

HOUSE BILL No. 2039

By Committee on Judiciary

1-16

1 AN ACT concerning the Kansas family law code; relating to domestic case
2 management; amending K.S.A. 2014 Supp. 23-3507, 23-3508, 23-3509
3 and 38-2223 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2014 Supp. 23-3507 is hereby amended to read as
7 follows: 23-3507. (a) *Domestic case management under ~~this act the~~ the*
8 *Kansas family law code* is the process by which a neutral *domestic* case
9 manager appointed by the court, or by a hearing officer in a proceeding
10 pursuant to K.S.A. 2014 Supp. 23-3401, and amendments thereto, or
11 through agreement by the parties, assists the parties by providing a
12 procedure, other than mediation, which facilitates negotiation of a plan for
13 ~~child custody, residency or visitation or decision-making~~, parenting time
14 ~~or third-party visitation~~. ~~In the event that the parties are unable to reach an~~
15 ~~agreement, the case manager shall make recommendations to the court.~~

16 (b) *The authority to exercise management and control of a case*
17 *remains exclusively with the court. The appointment of a domestic case*
18 *manager does not divest the court of its exclusive jurisdiction to determine*
19 *fundamental issues of decision-making, parenting time, third-party*
20 *visitation and child support. A party can request at any time that a*
21 *domestic case manager provide information to the court for judicial*
22 *review of the case.*

23 (c) *Nothing in the Kansas family law code shall abrogate either*
24 *parent's custodial, residential or parenting time rights or any third-party*
25 *visitation, except as specifically addressed in the court order appointing*
26 *the domestic case manager.*

27 Sec. 2. K.S.A. 2014 Supp. 23-3508 is hereby amended to read as
28 follows: 23-3508. (a) The court may order *domestic case management*,
29 when appropriate, of any contested issue of ~~child custody or decision-~~
30 ~~making~~, parenting time *or third-party visitation* at any time, upon the
31 motion of a party or on the court's own motion. A hearing officer in a
32 proceeding pursuant to K.S.A. 2014 Supp. 23-3401, and amendments
33 thereto, may order *domestic case management*, if appropriate, of a
34 contested issue of ~~child visitation decision-making, or~~ parenting time *or*
35 *third-party visitation* in such a proceeding.

36 (b) ~~Cases in which case management is appropriate shall include one~~

1 or more of the following circumstances:

2 ~~(1) Private or public neutral dispute resolution services have been~~
3 ~~tried and failed to resolve the disputes;~~

4 ~~(2) other neutral services have been determined to be inappropriate~~
5 ~~for the family;~~

6 ~~(3) repetitive conflict occurs within the family, as evidenced by the~~
7 ~~filing of at least two motions in a six-month period for enforcement,~~
8 ~~modification or change of residency, visitation, parenting time or custody~~
9 ~~which are denied by the court; or~~

10 ~~(4) a parent exhibits diminished capacity to parent.~~

11 *(b) The court or hearing officer shall not order domestic case*
12 *management if any party objects, unless the court makes the following*
13 *findings of fact:*

14 *(1) The case is high conflict based on a determination by the court*
15 *identifying the nature of the problems that led the court to make such*
16 *determination;*

17 *(2) other methods to resolve any identified conflicts have been*
18 *attempted, but have failed to resolve the disputes identified as creating*
19 *high conflict in the case;*

20 *(3) the appointment of a domestic case manager is in the best*
21 *interests of the children; and*

22 *(4) goals may be achieved by appointment of a domestic case*
23 *manager.*

24 *(c) If the court or hearing officer orders domestic case management*
25 *under ~~subsection (a) this section~~, the court or hearing officer shall appoint*
26 *a domestic case manager, taking into consideration the following:*

27 *(1) An agreement by the parties to have a specific domestic case*
28 *manager appointed by the court or hearing officer;*

29 *(2) the financial circumstances of the parties and the costs assessed*
30 *by the domestic case manager;*

31 *(3) the domestic case manager's knowledge of:*

32 *(A) The Kansas judicial system and the procedure used in domestic*
33 *relations cases;; (B) other resources in the community to which parties can*
34 *be referred for assistance;; (C) child development;; (D) clinical issues*
35 *relating to children;; (E) the effects of divorce on children; and (F) the*
36 *psychology of families; and*

