

SENATE BILL No. 38

By Committee on Judiciary

1-19

1 AN ACT concerning children; relating to permanency; priority of certain
2 orders; amending K.S.A. 2010 Supp. 38-1116, 38-1121, 38-2201, 38-
3 2203, 38-2262, 38-2284, 38-2304 and 60-1610 and repealing the
4 existing sections.
5

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

7 Section 1. K.S.A. 2010 Supp. 38-1116 is hereby amended to read as
8 follows: 38-1116. (a) The district court has jurisdiction of an action
9 brought under the Kansas parentage act. The action may be joined with
10 an action for divorce, annulment, separate maintenance, support or
11 adoption.

12 (b) If any determination is sought in any action under the Kansas
13 parentage act for custody, residency or parenting time, the initial pleading
14 seeking that determination shall include that information required by
15 K.S.A. 38-1356, and amendments thereto.

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

21 (d) Any ~~custody, residency or parenting time~~ order issued pursuant
22 to the revised Kansas code for care of children or the revised Kansas
23 juvenile justice code, shall take precedence over any order under article
24 11 of chapter 38 of the Kansas Statutes Annotated, and amendments
25 thereto (determination of parentage), until jurisdiction under the revised
26 Kansas code for care of children or the revised Kansas juvenile justice
27 code is terminated.

28 (e) If a court of competent jurisdiction within this state has entered
29 an order pursuant to the revised Kansas code for care of children
30 regarding custody of a child or children who are involved in a proceeding
31 filed pursuant to this section, and such court has determined pursuant to
32 subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the
33 orders in that case shall become the custody orders in the parentage case,
34 such court shall file a certified copy of the orders with the civil case
35 number in the caption and then close the case under the revised Kansas
36 code for care of children. Such orders shall be binding on the parties,

1 unless modified based on a material change in circumstances, even if
2 such courts have different venues.

3 Sec. 2. K.S.A. 2010 Supp. 38-1121 is hereby amended to read as
4 follows: 38-1121. (a) The judgment or order of the court determining the
5 existence or nonexistence of the parent and child relationship is
6 determinative for all purposes, but if any person necessary to determine
7 the existence of a father and child relationship for all purposes has not
8 been joined as a party, a determination of the paternity of the child shall
9 have only the force and effect of a finding of fact necessary to determine
10 a duty of support.

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

15 (c) Upon adjudging that a party is the parent of a minor child, the
16 court shall make provision for support and education of the child
17 including the necessary medical expenses incident to the birth of the
18 child. The court may order the support and education expenses to be paid
19 by either or both parents for the minor child. When the child reaches 18
20 years of age, the support shall terminate unless: (1) The parent or parents
21 agree, by written agreement approved by the court, to pay support beyond
22 that time; (2) the child reaches 18 years of age before completing the
23 child's high school education in which case the support shall not
24 automatically terminate, unless otherwise ordered by the court, until June
25 30 of the school year during which the child became 18 years of age if the
26 child is still attending high school; or (3) the child is still a bona fide high
27 school student after June 30 of the school year during which the child
28 became 18 years of age, in which case the court, on motion, may order
29 support to continue through the school year during which the child
30 becomes 19 years of age so long as the child is a bona fide high school
31 student and the parents jointly participated or knowingly acquiesced in
32 the decision which delayed the child's completion of high school. The
33 court, in extending support pursuant to subsection (c)(3), may impose
34 such conditions as are appropriate and shall set the child support utilizing
35 the guideline table category for 16-year through 18-year old children.
36 Provision for payment of support and educational expenses of a child
37 after reaching 18 years of age if still attending high school shall apply to
38 any child subject to the jurisdiction of the court, including those whose
39 support was ordered prior to July 1, 1992. If an agreement approved by
40 the court prior to July 1, 1988, provides for termination of support before
41 the date provided by subsection (c)(2), the court may review and modify
42 such agreement, and any order based on such agreement, to extend the
43 date for termination of support to the date provided by subsection (c)(2).

1 If an agreement approved by the court prior to July 1, 1992, provides for
2 termination of support before the date provided by subsection (c)(3), the
3 court may review and modify such agreement, and any order based on
4 such agreement, to extend the date for termination of support to the date
5 provided by subsection (c)(3). For purposes of this section, "bona fide
6 high school student" means a student who is enrolled in full accordance
7 with the policy of the accredited high school in which the student is
8 pursuing a high school diploma or a graduate equivalency diploma
9 (GED). The judgment may require the party to provide a bond with
10 sureties to secure payment. The court may at any time during the minority
11 of the child modify or change the order of support, including any order
12 issued in a title IV-D case, within three years of the date of the original
13 order or a modification order, as required by the best interest of the child.
14 If more than three years has passed since the date of the original order or
15 modification order, a requirement that such order is in the best interest of
16 the child need not be shown. The court may make a modification of
17 support retroactive to a date at least one month after the date that the
18 motion to modify was filed with the court. Any increase in support
19 ordered effective prior to the date the court's judgment is filed shall not
20 become a lien on real property pursuant to K.S.A. 60-2202, and
21 amendments thereto.

