

The Guardian ad litem Handbook

An educational resource to help understand
The role of a Guardian ad litem
In the state of Kansas



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Rule 110A STANDARDS FOR GUARDIANS AD LITEM

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Rule 110A STANDARDS FOR GUARDIANS AD LITEM

(a) Generally. Unless the appointing judge authorizes departure from these standards for good cause, these standards apply when the judge appoints a guardian ad litem for a child in a case under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 et seq.; the Revised Kansas Juvenile Justice Code, K.S.A. 38 - 2301 et seq.; and the Kansas Family Law Code, K.S.A. Chapter 23. The judge must:

- (1)** issue an order appointing the guardian ad litem on a form substantially in compliance with the judicial council form; and
- (2)** ensure compliance with this rule.

(b) Prerequisite and Continuing Education.

(1) [Requirements](#).

(A) Number of Hours; Timeframe. As a prerequisite to appointment, a guardian ad litem must complete at least 6 hours of education, including 1 hour of professional responsibility. An appointed guardian ad litem also must participate in continuing education consisting of at least 6 hours per year.

(B) Areas of Education. Areas of education should include, but are not limited to:

- dynamics of abuse and neglect;
- roles and responsibilities;
- cultural awareness;
- communication skills, including communication with children;
- information gathering and investigatory techniques;
- advocacy skills;
- child development;
- mental health issues;
- permanency and the law;
- community resources;
- professional responsibility;
- special education law;
- substance abuse issues;
- school law; and
- the revised code for care of children.

(2) Waiver of Prerequisite. The appointing judge may waive the prerequisite education when necessary to make an emergency temporary appointment. The educational requirements must be completed within 6 months after appointment.

(3) Continuing Education Requirements; Judicial Approval. If approved by the Continuing Legal Education Commission, the education hours required by paragraph **(1)** also can be counted to satisfy Supreme Court [Rule 803](#)'s continuing legal education requirements. These standards do not modify the minimum total hours annually required under that rule. The appointing judge may approve prerequisite education and continuing education hours not otherwise approved by the Continuing Legal Education Commission.

(4) Recordkeeping. Each guardian ad litem must maintain a record of the guardian's participation in prerequisite and continuing education programs. Upon request of the appointing judge, the guardian must provide evidence of compliance with this subsection.

(c) Guardian Ad Litem Duties and Responsibilities. A guardian ad litem must comply with the following standards:

- (1)** Conducting an Independent Investigation. A guardian ad litem must conduct an independent investigation and review all relevant documents and records, including those of social service agencies, police, courts, physicians, mental health practitioners, and schools. Interviews — either in person or by

telephone — of the child, parents, social workers, relatives, school personnel, court-appointed special advocates ([CASAs](#)), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and ongoing contact with the child are mandatory.

(2) Determining the [Best Interests of the Child](#). A guardian ad litem must determine the best interests of the child by considering such factors as:

- the child's age and sense of time;
- the child's level of maturity;
- the child's culture and ethnicity;
- degree of the child's attachment to family members, including siblings;
- continuity;
- consistency;
- permanency;
- the child's sense of belonging and identity; and
- results of the investigation.

(3) Representing in Court. A guardian ad litem must:

(A) file appropriate pleadings and other papers on the child's behalf;

(B) represent the best interests of the child at all hearings;

(C) present all relevant facts, including the child's position;

(D) submit the results of the guardian's independent investigation and the guardian's recommendations regarding the child's best interests; and

(E) vigorously advocate for the child's best interests by:

(i) calling, examining, and cross-examining witnesses;

(ii) submitting and responding to other evidence; and

(iii) making oral and written arguments based on the evidence that has been or is expected to be presented.

(4) Explaining to the Child. A guardian ad litem must explain the court proceedings and the guardian's role in terms the child can understand.

(5) Making Recommendations for Services. A guardian ad litem must recommend appropriate services for the child and the child's family.

(6) Monitoring. A guardian ad litem must monitor implementation of service plans and court orders.

(d) When Recommendation Conflicts With Child's Wishes. If the child disagrees with the guardian ad litem's recommendation, the guardian must inform the court of the disagreement. The court may, for good cause, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney for the child, that individual serves in addition to the guardian ad litem. The attorney must allow the child and the guardian to communicate with one another but may require the communications to occur in the attorney's presence.

(e) Participation Limited by Rules of Professional Conduct. An attorney in a proceeding in which the attorney serves as guardian ad litem may submit reports and recommendations to the court and testify only as permitted by [Kansas Rule of Professional Conduct](#) 3.7(a).

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Kansas Statutes

Browsable and searchable archive of 2009 Kansas Statutes Annotated (K.S.A.)

Chapter 38: Minors

Article 22: Revised Kansas Code For Care Of Children

Statutes:

- [38-2201](#): Citation; construction of code; policy of state.
- [38-2202](#): Definitions.
- [38-2203](#): Jurisdiction; age of child, presumptions.
- [38-2204](#): Venue.
- [38-2205](#): Right to counsel; guardian *ad litem*
- [38-2206](#): Appointment of special advocate.
- [38-2207](#): Citizen review boards; members.
- [38-2208](#): Same; duties and powers.
- [38-2209](#): Confidentiality of child in need of care records; penalties; immunities.
- [38-2210](#): Parties exchanging information.
- [38-2211](#): Access to official and social file; preservation of records.
- [38-2211a](#):
- [38-2212](#): Appropriate and necessary access; exchange of information; court ordered disclosure; limited public information.
- [38-2213](#): Records of law enforcement agencies; limited disclosure; exchange of information; access; court ordered disclosure.
- [38-2214](#): Duties of county or district attorney.
- [38-2215](#): Docket fee and expenses.
- [38-2216](#): Expense of care and custody of child.
- [38-2217](#): Health services.
- [38-2218](#): Educational decisions; educational advocates for exceptional children.
- [38-2219](#): Evaluation of development or needs of child.
- [38-2220](#): Parentage.
- [38-2221](#): Fingerprints and photographs.
- [38-2222](#): Public information and educational program; reporting of suspected abuse or neglect.
- [38-2223](#): Reporting of certain abuse or neglect of children; persons reporting; reports, made to whom; penalties; immunity from liability.
- [38-2224](#): Same; employer prohibited from imposing sanctions on employee making report or cooperating in investigation; penalty.
- [38-2225](#): Same; reporting of certain abuse or neglect of children in institutions operated by the secretary; rules and regulations.
- [38-2226](#): Investigation of reports; coordination between agencies.
- [38-2227](#): Child advocacy centers.
- [38-2228](#): Multidisciplinary team.
- [38-2229](#): Investigation of abuse or neglect; subpoena; request to quash.
- [38-2230](#): Same; duties of SRS.
- [38-2231](#): Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway.
- [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.

