staff secure facility shall be in a city or county jail.

(ii) "Transition plan" means, when used in relation to a youth in the custody of the secretary, an individualized strategy for the provision of medical, mental health, education, employment and housing supports as needed for the adult and, if applicable, for any minor child of the adult, to live independently and specifically provides for the supports and any services for which an adult with a

disability is eligible including, but not limited to, funding for home and community based services waivers.

(jj) "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.

**History:** L. 2006, ch. 200, § 2; L. 2008, ch. 169, § 1; L. 2009, ch. 99, § 1; L. 2010, ch. 75, § 5; L. 2011, ch. 30, § 155; L. 2012, ch. 162, § 60; L. 2013, ch. 120, § 31; L. 2015, ch. 94, § 12; L. 2016, ch. 102, § 9; July 1.

**Source or Prior Law:**  
38-1502.

**Revisor's Note:**

CAUTION: Section was amended twice in the 2016 session, see also L. 2016, ch. 46, § 23, effective July 1, 2019.

**CASE ANNOTATIONS**

1. Confrontation clause does not apply in CINC proceedings. In re J.D.C., 284 K. 155, 161, 159 P.3d 974 (2007).

2. Cited in upholding constitutionality of CINC; safeguards against arbitrary enforcement listed. In re A.F., 38 K.A.2d 773, 777, 172 P.3d 66 (2007).

3. Cited in discussion of "clear and convincing evidence" and standard for appellate review; prior court holdings disapproved. In re B.D.-Y., 286 K. 686, 690, 706, 707, 187 P.3d 594 (2008).

4. Cited; consensual appointment of permanent guardian under 38-1587 does not terminate parent's obligation to support child. State ex rel. Secretary of SRS v. Bohrer, 286 K. 898, 903, 189 P.3d 1157 (2008).

5. District court overturns magistrate's order finding child in need of care. In re L.C.W., 42 K.A.2d 293, 211 P.3d 829 (2009).

6. Balancing test weighing the interests of the state, parent and child discussed. In re L.B., 42 K.A.2d 837, 217 P.3d 1004 (2009).

7. Child in need of care includes those children who have been residing in the same

residence as a sibling who is in need of care. In re A.H., 50 K.A.2d 945, 948, 334 P.3d 339 (2014).

**38-2203. Jurisdiction; age of child, presumptions; precedence of certain orders.**

(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 court knows or has reason to know that an Indian child is involved in the proceeding, in which case, 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, K.S.A. 2017 Supp. 38-2234, and amendments thereto; ex parte custody orders, K.S.A. 2017 Supp. 38-2242, and amendments thereto; temporary custody hearing, K.S.A. 2017 Supp. 38-2243, and amendments thereto; adjudication, K.S.A. 2017 Supp. 38-2247, and amendments thereto; burden of proof, K.S.A. 2017 Supp. 38-2250, and amendments thereto; disposition, K.S.A. 2017 Supp. 38-2255, and amendments thereto; permanency hearings, K.S.A. 2017 Supp. 38-2264, and amendments thereto; termination of parental rights, K.S.A. 2017 Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto; establishment of permanent custodianship, K.S.A. 2017 Supp. 38-2268 and 38-2272, 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 article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

(b) Subject to the uniform child custody jurisdiction and enforcement act, K.S.A. 2017 Supp. 23-37,101 through 23-37,405, 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 K.S.A. 2017 Supp. 38-2242, and amendments thereto. When the court acquires jurisdiction over a child in need of care, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still

attending high school unless there is no court approved transition plan, in which event jurisdiction may continue until a transition plan is approved by the court or until the child reaches the age of 21; (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.

(f) A court's order issued in a proceeding pursuant to this code, shall take precedence over such orders in a civil custody case, a proceeding under article 31 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, protection from abuse act, or a comparable case in another jurisdiction, except as provided by K.S.A. 2017 Supp. 23-37,101 through 23-37,405, and amendments thereto, uniform child custody jurisdiction and enforcement act.

**History:** L. 2006, ch. 200, § 3; L. 2008, ch. 169, § 2; L. 2009, ch. 99, § 2; L. 2010, ch. 75, § 6; L. 2011, ch. 24, § 4; L. 2012, ch. 162, § 61; May 31.

**Source or Prior Law:**

38-1503, 38-1515.

**CASE ANNOTATIONS**

1. Indian child welfare act was not followed in child in need of care case; case remanded. In re M.F., 41 K.A.2d 927, 206 P.3d 57 (2009).

### **38-2204. Venue.**

(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.

**History:** L. 2006, ch. 200, § 4; Jan. 1, 2007.

### **Source or Prior Law:**

38-1504.

### **38-2205. Right to counsel; guardian ad litem.**

(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 K.S.A. 2017 Supp. 38-2237, 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 K.S.A. 2017 Supp. 38-2241, 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 K.S.A. 2017 Supp. 38-2237, and amendments thereto. If at any stage of the proceedings a person who is an interested party under subsection (d) of K.S.A. 2017 Supp. 38-2241, 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 K.S.A. 2017 Supp. 38-2215, and amendments thereto.

**History:** L. 2006, ch. 200, § 5; Jan. 1, 2007.

#### **Source or Prior Law:**

38-1505.

#### **CASE ANNOTATIONS**

1. Father dismisses court appointed attorney, requests pro se representation then requests counsel on trial day, denial not error. In re J.A.H., 285 K. 375, 383, 172 P.3d 1 (2007).

2. Cited in upholding constitutionality of CINC; safeguards against arbitrary enforcement listed. In re A.F., 38 K.A.2d 773, 778, 779, 172 P.3d 66 (2007).

3. Fundamental fairness exception set out in State v. Ortiz, 230 K. 733, 640 P.2d 1255 (1982), not applicable. In re L.B., 42 K.A.2d 837, 217 P.3d 1004 (2009).

#### **38-2206. Appointment of special advocate.**

(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.

**History:** L. 2006, ch. 200, § 6; Jan. 1, 2007.

#### **Source or Prior Law:**

38-1505a.

#### **38-2207. Citizen review boards; members.**

(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.

**History:** L. 2006, ch. 200, § 7; Jan. 1, 2007.

**Source or Prior Law:**

38-1812.

**38-2208. Same; duties and powers.**

(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) In any case referred to a citizen review board, the court shall conduct a hearing at least once each year.

(d) The judge shall consider the citizen review board recommendations in making an

authorized dispositional order pursuant to K.S.A. 2017 Supp. 38-2255, 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.

**History:** L. 2006, ch. 200, § 8; L. 2010, ch. 75, § 7; July 1.

**Source or Prior Law:**

38-1813.

**38-2209. Confidentiality of child in need of care records; penalties; immunities.**

(a) Confidentiality requirements. In order to protect the privacy of children who are the subject of a child in need of care record or report, the records identified in this section shall be confidential and shall not be disclosed except as provided in K.S.A. 2017 Supp. 38-2210 through 38-2213, and amendments thereto. Confidential records that are disclosed pursuant to K.S.A. 2017 Supp. 38-2210 through 38-2213, and amendments thereto, shall not be further disclosed except to persons or entities authorized to receive them as provided in those sections, or by being presented as admissible evidence.

(1) Court records. Court records include both the official file and the social file.

(A) Official file. The official file of proceedings pursuant to this code shall consist of the pleadings, process, service of process, orders, writs and journal entries reflecting hearings held and judgments and decrees entered by the court. The official file shall be kept separate from other records of the court.

(B) Social file. The social file of proceedings pursuant to this code shall consist of reports and information received by the court, other than the official file. The social file shall be kept separate from other records of the court.

(2) Agency records. Agency records shall consist of all records and reports in the possession

or control of the secretary or any agent of the secretary or of a juvenile intake and assessment agency concerning children alleged or adjudicated to be in need of care.

(3) Law enforcement records. Law enforcement records shall consist of all records and reports in the possession of a law enforcement agency concerning children alleged or adjudicated to be in need of care and shall, to the extent practical, be kept separate from other records held by a law enforcement agency.

(b) Penalties for improper disclosure of confidential records. No individual, association, partnership, corporation or other entity shall willfully or knowingly disclose, permit or encourage disclosure of the contents of records or reports in violation of the confidentiality requirements of this section. The court in a child in need of care proceeding may impose a civil penalty of up to \$1,000 on any person or entity that violates this section. Violation of this section is a class A nonperson misdemeanor.

(c) Immunity. The following immunities shall apply to the disclosure of confidential information:

(1) Anyone who participates in providing or receiving information without malice under the provisions of K.S.A. 2017 Supp. 38-2210 through 38-2213, and amendments thereto, shall have immunity from any civil liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from providing or receiving information.

(2) The sharing of any information pursuant to this code by any person licensed or registered by the behavioral science regulatory board shall not be subject to review under any rules or regulations adopted by the behavioral sciences regulatory board.

(d) Risk of harm to child or others. Access to or disclosure of information pursuant to K.S.A. 2017 Supp. 38-2210 through 38-2213, and amendments thereto, is not required if the person or entity in possession of a record or report has reason to believe the person requesting such information may harm a child or other person as a result of such access or disclosure. The court may enter an order

compelling or prohibiting access to, or disclosure of information.

**History:** L. 2004, ch. 178, § 1; July 1.

**Source or Prior Law:**

38-1505b.

**38-2210. Parties exchanging information.**

To facilitate investigation and ensure the provision of necessary services to children who may be in need of care and such children's families, the following persons and entities with responsibilities concerning a child who is alleged or adjudicated to be in need of care shall freely exchange information:

(a) The secretary.

(b) The secretary of corrections.

(c) The law enforcement agency receiving such report.

(d) Members of a court appointed multidisciplinary team.

(e) An entity mandated by federal law or an agency of any state authorized to receive and investigate reports of a child known or suspected to be in need of care.

(f) A military enclave or Indian tribal organization authorized to receive and investigate reports of a child known or suspected to be in need of care.

(g) A county or district attorney with responsibility for filing a petition pursuant to K.S.A. 2017 Supp. 38-2214, and amendments thereto.

(h) A court services officer who has taken a child into custody pursuant to K.S.A. 2017 Supp. 38-2231, and amendments thereto.

(i) An intake and assessment worker.

(j) Any community corrections program which has the child under court ordered supervision.

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

(l) The interstate compact for juveniles compact administrator for the purpose of carrying out the responsibilities related to the interstate compact for juveniles.

**History:** L. 2004, ch. 178, § 2; L. 2016, ch. 102, § 10; July 1.

**Source or Prior Law:**

38-1505c.

**38-2211. Access to official and social file; preservation of records.**

(a) Access to the official file. The following persons or entities shall have access to the official file of a child in need of care proceeding pursuant to this code:

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

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

(3) The guardian ad litem for a child who is the subject of the proceeding.

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

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

(6) A citizen review board.

(7) The secretary of corrections or any agents designated by the secretary of corrections.

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

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

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

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

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

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

(3) The guardian ad litem for a child who is the subject of the proceeding.

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

(5) A citizen review board.

(6) The secretary.

(7) The secretary of corrections or any agents designated by the secretary of corrections.

