

HOUSE BILL No. 2462

By Committee on Children and Seniors

1-21

1 AN ACT concerning the Kansas family law code; relating to establishment
2 and modification of child support; custody, residency and parenting
3 time; amending K.S.A. 2013 Supp. 20-1204a, 23-2904, 23-3001, 23-
4 3002, 23-3004, 23-3005, 23-3103, 23-3104, 23-3106, 23-3114, 23-
5 3201, 23-3202, 23-3203, 23-3206, 23-3207, 23-3208, 23-3209, 23-
6 3210, 23-3214, 23-3218, 23-3219 and 23-3401 and repealing the
7 existing sections; also repealing K.S.A. 2013 Supp. 23-3111, 23-3112,
8 23-3113, 23-3118, 23-3119, 23-3120, 23-3121, 23-3122, 23-3220, 23-
9 3221 and 23-3302.

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12 There is a constitutional dimension to the right of parents who direct
13 the upbringing of their children. It is cardinal with the Kansas
14 legislature that the custody, care and nurturing of children reside first in
15 the parents, whose primary function and freedom include preparation
16 for obligations the state can neither supply nor hinder. The child is not a
17 creature of the state. Those who nurture them and direct their destiny
18 have the right, coupled with the high duty, to recognize and prepare
19 them for additional obligations. As long as the parents adequately care
20 for their children, there will be no reason for the state to inject itself
21 into the private realm of the family to further question the ability of the
22 parents to make the best decisions concerning the rearing of their
23 children. The state should not have the ability to temporarily or
24 constructively terminate parental rights without having the parents
25 judged by a jury of their peers.

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

29 New Section 1. (a) There is hereby created the joint committee on
30 Kansas child support guidelines which shall be within the legislative
31 branch of state government and which shall be composed of nine members
32 as follows: (1) One member of the house of representatives appointed by
33 the speaker of the house of representatives; (2) one member of the house
34 of representatives appointed by the minority leader of the house of
35 representatives; (3) one member of the senate appointed by the president
36 of the senate; (4) one member of the senate appointed by the minority

1 leader of the senate; (5) one member of the house of representatives
2 appointed by the chairperson of the house committee on appropriations;
3 (6) one member of the senate appointed by the chairperson of the senate
4 committee on ways and means; (7) one member of the house of
5 representatives appointed by the ranking minority member of the house
6 committee on appropriations; (8) one member of the senate appointed by
7 the ranking minority member of the senate committee on ways and means;
8 and (9) one member of the house of representatives appointed by the
9 majority leader of the house of representatives.

10 (b) Members shall be appointed for terms coinciding with the
11 legislative terms for which such members are elected or appointed. All
12 members appointed to fill vacancies in the membership of the joint
13 committee and all members appointed to succeed members appointed to
14 membership on the joint committee shall be appointed in the manner
15 provided for the original appointment of the member succeeded.

16 (c) The members originally appointed as members of the joint
17 committee shall meet upon the call of the member appointed by the
18 speaker of the house of representatives, who shall be the first chairperson,
19 within 60 days of the effective date of this act. The vice-chairperson of the
20 joint committee shall be the member appointed by the president of the
21 senate. Chairperson and vice-chairperson shall alternate annually between
22 the members appointed by the speaker of the house of representatives and
23 the president of the senate. The ranking minority member shall be from the
24 same chamber as the chairperson. Five members of the joint committee
25 shall constitute a quorum.

26 (d) On or before January 12, 2015, the joint committee shall submit
27 to the president of the senate and the speaker of the house of
28 representatives a written report on the proposed statutory Kansas child
29 support guidelines to be ordered in any action in this state, including, but
30 not limited to, K.S.A. 39-755 and K.S.A. 23-2215, and amendments
31 thereto, article 30 of chapter 23 of the Kansas Statutes Annotated, and
32 amendments thereto, and K.S.A. 23-2711, and amendments thereto. In
33 establishing such guidelines, the joint committee shall consider:

- 34 (1) The criteria in K.S.A. 23-2215, and amendments thereto;
- 35 (2) higher amounts of child support for the first three years of child
36 support collection or until one parent remarries;
- 37 (3) the overall financial condition of a parent if such parent remarries;
- 38 (4) a parenting time adjustment for a parent with less than 42%
39 parenting time;
- 40 (5) the overall financial condition of a parent when such parent
41 receives bonus pay, overtime pay, a raise in pay or a promotion. Receipt of
42 bonus pay, a raise in pay or a promotion by a parent shall not automatically
43 increase such parent's amount of child support;

1 (6) a process for the parent receiving child support payments to
2 document how such payments are spent on behalf of the child; and

3 (7) imputing income to the parent receiving child support payments if
4 such parent is deliberately unemployed or employed within the primary
5 residency household undertaking homemaker-type services, including, but
6 not limited to, shopping, laundry, cleaning and child care. The overall
7 financial condition of the parent receiving child support payments shall be
8 considered, including, but not limited to, economic circumstances such as
9 an employment layoff, employment training or enrollment in a
10 postsecondary educational institution. For the purposes of this subsection,
11 "postsecondary educational institution" shall have the meaning ascribed to
12 such term under K.S.A. 2013 Supp. 74-3201b, and amendments thereto.

13 (e) Members of the committee shall be paid compensation, travel
14 expenses and subsistence expenses or allowance as provided in K.S.A. 75-
15 3212, and amendments thereto, for attendance at any meeting of the joint
16 committee or any subcommittee meeting authorized by the committee.

17 New Sec. 2. (a) The office of judicial administration shall create
18 and maintain or contract with a public or private entity to create and
19 maintain a registry that lists persons indebted to the court pursuant to
20 K.S.A. 2013 Supp. 20-1204a, and amendments thereto, to be accessed by
21 any lottery gaming facility manager as defined by K.S.A. 74-8702, and
22 amendments thereto, and any facility owner licensee as defined by K.S.A.
23 74-8802, and amendments thereto, for the purpose of offsetting any prize
24 as defined by K.S.A. 74-8702, and amendments thereto, or winnings from
25 parimutuel wagering as defined by K.S.A. 74-8802, and amendments
26 thereto.

27 (b) Except as provided in subsection (c), all lottery facility managers
28 and facility owner licensees shall conduct searches of the court debtor's
29 registry to ensure that an offset of a past due fine owed to the court
30 pursuant to K.S.A. 2013 Supp. 20-1204a, and amendments thereto, is made
31 against the winnings of any person who wins a prize or wager valued at
32 \$1,200 or more.