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

25 If the parties have an agreed parenting plan it shall be presumed the
26 agreed parenting plan is in the best interest of the child. This presumption
27 may be overcome and the court may make a different order if the court
28 makes specific findings of fact stating why the agreed parenting plan is
29 not in the best interest of the child. If the parties are not in agreement on a
30 parenting plan, each party shall submit a proposed parenting plan to the
31 court for consideration at such time before the final hearing as may be
32 directed by the court.

33 (e) If during the proceedings the court determines that there is
34 probable cause to believe that the child is a child in need of care, as
35 defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2010
36 Supp. 38-2202, and amendments thereto, or that neither parent is fit to
37 have residency, the court may award temporary residency of the child to a
38 grandparent, aunt, uncle or adult sibling, or another person or agency if
39 the court finds by written order that: (1)(A) The child is likely to sustain
40 harm if not immediately removed from the home; (B) allowing the child
41 to remain in home is contrary to the welfare of the child; or (C)
42 immediate placement of the child is in the best interest of the child; and
43 (2) reasonable efforts have been made to maintain the family unit and

1 prevent the unnecessary removal of the child from the child's home or
2 that an emergency exists which threatens the safety of the child. In
3 making such a residency order, the court shall give preference, to the
4 extent that the court finds it is in the best interests of the child, first to
5 awarding such residency to a relative of the child by blood, marriage or
6 adoption and second to awarding such residency to another person with
7 whom the child has close emotional ties. The court may make temporary
8 orders for care, support, education and visitation that it considers
9 appropriate. Temporary residency orders are to be entered in lieu of
10 temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-
11 2244, and amendments thereto, and shall remain in effect until there is a
12 final determination under the revised Kansas code for care of children.
13 An award of temporary residency under this paragraph shall not terminate
14 parental rights nor give the court the authority to consent to the adoption
15 of the child. When the court enters orders awarding temporary residency
16 of the child to an agency or a person other than the parent, the court shall
17 refer a transcript of the proceedings to the county or district attorney. The
18 county or district attorney shall file a petition as provided in K.S.A. 2010
19 Supp. 38-2234, and amendments thereto, and may request termination of
20 parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments
21 thereto. The costs of the proceedings shall be paid from the general fund
22 of the county. If a final determination is made that the child is not a child
23 in need of care, the county or district attorney shall notify the court in
24 writing and the court, after a hearing, shall enter appropriate custody
25 orders pursuant to this section. If the same judge presides over both
26 proceedings, the notice is not required. Any ~~eustody, residency or~~
27 ~~parenting time~~ order pursuant to the revised Kansas code for care of
28 children shall take precedence over any ~~eustody, residency or parenting~~
29 ~~time similar~~ order under this section.

30 (f) In entering an original order for support of a child under this
31 section, the court may award an additional judgment to reimburse the
32 expenses of support and education of the child from the date of birth to
33 the date the order is entered. If the determination of paternity is based
34 upon a presumption arising under K.S.A. 38-1114, and amendments
35 thereto, the court shall award an additional judgment to reimburse all or
36 part of the expenses of support and education of the child from at least
37 the date the presumption first arose to the date the order is entered, except
38 that no additional judgment need be awarded for amounts accrued under a
39 previous order for the child's support.

40 (g) In determining the amount to be ordered in payment and duration
41 of such payments, a court enforcing the obligation of support shall
42 consider all relevant facts including, but not limited to, the following:

43 (1) The needs of the child.

- 1 (2) The standards of living and circumstances of the parents.
- 2 (3) The relative financial means of the parents.
- 3 (4) The earning ability of the parents.
- 4 (5) The need and capacity of the child for education.
- 5 (6) The age of the child.
- 6 (7) The financial resources and the earning ability of the child.
- 7 (8) The responsibility of the parents for the support of others.
- 8 (9) The value of services contributed by both parents.
- 9 (h) The provisions of K.S.A. 23-4,107, and amendments thereto,
- 10 shall apply to all orders of support issued under this section.

11 (i) An order granting parenting time pursuant to this section may be
12 enforced in accordance with K.S.A. 23-701, and amendments thereto, or
13 under the uniform child custody jurisdiction and enforcement act.

14 Sec. 3. K.S.A. 2010 Supp. 38-2201 is hereby amended to read as
15 follows: 38-2201. K.S.A. 2010 Supp. 38-2201 through 38-2283, and
16 amendments thereto, shall be known as and may be cited as the revised
17 Kansas code for care of children.