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

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

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

**History:** L. 1982, ch. 182, § 6; L. 1988, ch. 139, § 1; L. 1992, ch. 318, § 1; L. 1996, ch. 229, § 32; L. 2004, ch. 178, § 3; L. 2008, ch. 145, § 7; L. 2009, ch. 143, § 15; L. 2016, ch. 102, § 11; July 1.

**Source or Prior Law:**

38-1506.

**Revisor's Note:**

Section was amended twice in the 2008 session, see also 38-2211a.

**Research and Practice Aids:**

Infants § 133.

C.J.S. Infants §§ 57, 69 to 85.

**CASE ANNOTATIONS**

1. Cited; second severance proceeding, change of circumstances, inapplicability of res judicata and collateral estoppel examined. In re A.S., 12 K.A.2d 594, 598, 752 P.2d 705 (1988).

2. Reference to a document attached to parental termination pleading does not constitute an allegation stating a claim. In re C.H.W., 26 K.A.2d 413, 417, 422, 988 P.2d 276 (1999).

**38-2211a.**

**History:** L. 1982, ch. 182, § 6; L. 1988, ch. 139, § 1; L. 1992, ch. 318, § 1; L. 1996, ch. 229, § 32; L. 2004, ch. 178, § 3; L. 2008, ch. 169, § 3; Repealed, L. 2009, ch. 143, § 37; July 1.

**38-2212. Appropriate and necessary access; exchange of information; court ordered disclosure; limited public information.**

(a) Principle of appropriate access. Information contained in confidential agency records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) Free exchange of information. Pursuant to K.S.A. 2017 Supp. 38-2210, and amendments thereto, the secretary and juvenile intake and assessment agencies shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

(c) Necessary access. The following persons or entities shall have access to information from agency records. Access shall be limited to information reasonably necessary to carry out their

lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged to be in need of care. Information authorized to be disclosed pursuant to this subsection shall not contain information which identifies a reporter of a child who is alleged or adjudicated to be a child in need of care.

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

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

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

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

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

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

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

(8) An attorney for a private party who files a petition pursuant to subsection (b) of K.S.A. 2017 Supp. 38-2233, and amendments thereto.

(9) A foster parent, prospective foster parent, permanent custodian, prospective permanent custodian, adoptive parent or prospective adoptive parent. In order to assist such persons in making an informed decision regarding acceptance of a particular child, to help the family anticipate problems which may occur during the child's placement, and to help the family meet the needs of the child in a constructive manner, the secretary shall seek and shall provide the following

information to such person's as the information becomes available to the secretary:

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

(B) circumstances which necessitated placement;

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

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

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

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

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

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

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

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

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

(1) Information from confidential agency records of the department of social and rehabilitation services, a law enforcement agency or any juvenile intake and assessment worker of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee

on corrections and juvenile justice, house committee on appropriations, senate committee on ways and means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate. The secretary of social and rehabilitation services shall not summarize the outcome of department actions regarding a child alleged to be a child in need of care in information available to members of such committees.

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

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

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

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

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

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

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

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

(4) Nothing in this subsection shall allow the disclosure of reports, records or documents concerning the child and such child's biological parents which were created prior to such child's adoption. Nothing herein is intended to require that

an otherwise privileged communication lose its privileged character.

**History:** L. 1982, ch. 182, § 7; L. 1983, ch. 140, § 14; L. 1985, ch. 145, § 1; L. 1988, ch. 138, § 2; L. 1990, ch. 147, § 1; L. 1992, ch. 318, § 2; L. 1996, ch. 229, § 33; L. 1997, ch. 156, § 41; L. 1998, ch. 171, § 7; L. 1999, ch. 116, § 43; L. 2000, ch. 150, § 5; L. 2002, ch. 135, § 1; L. 2004, ch. 178, § 4; L. 2010, ch. 75, § 8; July 1.

**Source or Prior Law:**  
38-1507.

**Revisor's Note:**

Section was also amended by L. 2004, ch. 144, § 1, but that version was repealed by L. 2004, ch. 178, § 7.

Section was neither amended nor repealed in the 2014 session by L. 2014, ch. 115.

**Research and Practice Aids:**

Infants § 133.

C.J.S. Infants §§ 57, 69 to 85.

**Law Review and Bar Journal References:**

"2002 Legislative Wrap-Up," Paul T. Davis, 71 J.K.B.A. No. 7, 15 (2002).

"Kansas Sunshine Law: How Bright Does It Shine Now? The Kansas Open Meetings and Open Records Acts," Theresa "Terry" Marcel, 72 J.K.B.A. No. 5, 28 (2003).

"Caring When a Parent Does Not - The State's Role in Child Welfare," Roberta Sue McKenna, 79 J.K.B.A. No. 7, 36 (2010).

**Attorney General's Opinions:**

Open public records; access of person to records bearing that person's name. 85-105.

Investigation of reports of suspected child abuse or neglect; interviews on school premises. 85-164.

Juvenile intake process, use of POSIT questionnaire. 2001-53.

Extensive discussion of confidentiality provisions of Kansas Code for Care of Children. 2004-32.

## CASE ANNOTATIONS

1. Preliminary injunction granted on claim statute requiring plaintiffs to report underage patients' sexual activities violated privacy rights. *Aid for Women v. Foulston*, 325 F.Supp.2d 1273, 1286 (2004).

### **38-2213. Records of law enforcement agencies; limited disclosure; exchange of information; access; court ordered disclosure.**

(a) Principle of limited disclosure. Information contained in confidential law enforcement records concerning a child alleged or adjudicated to be in need of care may be disclosed as provided in this section. Disclosure shall in all cases be guided by the principle of providing access only to persons or entities with a need for information that is directly related to achieving the purposes of this code.

(b) Free exchange of information. Pursuant to K.S.A. 2017 Supp. 38-2210, and amendments thereto, a law enforcement agency shall participate in the free exchange of information concerning a child who is alleged or adjudicated to be in need of care.

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

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

(2) The secretary.

(3) The commissioner of juvenile justice.

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

(5) Any juvenile intake and assessment worker.

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

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

(8) Persons or entities allowed access pursuant to subsection (f) of K.S.A. 2017 Supp. 38-2212, and amendments thereto.

(d) Necessary access. The following persons or entities shall have access to information from law enforcement records when reasonably necessary to carry out their lawful responsibilities, to maintain their personal safety and the personal safety of individuals in their care, or to educate, diagnose, treat, care for or protect a child alleged or adjudicated to be in need of care. Information authorized to be disclosed in this subsection shall not contain information which identifies a reporter of a child alleged or adjudicated to be a child in need of care.

(1) 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, including physicians, psychiatrists, nurses, nurse practitioners, psychologists, licensed social workers, child development specialists, physician assistants, community mental health workers, alcohol and drug abuse counselors, and licensed or registered child care providers.

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

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

(e) Legislative access. Information from law enforcement records of a child alleged or adjudicated to be in need of care shall be available to members of the standing house or senate committee on judiciary, house committee on corrections and juvenile justice, house committee on appropriations, senate committee on ways and

means, legislative post audit committee and any joint committee with authority to consider children's and families' issues, when carrying out such member's or committee's official functions in accordance with K.S.A. 75-4319, and amendments thereto, in a closed or executive meeting. Except in limited conditions established by 2/3 of the members of such committee, records and reports received by the committee shall not be further disclosed. Unauthorized disclosure may subject such member to discipline or censure from the house of representatives or senate.

(f) Court order. Notwithstanding the provisions of this section, a court of competent jurisdiction, after in camera inspection, may order disclosure of confidential law enforcement records pursuant to a determination that the disclosure is in the best interests of the child who is the subject of the reports or that the records are necessary for the proceedings of the court and otherwise admissible as evidence. The court shall specify the terms of disclosure and impose appropriate limitations.

**History:** L. 1982, ch. 182, § 8; L. 1983, ch. 140, § 15; L. 1984, ch. 153, § 2; L. 1992, ch. 318, § 3; L. 1996, ch. 229, § 35; L. 1997, ch. 156, § 42; L. 2004, ch. 178, § 5; July 1.

**Source or Prior Law:**

38-1508.

**Revisor's Note:**

Section was also amended by L. 2004, ch. 144, § 2, but that version was repealed by L. 2004, ch. 178, § 7.

**Research and Practice Aids:**

Infants § 133.

C.J.S. Infants §§ 57, 69 to 85, 133.

**Attorney General's Opinions:**

Investigation of reports of suspected child abuse or neglect; interviews on school premises. 85-164.

Juvenile intake process, use of POSIT questionnaire. 2001-53.

**38-2214. Duties of county or district attorney.**

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.

**History:** L. 2006, ch. 200, § 9; Jan. 1, 2007.

**Source or Prior Law:**

38-1510.

**38-2215. Docket fee; authorized only by legislative enactment; expenses; assessment.**

(a) Docket fee. The docket fee for proceedings under this code, if one is assessed as provided in this section, shall be \$34. Only one docket fee shall be assessed in each case. Except as provided further, the docket fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for the docket fee. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. On and after July 1, 2017, through June 30, 2019, the supreme court may impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel.

(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.

**History:** L. 2006, ch. 200, § 10; L. 2008, ch. 95, § 9; L. 2009, ch. 116, § 17; L. 2010, ch. 62, § 10; L. 2011, ch. 87, § 10; L. 2012, ch. 66, § 12; L. 2013, ch. 125, § 12; L. 2015, ch. 81, § 18; L. 2017, ch. 80, § 14; July 1.

**Source or Prior Law:**  
38-1511.

### **38-2216. Expense of care and custody of child.**

(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 K.S.A. 2017 Supp. 38-2231, 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.

**History:** L. 2006, ch. 200, § 11; Jan. 1, 2007.

**Source or Prior Law:**

38-1512.

**38-2217. Health services.**

(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 or agent of 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;

(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; and

(G) subject to limitations in K.S.A. 59-3075(e)(4), (5) and (6), and amendments thereto, medical or surgical care determined by a physician to be necessary for the welfare of such child, if the parents are not available or refuse to consent.

(4) When the court has adjudicated a child to be in need of care, 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 and subject to the limitations of K.S.A. 59-3075 (e)(4), (5) and (6), and amendments thereto.

(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.

**History:** L. 2006, ch. 200, § 12; L. 2008, ch. 169, § 4; July 1.

**Source or Prior Law:**

38-1513.

**38-2218. Educational decisions; educational advocates for exceptional children.**

(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.

**History:** L. 2006, ch. 200, § 13; Jan. 1, 2007.

**Source or Prior Law:**

38-1513a.

**38-2219. Evaluation of development or needs of child.**

(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) 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.

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

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

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

**History:** L. 2006, ch. 200, § 14; L. 2007, ch. 57, § 2; Apr. 5.

**Source or Prior Law:**  
38-1514.

**38-2220. Parentage.**

(a) If the court determines that the information contained in the petition concerning parentage of the child may be incomplete 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. 2017 Supp. 23-2201 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.

**History:** L. 2006, ch. 200, § 15; L. 2012, ch. 162, § 62; May 31.

**Source or Prior Law:**  
38-1516.

**38-2221. Fingerprints and photographs.**

(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, K.S.A. 2017 Supp. 23-2201 et seq., and amendments thereto;

(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.