33 (c) Any lottery gaming facility manager as defined by K.S.A. 74-
34 8702, and amendments thereto, and any facility owner licensee as defined
35 by K.S.A. 74-8802, and amendments thereto, may utilize the provisions of
36 K.S.A. 75-6201 et seq., and amendments thereto, to ensure court debtors
37 who win any prize or winning from parimutuel wagering valued at \$1,200
38 or more shall be subject to setoff of such court debt.

39 New Sec. 3. Any proceeding that is held under the provisions of the
40 Kansas family law code, or chapter 23 of the Kansas Statutes Annotated,
41 and amendments thereto, involving the termination of parental rights or
42 modification of child custody, residency, visitation or parenting time, shall
43 be tried by a jury if a jury is requested by a parent, guardian or custodian

1 whose parental rights are sought to be terminated or child custody,
2 residency, visitation or parenting time is sought to be modified. The
3 provisions of K.S.A. 60-238 and 60-239, and amendments thereto, relating
4 to trial by jury, shall be applicable to the right of trial by jury provided by
5 this section.

6 Sec. 4. K.S.A. 2013 Supp. 20-1204a is hereby amended to read as
7 follows: 20-1204a. (a) When an order in a civil action has been entered,
8 the court that rendered the same may order a person alleged to be guilty of
9 indirect contempt of such order to appear and show cause why such person
10 should not be held in contempt if there is filed a motion requesting an
11 order to appear and show cause which is accompanied by an affidavit
12 specifically setting forth the facts constituting the alleged violation.

13 (b) Except as provided in subsection (e), the order to appear and show
14 cause shall be served upon the party allegedly in contempt by the sheriff or
15 some other person appointed by the court for such purpose. Such order
16 shall state the time and place where the person is to appear and shall be
17 accompanied by a copy of the affidavit provided for in subsection (a). The
18 court shall hear the matter at the time specified in the order, and upon
19 proper showing, may extend the time so as to give the accused a
20 reasonable opportunity to purge oneself of the contempt. If the court
21 determines that a person is guilty of contempt such person shall be
22 punished ~~as the court shall direct~~ *by a fine not to exceed \$500.*

23 (c) If, after proper service of the order to appear and show cause, the
24 person served shall not appear in court as ordered, or if the court finds at a
25 hearing held on motion of a party to the civil action that the person
26 allegedly in contempt is secreting oneself to avoid the process of the court,
27 the court may issue a bench warrant commanding that the person be
28 brought before the court to answer for contempt. When such person is
29 brought before the court, the court shall proceed as provided in subsection
30 (b). The court may make such orders concerning the release of the person
31 pending the hearing as the court deems proper.

32 (d) The provisions of this section shall apply to both criminal and
33 civil contempts, but in the case of a criminal contempt the court on its own
34 motion may cause the motion and affidavit provided for in subsection (a)
35 to be filed.

36 (e) In cases involving an alleged violation of a restraining order
37 issued pursuant to subsection (a)(2) of K.S.A. 2013 Supp. 23-2707, and
38 amendments thereto, if the affidavit filed pursuant to subsection (a) alleges
39 physical abuse in violation of the court's order, the court immediately may
40 issue a bench warrant and proceed as provided in subsection (c).

41 ~~(f) If a person is found guilty of contempt in a child support~~
42 ~~enforcement proceeding, including an assignment of child support rights to~~
43 ~~the commissioner of juvenile justice and the evidence shows that the~~

1 person is or may be authorized to practice a profession by a licensing body
2 as defined in K.S.A. 74-146, and amendments thereto, the court, in
3 addition to any other remedies, may order that a notice pursuant to
4 subsection (a) of K.S.A. 74-147, and amendments thereto, be served on the
5 licensing body. If the person found guilty of contempt as provided in this
6 subsection is a licensed attorney, the court may file a complaint with the
7 disciplinary administrator if the licensing agency is the Kansas supreme
8 court, or the appropriate bar counsel's office if the licensee practices in
9 another state.

10 (g) If a person is found guilty of contempt in a child support
11 enforcement proceeding, including an assignment of child support rights to
12 the commissioner of juvenile justice, in an amount equal to or greater than
13 the amount of support payable for six months or the obligor has been
14 ordered by the court to pay a sum certain each month toward the
15 liquidation of the arrearages and the obligor has substantially failed to
16 abide by that order, the court may restrict the obligor's driver's license.
17 Such restriction may include, but not be limited to, driving to, from and
18 during the course of such person's employment. The court may order the
19 public office, as defined in K.S.A. 2013 Supp. 23-3102, and amendments
20 thereto, to contact the division of vehicles of the department of revenue to
21 restrict the obligor's driver's license as indicated in the court order until
22 further order of the court.

23 (h) (f) The court shall not recognize a motion to issue nor order in a
24 civil or criminal action a contempt citation against any person who reports
25 or publishes the information that a gag order has been issued by the court.

26 Sec. 5. K.S.A. 2013 Supp. 23-2904 is hereby amended to read as
27 follows: 23-2904. The court may make a modification of maintenance
28 retroactive to a date at least one month after the date that the motion to
29 modify was filed with the court. In any event, the court may not award
30 maintenance for a period of time in excess of ~~12~~ 12 months. ~~If the~~
31 ~~original court decree reserves the power of the court to hear subsequent~~
32 ~~motions for reinstatement of maintenance and such a motion is filed prior~~
33 ~~to the expiration of the stated period of time for maintenance payments,~~
34 ~~the court shall have jurisdiction to hear a motion by the recipient of the~~
35 ~~maintenance to reinstate the maintenance payments.~~ Upon motion and
36 hearing, the court may reinstate the payments in whole or in part for a
37 period of time, conditioned upon any modifying or terminating
38 circumstances prescribed by the court, but the reinstatement shall be
39 limited to a period of time not exceeding ~~12~~ 12 months. The recipient
40 may file subsequent motions for reinstatement of maintenance prior to the
41 expiration of subsequent periods of time for maintenance payments to be
42 made, but no single period of reinstatement ordered by the court may
43 exceed ~~12~~ 12 months.

1 Sec. 6. K.S.A. 2013 Supp. 23-3001 is hereby amended to read as
2 follows: 23-3001. (a) In any action under article 27 of chapter 23 of the
3 Kansas Statutes Annotated, and amendments thereto, the court shall make
4 provisions for the support and education of the minor children.