- [38-2233](#): Filing of petition on referral by SRS or other person; filing by individual.
- [38-2234](#): Pleadings.
- [38-2235](#): Procedure upon filing of petition.
- [38-2236](#): Summons; persons to be served; notice of hearing.
- [38-2237](#): Service of process.
- [38-2238](#): Proof of service.
- [38-2239](#): Service of other pleadings.
- [38-2240](#): Subpoenas; witness fees.
- [38-2241](#): Additional parties.
- [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.
- [38-2243](#): Orders of temporary custody; notice; hearing; procedure; findings; placement; orders for removal of child from custody of parent, limitations.
- [38-2244](#): Order for informal supervision; restraining orders.
- [38-2245](#): Discovery.
- [38-2246](#): Continuances.
- [38-2247](#): Attendance at proceedings; confidentiality.
- [38-2248](#): Stipulations and no contest statements.
- [38-2249](#): Rules of evidence.
- [38-2250](#): Degree of proof.
- [38-2251](#): Adjudication.
- [38-2252](#): Predispositional alternative; placement with person other than child's parent; conference; recommendations; immunity.
- [38-2253](#): Dispositional hearing; purpose; time.
- [38-2254](#): Same; notice.
- [38-2255](#): Authorized dispositions.
- [38-2256](#): Rehearing.
- [38-2257](#): Permanency planning at disposition.
- [38-2258](#): Change of placement; removal from home of parent, findings by court.
- [38-2259](#): Emergency change of placement; removal from home of parent, findings of court.
- [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.
- [38-2261](#): Reports made by foster parents.
- [38-2262](#): Placement; testimony of certain children.
- [38-2263](#): Permanency planning.
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- [38-2265](#): Same; notice.
- [38-2266](#): Request for termination of parental rights or appointment of permanent custodian.
- [38-2267](#): Procedure upon receipt of request.
- [38-2268](#): Voluntary relinquishment; voluntary permanent custodianship; consent to adoption.
- [38-2269](#): Factors to be considered in termination of parental rights; appointment of permanent custodian.
- [38-2270](#): Custody for adoption.
- [38-2271](#): Presumption of unfitness, when; burden of proof.
- [38-2272](#): Appointment of permanent custodian.
- [38-2273](#): Appeals; procedure; verification.
- [38-2274](#): Temporary orders pending appeal; status of orders appealed from.
- [38-2275](#): Fees and expenses.
- [38-2276](#): Prohibiting detainment or placement of child in jail.
- [38-2277](#): Determination of child support.
- [38-2278](#): Journal entry for child support.
- [38-2279](#): Withholding order for child support; filing; service.

- [38-2280](#): Remedies supplemental not substitute.
- [38-2281](#): Family services and community intervention fund; child in need of care, purpose of expenditure of moneys.
- [38-2282](#): Newborn infant protection act.
- [38-2283](#): Application to existing cases.

- [38-2201](#): Citation; construction of code; policy of state. K.S.A. 2009 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.
 - (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.

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

- [38-2202](#): Definitions. 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. 2009 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. 21-4204a](#), 41-727, subsection (j) of [K.S.A. 74-8810](#) or subsection (m) or (n) of [K.S.A. 79-3321](#), and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;
 - (8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by [K.S.A. 21-3105](#), and amendments thereto;
 - (9) is willfully and voluntarily absent from the child's home without the consent of the child's parent or other custodian;
 - (10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee;
 - (11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;
 - (12) while less than 10 years of age commits the offense defined in [K.S.A. 21-4204a](#), and amendments thereto; or
 - (13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve.
- (e) "Citizen review board" is a group of community volunteers appointed by the court and whose duties are prescribed by K.S.A. 2009 Supp. 38-2207 and 38-2208, and amendments thereto.
 - (f) "Court-appointed special advocate" means a responsible adult other than an attorney guardian ad litem who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 2009 Supp. 38-2206, and amendments thereto, in a proceeding pursuant to this code.
 - (g) "Custody" whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.
 - (h) "Extended out of home placement" means a child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date at which a child in the custody of the secretary was removed from the home.
 - (i) "Educational institution" means all schools at the elementary and secondary levels.
 - (j) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a) of [K.S.A. 72-89b03](#), and amendments thereto.
 - (k) "Harm" means physical or psychological injury or damage.
 - (l) "Interested party" means the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court pursuant to K.S.A. 2009 Supp. 38-2241, and amendments thereto or Indian tribe seeking to intervene that is not a party.
 - (m) "Jail" means:
 - (1) An adult jail or lockup; or
 - (2) a facility in the same building or on the same grounds as an adult jail or lockup, unless the facility meets all applicable standards and licensure requirements under law and there is: (A) Total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.
 - (n) "Juvenile detention facility" means any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders which must not be a jail.

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

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

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

(r) "Multidisciplinary team" means a group of persons, appointed by the court under K.S.A. 2009 Supp. 38-2228, and amendments thereto, which has knowledge of the circumstances of a child in need of care.

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

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

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

(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to subsection (a)(2) of K.S.A. 2009 Supp. 38-2217, and amendments thereto.

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

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

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

(w) "Permanent custodian" means a judicially approved permanent guardian of a child pursuant to K.S.A. 2009 Supp. 38-2272, and amendments thereto.

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

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

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

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

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

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

(dd) "Shelter facility" means any public or private facility or home other than a juvenile detention facility that may be used in accordance with this code for the purpose of providing either temporary

placement for children in need of care prior to the issuance of a dispositional order or longer term care under a dispositional order.

(ee) "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.

(ff) "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; July 1.

- [38-2203](#): Jurisdiction; age of child, presumptions. (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. 2009 Supp. 38-2234, and amendments thereto); ex parte custody orders (K.S.A. 2009 Supp. 38-2242, and amendments thereto); temporary custody hearing (K.S.A. 2009 Supp. 38-2243, and amendments thereto); adjudication (K.S.A. 2009 Supp. 38-2247, and amendments thereto); burden of proof (K.S.A. 2009 Supp. 38-2250, and amendments thereto); disposition (K.S.A. 2009 Supp. 38-2255, and amendments thereto); permanency hearings (K.S.A. 2009 Supp. 38-2264, and amendments thereto); termination of parental rights (K.S.A. 2009 Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto); establishment of permanent custodianship (K.S.A. 2009 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 chapter 59, article 30 of the Kansas Statutes Annotated, and amendments thereto.