**History:** L. 2006, ch. 200, § 16; L. 2012, ch. 162, § 63; May 31.

**Source or Prior Law:**  
38-1518.

**38-2222. Public information and educational program; reporting of suspected abuse or neglect.**

The secretary shall conduct a continuing public information and educational program concerning

the reporting of suspected abuse or neglect for local staff of the Kansas department for children and families, for persons required to report under this code and for other appropriate persons.

**History:** L. 2006, ch. 200, § 17; L. 2014, ch. 115, § 60; July 1.

**Source or Prior Law:**

38-1521.

**38-2223. Reporting of certain abuse or neglect of children; persons reporting; reports, made to whom; penalties; immunity from liability.**

(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 behavioral analysts, licensed assistant behavioral analysts, 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;

(D) firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services

officers, community corrections officers, case managers appointed under K.S.A. 2017 Supp. 23-3508, and amendments thereto, and mediators appointed under K.S.A. 2017 Supp. 23-3502, and amendments thereto; and

(E) any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including, but not limited to, counseling, adoption services and pregnancy education and maintenance.

(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 Kansas department for children and families 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 K.S.A. 2017 Supp. 38-2226, 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 Kansas department of corrections shall be made to the attorney general or the secretary of corrections. Reports of child abuse or neglect occurring in an institution operated by the Kansas department for aging and disability services shall be made to the appropriate law enforcement agency. All other reports of child abuse or neglect by persons employed by the Kansas department for aging and disability services or the Kansas department for children and families, or of children of persons employed by either department, 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.

**History:** L. 2006, ch. 200, § 18; L. 2011, ch. 44, § 1; L. 2012, ch. 162, § 64; L. 2014, ch. 115, § 61; L. 2016, ch. 53, § 1; July 1.

**Source or Prior Law:**

38-1522, 38-1526.

**38-2224. Same; employer prohibited from imposing sanctions on employee making report or cooperating in investigation; penalty.**

(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.

**History:** L. 2006, ch. 200, § 19; Jan. 1, 2007.

**Source or Prior Law:**

38-1525.

**38-2225. Same; reporting of certain abuse or neglect of children in institutions operated by the secretary; rules and regulations.**

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.

**History:** L. 2006, ch. 200, § 20; Jan. 1, 2007.

**Source or Prior Law:**

38-1522b.

**38-2226. Investigation of reports; coordination and cooperation between agencies.**

(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. 2017 Supp. 38-2210, 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 Kansas department of corrections shall be investigated by the attorney general or secretary of corrections. Any suspected child abuse or neglect in an institution operated by the Kansas department for aging and disability services, or by persons employed by the Kansas department for aging and disability services or the Kansas department for children and families, or of children of persons employed by either department, 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.

**History:** L. 2006, ch. 200, § 21; L. 2014, ch. 115, § 62; L. 2016, ch. 53, § 2; July 1.

**Source or Prior Law:**

38-1523.

**38-2227. Child advocacy centers.**

(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.

**History:** L. 2006, ch. 200, § 22; Jan. 1, 2007.

**Source or Prior Law:**

38-15,101.

**38-2228. Multidisciplinary team.**

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.

**History:** L. 2006, ch. 200, § 23; Jan. 1, 2007.

**Source or Prior Law:**

38-1523a.

**38-2229. Investigation of abuse or neglect; subpoena; request to quash.**

(a) The secretary, a law enforcement officer, or a multidisciplinary team appointed pursuant to K.S.A. 2017 Supp. 38-2228, 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, holidays, and days on which the office of the clerk of the court is not accessible. 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 seven 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, holidays, or days on which the office of the clerk of the court is not accessible, 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.

**History:** L. 2006, ch. 200, § 24; L. 2010, ch. 135, § 46; July 1.

**Source or Prior Law:**  
38-1523.

**Revisor's Note:**

Section was also amended by L. 2010, ch. 11, § 3, but that version was repealed by L. 2010, ch. 135, § 225.

**38-2230. Same; duties of the department for children and families.**

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.

**History:** L. 2006, ch. 200, § 25; Jan. 1, 2007.

**Source or Prior Law:**  
38-1524.

**38-2231. Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway.**

(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 the officer:

(1) Reasonably believes the child will be harmed if not immediately removed from the place or residence where the child has been found;

(2) has probable cause to believe that the child is a runaway or a missing person or a verified missing person entry for the child can be found in the national crime information center missing person system; or

(3) reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child.

(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) Except as provided in subsections (a) and (b), 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 K.S.A. 2017 Supp. 38-2232(g), and amendments thereto.

**History:** L. 2006, ch. 200, § 26; L. 2013, ch. 120, § 32; L. 2016, ch. 102, § 12; July 1.

**Source or Prior Law:**

38-1527, 38-1530.

**38-2232. Child under 18 taken into custody; duties of officers; referral of cases for proceedings under this code and interstate compact on juveniles; placed in shelter facility or with other person; application of law enforcement officer; release of child. [See Revisor's Note]**

(a) (1) 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.

(2) 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 shelter facility designated by the court, court services officer, juvenile intake and assessment worker, licensed attendant care center or other person or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows

signs of physical, mental, emotional or sexual abuse, to a facility or person designated by the secretary.

(3) 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 K.S.A. 2017 Supp. 38-2202, 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, legal holidays, and days on which the office of the clerk of the court is not accessible.

(4) 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 K.S.A. 2017 Supp. 38-2242, 38-2243 and 38-2260, and amendments thereto.

(5) 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) (1) When any law enforcement officer takes into custody any child as provided in subsection (b)(2) of K.S.A. 2017 Supp. 38-2231, 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. 2017 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.

(2) When any law enforcement officer takes into custody any child as provided in subsection (b)(3) of K.S.A. 2017 Supp. 38-2231, and amendments thereto, the law enforcement officer shall place the child in protective custody and may

deliver the child to a staff secure facility. The law enforcement officer shall contact the department for children and families to begin an assessment to determine safety, placement and treatment needs for the child. Such child shall not be placed in a juvenile detention facility or other secure facility, except as authorized by this section and by K.S.A. 2017 Supp. 38-2242, 38-2243 and 38-2260, and amendments thereto.

(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, legal holidays, and days on which the office of the clerk of the court is not accessible, 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 K.S.A. 2017 Supp. 38-2231, 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.

**History:** L. 2006, ch. 200, § 27; L. 2009, ch. 99, § 3; L. 2010, ch. 11, § 4; L. 2013, ch. 120, § 33; Jan. 1, 2014.

**Source or Prior Law:**

38-1517, 38-1528.

**Revisor's Note:**

CAUTION: Section was amended effective July 1, 2019, see L. 2016, ch. 46, § 24.

**Law Review and Bar Journal References:**

"Breaking the Victimization Cycle: Domestic Minor Trafficking in Kansas," Leslie Klaassen, 52 W.L.J. 581 (2013).

**38-2233. Filing of petition on referral by the department for children and families or other person; filing by individual.**

(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 K.S.A. 2017 Supp. 38-2282, 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.

**History:** L. 2006, ch. 200, § 28; Jan. 1, 2007.

**Source or Prior Law:**

38-1529.

### **38-2234. Pleadings.**

(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 K.S.A. 2017 Supp. 38-2234 (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.

**History:** L. 2006, ch. 200, § 29; Jan. 1, 2007.

### **Source or Prior Law:**

38-1531.

### **CASE ANNOTATIONS**

1. Cited in upholding constitutionality of CINC; safeguards against arbitrary enforcement listed. In re A.F., 38 K.A.2d 773, 778, 172 P.3d 66 (2007).

### **38-2235. Procedure upon filing of petition.**

(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 K.S.A. 2017 Supp. 38-2236, 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 K.S.A. 2017 Supp. 38-2237, and amendments thereto.

(2) If the child has been taken into protective custody under the provisions of K.S.A. 2017 Supp. 38-2242, and amendments thereto, and a temporary custody hearing is held as required by K.S.A. 2017 Supp. 38-2243, 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.

**History:** L. 2006, ch. 200, § 30; Jan. 1, 2007.

**Source or Prior Law:**

38-1532.

**38-2236. Summons; persons to be served; notice of hearing.**

(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.

**History:** L. 2006, ch. 200, § 31; Jan. 1, 2007.

**Source or Prior Law:**

38-1533.

**Law Review and Bar Journal References:**

"Caring When a Parent Does Not - The State's Role in Child Welfare," Roberta Sue McKenna, 79 J.K.B.A. No. 7, 36 (2010).

**38-2237. Service of process.**

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 person in charge of the institution and the confined parent in care of the person in charge of the institution or that person's designee. 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. If a parent cannot be served by other means and due diligence has revealed with substantial certainty that the parent is residing in a particular locality, publication shall also be in a newspaper authorized to publish legal notices in that locality.

**History:** L. 2006, ch. 200, § 32; L. 2007, ch. 36, § 1; L. 2008, ch. 169, § 5; July 1.

**Source or Prior Law:**

38-1534.

**38-2238. Proof of service.**

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.

**History:** L. 2006, ch. 200, § 33; Jan. 1, 2007.

**Source or Prior Law:**

38-1535.

**38-2239. Service of other pleadings.**

(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 K.S.A. 2017 Supp. 38-2237, 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.

**History:** L. 2006, ch. 200, § 34; Jan. 1, 2007.

**Source or Prior Law:**

38-1536.

**38-2240. Subpoenas; witness fees.**

(a) Subject to K.S.A. 2017 Supp. 38-2241, 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.

**History:** L. 2006, ch. 200, § 35; Jan. 1, 2007.

**Source or Prior Law:**

38-1537.

**38-2241. Additional parties.**

(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 K.S.A. 2017 Supp. 38-2236 and 38-2239, 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 K.S.A. 2017 Supp. 38-2205, and amendments thereto.

(c) Grandparents as interested parties. (1) A grandparent of the child shall be an interested party to a child in need of care proceeding.

(2) Grandparents 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 or Indian tribe seeking to intervene that is not a party may, upon motion, be made an interested party if the court determines that the person or tribe has a sufficient relationship with the child to warrant interested party status or that the person's or tribe's participation would be beneficial to the proceedings.

(3) The court may, upon its own motion, make any person an interested 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.

**History:** L. 2006, ch. 200, § 36; L. 2008, ch. 169, § 6; L. 2011, ch. 60, § 3; July 1.

**Source or Prior Law:**  
38-1541.

**Law Review and Bar Journal References:**

"Caring When a Parent Does Not - The State's Role in Child Welfare," Roberta Sue McKenna, 79 J.K.B.A. No. 7, 36 (2010).

**38-2242. Ex parte orders of protective custody; application; determination of probable cause; period of time; placement; procedures; orders for removal of child from custody of parent, limitations. [See Revisor's Note]**

(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 K.S.A. 2017 Supp. 38-2243, 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, legal holidays, and days on which the office of the clerk of the court is not accessible, 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 K.S.A. 2017 Supp. 38-2232, 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;

(E) a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto; or

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

(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 discretionary authority to place the child with a parent or to make other suitable placement for the child. When the child is placed in the temporary custody of the secretary and the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto, the secretary shall have the discretionary authority to place the child in a staff secure facility, notwithstanding any other provision of law. 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 K.S.A. 2017 Supp. 38-2202, 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, legal holidays, and days on which the office of the clerk of the court is not accessible.