5 (b) ~~Regardless of~~ *Based upon* the type of custodial arrangement
6 ordered by the court, the court may order the child support and education
7 expenses to be paid by either or both parents for any child less than 18
8 years of age, at which age the support shall terminate unless:

9 (1) The parent or parents agree, by written agreement ~~approved by the~~
10 ~~court~~, to pay support beyond the time the child reaches 18 years of age;

11 (2) the child reaches 18 years of age before completing the child's
12 high school education in which case the support shall not terminate
13 automatically, unless otherwise ordered by the court, until ~~June~~ *May* 30 of
14 the school year during which the child became 18 years of age if the child
15 is still attending high school; or

16 (3) the child is still a bona fide high school student after ~~June~~ *May* 30
17 of the school year during which the child became 18 years of age, in which
18 case the court, on motion, may order support to continue through the
19 school year during which the child becomes 19 years of age so long as the
20 child is a bona fide high school student and the parents jointly participated
21 or knowingly acquiesced in the decision which delayed the child's
22 completion of high school. The court, in extending support pursuant to
23 subsection (b)(3), ~~may impose such conditions as are appropriate and~~ shall
24 set the child support utilizing the guideline table category for 12-year
25 through 18-year-old children. For purposes of this section, "bona fide high
26 school student" means a student who is enrolled in full accordance with
27 the policy of the accredited high school in which the student is pursuing a
28 high school diploma or a graduate equivalency diploma (GED).

29 ~~(c) Provision for payment of support and educational expenses of a~~
30 ~~child after reaching 18 years of age if still attending high school shall~~
31 ~~apply to any child subject to the jurisdiction of the court, including those~~
32 ~~whose support was ordered prior to July 1, 1992. If an agreement approved~~
33 ~~by the court prior to July 1, 1992, provides for termination of support~~
34 ~~before the date provided by subsection (b)(3), the court may review and~~
35 ~~modify such agreement, and any order based on such agreement, to extend~~
36 ~~the date for termination of support to the date provided by subsection (b)~~
37 ~~(3).~~

38 Sec. 7. K.S.A. 2013 Supp. 23-3002 is hereby amended to read as
39 follows: 23-3002. In determining the amount to be paid for child support,
40 the court shall consider all relevant factors, ~~without regard to marital~~
41 ~~misconduct~~, including the financial resources and needs of both parents,
42 the financial resources and needs of the child and the physical and
43 emotional condition of the child. ~~Until a child reaches 18 years of age, the~~

1 court may set apart any portion of property of either the husband or wife,
2 or both, that seems necessary and proper for the support of the child.

3 Sec. 8. K.S.A. 2013 Supp. 23-3004 is hereby amended to read as
4 follows: 23-3004. Except for good cause shown, every order requiring
5 payment of child support under this article shall require that the support be
6 paid through the central unit for collection and disbursement of support
7 payments designated pursuant to K.S.A. 2013 Supp. 39-7,135, and
8 amendments thereto. A written agreement between the parties to make
9 direct child support payments to the obligee and not pay through the
10 central unit shall constitute good cause, ~~unless the court finds the~~
11 ~~agreement is not in the best interest of the child or children.~~ The obligor
12 shall file such written agreement with the court. The obligor shall maintain
13 written evidence of the payment of the support obligation and, at least
14 annually, shall provide such evidence to the court and the obligee.

15 Sec. 9. K.S.A. 2013 Supp. 23-3005 is hereby amended to read as
16 follows: 23-3005. (a) Subject to the provisions of K.S.A. 23-36,207, and
17 amendments thereto, the court may modify or change any prior child
18 support order, including any order issued in a title IV-D case, ~~within three~~
19 ~~years of the date of the original order or a modification order, when a~~
20 ~~material change in circumstances is shown, irrespective of the present~~
21 ~~domicile of the child or the parents. If more than three years has passed~~
22 ~~since the date of the original order or modification order, a material change~~
23 ~~in circumstance need not be shown.~~

24 (b) The court may make a modification of child support retroactive to
25 a date ~~at least one month after~~ *prior to* the date that the motion to modify
26 was filed with the court. Any increase in support ordered effective prior to
27 the date the court's judgment is filed shall not become a lien on real
28 property pursuant to K.S.A. 60-2202, and amendments thereto.

29 Sec. 10. K.S.A. 2013 Supp. 23-3103 is hereby amended to read as
30 follows: 23-3103. (a) Any new or modified order for support shall include
31 a provision for the withholding of income to enforce the order for support.

32 (b) Except as otherwise provided in subsection (j), (k) or (m), all new
33 or modified orders for support shall provide for immediate issuance of an
34 income withholding order. The income withholding order shall be issued
35 regardless of whether a payor subject to the jurisdiction of this state can be
36 identified at the time the order for support is entered. The income
37 withholding order shall be issued without further notice to the obligor and
38 shall specify:

39 (1) If the income withholding order is to attach to periodic payments,
40 an amount sufficient to satisfy the order for support and to defray any
41 arrearage; or

42 (2) if the income withholding order is to attach a lump sum payment,
43 the amount the payor is required to withhold for support from the lump

1 sum payment.

2 (c) Except as otherwise provided in this subsection or subsections (j)
3 or (m), if no income withholding order is in effect to enforce the support
4 order, an income withholding order shall be issued by the court upon
5 request of the obligee or public office, provided that the obligor accrued an
6 arrearage equal to or greater than the amount of support payable for one
7 month and the requirements of subsections (d) and (h) have been met. The
8 income withholding order shall be issued without further notice to the
9 obligor and shall specify an amount sufficient to satisfy the order for
10 support and to defray any arrearage. The income withholding order shall
11 be issued regardless of whether a payor subject to the jurisdiction of this
12 state can be identified at the time the income withholding order is issued.

13 (d) Not less than seven days after the obligee or public office has
14 served a notice pursuant to subsection (h), the obligee or public office may
15 initiate income withholding pursuant to paragraph (1) or (2).

16 (1) The obligee or public office may apply for an income withholding
17 order by filing with the court an affidavit stating: (A) The date that the
18 notice was served on the obligor and the manner of service; (B) that the
19 obligor has not filed a motion to stay issuance of the income withholding
20 order or, if a motion to stay has been filed, the reason an income
21 withholding order must be issued immediately; (C) a specified amount to
22 be withheld by the payor to satisfy the order of support and to defray any
23 arrearage; (D) whether the income withholding order is to include a
24 medical withholding order; and (E) that the amount of the arrearage as of
25 the date the notice to the obligor was prepared was equal to or greater than
26 the amount of support payable for one month. In addition to any other
27 penalty provided by law, the filing of such an affidavit with knowledge of
28 the falsity of a material declaration is punishable as a contempt.

29 Upon the filing of the affidavit, the income withholding order shall be
30 issued without further notice to the obligor, hearing or amendments of the
31 support order. Payment of all or part of the arrearage before issuance of the
32 income withholding order shall not prevent issuance of the income
33 withholding order, unless the arrearage is paid in full and the order for
34 support does not include an amount for the current support of a person. No
35 affidavit is required if the court, upon hearing a motion to stay issuance of
36 the income withholding order or otherwise, issues an income withholding
37 order.