18 (a) Proceedings pursuant to this code shall be civil in nature and all
19 proceedings, orders, judgments and decrees shall be deemed to be
20 pursuant to the parental power of the state. Any ~~eustody, residency or~~
21 ~~parenting time~~ orders pursuant to this code shall take precedence over any
22 ~~eustody, residency or parenting time~~ *similar* order under article 11 of
23 chapter 38 of the Kansas Statutes Annotated, and amendments thereto
24 (determination of parentage), article 21 of chapter 59 of the Kansas
25 Statutes Annotated, and amendments thereto (adoption and
26 relinquishment act), article 30 of chapter 59 of the Kansas Statutes
27 Annotated, and amendments thereto (guardians and conservators), article
28 16 of chapter 60 of the Kansas Statutes Annotated, and amendments
29 thereto (divorce), article 31 of chapter 60 of the Kansas Statutes
30 Annotated, and amendments thereto (protection from abuse act), until
31 jurisdiction under this code is terminated.

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

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

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

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

43 (4) acknowledge that the time perception of a child differs from that

1 of an adult and to dispose of all proceedings under this code without
2 unnecessary delay;

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

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

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

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

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

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

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

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

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

27 Sec. 4. K.S.A. 2010 Supp. 38-2203 is hereby amended to read as
28 follows: 38-2203. (a) Proceedings concerning any child who may be a
29 child in need of care shall be governed by this code, except in those
30 instances when the court knows or has reason to know that an Indian
31 child is involved in the proceeding, in which case, the Indian child
32 welfare act of 1978 (25 U.S.C. §1901 et seq.) applies. The Indian child
33 welfare act may apply to: The filing to initiate a child in need of care
34 proceeding (K.S.A. 2010 Supp. 38-2234, and amendments thereto); ex
35 parte custody orders (K.S.A. 2010 Supp. 38-2242, and amendments
36 thereto); temporary custody hearing (K.S.A. 2010 Supp. 38-2243, and
37 amendments thereto); adjudication (K.S.A. 2010 Supp. 38-2247, and
38 amendments thereto); burden of proof (K.S.A. 2010 Supp. 38-2250, and
39 amendments thereto); disposition (K.S.A. 2010 Supp. 38-2255, and
40 amendments thereto); permanency hearings (K.S.A. 2010 Supp. 38-2264,
41 and amendments thereto); termination of parental rights (K.S.A. 2010
42 Supp. 38-2267, 38-2268 and 38-2269, and amendments thereto);
43 establishment of permanent custodianship (K.S.A. 2010 Supp. 38-2268

1 and 38-2272, and amendments thereto); the placement of a child in any
2 foster, pre-adoptive and adoptive home and the placement of a child in a
3 guardianship arrangement under chapter 59, article 30 of the Kansas
4 Statutes Annotated, and amendments thereto.

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

9 (c) The court acquires jurisdiction over a child by the filing of a
10 petition pursuant to this code or upon issuance of an ex parte order
11 pursuant to K.S.A. 2010 Supp. 38-2242, and amendments thereto. When
12 the court acquires jurisdiction over a child in need of care, jurisdiction
13 may continue until the child has: (1) Become 18 years of age, or until
14 June 1 of the school year during which the child became 18 years of age
15 if the child is still attending high school unless there is no court approved
16 transition plan, in which event jurisdiction may continue until a transition
17 plan is approved by the court or until the child reaches the age of 21; (2)
18 been adopted; or (3) been discharged by the court. Any child 18 years of
19 age or over may request, in writing to the court, that the jurisdiction of the
20 court cease. The court shall give notice of the request to all parties and
21 interested parties and 30 days after receipt of the request, jurisdiction will
22 cease.

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

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

35 (f) A court's order ~~affecting a child's custody, residency, parenting~~
36 ~~time and visitation that is~~ issued in a proceeding pursuant to this code,
37 shall take precedence over such orders in a civil custody case, a
38 proceeding under article 31 of chapter 60 of the Kansas Statutes
39 Annotated, and amendments thereto (protection from abuse act), or a
40 comparable case in another jurisdiction, except as provided by K.S.A. 38-
41 1336 et seq., and amendments thereto (uniform child custody jurisdiction
42 and enforcement act).