(d) The order of protective custody shall be served pursuant to subsection (a) of K.S.A. 2017 Supp. 38-2237, 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 K.S.A. 2017 Supp. 38-2237, and amendments

thereto, on any alleged perpetrator to whom the order is directed.

(f) (1) The court shall not enter the initial 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.

**History:** L. 2006, ch. 200, § 37; L. 2009, ch. 99, § 4; L. 2010, ch. 11, § 5; L. 2010, ch. 155, § 12; L. 2013, ch. 120, § 34; Jan. 1, 2014.

**Source or Prior Law:**

38-1542.

**Revisor's Note:**

Section was also amended by L. 2010, ch. 75, § 9, but that version was repealed by L. 2010, ch. 155, § 26.

CAUTION: Section was amended effective July 1, 2019, see L. 2016, ch. 46, § 25.

**Law Review and Bar Journal References:**

"Packing Heat: The Personal and Family Protection Act," Mary D. Feighny, 76 J.K.B.A. No. 4, 21 (2007).

"Breaking the Victimization Cycle: Domestic Minor Trafficking in Kansas," Leslie Klaassen, 52 W.L.J. 581 (2013).

**CASE ANNOTATIONS**

1. Cited in case reviewing the four types of appealable orders under 38-2273. In re D.M.M., 38 K.A.2d 394, 166 P.3d 431 (2007).

**38-2243. Orders of temporary custody; notice; hearing; procedure; findings; placement; orders for removal of child from custody of parent, limitations. [See Revisor's Note]**

(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, legal holidays, and days on which the office of the clerk of the court is not accessible, 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 there is probable cause to believe 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; (3) health or welfare of the child may be endangered without further care; (4) child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto; or

(5) child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto.

(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;

(E) a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto; or

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

(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 placed in the temporary custody of the secretary and the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp.

21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto, the secretary shall have the discretionary authority to place the child in a staff secure facility, notwithstanding any other provision of law. 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 K.S.A. 2017 Supp. 38-2202, 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 K.S.A. 2017 Supp. 38-2242, and amendments thereto, shall not exceed 24 hours, excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible. The order of temporary custody shall remain in effect until modified or rescinded by the court or an adjudication order is entered but not exceeding 60 days, unless good cause is shown and stated on the record.

(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 K.S.A. 2017 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

(i) (1) The court shall not enter the initial 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 K.S.A. 2017 Supp. 38-2277, and amendments thereto.

**History:** L. 2006, ch. 200, § 38; L. 2008, ch. 169, § 7; L. 2009, ch. 99, § 5; L. 2010, ch. 11, § 6; L. 2010, ch. 155, § 13; L. 2013, ch. 120, § 35; Jan. 1, 2014.

**Source or Prior Law:**  
38-1543.

**Revisor's Note:**

Section was also amended by L. 2010, ch. 75, § 10, but that version was repealed by L. 2010, ch. 155, § 26.

CAUTION: Section was amended effective July 1, 2019, see L. 2016, ch. 46, § 26.

**Law Review and Bar Journal References:**

"Packing Heat: The Personal and Family Protection Act," Mary D. Feighny, 76 J.K.B.A. No. 4, 21 (2007).

**CASE ANNOTATIONS**

1. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 745, 172 P.3d 63 (2007).

2. Cited in upholding constitutionality of CINC; safeguards against arbitrary enforcement listed. In re A.F., 38 K.A.2d 773, 778, 172 P.3d 66 (2007).

3. Subsection (f)(3) is neither unconstitutionally vague nor overbroad. In re A.E.S., 48 K.A.2d 761, 298 P.3d 386 (2013).

**38-2244. Order for informal supervision; restraining orders.**

(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 objects. Upon granting the continuance, the court shall include in the order any conditions with which the parties and interested parties are expected to comply and provide the parties and interested parties with a copy of the order. The conditions may include appropriate dispositional alternatives authorized by K.S.A. 2017 Supp. 38-2255, 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 K.S.A. 2017 Supp. 38-2237, 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 K.S.A. 2017 Supp. 38-2237, 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 K.S.A. 2017 Supp. 38-2237, and amendments thereto, shall continue.

**History:** L. 2006, ch. 200, § 39; L. 2008, ch. 169, § 8; July 1.

**Source or Prior Law:**  
38-1544.

**38-2245. Discovery.**

(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.

**History:** L. 2006, ch. 200, § 40; Jan. 1, 2007.

**Source or Prior Law:**  
38-1545, 38-1551.

**CASE ANNOTATIONS**

1. Cited in upholding constitutionality of CINC; safeguards against arbitrary enforcement listed. In re A.F., 38 K.A.2d 773, 778, 172 P.3d 66 (2007).

### **38-2246. Continuances.**

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

**History:** L. 2006, ch. 200, § 41; Jan. 1, 2007.

#### **Source or Prior Law:**

38-1551.

### **38-2247. Attendance at proceedings; confidentiality.**

(a) Adjudication. Proceedings prior to and including adjudication 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 1001.

(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) Notwithstanding 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 for children and families; obligations of entities that contract with the Kansas department for children and families 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. 2017 Supp. 38-2209, 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.

**History:** L. 2006, ch. 200, § 42; L. 2008, ch. 169, § 9; L. 2014, ch. 115, § 63; July 1.

#### **Source or Prior Law:**

38-1552.

### **38-2248. Stipulations and no contest statements.**

(a) In any proceedings under this code, parents, persons with whom the child has been residing pursuant to subsection (d) of K.S.A. 2017 Supp. 38-2241, 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) In proceedings other than termination of parental rights proceedings under this code if all persons listed in subsection (a) do not stipulate or enter no contest statements, the court shall hear evidence as to those persons, if they are present. The case may proceed by proffer as to persons not present, unless they appear by counsel and have instructed counsel to object.

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

**History:** L. 2006, ch. 200, § 43; L. 2008, ch. 169, § 10; July 1.

**Source or Prior Law:**  
38-1553.

### **38-2249. Rules of evidence.**

(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) (1) The judge presiding at all hearings under this code shall not consider or rely upon any report not properly admitted according to the rules of evidence, except as provided by K.S.A. 2017 Supp. 38-2219, and amendments thereto.

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

(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.

**History:** L. 2006, ch. 200, § 44; L. 2007, ch. 57, § 1; L. 2017, ch. 58, § 3; July 1.

**Source or Prior Law:**

38-1554, 38-1557, 38-1558.

**38-2250. Degree of proof.**

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

**History:** L. 2006, ch. 200, § 45; Jan. 1, 2007.

**Source or Prior Law:**

38-1555.

**CASE ANNOTATIONS**

1. In CINC case state's evidence must be clear and convincing. In re J.D.C., 284 K. 155, 170, 159 P.3d 974 (2007).

2. Cited in discussion of "clear and convincing evidence" and standard for appellate review; prior court holdings disapproved. In re

B.D.-Y., 286 K. 686, 687, 690, 187 P.3d 594 (2008).

3. District court overturns magistrate's order finding child in need of care. In re L.C.W., 42 K.A.2d 293, 211 P.3d 829 (2009).

**38-2251. Adjudication.**

(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 final adjudication or dismissal shall be entered within 60 days from the date of the filing of the petition, unless good cause for a continuance is shown on the record.

**History:** L. 2006, ch. 200, § 46; L. 2008, ch. 169, § 11; L. 2010, ch. 75, § 11; July 1.

**Source or Prior Law:**

38-1556.

**CASE ANNOTATIONS**

1. Cited in case reviewing the four types of appealable orders under 38-2273. In re D.M.M., 38 K.A.2d 394, 398, 399 (2007).

2. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 745, 172 P.3d 63 (2007).

3. 60-day adjudication requirement of 38-2251 held directory, not mandatory. In re L.C.W., 42 K.A.2d 293, 211 P.3d 829 (2009).

**38-2252. Predispositional alternative; placement with person other than child's parent; conference; recommendations; immunity.**

(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.

**History:** L. 2006, ch. 200, § 47; Jan. 1, 2007.

**Source or Prior Law:**

38-1559.

**38-2253. Dispositional hearing; purpose; time.**

(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 K.S.A. 2017 Supp. 38-2254, 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 K.S.A. 2017 Supp. 38-2265, and amendments thereto, the dispositional hearing may serve as a permanency hearing.

**History:** L. 2006, ch. 200, § 48; Jan. 1, 2007.

**Source or Prior Law:**

38-1561.

**38-2254. Same; notice.**

(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 the right 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 the right to be heard. The right 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 at government expense.

(e) The provisions of this subsection shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 2017 Supp. 38-2239, and amendments thereto.

**History:** L. 2006, ch. 200, § 49; L. 2008, ch. 169, § 12; July 1.

**Source or Prior Law:**

38-1562.

**38-2255. Authorized dispositions; prohibitions.**

(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) Custody 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 the initial 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.

The court shall not enter an order removing a child from the custody of a parent pursuant to this section based solely on the finding that the parent is homeless.

(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 who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto; any other suitable person; a shelter facility; a youth residential facility; a staff secure facility, notwithstanding any other provision of law, if the child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto; or, if the child is 15 years of age or younger, or 16 or 17 years of age if the child has no identifiable parental or family resources or shows signs of physical, mental, emotional or sexual abuse, 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. 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.

(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 subsection (a) of K.S.A. 2017 Supp. 38-2237, 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 K.S.A. 2017 Supp. 38-2264, 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: (A) Murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-5402, and amendments thereto; (B) murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2017 Supp. 21-5403, and amendments thereto; (C) capital murder, K.S.A. 21-3439, prior to its repeal, or

K.S.A. 2017 Supp. 21-5401, and amendments thereto; (D) voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2017 Supp. 21-5404, and amendments thereto; or (E) 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 K.S.A. 2017 Supp. 21-5701 through 21-5717, and amendments thereto, 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 K.S.A. 2017 Supp. 38-2277, and amendments thereto. Except for good cause shown, the court shall issue an immediate income withholding order pursuant to K.S.A. 2017 Supp. 23-3101 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 K.S.A. 2017 Supp.

38-2279, 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.

**History:** L. 2006, ch. 200, § 50; L. 2009, ch. 99, § 6; L. 2009, ch. 143, § 16; L. 2010, ch. 75, § 12; L. 2011, ch. 69, § 1; L. 2012, ch. 162, § 65; L. 2013, ch. 120, § 36; Jan. 1, 2014.

**Source or Prior Law:**

38-1563.

**Revisor's Note:**

Section was also amended by L. 2009, ch. 32, § 47, but that version was repealed by L. 2009, ch. 143, § 37.

Section was amended twice in the 2010 session, see also 38-2255a.

Section was amended twice in the 2011 session, see also 38-2255b.