38 (2) In a title IV-D case, the IV-D agency may issue an income
39 withholding order as authorized by K.S.A. 39-7,147, and amendments
40 thereto. Any such income withholding order shall be considered an income
41 withholding order issued pursuant to this act.

42 (e) (1) An income withholding order shall be directed to any payor of
43 the obligor. Notwithstanding any other requirement of this act as to form

1 or content, only an income withholding order prepared in a standard
2 format prescribed by the secretary of the department for children and
3 families, or the standard federal notices and forms promulgated under 42
4 U.S.C. § 652 (a)(11) and 42 U.S.C. § 666 (b)(A)(ii), shall be deemed to be
5 in compliance with this act.

6 (2) An income withholding order which does not include a medical
7 withholding order shall require the payor to withhold from any income
8 due, or to become due, to the obligor a specified amount sufficient to
9 satisfy the order of support and to defray any arrearage and shall include
10 notice of and direction to comply with the provisions of K.S.A. 2013
11 Supp. 23-3104 and 23-3105, and amendments thereto.

12 (3) An income withholding order which consists only of a medical
13 withholding order shall include notice of the medical child support order
14 and shall conform to the requirements of K.S.A. 2013 Supp. 23-3116, and
15 amendments thereto. The medical withholding order shall include notice of
16 and direction to comply with the requirements of K.S.A. 2013 Supp. 23-
17 3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

18 (4) An income withholding order which includes both a medical
19 withholding order and an income withholding order for cash support shall
20 meet the requirements of paragraphs (2) and (3).

21 (f) (1) Upon written request and without the requirement of further
22 notice to the obligor, the clerk of the district court shall cause a copy of the
23 income withholding order to be served on the payor by first-class mail.

24 (2) Without the requirement of further notice to the obligor, the court
25 trustee or IV-D agency may cause a copy of any income withholding order
26 to be served on the payor by first-class mail or by any alternate method
27 acceptable to the payor, including, but not limited to: Facsimile
28 transmission, electronic mail attachment or electronic interface allowing
29 for the download of a document or transmission of the terms of the income
30 withholding order. No payor shall be liable to any person solely because of
31 the method of service accepted by the payor.

32 (3) As used in this section, "copy of the income withholding order"
33 means a copy of any document or notice, regardless of copy format, that
34 advises the payor of the same general duties, requires the same amount to
35 be withheld from income and requires medical withholding to the same
36 extent as the original income withholding order that complies with the
37 requirements of subsection (e)(1).

38 (g) An income withholding order shall be binding on any existing or
39 future payor on whom a copy of the order is served and shall require the
40 continued withholding of income from each periodic payment of income
41 until further order of the court or agency that issued the income
42 withholding order. At any time following issuance of an income
43 withholding order, a copy of the income withholding order may be served

1 on any payor without the requirement of further notice to the obligor.

2 (h) Except as provided in subsection (k) or (m), at any time following
3 entry of an order for support the obligee or public office may serve upon
4 the obligor a written notice of intent to initiate income withholding. If any
5 notice in the court record indicates that title IV-D services are being
6 provided in the case, whether or not the IV-D services include enforcement
7 of current support, the person or public office requesting issuance of the
8 income withholding order shall obtain the consent of the IV-D agency to
9 the terms of the proposed income withholding order.

10 The notice of intent to initiate income withholding shall be served on
11 the obligor by personal service, first-class mail or registered mail, return
12 receipt requested. The notice served on the obligor must state: (1) The
13 terms of the order of support and the total arrearage as of the date the
14 notice was prepared; (2) the amount of income that will be withheld, not
15 including premiums to satisfy a medical withholding order; (3) whether a
16 medical withholding order will be included; (4) that the provision for
17 withholding applies to any current or subsequent payor; (5) the procedures
18 available for contesting the withholding and that the only basis for
19 contesting the withholding is a mistake of fact concerning the amount of
20 the support order, the amount of the arrearage, the amount of income to be
21 withheld or the proper identity of the obligor; (6) the period within which
22 the obligor must act to stay issuance of the income withholding order and
23 that failure to take such action within the specified time will result in
24 payors' being ordered to begin withholding; and (7) the action which will
25 be taken if the obligor contests the withholding.

26 The obligor may, at any time, waive in writing the notice required by
27 this subsection.

28 (i) On request of an obligor, the court shall issue an income
29 withholding order which shall be honored by a payor regardless of whether
30 there is an arrearage. Nothing in this subsection shall limit the right of the
31 obligee to request modification of the income withholding order.

32 (j) (1) In a nontitle IV-D case, upon presentation to the court of a
33 written agreement between the parties providing for an alternative
34 arrangement, no income withholding order shall be issued pursuant to
35 subsection (b). In any case, before entry of a new or modified order for
36 support, a party may request that no income withholding order be issued
37 pursuant to subsection (b) if notice of the request has been served on all
38 interested parties and: (A) The party demonstrates, and the court finds, that
39 there is good cause not to require immediate income withholding; or (B) a
40 written agreement among all interested parties provides for an alternative
41 arrangement. If child support and maintenance payments are both made to
42 an obligee by the same obligor, and if the court has determined that good
43 cause has been shown that direct child support payments to the obligee

1 may be made, then the court shall provide for direct maintenance
2 payments to the obligee and no income withholding order shall be issued
3 pursuant to subsection (b). In a title IV-D case, the determination that there
4 is good cause not to require immediate income withholding must include a
5 finding that immediate income withholding would not be in the child's best
6 interests and, if an obligor's existing obligation is being modified, proof of
7 timely payment of previously ordered support.

8 (2) Notwithstanding the provisions of subsection (j)(1), the court
9 shall issue an income withholding order when an affidavit pursuant to
10 subsection (d) is filed if an arrearage exists in an amount equal to or
11 greater than the amount of support payable for one month.

12 (3) If a notice pursuant to subsection (h) has been served in a title IV-
13 D case, there is no arrearage or the arrearage is less than the amount of
14 support payable for one month, and the obligor files a motion to stay
15 issuance of the income withholding order based upon the court's previous
16 finding of good cause not to require immediate income withholding
17 pursuant to subsection (j)(1), the obligor must demonstrate the continued
18 existence of good cause. Unless the court again finds that good cause not
19 to require immediate income withholding exists, the court shall issue the
20 income withholding order.