43 Sec. 5. K.S.A. 2010 Supp. 38-2262 is hereby amended to read as

1 follows: 38-2262. At any hearing under the code, the court, if requested
2 by the child, shall ~~hear the testimony of the child as to the desires of the~~
3 ~~child concerning the child's placement~~ *allow the child to address the*
4 *court*, if the child is 10 years of age ~~and of sound intellect.~~ *or older.*

5 Sec. 6. K.S.A. 2010 Supp. 38-2284 is hereby amended to read as
6 follows: 38-2284. Any ~~custody or parenting time order, or order relating~~
7 ~~to the best interests of a child~~, issued pursuant to the revised Kansas code
8 for care of children or the revised Kansas juvenile justice code, shall take
9 precedence over any order under article 21 of chapter 59 of the Kansas
10 Statutes Annotated, and amendments thereto (adoption and
11 relinquishment act), or article 30 of chapter 59 of the Kansas Statutes
12 Annotated, and amendments thereto (guardians and conservators), until
13 jurisdiction under the revised Kansas code for care of children or the
14 revised Kansas juvenile justice code is terminated.

15 Sec. 7. K.S.A. 2010 Supp. 38-2304 is hereby amended to read as
16 follows: 38-2304. (a) Except as provided in K.S.A. 2010 Supp. 38-2347,
17 and amendments thereto, proceedings concerning a juvenile shall be
18 governed by the provisions of this code.

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

21 (c) When a complaint is filed under this code, the juvenile shall be
22 presumed to be subject to this code, unless the contrary is proved.

23 (d) Once jurisdiction is acquired by the district court over an alleged
24 juvenile offender, except as otherwise provided in subsection (e),
25 jurisdiction shall continue until one of the following occurs:

26 (1) The complaint is dismissed;

27 (2) the juvenile is adjudicated not guilty at trial;

28 (3) the juvenile, after being adjudicated guilty and sentenced:

29 (i) Successfully completes the term of probation or order of
30 assignment to community corrections;

31 (ii) is discharged by the commissioner pursuant to K.S.A. 2010
32 Supp. 38-2376, and amendments thereto;

33 (iii) reaches the juvenile's 21st birthday and no exceptions apply that
34 extend jurisdiction beyond age 21;

35 (4) the court terminates jurisdiction; or

36 (5) the offender is convicted of a new felony while the offender is
37 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671
38 prior to its repeal or K.S.A. 2010 Supp. 38-2373, and amendments
39 thereto, for an offense, which if committed by an adult would constitute
40 the commission of a felony.

41 (e) Once jurisdiction is acquired by the district court over an alleged
42 juvenile offender, it shall continue beyond the juvenile offender's 21st
43 birthday but no later than the juvenile offender's 23rd birthday if either or

1 both of the following conditions apply:

2 (1) The juvenile offender is sentenced pursuant to K.S.A. 2010
3 Supp. 38-2369, and amendments thereto, and the term of the sentence
4 including successful completion of aftercare extends beyond the juvenile
5 offender's 21st birthday; or

6 (2) the juvenile offender is sentenced pursuant to an extended
7 jurisdiction juvenile prosecution and continues to successfully serve the
8 sentence imposed pursuant to the revised Kansas juvenile justice code.

9 (f) Termination of jurisdiction pursuant to this section shall have no
10 effect on the juvenile offender's continuing responsibility to pay
11 restitution ordered.

12 (g) (1) If a juvenile offender, at the time of sentencing, is in an out of
13 home placement in the custody of the secretary of social and
14 rehabilitation services under the Kansas code for care of children, the
15 sentencing court may order the continued placement of the juvenile
16 offender as a child in need of care unless the offender was adjudicated for
17 a felony or a second or subsequent misdemeanor. If the adjudication was
18 for a felony or a second or subsequent misdemeanor, the continued
19 placement cannot be ordered unless the court finds there are compelling
20 circumstances which, in the best interest of the juvenile offender, require
21 that the placement should be continued. In considering whether
22 compelling circumstances exist, the court shall consider the reports and
23 recommendations of the foster placement, the contract provider, the
24 secretary of social and rehabilitation services, the presentence
25 investigation and all other relevant factors. If the foster placement refuses
26 to continue the juvenile in the foster placement the court shall not order
27 continued placement as a child in need of care.

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

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

39 (h) A court's order ~~affecting a child's custody, residency, parenting~~
40 ~~time and visitation that~~ is issued in a proceeding pursuant to this code,
41 shall take precedence over such orders in a proceeding under article 11 of
42 chapter 38 of the Kansas Statutes Annotated, and amendments thereto
43 (parentage act), a proceeding under article 16 of chapter 60 of the Kansas

1 Statutes Annotated, and amendments thereto (divorce), a proceeding
2 under article 31 of chapter 60 of the Kansas Statutes Annotated, and
3 amendments thereto (protection from abuse act), a proceeding under
4 article 21 of chapter 59 of the Kansas Statutes Annotated, and
5 amendments thereto (adoption and relinquishment act), a proceeding
6 under article 30 of chapter 59 of the Kansas Statutes Annotated, and
7 amendments thereto (guardians and conservators), or a comparable case
8 in another jurisdiction, except as provided by K.S.A. 38-1336 et seq., and
9 amendments thereto (uniform child custody jurisdiction and enforcement
10 act).