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

(c) The court acquires jurisdiction over a child by the filing of a petition pursuant to this code or upon issuance of an ex parte order pursuant to K.S.A. 2009 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.

History: L. 2006, ch. 200, § 3; L. 2008, ch. 169, § 2; L. 2009, ch. 99, § 2; July 1.

- [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.

- [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. 2009 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. 2009 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. 2009 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. 2009 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. 2009 Supp. 38-2215, and amendments thereto.

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

- [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.

- [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.

- [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) The citizen review board will review each referred case at least once each year.

(d) The judge shall consider the citizen review board recommendations in making an authorized dispositional order pursuant to K.S.A. 2009 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; Jan. 1, 2007.

- [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. 2009 Supp. 38-2210 through 38-2213, and amendments thereto. Confidential records that are disclosed pursuant to K.S.A. 2009 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. 2009 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. 2009 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.
- [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 commissioner of juvenile justice.

- (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. 2009 Supp. 38-2214, and amendments thereto.
 - (h) A court services officer who has taken a child into custody pursuant to K.S.A. 2009 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.
- History: L. 2004, ch. 178, § 2; July 1.

- [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 commissioner of juvenile justice or any agents designated by the commissioner.
 - (8) Any other person when authorized by a court order, subject to any conditions imposed by the order.
 - (9) 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 commissioner of juvenile justice or any agents designated by the commissioner.
 - (8) 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)(8) and (b) (8), 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; July 1.

- [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. 2009 Supp. 38-2210, and amendments thereto, the secretary, agents of 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. 2009 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 person's 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) Public disclosure of information from confidential reports or records of a child alleged or adjudicated to be a child in need of care shall be limited to:

(A) Confirmation of factual details with respect to how the case was handled, provided, however, that the information does not violate the privacy of the child, or the child's siblings, parents or guardians.

(B) Confidential information may be released to the public only with the express written permission of the individuals involved or their representatives.

(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 (2), in the event that child abuse or neglect results in a child fatality or near fatality, reports or records of a child in need of care received by the department of social and rehabilitation services, 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. 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. In reviewing such motion, 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. Nothing herein is intended to require that an otherwise privileged

communication lose its privileged character. If the court grants such motion, the court shall make written findings on the record justifying the closing of the records. 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.

(2) 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.

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; July 1.

- [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. 2009 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. 2009 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.

- [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.

- [38-2215](#): Docket fee and expenses. (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, 2009 through June 30, 2010, the supreme court may impose an additional charge, not to exceed \$10 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; July 1.

- [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. 2009 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.
- [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.

- [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.

- [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.

- [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. 38-1110](#) et seq., and amendments thereto, or otherwise. Nothing in this subsection shall be construed to limit the power of the court to carry out the purposes of the code.

History: L. 2006, ch. 200, § 15; Jan. 1, 2007.

- [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;

(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; Jan. 1, 2007.

- [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 department of social and rehabilitation services, for persons required to report under this code and for other appropriate persons.

History: L. 2006, ch. 200, § 17; Jan. 1, 2007.
- [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 professional counselors, licensed clinical professional counselors and registered alcohol and drug abuse counselors;

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

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

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

(b) *Form of report*. (1) The report may be made orally and shall be followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and the child's parents or other persons responsible for the child's care; the location of the child if not at the child's residence; the child's gender, race and age; the reasons why the reporter suspects the child may be a child in need of care; if abuse or neglect or sexual abuse is suspected, the nature and extent of the harm to the child, including any evidence of previous harm; and any other information that the reporter believes might be helpful in establishing the cause of the harm and the identity of the persons responsible for the harm.

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

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

(1) When the department of social and rehabilitation services is not open for business, reports shall be made to the appropriate law enforcement agency. On the next day that the department is open for business, the law enforcement agency shall report to the department any report received and any investigation initiated pursuant to [K.S.A. 2009 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 secretary of social and rehabilitation services or the commissioner of juvenile justice shall be made to the attorney general. All other reports of child abuse or neglect by persons employed by or of children of persons employed by the department of social and rehabilitation services shall be made to the appropriate law enforcement agency.

(d) *Death of child*. Any person who is required by this section to report a suspicion that a child is in need of care and who knows of information relating to the death of a child shall immediately notify the

coroner as provided by [K.S.A. 22a-242](#), and amendments thereto.

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

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

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

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

History: L. 2006, ch. 200, § 18; Jan. 1, 2007.

- [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.
- [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.
- [38-2226](#): Investigation of reports; coordination 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. 2009 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 secretary shall be investigated by the attorney general. Any other suspected child abuse or neglect by persons employed by the department of social and rehabilitation services shall be investigated by the appropriate law enforcement agency.
(d) *Coordination of investigations by county or district attorney.* If a dispute develops between agencies investigating a reported case of child abuse or neglect, the appropriate county or district attorney shall take charge of, direct and coordinate the investigation.

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

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

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

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

History: L. 2006, ch. 200, § 21; Jan. 1, 2007.

- [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.

- [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.

- [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. 2009 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 and holidays. The court issuing the subpoena or order shall keep all applications filed pursuant to this subsection and a copy of the subpoena or order in a special file maintained for that purpose. Upon receiving service of a subpoena, subpoena *duces tecum* or an order for production pursuant to this section, the person or agency served shall give oral or written notice of service to any person known to have a right to assert a privilege or assert a right of confidentiality in regard to the documents, reports or information sought at least three days before the date of delivery.

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

History: L. 2006, ch. 200, § 24; Jan. 1, 2007.
- [38-2230](#): Same; duties of SRS. 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.
- [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:

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

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

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

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

(d) A law enforcement officer may temporarily detain and assume temporary custody of any child subject to compulsory school attendance, pursuant to [K.S.A. 72-1111](#), and amendments thereto, during the hours school is actually in session and shall deliver the child pursuant to subsection (g) of K.S.A. 2009 Supp. 38-2232, and amendments thereto.

History: L. 2006, ch. 200, § 26; Jan. 1, 2007.

- [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. (a) To the extent possible, when any law enforcement officer takes into custody a child under the age of 18 years without a court order, the child shall forthwith be delivered to the custody of the child's parent or other custodian unless there are reasonable grounds to believe that such action would not be in the best interests of the child. Except as provided in subsection (b), if the child is not delivered to the custody of the child's parent or other custodian, the child shall forthwith be delivered to a 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. 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. 2009 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 and legal holidays. No child taken into custody pursuant to this code shall be placed in a juvenile detention facility or other secure facility, except as authorized by this section and by K.S.A. 2009 Supp. 38-2242, 38-2243 and 38-2260, and amendments thereto. It shall be the duty of the law enforcement officer to furnish to the county or district attorney, without unnecessary delay, all the information in the possession of the officer pertaining to the child, the child's parents or other persons interested in or likely to be interested in the child and all other facts and circumstances which caused the child to be taken into custody.