21 (4) If a notice pursuant to subsection (h) has been served in a title IV-
22 D case, there is no arrearage or the arrearage is less than the amount of
23 support payable for one month, and the obligor files a motion to stay
24 issuance of an income withholding order based upon a previous agreement
25 of the interested parties for an alternative arrangement pursuant to
26 subsection (j)(1), the court shall issue an income withholding order,
27 notwithstanding any previous agreement, if the court finds that:

28 (A) The agreement was not in writing;

29 (B) the agreement was not approved by all interested parties;

30 (C) the terms of the agreement or alternative arrangement are not
31 being met;

32 (D) the agreement or alternative arrangement is not in the best
33 interests of the child; or

34 (E) the agreement or alternative arrangement places an unnecessary
35 burden upon the obligor, obligee or a public office.

36 (5) The procedures and requirements of K.S.A. 2013 Supp. 23-3106,
37 and amendments thereto, apply to any motion pursuant to paragraph (3) or
38 (4) of this subsection.

39 (k) (1) An ex parte interlocutory order for support may be enforced
40 pursuant to subsection (b) only if the obligor has consented to the income
41 withholding in writing.

42 ~~(2) An ex parte interlocutory order for support may be enforced~~
43 ~~pursuant to subsection (c) only if 14 or more days have elapsed since the~~

1 order for support was served on the obligor.

2 ~~(3) Any other interlocutory order for support may be enforced by~~
3 ~~income withholding pursuant to this act in the same manner as a final~~
4 ~~order for support.~~

5 ~~(4) (2) No bond shall be required for the issuance of an income~~
6 ~~withholding order to enforce an interlocutory order pursuant to this act.~~

7 (1) All remittances from any income withholding order, regardless of
8 when such order was entered or modified, shall be required to be directed
9 to the central unit for collection and disbursement of support payments
10 designated pursuant to K.S.A. 2013 Supp. 39-7,135, and amendments
11 thereto.

12 ~~(m) All new or modified orders for maintenance of a spouse or ex-~~
13 ~~spouse, except orders for a spouse or ex-spouse living with a child for~~
14 ~~whom an order of support is also being enforced, entered on or after July~~
15 ~~1, 1992, shall include a provision for the withholding of income to enforce~~
16 ~~the order of support. Unless the parties consent in writing to earlier~~
17 ~~issuance of a withholding order, withholding shall take effect only after~~
18 ~~there is an arrearage in an amount equal to or greater than the amount of~~
19 ~~support payable for two months and after service of a notice as provided in~~
20 ~~subsection (h).~~

21 Sec. 11. K.S.A. 2013 Supp. 23-3104 is hereby amended to read as
22 follows: 23-3104. (a) It shall be the affirmative duty of any payor to
23 respond within 10 days to written or electronic requests for information
24 presented by the public office concerning: (1) The full name of the obligor;
25 (2) the current address of the obligor; (3) the obligor's social security
26 number; (4) the obligor's work location; (5) the number of the obligor's
27 claimed dependents; (6) the obligor's gross income; (7) the obligor's net
28 income; (8) an itemized statement of deductions from the obligor's
29 income; (9) the obligor's pay schedule; (10) the obligor's health insurance
30 coverage; and (11) whether or not income owed the obligor is being
31 withheld pursuant to this act. This is an exclusive list of the information
32 that the payor is required to provide under this section.

33 (b) It shall be the duty of any payor who has been served a copy of an
34 income withholding order for payment of an order for cash support that
35 meets the requirements of subsection (i) to deduct and pay over income as
36 provided in this section. The payor shall begin the required deductions no
37 later than the next payment of income due the obligor after 14 days
38 following service of the order on the payor.

39 (c) Within seven business days of the time the obligor is normally
40 paid, the payor shall pay the amount withheld as directed by the income
41 withholding agency pursuant to K.S.A. 2013 Supp. 23-3105, and
42 amendments thereto, as directed by the income withholding order ~~or by a~~
43 ~~rule of the Kansas supreme court.~~ The payor shall identify each payment

1 with the name of the obligor, the county and case number of the income
2 withholding order, and the date the income was withheld from the obligor.
3 The payor shall pay the amounts withheld and identify each payment in
4 the same business day. A payor subject to more than one income
5 withholding order payable to the same payee may combine the amounts
6 withheld into a single payment, but only if the amount attributable to each
7 income withholding order is clearly identified. Premiums required for a
8 child's coverage under a health benefit plan shall be remitted as provided
9 in the health benefit plan and shall not be combined with any other support
10 payment required by the income withholding order.

11 (d) The payor shall continue to withhold income as required by the
12 income withholding order until further order of the court or agency.

13 (e) From income due the obligor, the payor may withhold and retain
14 to defray the payor's costs a cost recovery fee of \$5 for each pay period for
15 which support is withheld from a periodic payment or \$10 for each month
16 for which support is withheld from a periodic payment, whichever is less.
17 For income withholding from a lump sum payment, a cost recovery fee of
18 up to \$10 per withholding may be withheld by the payor and shall be in
19 addition to any cost recovery fee charged for withholding from periodic
20 payments. Any such cost recovery fee shall be in addition to the amount
21 withheld as support.

22 (f) The entire sum withheld by the payor, including the cost recovery
23 fee and premiums due from the obligor which are incurred solely because
24 of a medical withholding order, shall not exceed 50% of the obligor's
25 disposable income as defined by section 302(b) of the consumer credit
26 protection act, 15 U.S.C. § 1672(b). If amounts of earnings required to be
27 withheld exceed the maximum amount of earnings which may be withheld
28 under this section, priority shall be given to payment of current and past
29 due support, and the payor shall promptly notify the holder of the limited
30 power of attorney of any nonpayment of premium for a health benefit plan
31 on the child's behalf. An income withholding order issued pursuant to this
32 act shall not be considered a wage garnishment as defined in subsection
33 (b) of K.S.A. 60-2310, and amendments thereto. If amounts of earnings
34 required to be withheld in accordance with this act are less than the
35 maximum amount of earnings which could be withheld according to
36 section 303(b) of the consumer credit protection act, 15 U.S.C. § 1673(b),
37 the payor shall honor garnishments filed by other creditors to the extent
38 that the total amount taken from earnings does not exceed consumer credit
39 protection act limitations.

40 (g) A payor who has been served an income withholding order by the
41 IV-D agency which includes an amount to defray an arrearage shall
42 contact the IV-D agency no less than 14 days prior to making payment of
43 any lump sum amount to the obligor. The payor may make payment of the

1 lump sum to the obligor once 14 days have passed after providing such
2 contact unless additional process, or notice of intended process, has been
3 received.

4 (h) The payor shall promptly notify the court or agency that issued
5 the income withholding order of the termination of the obligor's
6 employment or other source of income, or the layoff of the obligor from
7 employment, and provide the obligor's last known address and the name
8 and address of the individual's current employer, if known.