37 *(4) the domestic case manager's training and experience in the*
38 *process and techniques of alternative dispute resolution and domestic case*
39 *management.*

40 *(d) To qualify as an appointed domestic case manager, an individual*
41 *shall:*

42 *(1) (A) Be currently licensed in Kansas as a licensed psychologist,*
43 *licensed masters level psychologist, licensed clinical psychotherapist,*

1 licensed professional counselor, licensed clinical professional counselor,
2 licensed marriage and family therapist, licensed clinical marriage and
3 family therapist, licensed master social worker or licensed specialist social
4 worker;

5 (B) be currently licensed to practice law in Kansas and have at least
6 five years of experience in the field of domestic relations law or family
7 law; or

8 (C) be a court services officer ~~and~~, have training in domestic relations
9 cases as prescribed by the district court in which the case is filed *and be*
10 *appointed by the district court prior to August 28, 2012;*

11 (2) be qualified to conduct mediation;

12 (3) have experience as a mediator;

13 (4) attend one or more workshops, approved and as ordered by the
14 district court in which the case is filed, on *domestic* case management; and

15 (5) ~~complete a minimum number of~~ *at least six* continuing education
16 ~~hours regarding case management issues or abuse and control dynamics~~
17 ~~issues annually~~ *as established and approved by the supreme court director*
18 *of dispute resolution. Upon request by an appointing judge or hearing*
19 *officer, a domestic case manager shall provide documentation*
20 *demonstrating compliance with the provisions of this subsection.*

21 (e) *If a court or hearing officer appoints a domestic case manager*
22 *under this section, the domestic case management shall be limited to a*
23 *specific time period, not to exceed 36 months, which may be renewed by*
24 *an agreement of the parties or by the court or hearing officer at a hearing*
25 *where the effectiveness and appropriateness of the domestic case*
26 *management process is considered by the court with all parties*
27 *contributing.*

28 (f) *The director of dispute resolution appointed by the judicial*
29 *administrator pursuant to K.S.A. 5-503, and amendments thereto, shall*
30 *establish standards and approve all continuing education hours for*
31 *domestic case managers under this section. Continuing education hours*
32 *approved by the director of dispute resolution may involve topics*
33 *including, but not limited to, domestic case management, domestic*
34 *relations, mediation and the dynamics of abuse and control. The director*
35 *of dispute resolution may approve continuing legal education hours*
36 *approved by the state continuing legal education accrediting organization*
37 *as continuing education hours for domestic case managers if such*
38 *continuing legal education hours relate to issues involving domestic case*
39 *management, domestic relations, mediation or the dynamics of abuse and*
40 *control.*

41 (e) (g) ~~On and after September 1, 2012~~ *December 31, 2015*, any
42 *domestic case manager appointed by the court prior to, on or after July 1,*
43 *2012 2015, shall meet the requirements of subsection (d).*

1 Sec. 3. K.S.A. 2014 Supp. 23-3509 is hereby amended to read as
2 follows: 23-3509. (a) A *domestic* case manager appointed under K.S.A.
3 2014 Supp. 23-3508, and amendments thereto, ~~shall~~ *may*:

4 (1) Meet with the parties, and other individuals deemed appropriate;

5 (2) gather information necessary *regarding the parties and the*
6 *children* to assist the parties in reaching an agreement or making
7 recommendations, including medical, psychological, education and court
8 records, including child custody investigations—~~and~~, child custody
9 psychological evaluations, ~~of the parties and children or parenting plan~~
10 *evaluations*;

11 (3) report to the court as directed by court order;

12 (4) keep a record by date and topic of all contacts with the parties in
13 the case. When requested, this record shall be made available to the court
14 in total or summary form without the express consent of the parties and
15 shall not be considered a medical or psychological record for purposes of
16 confidentiality;

17 (5) notify the court when a party fails to meet the financial
18 obligations of the *domestic* case management process;

19 (6) file for collection of costs as necessary. The court shall assist in
20 such filing or collection efforts, or both;