(b) When any law enforcement officer takes into custody any child as provided in subsection (b)(2) of K.S.A. 2009 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. 2009 Supp. 38-1008, and amendments thereto, when effective. Any child taken into custody pursuant to the interstate compact on juveniles may be detained in a juvenile detention facility or other secure facility.

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

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

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

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

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

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

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

(g) When any law enforcement officer takes into custody any child as provided in subsection (d) of K.S.A. 2009 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; July 1.

- [38-2233](#): Filing of petition on referral by SRS 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. 2009 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.
- [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. 2009 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.

- [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. 2009 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. 2009 Supp. 38-2237, and amendments thereto.
 - (2) If the child has been taken into protective custody under the provisions of K.S.A. 2009 Supp. 38-2242, and amendments thereto, and a temporary custody hearing is held as required by K.S.A. 2009 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.
- [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.
- [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.

- [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.

- [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. 2009 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.

- [38-2240](#): Subpoenas; witness fees. (a) Subject to K.S.A. 2009 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.
- [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. 2009 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. 2009 Supp. 38-2205, and amendments thereto.
 - (c) *Grandparents as interested parties.* (1) A grandparent of the child shall be made an interested party to a child in need of care proceeding if the grandparent notifies the court of such grandparent's desire to become an interested party. Notification may be made in writing, orally or by appearance at the initial or a subsequent hearing on the child in need of care petition.
 - (2) Grandparents with interested party status shall have the participatory rights of parties pursuant to subsection (b), except that the court may restrict those rights if the court finds that it would be in the best interests of the child. A grandparent may not be prevented under this paragraph from attending the proceedings, having access to the child's official file in the court records or making a statement to the court.
 - (d) *Persons with whom the child has been residing as interested parties.* (1) Any person with whom the child has resided for a significant period of time within six months of the date the child in need of care petition is filed shall be made an interested party, if such person notifies the court of such person's desire to become an interested party. Notification may be made in writing, orally or by appearance at the initial or a subsequent hearing on the child in need of care petition.
 - (2) Persons with interested party status under this subsection shall have the participatory rights of parties pursuant to subsection (b), except that the court may restrict those rights if the court finds that it would be in the best interests of the child.
 - (e) *Other interested parties.* (1) Any person with whom the child has resided at any time, who is within the fourth degree of relationship to the child, or to whom the child has close emotional ties may, upon motion, be made an interested party if the court determines that it is in the best interests of the child.
 - (2) Any other person 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; July 1.

- [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. (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. 2009 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 and legal holidays, unless within the 72-hour period a determination is made as to the necessity for temporary custody in a temporary custody hearing. The time spent in custody pursuant to K.S.A. 2009 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; or
 - (E) 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 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. 2009 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 and legal holidays.

(d) The order of protective custody shall be served pursuant to subsection (a) of K.S.A. 2009 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. 2009 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

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

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

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

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

History: L. 2006, ch. 200, § 37; L. 2009, ch. 99, § 4; July 1.

- [38-2243](#): Orders of temporary custody; notice; hearing; procedure; findings; placement; orders for removal of child from custody of parent, limitations. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.
 - (b) A hearing pursuant to this section shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, following a child having been taken into protective custody.
 - (c) Whenever it is determined that a temporary custody hearing is required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be given to all parties and interested parties.
 - (d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party or interested party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay.
 - (e) Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice.
 - (f) The court may enter an order of temporary custody after determining 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; or (3) health or welfare of the child may be endangered without further care.
 - (g) (1) Whenever the court determines the necessity for an order of temporary custody the court may place the child in the temporary custody of:
 - (A) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (h);
 - (B) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;
 - (C) a youth residential facility;
 - (D) a shelter facility; or

(E) the secretary, 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 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. 2009 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. 2009 Supp. 38-2242, and amendments thereto, shall not exceed 24 hours, excluding Saturdays, Sundays and legal holidays. The order of temporary custody shall remain in effect until modified or rescinded by the court or 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. 2009 Supp. 38-2237, and amendments thereto, on any alleged perpetrator to whom the order is directed.

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

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

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

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

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

(j) If the court enters an order of temporary custody that provides for placement of the child with a person other than the parent, the court shall make a child support determination pursuant to K.S.A. 2009 Supp. 38-2277, and amendments thereto.

History: L. 2006, ch. 200, § 38; L. 2008, ch. 169, § 7; L. 2009, ch. 99, § 5; July 1.

- [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. 2009 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. 2009 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. 2009 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. 2009 Supp. 38-2237, and amendments thereto, shall continue.

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

- [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.
- [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.
- [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 10.01.(b) *Disposition*. Proceedings pertaining to the disposition of a child adjudicated to be in need of care shall be closed to all persons except the parties, the guardian ad litem, interested parties and their attorneys, officers of the court, a court appointed special advocate and the custodian.
 - (1) Other persons may be permitted to attend with the consent of the parties or by order of the court, if the court determines that it would be in the best interests of the child or the conduct of the proceedings, subject to such limitations as the court determines to be appropriate.
 - (2) The court may exclude any person if the court determines that such person's exclusion would be in the best interests of the child or the conduct of the proceedings.(c) 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 of social and rehabilitation services; obligations of entities that contract with the department of social and rehabilitation services for family preservation, foster care and adoption; the termination of parental rights; the procedures for appeals; and the basic rules regarding court procedure.

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

(d) *Preservation of confidentiality.* If information required to be kept confidential by K.S.A. 2009 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; July 1.

- [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. 2009 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.

- [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) 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. 2009 Supp. 38-2219, and amendments thereto.
 - (c) In any proceeding in which a child less than 13 years of age is alleged to have been physically, mentally or emotionally abused or neglected or sexually abused, a recording of an oral statement of the child, or of any witness less than 13 years of age, made before the proceeding began, is admissible in evidence if:
 - (1) The court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability;
 - (2) no attorney for any party or interested party is present when the statement is made;
 - (3) the recording is both visual and aural and is recorded on film, videotape or by other electronic means;

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

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

(6) every voice on the recording is identified;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: L. 2006, ch. 200, § 44; L. 2007, ch. 57, § 1; Apr. 5.