9 (i) A payor who complies with a copy of an income withholding
10 order that is regular on its face shall not be subject to civil liability to any
11 person or agency for conduct in compliance with the income withholding
12 order. As used in this section, "regular on its face" means a completed
13 document that is in compliance with subsection (e)(1) of K.S.A. 2013
14 Supp. 23-3103, and amendments thereto.

15 ~~(j) Except as provided further, if any payor violates the provisions of
16 this act, the court may enter a judgment against the payor for the total
17 amount which should have been withheld and paid over. If the payor,
18 without just cause or excuse, fails to pay over income within the time
19 established in subsection (e) and the obligee files a motion to have such
20 income paid over, the court shall enter a judgment against the payor and in
21 favor of the obligee for three times the amount of the income owed and
22 reasonable attorney fees. If the payor, without good cause, fails to pay over
23 the income and identify each payment in the same business day, the court
24 shall enter a judgment against the payor and in favor of the obligee for
25 twice the amount of the cost recovery fee, as established in subsection (e),
26 per obligor.~~

27 ~~(k) In addition to any judgment authorized by subsection (i), a payor
28 shall be subject to a civil penalty not exceeding \$500 and other equitable
29 relief as the court considers proper if the payor: (1) Discharges, refuses to
30 employ or takes disciplinary action against an obligor subject to an income
31 withholding order because of such withholding and the obligations or
32 additional obligations which it imposes upon the payor; or (2) fails to
33 withhold support from income or to pay such amounts in the manner
34 required by this act.~~

35 ~~(h) (j)~~ The provisions of this section as amended by this act shall
36 apply to all income withheld on or after July 1, 2013, regardless of when
37 the applicable income withholding order was entered or modified.

38 Sec. 12. K.S.A. 2013 Supp. 23-3106 is hereby amended to read as
39 follows: 23-3106. This section shall not apply if the notice of intent to
40 initiate income withholding was issued by the IV-D agency pursuant to
41 K.S.A. 39-7,147, and amendments thereto.

42 (a) A motion to stay issuance of the income withholding order must
43 be filed with the court and a copy served on the obligee or public office

1 within ~~seven~~ 10 days after service on the obligor of a notice pursuant to
2 subsection (h) of K.S.A. 2013 Supp. 23-3103, and amendments thereto.
3 Except as provided in subsection (j) of K.S.A. 2013 Supp. 23-3103, and
4 amendments thereto, the grounds for obtaining the stay shall be limited to
5 a mistake of fact in the notice concerning the amount of the order for
6 support, the amount of the arrearage, the amount of income to be withheld
7 or the proper identity of the obligor. The motion shall specify the mistake
8 of fact alleged to be the basis for the motion. If the amount of the order for
9 support or the amount of the arrearage is challenged, the motion shall
10 specify the amount of the order for support or the arrearage which is
11 uncontested. In addition to any other penalty provided by law, filing a
12 motion to stay with knowledge of the falsity of any material declaration or
13 without specifying the uncontested amount of the order for support or the
14 arrearage, when required, is punishable as a contempt.

15 (b) The court, upon notice of the date, time and place of hearing to
16 the obligor and the obligee or public office, shall hear the matter within ~~14~~
17 21 days after the motion to stay issuance of the income withholding order
18 is filed with the court.

19 (c) (1) If a motion to stay has been filed and the identity of the
20 obligor is not contested, the obligee, obligor or public office may apply for
21 immediate issuance of an income withholding order pursuant to subsection
22 (d) of K.S.A. 2013 Supp. 23-3103, and amendments thereto, pending
23 resolution of the contested issues. The affidavit shall specify an amount
24 sufficient to satisfy the order for support or the arrearage only to the extent
25 that the amount of the order for support or the arrearage is not contested. A
26 copy of the affidavit shall be served on the obligor.

27 (2) Whenever an affidavit has been filed as provided in this
28 subsection, the court shall immediately issue the income withholding
29 order.

30 (d) If the court cannot promptly resolve all issues, the court may
31 continue the hearing on the unresolved issues, provided that within 45
32 days of the date the notice was served on the obligor the court notifies the
33 obligor and the obligee or public office of whether or not the withholding
34 is to occur. If the court upholds the issuance of an income withholding
35 order in a contested case, the court must include in its order notice of the
36 time within which the withholding will begin and the information given to
37 the payor as required in K.S.A. 2013 Supp. 23-3104 and 23-3105, and
38 amendments thereto.

39 (e) In addition to any other circumstances warranting issuance of an
40 income withholding order, if the court finds that a notice of intent to
41 initiate income withholding was served on the obligor and that there was
42 an arrearage, as of the date the notice was prepared, in an amount equal to
43 or greater than the amount of support payable for one month, the court

1 shall issue an income withholding order. The provisions of this subsection
2 shall only apply to an order for support of a spouse or ex-spouse if the
3 spouse or ex-spouse is living with a child for whom an order of support is
4 also being enforced.

5 Sec. 13. K.S.A. 2013 Supp. 23-3114 is hereby amended to read as
6 follows: 23-3114. (a) Whether or not a medical child support order has
7 previously been entered, the court shall address the medical needs of the
8 child, and if necessary, enter a medical child support order. Subject to any
9 requirements in child support guidelines ~~adopted by the supreme court~~
10 ~~pursuant to K.S.A. 20-165, and amendments thereto~~, the medical child
11 support order may require either parent or both parents to furnish coverage
12 under any health benefit plan as provided in this section, allocate between
13 the parents responsibility for deductibles and copayments, allocate
14 between the parents responsibility for medical costs not covered by any
15 health benefit plan, include costs of coverage under a health benefit plan in
16 the calculation of a current child support order, require cash medical
17 support as an adjustment to a current support order, and make any other
18 provision that justice may require. Before requiring either parent to
19 provide coverage under any health benefit plan, the court shall consider
20 whether the benefits of the plan are accessible to the child and the cost of
21 coverage, including deductibles and copayments, in relation to the overall
22 financial circumstances. In no event shall the court consider as a factor the
23 availability of medical assistance to any person. Nothing in this section
24 shall prevent the court from prospectively ordering a parent to provide
25 coverage under any health benefit plan which may become available to the
26 parent.

27 (b) Except for good cause shown, if more than one health benefit plan
28 is available for and accessible to a child, the court shall give preference to
29 the plan: (1) Designated by court order or agreement of the parties, or, if
30 none, then (2) in which the child already has benefits, or, if none, then (3)
31 with terms closest to those designated by court order or agreement of the
32 parties, or, if none, then (4) in which the parent or members of the parent's
33 household have benefits, or, if none, then (5) in which the child will
34 receive the greatest benefits.