21 (7) be authorized by the court to report threats, imminent danger,
22 suspected child abuse, fear of abduction and suspected or actual harm to
23 any party or child involved in *domestic* case management either directly to
24 the court and to other authorities, or both. Such action shall be followed by
25 a written summary within five business days of the initial filing of such
26 report which shall be sent to the judge or the judge's designee and included
27 in the court file; and

28 (8) directly contact the court with any other information the *domestic*
29 case manager determines that the court should know. *Any information*
30 *provided to the court pursuant to this paragraph shall also be distributed*
31 *to the parties.*

32 (b) A *domestic* case manager appointed under K.S.A. 2014 Supp. 23-
33 3508, and amendments thereto, may withdraw at any time following the
34 initial order. Sufficient reasons for withdrawal may include, but not be
35 limited to, the following:

36 (1) Loss of neutrality which prevents objectivity;

37 (2) nonpayment by a party;

38 (3) lack of cooperation by a party;

39 (4) threat to a party;

40 (5) retirement or case load reduction by a *domestic* case manager; or

41 (6) any other reason which shall be stated to the court in writing and
42 considered adequate and sufficient reason by the court.

43 (c) A disputant party may request reassignment of a *domestic* case

1 manager by filing a motion with the court. The court shall consider such
2 requests upon review. Repeated requests may raise a presumption of lack
3 of parental cooperation and the court may consider sanctions against the
4 uncooperative parent or parents.

5 ~~(d) (1) If parties have been ordered by the court to attempt to settle~~
6 ~~the party's disputes with the assistance of a case manager, and are unable~~
7 ~~to settle such disputes, the parties are to follow the recommendation or~~
8 ~~recommendations of the case manager as ordered by the court.~~

9 ~~(2) When a case manager is forced to make recommendations for the~~
10 ~~parties, such recommendations shall be noted in writing as soon as~~
11 ~~possible and may be accompanied by supporting information. Such~~
12 ~~recommendation shall be reported to the court with copies to the attorneys~~
13 ~~of record for each party within 10 working days.~~

14 ~~(3) Agreements of the parties and recommendations of the case~~
15 ~~manager which may concern temporary arrangements need not be entered~~
16 ~~into the court record by the attorneys of record.~~

17 ~~(4) Case managers shall be furnished a form for orders to recommend~~
18 ~~such agreements to the court for the court's final order.~~

19 ~~(5) Permanent issues such as designation of custody, primary~~
20 ~~residence or child support which are recommended by the case manager~~
21 ~~shall be entered into the court record within 10 working days of receipt of~~
22 ~~the recommendation. Should there be differing opinions as to the language~~
23 ~~of the journal entry, the case manager shall review the proposed journal~~
24 ~~entry and may recommend appropriate language to the court.~~

25 ~~(6) If a disputant party disagrees with a recommendation such party~~
26 ~~may file a motion before the court for a review at which time an order~~
27 ~~shall be made by the court. The case manager shall explain to the court~~
28 ~~either by report or testimony the reasons for such recommendation or~~
29 ~~recommendations.~~

30 ~~(7) (d) Costs of the procedure and professional time may be assessed~~
31 ~~to the party who objected to the recommendations in the journal entry or~~
32 ~~may be otherwise assessed by the court as costs of the action. The court~~
33 ~~may require that a retainer be paid to the domestic case manager before~~
34 ~~services are provided by the domestic case manager.~~

35 ~~(e) The meetings between a domestic case manager and the parties~~
36 ~~may be informal. Any communications made between a domestic case~~
37 ~~manager and the parties, or between a domestic case manager and any~~
38 ~~person with information relating to the parties or best interest of a child,~~
39 ~~shall not be confidential.~~

40 ~~(f) A domestic case manager may allow the parties to make minor,~~
41 ~~temporary departures from an existing parenting plan, upon agreement by~~
42 ~~the parties. In addition, a domestic case manager may make minor,~~
43 ~~temporary departures from an existing parenting plan if authorized by the~~

1 court or hearing officer.

2 (g) Any order by a court or hearing officer appointing a domestic
3 case manager shall specify the matters of decision-making, parenting time,
4 third-party visitation and aspects of the parenting plan that the domestic
5 case manager is authorized to address.

6 (h) By written agreement, the parties may agree to have the domestic
7 case manager address and provide recommendations on additional issues,
8 so long as addressing such additional issues are not inconsistent with any
9 orders of the court.