- [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.
- [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 finding that a child subject to this code is a child in need of care shall be entered without undue delay. If the child has been removed from the child's home, an order of adjudication shall be entered as soon as practicable but not more than 60 days from the date of removal unless an order of informal supervision or an order of continuance for good cause has been entered.

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

- [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.
- [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. 2009 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. 2009 Supp. 38-2265, and amendments thereto, the dispositional hearing may serve as a permanency hearing.
History: L. 2006, ch. 200, § 48; Jan. 1, 2007.
- [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. 2009 Supp. 38-2239, and amendments thereto.

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

- [38-2255](#): Authorized dispositions. (a) *Considerations*. Prior to entering an order of disposition, the court shall give consideration to:
 - (1) The child's physical, mental and emotional condition;
 - (2) the child's need for assistance;
 - (3) the manner in which the parent participated in the abuse, neglect or abandonment of the child;
 - (4) any relevant information from the intake and assessment process; and
 - (5) the evidence received at the dispositional hearing.(b) *Placement with a parent*. The court may place the child in the custody of either of the child's parents subject to terms and conditions which the court prescribes to assure the proper care and protection of the child, including, but not limited to:
 - (1) Supervision of the child and the parent by a court services officer;
 - (2) participation by the child and the parent in available programs operated by an appropriate individual or agency; and
 - (3) any special treatment or care which the child needs for the child's physical, mental or emotional health and safety.(c) *Removal of a child from custody of a parent*. The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds probable cause that: (1)(A) The child is likely to sustain harm if not immediately removed from the home;
 - (B) allowing the child to remain in home is contrary to the welfare of the child; or
 - (C) immediate placement of the child is in the best interest of the child; and(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child.
 - (d) *Custody of a child removed from the custody of a parent*. If the court has made the findings required by subsection (c), the court shall enter an order awarding custody to a relative of the child or to a person with whom the child has close emotional ties, to any other suitable person, to a shelter facility, to a youth residential facility or, 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.
 - (A) After providing the parties or interested parties notice and opportunity to be heard, the court may determine whether the secretary's placement or proposed placement is contrary to the welfare or in the best interests of the child. In making that determination the court shall consider the health and safety needs of the child and the resources available to meet the needs of children in the custody of the secretary. If the court determines that the placement or proposed placement is contrary to the welfare or not in the best interests of the child, the court shall notify the secretary, who shall then make an alternative placement.
 - (B) The secretary may propose and the court may order the child to be placed in the custody of a parent or parents if the secretary has provided and the court has approved an appropriate safety action plan which includes services to be provided. The court may order the parent or parents and the child to perform tasks as set out in the safety action plan.
 - (2) The custodian designated under this subsection shall notify the court in writing at least 10 days prior to any planned placement with a parent. The written notice shall state the basis for the custodian's belief that placement with a parent is no longer contrary to the welfare or best interest of the child. Upon reviewing the notice, the court may allow the custodian to proceed with the planned placement or may set

the date for a hearing to determine if the child shall be allowed to return home. If the court sets a hearing on the matter, the custodian shall not return the child home without written consent of the court.

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

(4) The court may enter an order restraining any alleged perpetrator of physical, mental or emotional abuse or sexual abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child, other family member or witness; or attempting to visit, contact, harass or intimidate the child, other family member or witness. Such restraining order shall be served by personal service pursuant to subsection (a) of K.S.A. 2009 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. 2009 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: Murder in the first degree, [K.S.A. 21-3401](#), and amendments thereto, murder in the second degree, [K.S.A. 21-3402](#), and amendments thereto, capital murder, [K.S.A. 21-3439](#), and amendments thereto, voluntary manslaughter, [K.S.A. 21-3403](#), and amendments thereto, or a felony battery that resulted in bodily injury;

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

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

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

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

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

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

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

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

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

(2) If the court has reason to believe that a child is before the court due, in whole or in part, to the use or misuse of alcohol or a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, 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. 2009 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. 23-4,105](#) et seq., and amendments thereto, for each parent ordered to pay support under this subsection, regardless of whether a payor has been identified for the parent. A parent ordered to pay child support under this subsection shall be notified, at the hearing or otherwise, that the child support order may be registered pursuant to K.S.A. 2009 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; July 1.

- [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. 2009 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. 2009 Supp. 38-2279, and amendments thereto, may only be modified pursuant to K.S.A. 2009 Supp. 38-2279, and amendments thereto.

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

- [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. 2009 Supp. 38-2263, and amendments thereto.

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

- [38-2258](#): Change of placement; removal from home of parent, findings by court. (a) Except as provided in K.S.A. 2009 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) each parent whose address is available; (3) the foster parent or custodian from whose home or shelter facility it is proposed to remove the child; (4) the child, if 12 or more years of age; and (5) the child's guardian ad litem.

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

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

purpose of adoption, unless the change is approved by the court.

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

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

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

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

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

History: L. 2006, ch. 200, § 53; L. 2008, ch. 169, § 13; 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.

- [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. (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. 2009 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. 2009 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. 2009 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 and legal holidays shall not be counted in computing any time limit imposed by this section.

History: L. 2006, ch. 200, § 55; L. 2008, ch. 169, § 15; July 1.

- [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 department of social and rehabilitation services.
History: L. 2006, ch. 200, § 56; Jan. 1, 2007.
- [38-2262](#): Placement; testimony of certain children. At any hearing under the code, the court, if requested by the child, shall hear the testimony of the child as to the desires of the child concerning the child's placement, if the child is 10 years of age and of sound intellect.
History: L. 2006, ch. 200, § 57; Jan. 1, 2007.
- [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, 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. 2009 Supp. 38-2264 and 38-2265, and amendments thereto.

History: L. 2006, ch. 200, § 58; Jan. 1, 2007.