**Law Review and Bar Journal References:**

"Packing Heat: The Personal and Family Protection Act," Mary D. Feighny, 76 J.K.B.A. No. 4, 21 (2007).

**CASE ANNOTATIONS**

1. Cited in case reviewing the four types of appealable orders under 38-2273. In re D.M.M., 38 K.A.2d 394, 166 P.3d 431 (2007).

2. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 745, 172 P.3d 63 (2007).

**38-2255a.**

**History:** L. 2006, ch. 200, § 50; L. 2009, ch. 99, § 6; L. 2009, ch. 143, § 16; L. 2010, ch. 135, § 47; Repealed, L. 2011, ch. 30, § 288; July 1.

**38-2255b.**

**History:** L. 2006, ch. 200, § 50; L. 2009, ch. 99, § 6; L. 2009, ch. 143, § 16; L. 2010, ch. 75, §

12; L. 2011, ch. 30, § 156; Repealed, L. 2012, ch. 162, § 90; May 31.

**38-2256. Rehearing.**

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 K.S.A. 2017 Supp. 38-2254, 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 K.S.A. 2017 Supp. 38-2279, and amendments thereto, may only be modified pursuant to K.S.A. 2017 Supp. 38-2279, and amendments thereto.

**History:** L. 2006, ch. 200, § 51; Jan. 1, 2007.

**Source or Prior Law:**

38-1564.

**38-2257. Permanency planning at disposition.**

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 K.S.A. 2017 Supp. 38-2263, and amendments thereto.

**History:** L. 2006, ch. 200, § 52; Jan. 1, 2007.

**Source or Prior Law:**

38-1565.

**38-2258. Change of placement; notice; opportunity for hearing; removal from home of parent, findings by court.**

(a) Except as provided in K.S.A. 2017 Supp. 38-2255(d)(2) and 38-2259, 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) the petitioner; (3) the attorney for the parents, if any; (4) each parent

whose address is available; (5) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (6) the child, if 12 or more years of age; (7) the child's guardian ad litem; (8) any other party or interested party; and (9) the child's court appointed special advocate.

(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 (8) consent in writing to the transfer.

(c) Within 14 days after receipt of the notice, any person enumerated in subsection (a)(2) through (8) 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 (9). If the court does not receive a request for hearing within the specified time, the change in placement may occur prior to the expiration of the 30 days. 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.

**History:** L. 2006, ch. 200, § 53; L. 2008, ch. 169, § 13; L. 2010, ch. 75, § 13; L. 2011, ch. 91, § 20; July 1.

**Source or Prior Law:**

38-1566.

**Revisor's Note:**

Section was amended twice in the 2010 session, see also 38-2258a.

**CASE ANNOTATIONS**

1. Cited in case reviewing the four types of appealable orders under 38-2273. In re D.M.M., 38 K.A.2d 394, 166 P.3d 431 (2007).

2. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 745, 172 P.3d 63 (2007).

3. Preadoptive foster parents' due process right prior to removal of foster child not clearly established; SRS entitled to qualified immunity. *Elwell v. Byers*, 699 F.3d 1208 (10th Cir. 2012).

**38-2258a.**

**History:** L. 2006, ch. 200, § 53; L. 2008, ch. 169, § 13; L. 2010, ch. 135, § 48; Repealed, L. 2011, ch. 91, § 41; July 1.

**38-2259. Emergency change of placement; removal from home of parent, findings of court.**

(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 approving the removal of a child from the home 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.

**History:** L. 2006, ch. 200, § 54; L. 2008, ch. 169, § 14; July 1.

**Source or Prior Law:**

38-1567.

**CASE ANNOTATIONS**

1. Cited in case reviewing the four types of appealable orders under 38-2273. In re D.M.M., 38 K.A.2d 394, 166 P.3d 431 (2007).

**38-2260. Placement; order directing child to remain in present or future placement,**

**application for determination that child has violated order; procedure; authorized dispositions; limitations on facilities used for placement; computation of time limitations. [See Revisor's Note]**

(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 K.S.A. 2017 Supp. 38-2202, 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 court's order to remain in placement without good cause. Pursuant to K.S.A. 2017 Supp. 38-2237, 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 K.S.A. 2017 Supp. 38-2256, 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, legal holidays, and days on which the office of the clerk of the court is not accessible shall not be counted in computing any time limit imposed by this section.

**History:** L. 2006, ch. 200, § 55; L. 2008, ch. 169, § 15; L. 2010, ch. 11, § 7; Apr. 1.

**Source or Prior Law:**  
38-1568.

**Revisor's Note:**

CAUTION: Section was amended effective July 1, 2019, see L. 2016, ch. 46, § 27.

**Law Review and Bar Journal References:**

"Breaking the Victimization Cycle: Domestic Minor Trafficking in Kansas," Leslie Klaassen, 52 W.L.J. 581 (2013).

**CASE ANNOTATIONS**

1. Placement orders issued under 38-2260 are not appealable orders under 38-2273. In re C.E., 47 K.A.2d 442, 275 P.3d 67 (2012).

**38-2261. Reports made by foster parents.**

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 Kansas department for children and families.

**History:** L. 2006, ch. 200, § 56; L. 2014, ch. 115, § 64; July 1.

**Source or Prior Law:**  
38-1569.

**38-2262. Placement; testimony of certain children.**

At any hearing under the code, the court, if requested by the child, shall allow the child to

address the court, if the child is 10 years of age or older.

**History:** L. 2006, ch. 200, § 57; L. 2011, ch. 24, § 5; July 1.

**Source or Prior Law:**  
38-1570.

**CASE ANNOTATIONS**

1. Section construed; court did not err by declining to bring child in for personal interview. In re A.A., 38 K.A.2d 1100, 1107, 176 P.3d 237 (2008).

**38-2263. Permanency planning.**

(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 in consultation with the child, if the child is 14 years of age or older and the child is able, and, 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 K.S.A. 2017 Supp. 38-2264 and 38-2265, and amendments thereto.

**History:** L. 2006, ch. 200, § 58; L. 2016, ch. 102, § 13; July 1.

**38-2264. Permanency hearing; purpose; procedure and requirements; time for hearing; authorized orders.**

(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 K.S.A. 2017 Supp. 38-2263, 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 child is 16 years of age or older and 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) At each permanency hearing, the court shall:

(1) Enter a finding as to whether reasonable efforts have been made by appropriate public or private agencies to rehabilitate the family and achieve the permanency goal in place at the time of the hearing;

(2) enter a finding as to whether the reasonable and prudent parenting standard has been met and whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities. The secretary shall report to the court the steps the secretary is taking to ensure that the child's foster family home or child care institution is following the reasonable and prudent parenting standard and that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consultation with the child in an age-appropriate manner about the opportunities of the child to participate in the activities;

(3) if the child is 14 years of age or older, document the efforts made by the secretary to help the child prepare for the transition from custody to a successful adulthood. The secretary shall report to the court the programs and services that are being provided to the child which will help the child prepare for the transition from custody to a successful adulthood.

(d) The requirements of this subsection shall apply only if the permanency goal in place at the time of the hearing is another planned permanent arrangement as described in subsection (b)(4). At each permanency hearing held with respect to the child, in addition to the requirements of subsection (c), the court shall:

(1) Ask the child, if the child is able, by attendance at the hearing or by report to the court, about the desired permanency outcome for the child;

(2) document the intensive, ongoing and, as of the date of the hearing, unsuccessful permanency efforts made by the secretary to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian or an adoptive parent. The secretary shall report to the court the intensive, ongoing and, as of the date of the hearing, unsuccessful efforts made by the secretary to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian or an adoptive parent, including efforts that utilize search technology, including social media, to find biological family members of the children; and

(3) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, be placed with a legal guardian or be placed with a fit and willing relative.

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

(f) 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.

(g) 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.

(h) 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.

(i) 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 been 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.

(j) If permanency with one parent has been achieved without the termination of the other parent's rights, the court may, prior to dismissing the case, enter child custody orders, including residency and parenting time that the court determines to be in the best interests of the child. The court shall complete a parenting plan pursuant to K.S.A. 2017 Supp. 23-3213, and amendments thereto.

(1) Before entering a custody order under this subsection, the court shall inquire whether a custody order has been entered or is pending in a

civil custody case by a court of competent jurisdiction within the state of Kansas.

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

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

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

(5) Nothing in this subsection shall operate to expand access to information that is confidential under K.S.A. 2017 Supp. 38-2209, and amendments thereto, and the confidentiality of such information shall be preserved in all filings in a civil custody case.

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

**History:** L. 2006, ch. 200, § 59; L. 2008, ch. 169, § 16; L. 2010, ch. 75, § 14; L. 2012, ch. 162, § 66; L. 2016, ch. 102, § 14; July 1.

### CASE ANNOTATIONS

1. The required findings to be made by the district court are discussed when the court is authorized to rescind or enter a new order of

custody for adoption. In re N.A.C., 49 K.A.2d 699, 316 P.3d 771 (2013).

### 38-2265. Same; notice.

(a) (1) 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 the right to be heard at the hearing.

(2) If the child is 14 years of age or older, the court shall require notice of the time and place of the permanency hearing be given to the child. Such notice shall request the child's participation in the hearing by attendance or by report to the court.

(b) The court shall require notice and the right 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 subsection (b) 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 the right to be heard. The right 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 at government expense.

(e) The provisions of this section shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 2017 Supp. 38-2239, and amendments thereto.

**History:** L. 2006, ch. 200, § 60; L. 2008, ch. 169, § 17; L. 2016, ch. 102, § 15; July 1.

**38-2266. Request for termination of parental rights or appointment of permanent custodian.**

(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.

**History:** L. 2006, ch. 200, § 61; Jan. 1, 2007.

**Source or Prior Law:**

38-1581.

**CASE ANNOTATIONS**

1. Cited in case reviewing the four types of appealable orders under 38-2273. In re D.M.M., 38 K.A.2d 394, 166 P.3d 431 (2007).

**38-2267. Procedure upon receipt of request.**

(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 K.S.A. 2017 Supp. 38-2236 and 38-2237, 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.

**History:** L. 2006, ch. 200, § 62; Jan. 1, 2007.

**Source or Prior Law:**

38-1582.

**38-2268. Voluntary relinquishment; voluntary permanent custodianship; consent to adoption.**

(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 in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the relinquishment is 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 an individual as permanent custodian and if the individual accepts the consent, such individual shall stand in loco parentis to the child and shall have and possess over the child all the rights of a legal guardian.

(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 in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the consent is 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.

**History:** L. 2006, ch. 200, § 63; L. 2008, ch. 169, § 18; L. 2014, ch. 126, § 5; July 1.

#### CASE ANNOTATIONS

1. Cited; consensual appointment of permanent guardian under 38-1587 does not terminate parent's obligation to support child. State ex rel. Secretary of SRS v. Bohrer, 286 K. 898, 913, 189 P.3d 1157 (2008).

#### **38-2269. Factors to be considered in termination of parental rights; appointment of permanent custodian.**

(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;

(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; and

(9) whether the child has been in extended out of home placement as a result of actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply.