35 (c) When a medical child support order has been entered, the obligor
36 shall be deemed to have granted by operation of law a limited power of
37 attorney to submit claims to a health benefit plan on the child's behalf and
38 to endorse and negotiate any check or other negotiable instrument issued
39 in full or partial payment of the child's claim. Except as otherwise
40 provided in this subsection, the limited power of attorney shall be held by
41 the obligee. If the child is receiving medical assistance from the secretary
42 ~~of social and rehabilitation services for children and families~~, the secretary
43 ~~of social and rehabilitation services for children and families~~ shall be

1 deemed the sole holder of the limited power of attorney with respect to
2 payments subject to the secretary's claim for reimbursement. Upon
3 termination of medical assistance in this state for the child, the secretary of
4 ~~social and rehabilitation services~~ *for children and families* shall retain the
5 limited power of attorney with respect to medical assistance already
6 provided until the claim of the secretary for reimbursement is satisfied. If
7 the child is receiving medical assistance under Title XIX of the federal
8 social security act in another state or jurisdiction, the agency or official
9 responsible for administering the Title XIX program in that state or
10 jurisdiction shall be deemed the sole holder of the limited power of
11 attorney with respect to payments subject to the claim of that agency or
12 official for reimbursement. Upon termination of medical assistance in that
13 state or jurisdiction for the child the agency or official administering the
14 Title XIX program shall retain the limited power of attorney with respect
15 to medical assistance already provided until the claim of that agency or
16 official for reimbursement is satisfied.

17 (d) In any case in which a participating parent is required by a court
18 or administrative order to provide health coverage for a child, the
19 participating parent is eligible for family health coverage, and the child is
20 otherwise eligible for family health coverage, without regard to any
21 enrollment season restrictions the employer, sponsor or other administrator
22 of a health benefit plan: (1) Shall permit the participating parent to enroll
23 the child for coverage; or (2) if the participating parent is enrolled but has
24 not applied for coverage for the child, shall permit the holder of a limited
25 power of attorney pursuant to subsection (c) to enroll the child. A child
26 enrolled under this subsection shall be treated, with regard to any
27 preexisting condition, as though enrollment occurred during the normal
28 open enrollment period.

29 (e) When a child has been enrolled for coverage pursuant to
30 subsection (d), the employer, sponsor or other administrator of a health
31 benefit plan shall not disenroll or eliminate coverage of the child unless
32 the employer, sponsor or administrator is provided: (1) Satisfactory written
33 evidence that the court or administrative order requiring the parent to
34 provide health coverage is no longer in effect for the child and either the
35 participating parent has requested a change or discontinuance of the child's
36 coverage, or the child is otherwise ineligible for continued coverage; or (2)
37 satisfactory written evidence, signed by all holders of a limited power of
38 attorney pursuant to subsection (c), that the child is or will be enrolled in
39 comparable health coverage through another insurer or health benefit plan
40 which will take effect no later than the effective date of the disenrollment.
41 An employer may also disenroll or eliminate coverage for the child if the
42 employer has eliminated family health coverage for all of its employees.

43 (f) The provisions of this section and the income withholding act and

1 amendments thereto shall apply to all orders for support, including all
2 medical child support orders, entered in this state regardless of the date the
3 order was entered.

4 Sec. 14. K.S.A. 2013 Supp. 23-3201 is hereby amended to read as
5 follows: 23-3201. (a) The court shall determine custody or residency of a
6 child in accordance with the best interests of the child. *At any stage of a*
7 *proceeding, in any order or decree that allocates parental rights and*
8 *responsibilities regarding the care of and access to the children of the*
9 *parents, a court shall grant equal legal and physical access to the parents*
10 *unless it finds by clear and convincing evidence through an evidentiary*
11 *hearing or jury trial that equal legal and physical access would be*
12 *harmful to the children. Unless the court finds by clear and convincing*
13 *evidence to the contrary, there is a presumption that joint custody is the*
14 *least detrimental alternative for a minor child where the parents have*
15 *agreed to joint custody or so agree in open court at a hearing for the*
16 *purpose of determining the custody of the minor child. For the purpose of*
17 *assisting the court in making a determination whether an award of joint*
18 *custody is appropriate, the court may direct that an investigation to be*
19 *conducted. To qualify, an individual shall be currently licensed in Kansas*
20 *as a licensed psychologist, licensed masters level psychologist, licensed*
21 *clinical psychotherapist, licensed professional counselor, licensed clinical*
22 *professional counselor, licensed marriage and family therapist or licensed*
23 *clinical marriage and family therapist. The burden of proof necessary to*
24 *modify an order of joint custody at a subsequent proceeding is beyond a*
25 *reasonable doubt. To ensure minor children of frequent and continuing*
26 *contact and a meaningful relationship with both parents after the parents*
27 *have separated and divorced, it becomes necessary to encourage parents*
28 *to share in the rights and responsibilities of child care and rearing.*
29 *Primary consideration in awarding custody shall be given to both parents*
30 *jointly in order to secure the least detrimental alternative for the children*
31 *by providing the continuation of parent-child relationships. It is therefore*
32 *the presumption of the courts that in all cases, shared custody should be*
33 *considered paramount to ensure the happiness and welfare of the children.*

34 (b) *In all separation and divorce proceedings involving minor*
35 *children, it shall be the presumption of the courts that both parents have*
36 *an inalienable right to share temporary and final legal as well as physical*
37 *custody of the children, unless one or both parents prove to be unfit to*
38 *such an extent and in such a manner as to cause immediate physical or*
39 *emotional danger or damage to the children, abandon the children or*
40 *voluntarily relinquish custody. The shared parenting will require that it is*
41 *up to a parent who opposes equal parenting time during a hearing to*
42 *prove the other parent is a danger to the children. Only after an*
43 *evidentiary hearing may a judge write an opinion denying equal or near*

1 *equal time to both parents. An agreement signed by both parents defining*
2 *the shared arrangements shall be the order of the court, if the parents have*
3 *been apprised of their custody rights, unless clear and convincing*
4 *evidence demonstrates that such an order would not be the least*
5 *detrimental alternative for their children. Only after the parents have*
6 *attempted and failed to reach an agreement on the shared living*
7 *arrangements of the children shall the court determine the shared living*
8 *arrangements of the children. The children shall also have the right to*
9 *reside and spend an equal amount of time with each parent, provided this*
10 *sharing arrangement does not interfere nor disrupt the school term. If*
11 *equal time is neither practical nor possible, the right of one parent to a*
12 *minimum guaranteed amount of time per year with the children shall be*
13 *established and protected by the court.*

14 Sec. 15. K.S.A. 2013 Supp. 23-3202 is hereby amended to read as
15 follows: 23-3202. If the parties have entered into a parenting plan, it shall
16 be presumed that the agreement is ~~in the best interests of the least~~
17 *detrimental alternative for the child.* This presumption may *not* be
18 overcome ~~and by the court may make a different order if the court makes~~
19 ~~specific findings of fact stating why the agreed parenting plan is not in the~~
20 ~~best interests of the child.~~

21 Sec. 16. K.S.A. 2013 Supp. 23-3203 is hereby amended to read as
22 follows: 23-3203. In determining the issue of child custody, residency and
23 parenting time, the court shall consider all relevant factors, including, but
24 not limited to:

25 (a) The length of time that the child has been under the actual care
26 and control of any person other than a parent and the circumstances
27 relating thereto;

28 (b) the desires of the child's parents as to custody or residency;

29 (c) the desires of the child as to the child's custody or residency.