- [38-2264](#): Permanency hearing; purpose; procedure; time for hearing. (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. 2009 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 secretary has documented compelling reasons why it would not be in the child's best interests for a placement in one of the placements pursuant to paragraphs (1), (2) or (3) placed in another planned permanent arrangement.
 - (c) The court shall enter a finding as to whether the person or entity having custody of the child has made reasonable efforts to accomplish the permanency plan in place at the time of the hearing.
 - (d) A permanency hearing shall be held within 12 months of the date the court authorized the child's removal from the home and not less frequently than every 12 months thereafter.
 - (e) If the court determines at any time other than during a permanency hearing that reintegration may not be a viable alternative for the child, a permanency hearing shall be held no later than 30 days following that determination.
 - (f) When the court finds that reintegration continues to be a viable alternative, the court shall determine whether and, if applicable, when the child will be returned to the parent. The court may rescind any of its prior dispositional orders and enter any dispositional order authorized by this code or may order that a new plan for the reintegration be prepared and submitted to the court. If reintegration cannot be accomplished as approved by the court, the court shall be informed and shall schedule a hearing pursuant to this section. No such hearing is required when the parents voluntarily relinquish parental rights or consent to appointment of a permanent custodian.
 - (g) If the court finds reintegration is no longer a viable alternative, the court shall consider whether: (1) The child is in a stable placement with a relative; (2) services set out in the case plan necessary for the safe return of the child have been made available to the parent with whom reintegration is planned; or (3) compelling reasons are documented in the case plan to support a finding that neither adoption nor appointment of a permanent custodian are in the child's best interest. If reintegration is not a viable alternative and either adoption or appointment of a permanent custodian might be in the best interests of the child, the county or district attorney or the county or district attorney's designee shall file a motion to terminate parental rights or a motion to appoint a permanent custodian within 30 days and the court shall set a hearing on such motion within 90 days of the filing of such motion.
 - (h) If the court enters an order terminating parental rights to a child, or an agency has accepted a relinquishment pursuant to [K.S.A. 59-2124](#), and amendments thereto, the requirements for permanency hearings shall continue until an adoption or appointment of a permanent custodian has been accomplished. If the court determines that reasonable efforts or progress have not 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.

History: L. 2006, ch. 200, § 59; L. 2008, ch. 169, § 16; July 1.

- [38-2265](#): Same; notice. (a) The court shall require notice of the time and place of the permanency hearing be given to the parties and interested parties. The notice shall state that the person receiving the notice shall have the right to be heard at the hearing.
 - (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 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 section shall not require additional notice to any person otherwise receiving notice of the hearing pursuant to K.S.A. 2009 Supp. 38-2239, and amendments thereto.

History: L. 2006, ch. 200, § 60; L. 2008, ch. 169, § 17; 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.
- [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. 2009 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.

- [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 the secretary or an individual as permanent custodian and if the secretary or individual accepts the consent, the secretary or individual shall stand *in loco parentis* to the child and shall have and possess over the child all the rights of a legal guardian. When the consent is to the secretary, the secretary shall have the right to place the child in the permanent custody of an individual who is appointed permanent custodian.

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

(3) The consent shall be 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; July 1.

- [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. 2009 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. 2009 Supp. 38-2270, and amendments thereto, appointment of a permanent custodian pursuant to K.S.A. 2009 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. 2009 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. 2009 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. 2009 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.

- [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.
- [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. 2009 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, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of 18 years;
 - (3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by subsection (d)(1),(d)(3), (d)(5) or (d)(11) of K.S.A. 2009 Supp. 38-2202, and amendments thereto, or comparable proceedings under the laws of another jurisdiction.

- (4) the parent has been convicted of causing the death of another child or stepchild of the parent;
- (5) the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;
- (6) (A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a substantial probability that the parent will not carry out such plan in the near future;
- (7) a parent has been convicted of capital murder, [K.S.A. 21-3439](#), and amendments thereto, murder in the first degree, [K.S.A. 21-3401](#), and amendments thereto, murder in the second degree, [K.S.A. 21-3402](#), and amendments thereto, or voluntary manslaughter, [K.S.A. 21-3403](#), and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;
- (8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under subsection (b) of [K.S.A. 21-3604](#), and amendments thereto; or
- (9) a parent has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;
- (10) a father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;
- (11) a father abandoned the mother after having knowledge of the pregnancy;
- (12) a parent has been convicted of rape, [K.S.A. 21-3502](#), and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or
- (13) a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitations, contacts, communications or contributions.

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to K.S.A. 2009 Supp. 38-2266 et seq., and amendments thereto.

History: L. 2006, ch. 200, § 66; Jan. 1, 2007.

- [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. 2009 Supp. 38-2269, and amendments thereto; or
 - (3) after termination of parental rights pursuant to K.S.A. 2009 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 on the record or executed by the parent of the child and acknowledged before a judge of a court of record. It shall be the duty of the court before which the consent is acknowledged to advise the consenting parent of the consequences of the consent, including the following:

- (1) Do you understand that your parental rights are not being terminated and you can be ordered to pay child support and medical support for your child
- (2) Do you understand that to get the rights you still have with your child, you must keep the court up to date about how to contact you? This means that the court needs to always have your current address and telephone number.
- (3) Do you understand that if your child is ever placed for adoption, the court will try to let you know by using the information you have given them? If your address and telephone number are not up to date, you might not know your child is placed for adoption.
- (4) Do you understand that if you want information about your child's health or education, you will have to keep the information you give the court about where you are up to date because the information will be sent to the latest address the court has
- (5) Do you understand that you may be able to have some contact with your child, but only if the permanent custodian decides it is in the child's best interests and if the court allows the contact
- (6) Do you understand that unless the court orders differently, the permanent custodian has the right to make the following decisions about your child: The amount and type of contact you have with the child; consent to your child's marriage; consent to medical treatment; consent to mental health treatment; consent to placement in a psychiatric hospital or an institution for the developmentally disabled; consent to behavioral and medical experiments; consent to sterilization and consent to withholding life-prolonging medical treatment

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

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

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

- (1) The obligation to pay child support and medical support; and
- (2) the right to inherit from the child.
- (3) The right to consent to adoption of the child.

All other parental rights transfer to the permanent custodian.

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

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

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

History: L. 2006, ch. 200, § 67; Jan. 1, 2007.

- [38-2273](#): Appeals; procedure; verification. (a) An appeal may be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights.
 - (b) An appeal from an order entered by a district magistrate judge shall be to a district judge. The appeal shall be heard on the basis of the record within 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo.
 - (c) Procedure on appeal shall be governed by article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.
 - (d) Notwithstanding any other provision of law to the contrary, appeals under this section shall have priority over all other cases.
 - (e) Every notice of appeal, docketing statement and brief shall be verified by the appellant if the appellant has been personally served at any time during the proceedings. Failure to have the required verification shall result in the dismissal of the appeal.

History: L. 2006, ch. 200, § 68; Jan. 1, 2007.
- [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.
- [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.
- [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.
- [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. 2009 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.

- [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.