11 Sec. 8. K.S.A. 2010 Supp. 60-1610 is hereby amended to read as
12 follows: 60-1610. A decree in an action under this article may include
13 orders on the following matters:

14 (a) *Minor children.* (1) *Child support and education.* The court shall
15 make provisions for the support and education of the minor children.
16 Subject to the provisions of K.S.A. 23-9,207, and amendments thereto,
17 the court may modify or change any prior order, including any order
18 issued in a title IV-D case, within three years of the date of the original
19 order or a modification order, when a material change in circumstances is
20 shown, irrespective of the present domicile of the child or the parents. If
21 more than three years has passed since the date of the original order or
22 modification order, a material change in circumstance need not be shown.
23 The court may make a modification of child support retroactive to a date
24 at least one month after the date that the motion to modify was filed with
25 the court. Any increase in support ordered effective prior to the date the
26 court's judgment is filed shall not become a lien on real property pursuant
27 to K.S.A. 60-2202, and amendments thereto. Regardless of the type of
28 custodial arrangement ordered by the court, the court may order the child
29 support and education expenses to be paid by either or both parents for
30 any child less than 18 years of age, at which age the support shall
31 terminate unless: (A) The parent or parents agree, by written agreement
32 approved by the court, to pay support beyond the time the child reaches
33 18 years of age; (B) the child reaches 18 years of age before completing
34 the child's high school education in which case the support shall not
35 terminate automatically, unless otherwise ordered by the court, until June
36 30 of the school year during which the child became 18 years of age if the
37 child is still attending high school; or (C) the child is still a bona fide high
38 school student after June 30 of the school year during which the child
39 became 18 years of age, in which case the court, on motion, may order
40 support to continue through the school year during which the child
41 becomes 19 years of age so long as the child is a bona fide high school
42 student and the parents jointly participated or knowingly acquiesced in
43 the decision which delayed the child's completion of high school. The

1 court, in extending support pursuant to subsection (a)(1)(C), may impose
2 such conditions as are appropriate and shall set the child support utilizing
3 the guideline table category for 12-year through 18-year old children.
4 Provision for payment of support and educational expenses of a child
5 after reaching 18 years of age if still attending high school shall apply to
6 any child subject to the jurisdiction of the court, including those whose
7 support was ordered prior to July 1, 1992. If an agreement approved by
8 the court prior to July 1, 1992, provides for termination of support before
9 the date provided by subsection (a)(1)(C), the court may review and
10 modify such agreement, and any order based on such agreement, to
11 extend the date for termination of support to the date provided by
12 subsection (a)(1)(C). For purposes of this section, "bona fide high school
13 student" means a student who is enrolled in full accordance with the
14 policy of the accredited high school in which the student is pursuing a
15 high school diploma or a graduate equivalency diploma (GED). In
16 determining the amount to be paid for child support, the court shall
17 consider all relevant factors, without regard to marital misconduct,
18 including the financial resources and needs of both parents, the financial
19 resources and needs of the child and the physical and emotional condition
20 of the child. Until a child reaches 18 years of age, the court may set apart
21 any portion of property of either the husband or wife, or both, that seems
22 necessary and proper for the support of the child. Except for good cause
23 shown, every order requiring payment of child support under this section
24 shall require that the support be paid through the central unit for
25 collection and disbursement of support payments designated pursuant to
26 K.S.A. 23-4,118, and amendments thereto. A written agreement between
27 the parties to make direct child support payments to the obligee and not
28 pay through the central unit shall constitute good cause, unless the court
29 finds the agreement is not in the best interest of the child or children. The
30 obligor shall file such written agreement with the court. The obligor shall
31 maintain written evidence of the payment of the support obligation and, at
32 least annually, shall provide such evidence to the court and the obligee. If
33 the divorce decree of the parties provides for an abatement of child
34 support during any period provided in such decree, the child support such
35 nonresidential parent owes for such period shall abate during such period
36 of time, except that if the residential parent shows that the criteria for the
37 abatement has not been satisfied there shall not be an abatement of such
38 child support.

39 (2) *Child custody and residency. (A) Changes in custody.* Subject to
40 the provisions of the uniform child custody jurisdiction and enforcement
41 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
42 court may change or modify any prior order of custody, residency,
43 visitation and parenting time, when a material change of circumstances is

1 shown, but no ex parte order shall have the effect of changing residency
2 of a minor child from the parent who has had the sole de facto residency
3 of the child to the other parent unless there is sworn testimony to support
4 a showing of extraordinary circumstances. If an interlocutory order is
5 issued ex parte, the court shall hear a motion to vacate or modify the
6 order within 15 days of the date that a party requests a hearing whether to
7 vacate or modify the order.