(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 K.S.A. 2017

Supp. 38-2282, 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 K.S.A. 2017 Supp. 38-2270, and amendments thereto, appointment of a permanent custodian pursuant to K.S.A. 2017 Supp. 38-2272, 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 K.S.A. 2017 Supp. 38-2272, and amendments thereto, or continued permanency planning.

(h) If a parent is convicted of an offense as provided in subsection (a)(7) of K.S.A. 2017 Supp. 38-2271, 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 K.S.A. 2017 Supp. 38-2271, 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.

**History:** L. 2006, ch. 200, § 64; L. 2008, ch. 169, § 19; July 1.

**Source or Prior Law:**

38-1583, 38-1586.

**CASE ANNOTATIONS**

1. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 745, 172 P.3d 63 (2007).

2. Use of a lower but stringent burden of proof in cases involving non-Indian parents does not violate equal protection. In re A.A., 38 K.A.2d 1100, 1103, 176 P.3d 237 (2008).

3. Cited; consensual appointment of permanent guardian under 38-1587 does not terminate parent's obligation to support child. State ex rel. Secretary of SRS v. Bohrer, 286 K. 898, 913, 189 P.3d 1157 (2008).

4. Cited; clear and convincing evidence showed father's right in children should be terminated and termination in best interest of children. In re. B.E.Y., 40 K.A.2d 842 to 844, 196 P.3d 439 (2008).

5. Parent's failure to protect child from abuse constitutes grounds to sever parental rights per section 38-2269(b)(2). In re S.D., 41 K.A.2d 780, 204 P.3d 1182 (2009).

6. Termination of mother's parental rights upheld; presumptions under 60-414 discussed. In re J.S., 42 K.A.2d 113, 208 P.3d 802 (2009).

7. Mother's parental rights properly terminated. In re L.B., 42 K.A.2d 837, 217 P.3d 1004 (2009).

8. Determination of parental unfitness must be made under the entire statutory scheme. In re K.P., 44 K.A.2d. 316, 235 P.3d 1255 (2010).

9. District court failed to consider that termination of parental rights was in the best interests of children; case remanded. In re K.W., 45 K.A.2d 353, 246 P.3d 1021 (2011).

**38-2270. Custody for adoption.**

(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.

**History:** L. 2006, ch. 200, § 65; Jan. 1, 2007.

**Source or Prior Law:**

38-1584.

## CASE ANNOTATIONS

1. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 746, 172 P.3d 63 (2007).

2. Cited; consensual appointment of permanent guardian under 38-1587 does not terminate parent's obligation to support child. State ex rel. Secretary of SRS v. Bohrer, 286 K. 898, 914, 189 P.3d 1157 (2008).

### **38-2271. Presumption of unfitness, when; burden of proof.**

(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 K.S.A. 2017 Supp. 38-2266 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, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, 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 K.S.A. 2017 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), 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, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments thereto, murder in the first degree, K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2017 Supp. 21-5403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2017 Supp. 21-5404, and amendments thereto, human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 2017 Supp. 21-6422, 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 K.S.A. 21-3604(b), prior to its repeal, or K.S.A. 2017 Supp. 21-5605(d), 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, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, 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 K.S.A. 2017 Supp. 38-2266 et seq., and amendments thereto.

**History:** L. 2006, ch. 200, § 66; L. 2011, ch. 30, § 157; L. 2015, ch. 94, § 13; July 1.

**Source or Prior Law:**  
38-1585.

### CASE ANNOTATIONS

1. Prior to applying presumption of unfitness under 38-2271, court must determine whether presumption is a 60-414(a) or (b) presumption. In re J.S., 42 K.A.2d 113, 208 P.3d 802 (2009).

2. District court erred in its application of a presumption of unfitness; termination of mother's parental rights reversed. In re K.R., 43 K.A.2d 891, 233 P.3d 746 (2010).

3. Determination of parental unfitness must be made under the entire statutory scheme. In re K.P., 44 K.A.2d 316, 235 P.3d 1255 (2010).

4. In termination of parental rights proceeding, the trial court's denial of phone participation by a natural father denied him procedural due process. In re K.E., 46 K.A.2d 218, 261 P.3d 934 (2011).

5. Court's application of the unfitness presumption without hearing father's testimony

violated father's due process rights. In re X.D., 51 K.A.2d 71, 75, 340 P.3d 1230 (2014).

### **38-2272. Appointment of permanent custodian.**

(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 K.S.A. 2017 Supp. 38-2269, and amendments thereto; or

(3) after termination of parental rights pursuant to K.S.A. 2017 Supp. 38-2270, 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 in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the consent is 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.

**History:** L. 2006, ch. 200, § 67; L. 2010, ch. 75, § 15; July 1.

**Source or Prior Law:**  
38-1587.

#### CASE ANNOTATIONS

1. Cited; consensual appointment of permanent guardian under 38-1587 does not terminate parent's obligation to support child. State ex rel. Secretary of SRS v. Bohrer, 286 K. 898, 901, 903, 905, 921, 189 P.3d 1157 (2008).

#### **38-2273. Appeals; procedure; verification; continuing jurisdiction.**

(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 who is not regularly admitted to practice law in Kansas 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.

(f) While a case is on appeal from the district court, the district court or magistrate court shall continue to have jurisdiction over all issues not specifically appealed and shall conduct timely permanency hearings.

**History:** L. 2006, ch. 200, § 68; L. 2010, ch. 75, § 16; L. 2014, ch. 71, § 4; July 1.

**Source or Prior Law:**  
38-1591.

#### **Law Review and Bar Journal References:**

"Waiting for Judgment Day: Negotiating the Interlocutory Appeal in 8 Easy Lessons," Jonathan Paretsky, 78 J.K.B.A. No. 4, 30 (2009).

"Caring When a Parent Does Not - The State's Role in Child Welfare," Roberta Sue McKenna, 79 J.K.B.A. No. 7, 36 (2010).

#### CASE ANNOTATIONS

1. Appellate court is without jurisdiction to consider appeal of order changing placement of child after parental rights terminated. In re D.M.M., 38 K.A.2d 394, 166 P.3d 431 (2007).

2. Mentioned, there is no right to appeal from district court judgment regarding SRS placement with potential adoptive families. In re A.F., 38 K.A.2d 742, 744, 745, 172 P.3d 63 (2007).

3. District court reviews an order of magistrate judge on the basis of the record and de novo determination. In re L.C.W., 42 K.A.2d 293, 211 P.3d 829 (2009).

4. Placement orders issued under 38-2260 are not appealable orders under 38-2273. In re C.E., 47 K.A.2d 442, 275 P.3d 67 (2012).

5. An order terminating parental rights is the last appealable order under section; any later orders are not subject to appellate review. In re N.A.C., 299 K. 1100, 1119, 329 P.3d 458 (2014).

6. State lacked the statutory right to appeal the denial of a motion to terminate parental rights. In re A.S., 52 K.A.2d 173, 178, 364 P.3d 1203 (2015).

#### **38-2274. Temporary orders pending appeal; status of orders appealed from.**

(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.

**History:** L. 2006, ch. 200, § 69; Jan. 1, 2007.

**Source or Prior Law:**  
38-1592.

#### **38-2275. Fees and expenses.**

(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.

**History:** L. 2006, ch. 200, § 70; Jan. 1, 2007.

**Source or Prior Law:**

38-1593.

**38-2276. Prohibiting detainment or placement of child in jail.**

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

**History:** L. 2006, ch. 200, § 71; Jan. 1, 2007.

**Source or Prior Law:**

38-1594.

**38-2277. Determination of child support.**

(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 K.S.A. 2017 Supp. 38-2279, 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.

**History:** L. 2006, ch. 200, § 72; Jan. 1, 2007.

**Source or Prior Law:**

38-1595.

**38-2278. Journal entry for child support.**

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.

**History:** L. 2006, ch. 200, § 73; Jan. 1, 2007.

**Source or Prior Law:**

38-1596.

**38-2279. Withholding order for child support; filing; service; jurisdiction; consolidation with child in need of care case; modification.**

(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 except as otherwise provided in this section. Registration of a child support order under this section does not confer jurisdiction in the registration case for custody, residency or parenting time 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) upon request of 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; and

(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.

(g) Subject to the provisions of K.S.A. 23-9,207, and amendments thereto, the court in the registration case shall have continuing jurisdiction over the child support action and the parties thereto and subject matter and, except as otherwise provided in subsection (h) or (i), may modify any prior support order if a material change in circumstances is shown irrespective of the present domicile of the child or parents. If more than three years have passed since the date of the original support order or the most recent modification order, a material change in circumstances 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.

(h) At the direction of the judge in the child in need of care case, the registration case may be consolidated with the child in need of care case pursuant to the code of civil procedure so long as the child in need of care case is open. While the cases are consolidated, any motion to modify the

registered support order shall be filed in the child in need of care case. If any support rights are assigned, the assignee shall be treated as an interested party in the consolidated cases for all proceedings involving the support order. Nothing in this subsection shall be construed to prevent or limit enforcement of the support order.

(i) If the person requesting modification of current support shows that the support order was based upon one or more of the presumptions provided in K.S.A. 2017 Supp. 38-2277, and amendments thereto, or upon a stipulation pursuant to subsection (c) of K.S.A. 2017 Supp. 38-2277, 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.

**History:** L. 2006, ch. 200, § 74; L. 2010, ch. 75, § 17; July 1.

**Source or Prior Law:**  
38-1597.

**38-2280. Remedies supplemental not substitute.**

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

**History:** L. 2006, ch. 200, § 75; Jan. 1, 2007.

**Source or Prior Law:**  
38-1598.

**38-2281. Family services and community intervention fund; child in need of care, purpose of expenditure of moneys.**

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.

**History:** L. 2006, ch. 200, § 76; Jan. 1, 2007.

**Source or Prior Law:**  
38-1599.

**38-2282. Newborn infant protection act.**

(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 police station, sheriff's office, law enforcement center, 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. A parent or other person voluntarily

surrendering an infant under this subsection shall not be required to reveal personally identifiable information, but may be offered the opportunity to provide information concerning the infant's familial or medical history.

(c) A person or facility to whom an infant is delivered pursuant to this subsection shall not reveal the name or other personally identifiable information of the person who delivered the infant unless there is a reasonable suspicion that the infant has been abused, and such person or such facility shall be immune from civil or criminal liability for any action taken pursuant to this subsection.

(d) 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 infant. The law enforcement agency shall deliver the infant to a facility or person designated by the secretary pursuant to K.S.A. 2017 Supp. 38-2232, and amendments thereto.

(e) 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.

(f) Upon request, all medical records of the infant shall be made available to the Kansas department for children and families 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.

**History:** L. 2006, ch. 200, § 77; L. 2014, ch. 70, § 1; L. 2014, ch. 115, § 65; July 1.

**Source or Prior Law:**

38-15,100.

**38-2283. Application to existing cases.**

(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.