- [38-2279](#): Withholding order for child support; filing; service. (a) A person entitled to receive child support under an order issued pursuant to the code may file with the clerk of the district court in the county in which the judgment was rendered the original child support order and the original income withholding order, if any. If the original child support or income withholding order is unavailable for any reason, a certified or authenticated copy of the order may be substituted. The clerk of the district court shall number the child support order as a case filed under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and enter the numbering of the case on the appearance docket of the case. Registration of a child support order under this section shall be without cost or docket fee.
 - (b) If the number assigned to a case under the code appears in the caption of a document filed pursuant to this section, the clerk of the district court may obliterate that number and replace it with the new case number assigned pursuant to this section.
 - (c) The filing of the child support order shall constitute registration under this section. Upon registration of the child support order, all matters related to that order, including, but not limited to, modification of the order, shall proceed under the new case number. Registration of a child support order under this section does not confer jurisdiction in the registration case for custody or visitation issues.
 - (d) The person registering a child support order shall serve a copy of the registered child support order and income withholding order, if any, upon the party or interested parties by first-class mail. The person registering the child support order shall file, in the official file for each child affected, either a copy of the registered order showing the new case number or a statement that includes the caption, new case number and date of registration of the child support order.
 - (e) If the secretary is entitled to receive payment under an order which may be registered under this section, the county or district attorney shall take the actions permitted or required in subsections (a) and (d) on behalf of the secretary, unless otherwise requested by the secretary.
 - (f) A child support order registered pursuant to this section shall have the same force and effect as an original child support order entered under chapter 60 of the Kansas Statutes Annotated, and amendments thereto, including, but not limited to:
 - (1) The registered order shall become a lien on the real estate of the judgment debtor in the county from the date of registration;
 - (2) execution or other action to enforce the registered order may be had from the date of registration;
 - (3) the registered order may itself be registered pursuant to any law, including, but not limited to, the uniform interstate family support act, [K.S.A. 23-9,101](#) et seq., and amendments thereto;

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

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

(g) If a motion to modify the child support order is filed within three months after the date of registration pursuant to this section, if no motion to modify the order has previously been heard and if the moving party shows that the support order was based upon one or more of the presumptions provided in K.S.A. 2009 Supp. 38-2277, and amendments thereto, or upon a stipulation pursuant to subsection (c) of K.S.A. 2009 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. Nothing in this subsection shall prevent or limit enforcement of the support order during the three months after the date of registration.

History: L. 2006, ch. 200, § 74; Jan. 1, 2007.

- [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.
- [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.
- [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 fire station, city or county health department or medical care facility as defined by [K.S.A. 65-425](#), and amendments thereto. Such employee shall take physical custody of an infant surrendered pursuant to this section.
(c) As soon as possible after a person takes physical custody of an infant under this section, such person shall notify a local law enforcement agency that the person has taken physical custody of an infant pursuant to this section. Upon receipt of such notice a law enforcement officer from such law enforcement

agency shall take custody of the infant as an abandoned child. The law enforcement agency shall deliver the infant to a facility or person designated by the secretary pursuant to K.S.A. 2009 Supp. 38-2232, and amendments thereto.

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

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

History: L. 2006, ch. 200, § 77; Jan. 1, 2007.

- [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.

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Rule 226 Kansas Rules of Professional Conduct

3.1 Advocate: [Meritorious Claims and Contentions](#)

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

3.2 Advocate: Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

3.3 Advocate: Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs **(a)** and **(b)** continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by **Rule 1.6**.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See **Rule 1.0(n)** for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph **(a)(3)** requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare **Rule 3.1**. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in **Rule 1.2(d)** not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with **Rule 1.2(d)**, see the Comment to that Rule. See also the Comment to **Rule 8.4(b)**.

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph **(a)(3)**, an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph **(a)(3)** requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness' testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs **(a)** and **(b)** apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment **[9]**.

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See **Rule 1.0(e)**. Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph **(a)(3)** only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and

thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [\[7\]](#).
Remedial Measures

[\[10\]](#) Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by [Rule 1.6](#). It is for the tribunal then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[\[11\]](#) The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See [Rule 1.2\(d\)](#). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[\[12\]](#) Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph [\(b\)](#) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[\[13\]](#) A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[\[14\]](#) Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[\[15\]](#) Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by [Rule 1.16\(a\)](#) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see [Rule 1.16\(b\)](#) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may

reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by **Rule 1.6**.

[History: Am. effective July 1, 2007.]

3.4 Advocate: Fairness to Opposing Party and Counsel

A lawyer shall not:

- (a)** unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b)** falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c)** knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d)** in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (e)** in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f)** request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1)** the person is a relative or an employee or other agent of a client; and
 - (2)** the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph **(a)** applies to evidentiary material generally, including computerized information.

[3] With regard to paragraph **(b)**, it is not improper to pay a witness' expenses or to compensate an expert witness on terms permitted by law. The common-law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph **(f)** permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also **Rule 4.2**.

3.5 Advocate: Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a)** give or lend anything of value to a judge, official, or employee of a tribunal except as permitted by **Section**

D(5) of [Canon 4](#) of the Code of Judicial Conduct as it may, from time to time be adopted in Kansas, nor may a lawyer attempt to improperly influence a judge, official or employee of a tribunal, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with **Section C(2)** and **(4)** of [Canon 5](#) of the Code of Judicial Conduct;

(b) communicate or cause another to communicate with a member of a jury or the venire from which the jury will be selected about the matters under consideration other than in the course of official proceedings until after the discharge of the jury from further consideration of the case;

(c) communicate or cause another to communicate as to the merits of a cause with a judge or official before whom an adversary proceeding is pending except:

(1) in the course of official proceedings in the cause;

(2) in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if unrepresented;

(3) orally upon adequate notice to opposing counsel or the adverse party if unrepresented;

(4) as otherwise authorized by law or court rule;

(d) engage in undignified or discourteous conduct degrading to a tribunal.

[Kansas Comment](#)

[1] [Rule 3.5](#) has imposed an absolute prohibition upon a lawyer giving or lending anything of value to a judge or official; except as permitted by the Code of Judicial Conduct. In other words, a lawyer may ethically give what a judge may ethically receive.

[History: Am. (a) effective July 1, 2007.]

3.6 Advocate: [Trial Publicity](#)

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph [\(a\)](#) a lawyer may state:

(1) the claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of the matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs **(1)** through **(6)**:

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph [\(a\)](#), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph [\(a\)](#) shall make a statement prohibited by paragraph [\(a\)](#).

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. **Rule 3.4(c)** requires compliance with such Rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been, involved in the investigation or litigation of a case, and their associates.

[4] Paragraph **(b)** identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice and should not in any event be considered prohibited by the general prohibition of paragraph **(a)**. Paragraph **(b)** is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph **(a)**.

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- (1)** the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2)** in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- (3)** the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (4)** any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- (5)** information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- (6)** the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Nonjury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See **Rule 3.8(f)** for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

[History: Am. effective July 1, 2007.]