8 (B) *Examination of parties.* The court may order physical or mental
9 examinations of the parties if requested pursuant to K.S.A. 60-235, and
10 amendments thereto.

11 (3) *Child custody or residency criteria.* The court shall determine
12 custody or residency of a child in accordance with the best interests of the
13 child.

14 (A) If the parties have entered into a parenting plan, it shall be
15 presumed that the agreement is in the best interests of the child. This
16 presumption may be overcome and the court may make a different order
17 if the court makes specific findings of fact stating why the agreed
18 parenting plan is not in the best interests of the child.

19 (B) In determining the issue of child custody, residency and
20 parenting time, the court shall consider all relevant factors, including but
21 not limited to:

22 (i) The length of time that the child has been under the actual care
23 and control of any person other than a parent and the circumstances
24 relating thereto;

25 (ii) the desires of the child's parents as to custody or residency;

26 (iii) the desires of the child as to the child's custody or residency;

27 (iv) the interaction and interrelationship of the child with parents,
28 siblings and any other person who may significantly affect the child's best
29 interests;

30 (v) the child's adjustment to the child's home, school and
31 community;

32 (vi) the willingness and ability of each parent to respect and
33 appreciate the bond between the child and the other parent and to allow
34 for a continuing relationship between the child and the other parent;

35 (vii) evidence of spousal abuse;

36 (viii) whether a parent is subject to the registration requirements of
37 the Kansas offender registration act, K.S.A. 22-4901, et seq., and
38 amendments thereto, or any similar act in any other state, or under
39 military or federal law;

40 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
41 21-3609, and amendments thereto;

42 (x) whether a parent is residing with an individual who is subject to
43 registration requirements of the Kansas offender registration act, K.S.A.

1 22-4901, et seq., and amendments thereto, or any similar act in any other
2 state, or under military or federal law; and

3 (xi) whether a parent is residing with an individual who has been
4 convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

5 (C) Neither parent shall be considered to have a vested interest in the
6 custody or residency of any child as against the other parent, regardless of
7 the age of the child, and there shall be no presumption that it is in the best
8 interests of any infant or young child to give custody or residency to the
9 mother.

10 (D) There shall be a rebuttable presumption that it is not in the best
11 interest of the child to have custody or residency granted to a parent who:

12 (i) Is residing with an individual who is subject to registration
13 requirements of the Kansas offender registration act, K.S.A. 22-4901, et
14 seq., and amendments thereto, or any similar act in any other state, or
15 under military or federal law; or

16 (ii) is residing with an individual who has been convicted of abuse
17 of a child, K.S.A. 21-3609, and amendments thereto.

18 (E) If a court of competent jurisdiction within this state has entered
19 an order pursuant to the revised Kansas code for care of children
20 regarding custody of a child or children who are involved in a proceeding
21 filed pursuant to this section, and such court has determined pursuant to
22 subsection (i)(2) of K.S.A. 38-2264, and amendments thereto, that the
23 orders in that case shall become the custody orders in the divorce case,
24 such court shall file a certified copy of the orders with the civil case
25 number in the caption and then close the case under the revised Kansas
26 code for care of children. Such orders shall be binding on the parties,
27 unless modified based on a material change in circumstances, even if
28 such courts have different venues.

29 (4) *Types of legal custodial arrangements.* Subject to the provisions
30 of this article, the court may make any order relating to custodial
31 arrangements which is in the best interests of the child. The order shall
32 provide one of the following legal custody arrangements, in the order of
33 preference:

34 (A) *Joint legal custody.* The court may order the joint legal custody
35 of a child with both parties. In that event, the parties shall have equal
36 rights to make decisions in the best interests of the child.

37 (B) *Sole legal custody.* The court may order the sole legal custody of
38 a child with one of the parties when the court finds that it is not in the
39 best interests of the child that both of the parties have equal rights to
40 make decisions pertaining to the child. If the court does not order joint
41 legal custody, the court shall include on the record specific findings of
42 fact upon which the order for sole legal custody is based. The award of
43 sole legal custody to one parent shall not deprive the other parent of

1 access to information regarding the child unless the court shall so order,
2 stating the reasons for that determination.

3 (5) *Types of residential arrangements.* After making a determination
4 of the legal custodial arrangements, the court shall determine the
5 residency of the child from the following options, which arrangement the
6 court must find to be in the best interest of the child. The parties shall
7 submit to the court either an agreed parenting plan or, in the case of
8 dispute, proposed parenting plans for the court's consideration. Such
9 options are:

10 (A) *Residency.* The court may order a residential arrangement in
11 which the child resides with one or both parents on a basis consistent with
12 the best interests of the child.

13 (B) *Divided residency.* In an exceptional case, the court may order a
14 residential arrangement in which one or more children reside with each
15 parent and have parenting time with the other.