**History:** L. 2006, ch. 200, § 78; Jan. 1, 2007.

**38-2284. Precedence of certain orders issued under revised Kansas code for care of children and revised Kansas juvenile justice code.**

Any order issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall take precedence over any order under article 21 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (adoption and relinquishment act), or article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto (guardians and conservators), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

**History:** L. 2010, ch. 75, § 1; L. 2011, ch. 24, § 6; July 1.

**38-2285. Awarding high school diplomas; requirements.**

(a) The board of education of a school district shall award a high school diploma to any person requesting a diploma if such person: (1) Is at least 17 years of age; (2) is enrolled or resides in such school district; (3) is or has been a child in the custody of the secretary, or in the custody of a federally recognized Indian tribe in this state, at any time on or after such person's 14th birthday; and (4) has achieved at least the minimum high school graduation requirements adopted by the state board of education.

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

**History:** L. 2011, ch. 60, § 1; L. 2013, ch. 79, § 2; Apr. 25.

**38-2286. Child removed from custody of parent, substantial consideration of grandparent.**

(a) Notwithstanding the provisions of other statutes, when a child is removed from the custody of a parent and not placed with the child's other parent, a grandparent who requests custody shall receive substantial consideration when evaluating what custody, visitation or residency arrangements are in the best interests of the child. Such evaluation of custody, visitation or residency arrangements shall be stated on the record.

(b) In deciding whether to give custody to a grandparent, the court should be guided by the best interests of the child and should consider all relevant factors including, but not limited to, the following:

(1) The wishes of the parents, child and grandparent;

(2) the extent to which the grandparent has cared for, nurtured and supported the child;

(3) the intent and circumstances under which the child is placed with the grandparent, including whether domestic violence is a factor and whether the child is placed to allow the parent to seek work or attend school; and

(4) the physical and mental health of all individuals involved.

(c) If the court does not give custody of a child to a grandparent pursuant to subsection (b) and the child is placed in the custody of the secretary for children and families, a grandparent who requests placement of the child in such grandparent's home shall receive substantial consideration in the evaluation of the secretary's placement of the child. The secretary shall consider all relevant factors, including, but not limited to, all factors listed in subsection (b) in deciding whether to place the child in the home of such grandparent. If the secretary decides that the child is not to be placed in the home of such grandparent, the secretary shall prepare and maintain a written report providing the specific reasons for such finding.

(d) The provisions of this section shall not apply to actions filed under the Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto.

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

**History:** L. 2012, ch. 115, § 1; L. 2014, ch. 115, § 66; July 1.

**Cross References to Related Sections:**

Custody of child removed from custody of a parent, 38-2255.

**38-2287. Child in custody, victim of certain conduct; special assessment to determine safety, placement and treatment needs.**

(a) Whenever a child is in custody, as defined in K.S.A. 2017 Supp. 38-2202, and amendments thereto, and there is reason to believe such child has been subjected to an act which would constitute human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto, or the child committed an act which, if committed by an adult, would constitute selling sexual relations, as defined by K.S.A. 2017 Supp. 21-6419, and amendments thereto, the court shall refer the child to the secretary for children and families for an assessment to determine safety, placement, treatment and service needs for the child. The secretary shall use a validated, evidence-based assessment tool or instrument to assess such needs and shall make appropriate recommendations to the court. The secretary shall provide only a summary of the results from the assessment tool or instrument, not the complete assessment tool or instrument.

(b) When any law enforcement officer takes into custody any child as provided in K.S.A. 2017 Supp. 38-2231(b)(3), and amendments thereto, the law enforcement officer shall contact the department for children and families to begin an assessment to determine safety, appropriate and timely placement and appropriate services to meet the immediate needs of the child.

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

**History:** L. 2013, ch. 120, § 5; L. 2016, ch. 102, § 16; July 1.

**38-2288. CINC placement in a juvenile detention facility. [See Revisor's Note]**

(a) Notwithstanding any other provision of law, no child alleged or found to be a child in need of care may be placed in a juvenile detention facility unless:

(1) Such placement is necessary to protect the safety of the child and is authorized by subsection (b) of K.S.A. 2017 Supp. 38-2232, and amendments thereto, or K.S.A. 2017 Supp. 38-2242, 38-2243 or 38-2260, and amendments thereto; or

(2) the child is also alleged to be a juvenile offender and such placement is authorized by K.S.A. 2017 Supp. 38-2330 or 38-2343, and amendments thereto.

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

**History:** L. 2014, ch. 126, § 2; July 1.

**Revisor's Note:**

CAUTION: Section was amended effective July 1, 2019, see L. 2016, ch. 46, § 28.

**38-2289. Child in custody, victim of certain conduct; reporting of information.**

(a) Immediately after receiving information that a child has been identified as a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, and in no case later than 24 hours after receiving such information, the secretary shall report such information to law enforcement agencies of jurisdiction.

(b) Immediately after receiving information that a child in the custody of the secretary is missing, and in no case later than 24 hours after receiving such information, the secretary shall report such information to the national center for missing and exploited children and the law enforcement agency in the jurisdiction from which

the child is missing. The law enforcement agency shall enter such information into the missing person system of the national crime information center and the missing and unidentified person system of the Kansas bureau of investigation, in accordance with K.S.A. 75-712c, and amendments thereto.

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

**History:** L. 2016, ch. 102, § 6; July 1.

**Chapter 23.—KANSAS FAMILY LAW  
CODE-REVISED**

**Article 22.—PARENTAGE ACT**

**23-2210. Jurisdiction; venue; precedence of certain other orders.**

(a) The district court has jurisdiction of an action brought under the Kansas parentage act. The action may be joined with an action for divorce, annulment, separate maintenance, support or adoption.

(b) If any determination is sought in any action under the Kansas parentage act for custody, residency or parenting time, the initial pleading seeking that determination shall include that information required by K.S.A. 2017 Supp. 23-37,209, and amendments thereto.

(c) The action may be brought in the county in which the child, the mother or the presumed or alleged father resides or is found. If a parent or an alleged or presumed parent is deceased, an action may be brought in the county in which proceedings for probate of the estate of the parent or alleged or presumed parent have been or could be commenced.

(d) Any order issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall take precedence over any order under article 22 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto (determination of parentage), until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated.

(e) If a court of competent jurisdiction within this state has entered an order pursuant to the revised Kansas code for care of children regarding

custody of a child or children who are involved in a proceeding filed pursuant to this section, and such court has determined pursuant to subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the orders in that case shall become the custody orders in the parentage case, such court shall file a certified copy of the orders with the civil case number in the caption and then close the case under the revised Kansas code for care of children. Such orders shall be binding on the parties, unless modified based on a material change in circumstances, even if such courts have different venues.

**History:** L. 1985, ch. 114, § 7; L. 2000, ch. 171, § 73; L. 2010, ch. 75, § 2; L. 2011, ch. 24, § 1; July 1.

**Source or Prior Law:**  
38-1116.

**Law Review and Bar Journal References:**

"Challenging the Presumption of Paternity,"  
Sheila Reynolds, 65 J.K.B.A. No. 10, 36 (1996).

**CASE ANNOTATIONS**

1. Court without jurisdiction where action brought without mother, child and presumed father as parties. *State ex rel. Secretary of SRS v. Stephens*, 13 K.A.2d 715, 717, 782 P.2d 68 (1989).

2. Post judgment motions for reconsideration filed without challenging jurisdiction waived lack of personal jurisdiction defense. *Carrington v. Unseld*, 22 K.A.2d 815, 818, 923 P.2d 1052 (1996).

3. Subject matter jurisdiction not divested by failure to give mother who assigned support to SRS notice of paternity action. *State ex rel. Secretary of SRS v. Miller*, 24 K.A.2d 822, 823, 953 P.2d 245 (1998).

**23-2215. Judgment or order; other authorized orders.**

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall

have only the force and effect of a finding of fact necessary to determine a party's duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child under article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto. The court may order the payment of all or a portion of the necessary medical expenses incident to the child's birth. The court may order the support and education expenses to be paid by either or both parents for the minor child.

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest 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 interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) 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 (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2017 Supp. 38-2202, 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 by written order 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 of 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. 2017 Supp. 38-2243 and 38-2244, 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 subsection 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. 2017 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2017 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. If 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 order pursuant to the revised Kansas code for care of children shall take precedence over any similar order under this section.

(f) (1) In entering an original order for support of a child under this section, the court may award an additional judgment to the mother or any other party who made expenditures for support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 2017 Supp. 23-2208, and amendments thereto, the court shall award an additional

judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(2) The court may consider any affirmative defenses pled and proved in making an award under this subsection.

(3) The amount of any award made under this subsection shall be determined by application of the Kansas child support guidelines. For any period occurring five years or less before or after commencement of the action, there is a rebuttable presumption that such child support guidelines amount reflects the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award has the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.

**History:** L. 1985, ch. 114, § 12; L. 1985, ch. 115, § 39; L. 1986, ch. 138, § 5; L. 1986, ch. 137, § 22; L. 1988, ch. 137, § 1; L. 1991, ch. 171, § 3; L. 1992, ch. 273, § 1; L. 1994, ch. 292, § 10; L. 1997, ch. 182, § 5; L. 2000, ch. 171, § 10; L. 2001, ch. 195, § 5; L. 2010, ch. 75, § 3; L. 2011, ch. 24, § 2; L. 2014, ch. 116, § 2; July 1.

**Source or Prior Law:**  
38-1121.

**Law Review and Bar Journal References:**

"Kansas Child Support Guidelines: An Elusive Search for Fairness in Support Orders," Linda Henry Elrod, 27 W.L.J. 104, 107, 113 (1987).

"Survey of Kansas Law: Family Law," Nancy G. Maxwell, 37 K.L.R. 801, 817 (1989).

"Dissolution of Non-Marital Relationships," Charles F. Harris, J.K.T.L.A. Vol. XXII, No. 2, 18 (1998).

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

"For Love or Money: The Kansas Supreme Court's Problematic Acceptance of the 'Best Interests of the Child' Standard in an Intestate

Claim [Reese v. Muret, 150 P.3d 309 (Kan. 2007)]," Angela Chesney Herrington, 47 W.L.J. 177 (2007).

### CASE ANNOTATIONS

1. L. 1985 cited; Kansas parentage act not applied retroactively; unwed parent has same custody rights as any other parent. LaGrone v. LaGrone, 238 K. 630, 631, 632, 713 P.2d 474 (1986).

2. Kansas has no statute regarding priority or prerequisite for action to increase child support based upon absent parent's common-law duty. Swarts v. Dean, 13 K.A.2d 228, 231, 766 P.2d 1291 (1989).

3. Evidence concerning best interests of child as unnecessary in determination of parentage proceeding examined. In re Marriage of O'Brien, 13 K.A.2d 402, 405, 772 P.2d 278 (1989).

4. Absence of jurisdiction examined where action brought without mother, child and presumed father as parties. State ex rel. Secretary of SRS v. Stephens, 13 K.A.2d 715, 782 P.2d 68 (1989).

5. Standard for modification of support order entered under act is the best interest of child. State ex rel. Dix v. Plank, 14 K.A.2d 12, 14, 780 P.2d 171 (1989).