3.7 Advocate: [Lawyer as Witness](#)

- (a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:
- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or
 - (3) disqualification of the lawyer would work substantial hardship on the client.
- (b) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by [Rule 1.7](#) or [Rule 1.9](#).

[Comment](#)

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's right in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph [\(a\)](#) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs [\(a\)\(1\)](#) through [\(a\)\(3\)](#). Paragraph [\(a\)\(1\)](#) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph [\(a\)\(2\)](#) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has first-hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph [\(a\)\(3\)](#) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in [Rules 1.7](#), [1.9](#) and [1.10](#) have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph [\(b\)](#) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with [Rules 1.7](#) or [1.9](#). For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with [Rule 1.7](#). This would be true even though the lawyer might not be prohibited by paragraph [\(a\)](#) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph [\(a\)\(3\)](#) might be precluded from doing so by [Rule 1.9](#). The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's [informed consent](#), confirmed in writing. In some cases, the lawyer will be precluded from

seeking the client's consent. See [Rule 1.7](#). See [Rule 1.0\(b\)](#) for the definition of "confirmed in writing" and Rule 1.0(f) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by [Rule 1.7](#) or [Rule 1.9](#) from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by [Rule 1.10](#) unless the client gives informed consent under the conditions stated in [Rule 1.7](#).

3.8 Advocate: [Special Responsibilities of a Prosecutor](#)

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:
 - (1) the information sought is not protected from disclosure by any applicable privilege;
 - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
 - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under [Rule 3.6](#) or this [Rule](#).

[Comment](#)

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of [Rule 8.4](#).

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal

proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship. **[5]** Paragraph **(f)** supplements **Rule 3.6**, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with **Rule 3.6(b)** or **3.6(c)**. **[6]** Like other lawyers, prosecutors are subject to **Rules 5.1** and **5.3**, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph **(f)** reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph **(f)** requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[History: Am. (e) and (f) effective July 1, 2007.]

3.9 Advocate: Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of **Rules 3.3(a)** through **(c)**, **3.4(a)** through **(c)**, and **3.5**.

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in such a transaction is governed by **Rules 4.1 through 4.4**.

Friday, September 20, 2013
9:12 AM

Training

At the time of publication there was no clear time frame as to how much training a person needed to have in order to become a GAL in Kansas. According to Rule 110A a person who wants to become a Guardian ad litem in the state is required to complete "at least" 6 hours of education and 1 hour of professional responsibility. To continue with the role as a Guardian ad litem the person must complete an additional 6 years per year of continuing education.

The question should be asked is if essentially 7 hours of training enough to make left altering decisions. Would you as a consumer want a Judge to decide a case based on 7 hours of training or a Doctor to operate on you with only 7 hours of training. Electricians and plumbers have years of apprenticeship before being licensed.

Further detail:

[Kansas Legal Services](#) - this is course has passed by but it does have the course materials.

[return](#)

Best Interest of the Child

At best there is no definition of the term but there is a lot of ambiguity. It is largely based on the opinion of the Guardian ad litem (GAL) who has a minimum of training. This opinion is going to be swayed by the cultural bias and prejudice that the GAL has. It can be affected by such things as a parent being a Republican and the GAL is a Democrat and as a result may view that parent as not being in the child's best interest. This term "Best interest of the child" is abused. A better standard may be "Is the child safe? Is there child endangerment?" these terms are more easily defined. The reference material here is provided for better understanding.

Childwelfare.gov - [Determining the Best Interests of the Child](#)

State statutes frequently reference overarching goals, purposes, and objectives that shape the analysis in making best interests determinations. The following are among the most frequently stated guiding principles:

- The importance of family integrity and preference for avoiding removal of the child from his/her home (approximately 28 States, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands)
- The health, safety, and/or protection of the child (19 States and the Northern Mariana Islands)
- The importance of timely permanency decisions (19 States and the U.S. Virgin Islands)
- The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult (12 States, American Samoa, and Guam)

Approximately 21 States and the District of Columbia list in their statutes specific factors for courts to consider in making determinations regarding the best interests of the child. While the factors vary considerably from State to State, some factors commonly required include:

- The emotional ties and relationships between the child and his or her parents, siblings, family and household members, or other caregivers (15 States and the District of Columbia)
- The capacity of the parents to provide a safe home and adequate food, clothing, and medical care (nine States)
- The mental and physical health needs of the child (eight States and the District of Columbia)
- The mental and physical health of the parents (eight States and the District of Columbia)
- The presence of domestic violence in the home (eight States)

Sanata Clara University - [The Best Interest of the Child](#)

Legal Match - [Child's Best Interest Standard](#)

What Factors are Used to Determine their Best Interests?

Child custody laws vary by state, but courts will generally consider the following in order to determine what is in the child's best interest:

- The child's background including age, gender, and mental and physical health
- The child's own preference, if they are of a certain age of maturity, usually 12-14 years or older
- Environmental considerations such as quality of schools, community safety, and extra-curricular opportunities
- The health and maturity of each parent
- Each parent's ability to provide financially and emotionally for the child
- The degree of each parent's willingness to encourage contact between the child and the other party
- Whether there are any siblings or important family members involved
- Social background and lifestyle of each parent

[return](#) Determining the Best Interests of the Child

Informed Consent - waiver/release

In many cases by signing a waiver/ release to a Guardian ad litem (GAL) there is little or no disclosure as to how that information may or may not be used against the parent signing the release. We have seen instances where parents are in effect testifying against themselves as a result of the information being used in court. In almost every case there is no "informed consent".

informed consent n. agreement to do something or to allow something to happen only after all the relevant facts are known. In contracts, an agreement may be reached only if there has been full disclosure by both parties of everything each party knows which is significant to the agreement. A patient's consent to a medical procedure must be based on his/her having been told all the possible consequences, except in emergency cases when such consent cannot be obtained. A physician or dentist who does not tell all the possible bad news as well as the good, operates at his/her peril of a lawsuit if anything goes wrong. In criminal law, a person accused or even suspected of a crime cannot give up his/her legal rights such as remaining silent or having an attorney, unless he/she has been fully informed of his/her rights. (See: consent, Miranda warning)

Further detail

[Legal Dictionary](#)

[return](#)

Ex Parte

[Latin, On one side only.] Done by, for, or on the application of one party alone.

Further detail

[Legal Dictionary](#)

[Legal Information Institute](#)

Wikipedia - [Ex parte](#)

[return](#) Ex Parte Proceedings