16 (C) *Nonparental residency.* If during the proceedings the court
17 determines that there is probable cause to believe that the child is a child
18 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
19 of K.S.A. 2010 Supp. 38-2202, and amendments thereto, or that neither
20 parent is fit to have residency, the court may award temporary residency
21 of the child to a grandparent, aunt, uncle or adult sibling, or, another
22 person or agency if the court finds by written order that: (i) (a) The child
23 is likely to sustain harm if not immediately removed from the home;

24 (b) allowing the child to remain in home is contrary to the welfare of
25 the child; or

26 (c) immediate placement of the child is in the best interest of the
27 child; and

28 (ii) reasonable efforts have been made to maintain the family unit
29 and prevent the unnecessary removal of the child from the child's home
30 or that an emergency exists which threatens the safety to the child. In
31 making such a residency order, the court shall give preference, to the
32 extent that the court finds it is in the best interests of the child, first to
33 awarding such residency to a relative of the child by blood, marriage or
34 adoption and second to awarding such residency to another person with
35 whom the child has close emotional ties. The court may make temporary
36 orders for care, support, education and visitation that it considers
37 appropriate. Temporary residency orders are to be entered in lieu of
38 temporary orders provided for in K.S.A. 2010 Supp. 38-2243 and 38-
39 2244, and amendments thereto, and shall remain in effect until there is a
40 final determination under the revised Kansas code for care of children.
41 An award of temporary residency under this paragraph shall not terminate
42 parental rights nor give the court the authority to consent to the adoption
43 of the child. When the court enters orders awarding temporary residency

1 of the child to an agency or a person other than the parent, the court shall
2 refer a transcript of the proceedings to the county or district attorney. The
3 county or district attorney shall file a petition as provided in K.S.A. 2010
4 Supp. 38-2234, and amendments thereto, and may request termination of
5 parental rights pursuant to K.S.A. 2010 Supp. 38-2266, and amendments
6 thereto. The costs of the proceedings shall be paid from the general fund
7 of the county. If a final determination is made that the child is not a child
8 in need of care, the county or district attorney shall notify the court in
9 writing and the court, after a hearing, shall enter appropriate custody
10 orders pursuant to this section. If the same judge presides over both
11 proceedings, the notice is not required. Any order pursuant to the revised
12 Kansas code for care of children shall take precedence over any order
13 under this section.

14 (6) *Priority.* Any ~~custody or parenting time order, or order relating to~~
15 ~~the best interests of a child,~~ issued pursuant to the revised Kansas code
16 for care of children or the revised Kansas juvenile justice code, shall be
17 binding and shall take precedence over any order under article 16 of
18 chapter 60 of the Kansas Statutes Annotated, and amendments thereto
19 (divorce), until jurisdiction under the revised Kansas code for care of
20 children or the revised Kansas juvenile justice code is terminated.

21 (7) *Child health insurance coverage.* The court may order that each
22 parent execute any and all documents, including any releases, necessary
23 so that both parents may obtain information from and to communicate
24 with any health insurance provider regarding the health insurance
25 coverage provided by such health insurance provider to the child. The
26 provisions of this paragraph shall apply irrespective of which parent
27 owns, subscribes or pays for such health insurance coverage.

28 (b) *Financial matters.* (1) *Division of property.* The decree shall
29 divide the real and personal property of the parties, including any
30 retirement and pension plans, whether owned by either spouse prior to
31 marriage, acquired by either spouse in the spouse's own right after
32 marriage or acquired by the spouses' joint efforts, by: (A) A division of
33 the property in kind; (B) awarding the property or part of the property to
34 one of the spouses and requiring the other to pay a just and proper sum;
35 or (C) ordering a sale of the property, under conditions prescribed by the
36 court, and dividing the proceeds of the sale. Upon request, the trial court
37 shall set a valuation date to be used for all assets at trial, which may be
38 the date of separation, filing or trial as the facts and circumstances of the
39 case may dictate. The trial court may consider evidence regarding
40 changes in value of various assets before and after the valuation date in
41 making the division of property. In dividing defined-contribution types of
42 retirement and pension plans, the court shall allocate profits and losses on
43 the nonparticipant's portion until date of distribution to that

1 nonparticipant. In making the division of property the court shall consider
2 the age of the parties; the duration of the marriage; the property owned by
3 the parties; their present and future earning capacities; the time, source
4 and manner of acquisition of property; family ties and obligations; the
5 allowance of maintenance or lack thereof; dissipation of assets; the tax
6 consequences of the property division upon the respective economic
7 circumstances of the parties; and such other factors as the court considers
8 necessary to make a just and reasonable division of property. The decree
9 shall provide for any changes in beneficiary designation on: (A) Any
10 insurance or annuity policy that is owned by the parties, or in the case of
11 group life insurance policies, under which either of the parties is a
12 covered person; (B) any trust instrument under which one party is the
13 grantor or holds a power of appointment over part or all of the trust
14 assets, that may be exercised in favor of either party; or (C) any transfer
15 on death or payable on death account under which one or both of the
16 parties are owners or beneficiaries. Nothing in this section shall relieve
17 the parties of the obligation to effectuate any change in beneficiary
18 designation by the filing of such change with the insurer or issuer in
19 accordance with the terms of such policy.