10 (i) If the parties are unable to come to an agreement upon all issues
11 in dispute, the domestic case manager shall make written
12 recommendations to the court within 14 days of an impasse, as determined
13 by the domestic case manager. Any determination of an impasse made by a
14 domestic case manager under this subsection shall be supported with facts
15 and information.

16 (1) A domestic case manager's recommendations regarding
17 resolution of a dispute or permanent changes to a parenting plan shall be
18 in writing to the court or hearing officer within 14 days of impasse, with
19 copies served to the parties.

20 (2) The domestic case manager's reporting of recommendations
21 under this subsection shall explain the reasoning for the domestic case
22 manager's recommendations, including specific factual references relevant
23 to the recommendations.

24 (3) The parties upon whom a domestic case manager's report is
25 served shall serve the court or hearing officer, domestic case manager and
26 all other parties with a motion containing any objections to such report
27 within 14 days after service is made.

28 (4) Upon a party's motion objecting to a domestic case manager's
29 report, the court or hearing officer may order the domestic case manager
30 to explain to the court in writing or by testimony any additional reasons
31 for the recommendations in the domestic case manager's report.

32 (5) Upon expiration of the 14-day period to move for objection to a
33 domestic case manager's report under this section, the court or hearing
34 officer shall make and resolve any objections to a domestic case
35 manager's report in a manner the court or hearing officer deems
36 appropriate, necessary and consistent.

37 (6) If a hearing is not requested by either party under this subsection,
38 the court or hearing officer may set the matter for hearing or rule on a
39 disputed issue without a hearing.

40 (j) The court or hearing officer shall conduct an evidentiary hearing
41 prior to ruling on a domestic case manager's recommendations when a
42 domestic case manager's recommendations:

43 (1) Materially affect decision-making, parenting time or third-party

1 visitation;

2 (2) materially affect the implementation of other provisions of the
3 parenting plan;

4 (3) rely upon material facts unsupported by specific factual
5 references; or

6 (4) rely upon material facts specifically disputed by a party.

7 (k) The court or hearing officer may remove a domestic case
8 manager at its discretion. Upon good cause shown, the court may also
9 remove a domestic case manager by the request or agreement of the
10 parties.

11 Sec. 4. K.S.A. 2014 Supp. 38-2223 is hereby amended to read as
12 follows: 38-2223. (a) *Persons making reports.* (1) When any of the
13 following persons has reason to suspect that a child has been harmed as a
14 result of physical, mental or emotional abuse or neglect or sexual abuse,
15 the person shall report the matter promptly as provided in subsections (b)
16 and (c);

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

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

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

33 (D) firefighters, emergency medical services personnel, law
34 enforcement officers, juvenile intake and assessment workers, court
35 services officers, community corrections officers, *domestic* case managers
36 appointed under K.S.A. 2014 Supp. 23-3508, and amendments thereto, and
37 mediators appointed under K.S.A. 2014 Supp. 23-3502, and amendments
38 thereto; and

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

43 (2) In addition to the reports required under subsection (a)(1), any

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

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

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

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

19 (1) When the Kansas department for children and families is not open
20 for business, reports shall be made to the appropriate law enforcement
21 agency. On the next day that the department is open for business, the law
22 enforcement agency shall report to the department any report received and
23 any investigation initiated pursuant to K.S.A. 2014 Supp. 38-2226, and
24 amendments thereto. The reports may be made orally or, on request of the
25 secretary, in writing.

26 (2) Reports of child abuse or neglect occurring in an institution
27 operated by the Kansas department for aging and disability services or the
28 ~~commissioner of juvenile justice~~ *secretary of corrections* shall be made to
29 the attorney general. All other reports of child abuse or neglect by persons
30 employed by or of children of persons employed by the Kansas department
31 for aging and disability services and the Kansas department for children
32 and families shall be made to the appropriate law enforcement agency.

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

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

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

42 (3) Any person who willfully and knowingly makes a false report
43 pursuant to this section or makes a report that such person knows lacks

1 factual foundation is guilty of a class B misdemeanor.

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

9 Sec. 5. K.S.A. 2014 Supp. 23-3507, 23-3508, 23-3509 and 38-2223
10 are hereby repealed.

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