6. Purpose of Kansas parentage act stated and applied. In re Marriage of Ross, 245 K. 591, 595, 783 P.2d 331 (1989).

7. Noted where term "wholly dependent child" in workers compensation act (44-508(c), 44-510b) construed. Killingsworth v. City of Wichita, 16 K.A.2d 801, 804, 830 P.2d 70 (1992).

8. Act contemplates minors as parents; no exception regarding duty of support. State ex rel. Hermesmann v. Seyer, 252 K. 646, 652, 847 P.2d 1273 (1993).

9. Incarceration in correctional facility not legal justification for suspension or modification of child support obligation under guidelines. Rupp v. Grubb, 265 K. 711, 712, 962 P.2d 1074 (1998).

10. Trial court lacks authority to change child's name on birth certificate without both parents' consent. Denk v. Taylor, 25 K.A.2d 172, 173, 958 P.2d 1172 (1998).

11. Father, who had no contact with mother after she became pregnant nor with the child, acquiesced in mother's decision to delay child's

enrollment date in school (liable to pay child support until child graduates from high school even though 19 years of age). State ex rel. Sec. of SRS v. Hartzog, 31 K.A.2d 146, 62 P.3d 256 (2003).

12. Increase in monthly child support considered to be related to mother's living expenses not approved. Skillet v. Sierra, 30 K.A.2d 1041, 53 P.3d 1234 (2002).

13. Presumption of paternity arose when man acquiesced to being named as father on child's birth certificate; doctrine of laches may not be invoked. In re Parentage of Shade, 34 K.A.2d 895, 126 P.3d 445 (2006).

**Chapter 23.—KANSAS FAMILY LAW  
CODE-REVISED**

**Article 32.—CUSTODY, RESIDENCY  
AND PARENTING PLANS**

**23-3207. 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 (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2017 Supp. 38-2202, 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 by written order that:

(1) (A) The child is likely to sustain harm if not immediately removed from the home;

(B) allowing the child to remain in the 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 of 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. 2017 Supp. 38-2243 and 38-2244, 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. 2017 Supp. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2017 Supp. 38-2266, 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 article. If the same judge presides over both proceedings, the notice is not required. Any order pursuant to the revised Kansas code for care of children shall take precedence over any order under this article.

**History:** L. 2011, ch. 26, § 24; L. 2012, ch. 162, § 48; May 31.

**Source or Prior Law:**  
60-1610(a)(5).

**CASE ANNOTATIONS**

1. District court abused its discretion by applying K.S.A. 23-3207(b) to a situation where the residency of half siblings was being divided; statute is inapplicable to such situations. *Cheney v. Poore*, 301 K. 120, 127, 130, 339 P.3d 1220 (2014).

## Chapter 60.—PROCEDURE, CIVIL

### Article 31.—PROTECTION FROM ABUSE ACT

#### **60-3107. Protection from abuse orders procedure; modifications; inconsistent orders; extension of orders; violation of orders, criminal violations and penalties.**

(a) The court may approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Restraining the defendant from abusing, molesting or interfering with the privacy or rights of the plaintiff or of any minor children of the parties. Such order shall contain a statement that if such order is violated, such violation may constitute assault as defined in subsection (a) of K.S.A. 2017 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2017 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2017 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.

(2) Granting possession of the residence or household to the plaintiff to the exclusion of the defendant, and further restraining the defendant from entering or remaining upon or in such residence or household, subject to the limitation of subsection (d). Such order shall contain a statement that if such order is violated, such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2017 Supp. 21-5808, and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto. The court may grant an order, which shall expire 60 days following the date of issuance, restraining the defendant from cancelling utility service to the residence or household.

(3) Requiring defendant to provide suitable, alternate housing for the plaintiff and any minor children of the parties.

(4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.

(5) Ordering a law enforcement officer to evict the defendant from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child, if the party is the father or mother of the child, or the plaintiff, if the plaintiff is married to the defendant. Such support orders shall remain in effect until modified or dismissed by the court or until expiration and shall be for a fixed period of time not to exceed one year. On the motion of the plaintiff, the court may extend the effect of such order for 12 months.

(7) Awarding costs and attorney fees to either party.

(8) Making provision for the possession of personal property of the parties and ordering a law enforcement officer to assist in securing possession of that property, if necessary.

(9) Requiring any person against whom an order is issued to seek counseling to aid in the cessation of abuse.

(10) Ordering or restraining any other acts deemed necessary to promote the safety of the plaintiff or of any minor children of the parties.

(b) No protection from abuse order shall be entered against the plaintiff unless:

(1) The defendant properly files a written cross or counter petition seeking such a protection order;

(2) the plaintiff had reasonable notice of the written cross or counter petition by personal service as provided in subsection (d) of K.S.A. 60-3104, and amendments thereto; and

(3) the issuing court made specific findings of abuse against both the plaintiff and the defendant and determined that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

(c) Any order entered under the protection from abuse act shall not be subject to modification on ex parte application or on motion for temporary orders in any action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto. Orders previously issued in an action filed pursuant to K.S.A. 60-1601 et seq., prior to their transfer or

repeal, or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 38-1101 et seq., and amendments thereto, shall be subject to modification under the protection from abuse act only as to those matters subject to modification by the terms of K.S.A. 2017 Supp. 23-3201 through 23-3207 and 23-3218 and article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, and on sworn testimony to support a showing of good cause. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause. If an action is filed pursuant to K.S.A. 2017 Supp. 23-3201 through 23-3207 or 23-3218 or article 22 or 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, during the pendency of a proceeding filed under the protection from abuse act or while an order issued under the protection from abuse act is in effect, the court, on final hearing or on agreement of the parties, may issue final orders authorized by K.S.A. 2017 Supp. 23-3201 through 23-3207 and 23-3218 and articles 22 and 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto, that are inconsistent with orders entered under the protection from abuse act. Any inconsistent order entered pursuant to this subsection shall be specific in its terms, reference the protection from abuse order and parts thereof being modified and a copy thereof shall be filed in both actions. The court shall consider whether the actions should be consolidated in accordance with K.S.A. 60-242, and amendments thereto. Any custody or parenting time order, or order relating to the best interests of a child, issued pursuant to the revised Kansas code for care of children or the revised Kansas juvenile justice code, shall be binding and shall take precedence over any such custody or parenting order involving the same child issued under the protection from abuse act, until jurisdiction under the revised Kansas code for care of children or the revised Kansas juvenile justice code is terminated. Any inconsistent custody or parenting order issued in the revised Kansas code for care of children case or the revised Kansas juvenile justice code case shall be specific in its terms, reference any preexisting protection from abuse order and the custody being modified, and a copy of such order

shall be filed in the preexisting protection from abuse case.

(d) If the parties to an action under the protection from abuse act are not married to each other and one party owns the residence or household, the court shall not have the authority to grant possession of the residence or household under subsection (a)(2) to the exclusion of the party who owns it.

(e) Subject to the provisions of subsections (b), (c) and (d), a protective order or approved consent agreement shall remain in effect until modified or dismissed by the court and shall be for a fixed period of time not to exceed one year, except as provided in subsection (e)(1) and (e)(2).

(1) Upon motion of the plaintiff, such period may be extended for one additional year.

(2) Upon verified motion of the plaintiff and after the defendant has been personally served with a copy of the motion and has had an opportunity to present evidence and cross-examine witnesses at a hearing on the motion, if the court determines by a preponderance of the evidence that the defendant has violated a valid protection order or (A) has previously violated a valid protection order, or (B) has been convicted of a person felony or any conspiracy, criminal solicitation or attempt thereof, under the laws of Kansas or the laws of any other jurisdiction which are substantially similar to such person felony, committed against the plaintiff or any member of the plaintiff's household, the court shall extend a protective order for not less than two additional years and may extend the protective order up to the lifetime of the defendant. No service fee shall be required for a motion filed pursuant to this subsection.

(f) The court may amend its order or agreement at any time upon motion filed by either party.

(g) No order or agreement under the protection from abuse act shall in any manner affect title to any real property.

(h) If a person enters or remains on premises or property violating an order issued pursuant to subsection (a)(2), such violation shall constitute criminal trespass as defined in subsection (a)(1)(C) of K.S.A. 2017 Supp. 21-5808, and amendments thereto, and violation of a protective order as

defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to subsection (a)(1), such violation may constitute assault as defined in subsection (a) of K.S.A. 2017 Supp. 21-5412, and amendments thereto, battery as defined in subsection (a) of K.S.A. 2017 Supp. 21-5413, and amendments thereto, domestic battery as defined in K.S.A. 2017 Supp. 21-5414, and amendments thereto, and violation of a protective order as defined in K.S.A. 2017 Supp. 21-5924, and amendments thereto.

**History:** L. 1979, ch. 92, § 7; L. 1980, ch. 177, § 6; L. 1983, ch. 201, § 4; L. 1987, ch. 228, § 6; L. 1988, ch. 220, § 1; L. 1990, ch. 210, § 1; L. 1992, ch. 76, § 1; L. 1996, ch. 208, § 8; L. 1998, ch. 94, § 5; L. 2000, ch. 171, § 24; L. 2001, ch. 177, § 10; L. 2002, ch. 142, § 3; L. 2010, ch. 75, § 22; L. 2011, ch. 26, § 46; L. 2011, ch. 91, § 26; L. 2012, ch. 138, § 5; L. 2013, ch. 133, § 22; July 1.

**Revisor's Note:**

Section was amended twice in the 2012 session, see also 60-3107a.

**Cross References to Related Sections:**

Violation of restraining order as constituting criminal trespass, see 21-5808.

**Law Review and Bar Journal References:**

"Family Law: Under the Kansas Protection from Abuse Act, Petitioner for Protective Order Alleging Injury from Wanton Conduct Must Prove Substantial Pain or Impairment [Paidia v. Leach, 917 P.2d 1342 (Kan. 1996)]," Brenda Clary, 36 W.L.J. 290 (1997).

"Dissolution of Non-Marital Relationships," Charles F. Harris, J.K.T.L.A. Vol. XXII, No. 2, 18 (1998).

"2001 Legislative Wrap-Up," Paul T. Davis, 70 J.K.B.A. No. 7, 14 (2001).

"2002 Legislative Wrap-Up," Paul T. Davis, 71 J.K.B.A. No. 7, 15 (2002).

**Attorney General's Opinions:**

Restraining orders violations; criminal trespass; probable cause for arrest. 94-74.

Federal violence against women act; enforcement of orders issued by courts in other states. 95-107.

**CASE ANNOTATIONS**

1. Record does not support abuse of court's discretion in denying portion of requested attorney fees hereunder. *Barnett v. Barnett*, 24 K.A.2d 342, 353, 354, 945 P.2d 870 (1997).

2. Consent of victim is not a defense to crime of violating a protective order. *State v. Branson*, 38 K.A.2d 484, 167 P.3d 370 (2007).

3. Trial court has discretion to extend the protection from abuse order. *Jordan v. Jordan*, 47 K.A.2d 300, 274 P.3d 657 (2012).

4. A protection from abuse act case is not a proper setting to assert grandparent visitation rights. *Baker v. McCormick*, 52 K.A.2d 899, 912, 380 P.3d 706 (2016).