20 (2) *Maintenance*. The decree may award to either party an allowance
21 for future support denominated as maintenance, in an amount the court
22 finds to be fair, just and equitable under all of the circumstances. The
23 decree may make the future payments modifiable or terminable under
24 circumstances prescribed in the decree. The court may make a
25 modification of maintenance retroactive to a date at least one month after
26 the date that the motion to modify was filed with the court. In any event,
27 the court may not award maintenance for a period of time in excess of
28 121 months. If the original court decree reserves the power of the court to
29 hear subsequent motions for reinstatement of maintenance and such a
30 motion is filed prior to the expiration of the stated period of time for
31 maintenance payments, the court shall have jurisdiction to hear a motion
32 by the recipient of the maintenance to reinstate the maintenance
33 payments. Upon motion and hearing, the court may reinstate the
34 payments in whole or in part for a period of time, conditioned upon any
35 modifying or terminating circumstances prescribed by the court, but the
36 reinstatement shall be limited to a period of time not exceeding 121
37 months. The recipient may file subsequent motions for reinstatement of
38 maintenance prior to the expiration of subsequent periods of time for
39 maintenance payments to be made, but no single period of reinstatement
40 ordered by the court may exceed 121 months. Maintenance may be in a
41 lump sum, in periodic payments, on a percentage of earnings or on any
42 other basis. At any time, on a hearing with reasonable notice to the party
43 affected, the court may modify the amounts or other conditions for the

1 payment of any portion of the maintenance originally awarded that has
2 not already become due, but no modification shall be made without the
3 consent of the party liable for the maintenance, if it has the effect of
4 increasing or accelerating the liability for the unpaid maintenance beyond
5 what was prescribed in the original decree. Except for good cause shown,
6 every order requiring payment of maintenance under this section shall
7 require that the maintenance be paid through the central unit for
8 collection and disbursement of support payments designated pursuant to
9 K.S.A. 23-4,118, and amendments thereto. A written agreement between
10 the parties to make direct maintenance payments to the obligee and not
11 pay through the central unit shall constitute good cause. If child support
12 and maintenance payments are both made to an obligee by the same
13 obligor, and if the court has made a determination concerning the manner
14 of payment of child support, then maintenance payments shall be paid in
15 the same manner.

16 (3) *Separation agreement.* If the parties have entered into a
17 separation agreement which the court finds to be valid, just and equitable,
18 the agreement shall be incorporated in the decree. A separation agreement
19 may include provisions relating to a parenting plan. The provisions of the
20 agreement on all matters settled by it shall be confirmed in the decree
21 except that any provisions relating to the legal custody, residency,
22 visitation parenting time, support or education of the minor children shall
23 be subject to the control of the court in accordance with all other
24 provisions of this article. Matters settled by an agreement incorporated in
25 the decree, other than matters pertaining to the legal custody, residency,
26 visitation, parenting time, support or education of the minor children,
27 shall not be subject to subsequent modification by the court except: (A)
28 As prescribed by the agreement or (B) as subsequently consented to by
29 the parties.

30 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
31 party as justice and equity require. The court may order that the amount
32 be paid directly to the attorney, who may enforce the order in the
33 attorney's name in the same case.

34 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the
35 request of a spouse, the court shall order the restoration of that spouse's
36 maiden or former name. The court shall have jurisdiction to restore the
37 spouse's maiden or former name at or after the time the decree of divorce
38 becomes final. The judicial council shall develop a form which is simple,
39 concise and direct for use with this paragraph.

40 (2) *Effective date as to remarriage.* Any marriage contracted by a
41 party, within or outside this state, with any other person before a
42 judgment of divorce becomes final shall be voidable until the decree of
43 divorce becomes final. An agreement which waives the right of appeal

1 from the granting of the divorce and which is incorporated into the decree
2 or signed by the parties and filed in the case shall be effective to shorten
3 the period of time during which the remarriage is voidable.

4 Sec. 9. K.S.A. 2010 Supp. 38-1116, 38-1121, 38-2201, 38-2203, 38-
5 2262, 38-2284, 38-2304 and 60-1610 are hereby repealed.

6 Sec. 10. This act shall take effect and be in force from and after its
7 publication in the statute book.

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