30 *Assuming the child's best interests would be served, the court shall then*
31 *consider whether the child is expressing an "intelligent preference." At any*
32 *hearing, the court, if requested by the child, shall hear the testimony of the*
33 *child as to the desires of the child concerning the child's placement, if the*
34 *child is 10 years of age and of sound intellect. There is a presumption in*
35 *favor of the choice of a child of age 10 or older. If the court does not abide*
36 *by the "intelligent preference" of a child of sufficient age, the court shall*
37 *set forth findings of fact and conclusions of law supporting the court's*
38 *decision. The child's testimony shall be taken and transcribed to verify the*
39 *authenticity of the testimony if not done in a courtroom;*

40 (d) the interaction and interrelationship of the child with parents,
41 siblings, *grandparents, relatives* and any other person who may
42 significantly affect the child's best interests;

43 (e) the child's adjustment to the child's home, school and community;

1 (f) the *lack of* willingness and ability of each parent to respect and
2 appreciate the bond between the child and the other parent and to allow for
3 a continuing relationship between the child and the other parent, *such as*
4 *false allegations against one parent, impeding communications between*
5 *the child and the other parent, multiple issues with making exchange times*
6 *or dates, or withholding or denying documents;*

7 (g) *substantiated* evidence of spousal abuse *either by testimony or*
8 *public record;*

9 (h) whether a parent is subject to the registration requirements of the
10 Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments
11 thereto, or any similar act in any other state, or under military or federal
12 law;

13 (i) whether a parent has been convicted of abuse of a child, K.S.A.
14 21-3609, prior to its repeal, or K.S.A. 2013 Supp. 21-5602, and
15 amendments thereto;

16 (j) whether a parent is residing with an individual who is subject to
17 registration requirements of the Kansas offender registration act, K.S.A.
18 22-4901 et seq., and amendments thereto, or any similar act in any other
19 state, or under military or federal law; ~~and~~

20 (k) whether a parent is residing with an individual who has been
21 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.
22 2013 Supp. 21-5602, and amendments thereto; *and*

23 *(l) the court, insofar as is reasonable and is the least detrimental*
24 *alternative for the child, shall order the custody award, including liberal*
25 *visitation rights where appropriate, which will assure the child the*
26 *opportunity for the maximum continuing physical and emotional contact*
27 *with both parents after the parents have separated or dissolved the*
28 *marriage, and which will encourage parents to share the rights and*
29 *responsibilities of raising the child, unless direct physical harm or*
30 *significant emotional harm to the child, other children or a parent is likely*
31 *to result from such contact with one parent.*

32 Sec. 17. K.S.A. 2013 Supp. 23-3206 is hereby amended to read as
33 follows: 23-3206. Subject to the provisions of this article, the court may
34 make any order relating to custodial arrangements which is in the best
35 interests of the child. The order shall provide one of the following legal
36 custody arrangements, in the order of preference:

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

40 (b) Sole legal custody. The court may order the sole legal custody of a
41 child with one of the parties when *a jury or* the court finds that it is not in
42 the best interests of the child that both of the parties have equal rights to
43 make decisions pertaining to the child. *This can only happen after an*

1 *evidentiary hearing has occurred or one parent has agreed to this setting.*
2 If the court does not order joint legal custody, the court shall include on the
3 record specific findings of fact upon which the order for sole legal custody
4 is based. The award of sole legal custody to one parent shall not deprive
5 the other parent of access to information regarding the child—~~unless the~~
6 ~~court shall so order, stating the reasons for that determination.~~

7 Sec. 18. K.S.A. 2013 Supp. 23-3207 is hereby amended to read as
8 follows: 23-3207. After making a determination of the legal custodial
9 arrangements, the court shall determine the residency of the child from the
10 following options, which arrangement the court must find to be in the best
11 interest of the child. The parties shall submit to the court either an agreed
12 parenting plan or, in the case of dispute, proposed parenting plans for the
13 court's consideration. Such options are:

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

17 (b) *Divided residency.* ~~In an exceptional case,~~ The court may order a
18 residential arrangement in which one or more children reside with each
19 parent and have parenting time with the other.

20 (c) *Nonparental residency.* If during the proceedings the court
21 determines *through evidence and testimony* that there is ~~probable cause to~~
22 ~~believe clear and convincing evidence~~ that the child is a child in need of
23 care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A.
24 2013 Supp. 38-2202, and amendments thereto, or that neither parent is fit
25 to have residency, the court may award temporary residency of the child to
26 a grandparent, aunt, uncle or adult sibling, or, another person ~~or agency~~ if
27 the court finds by written order that:

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

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

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

34 (2) ~~reasonable~~ efforts have been made to maintain the family unit and
35 prevent the unnecessary removal of the child from the child's home or that
36 an emergency exists which threatens the safety of the child. In making
37 such a residency order, the court shall give preference, to the extent that
38 the court finds it is in the best interests of the child, first to awarding such
39 residency to a relative of the child by blood, marriage or adoption and
40 second to awarding such residency to another person with whom the child
41 has close emotional ties. The court may make temporary orders for care,
42 support, education and visitation that it considers appropriate. Temporary
43 residency orders are to be entered in lieu of temporary orders provided for

1 in K.S.A. 2013 Supp. 38-2243 and 38-2244, and amendments thereto, and
2 shall remain in effect until there is a final determination under the revised
3 Kansas code for care of children. An award of temporary residency under
4 this paragraph shall not terminate parental rights nor give the court the
5 authority to consent to the adoption of the child. When the court enters
6 orders awarding temporary residency of the child to an agency or a person
7 other than the parent, the court shall refer a transcript of the proceedings to
8 the county or district attorney. The county or district attorney shall file a
9 petition as provided in K.S.A. 2013 Supp. 38-2234, and amendments
10 thereto, and may request termination of parental rights pursuant to K.S.A.
11 2013 Supp. 38-2266, and amendments thereto. The costs of the
12 proceedings shall be paid from the general fund of the county. When a
13 final determination is made that the child is not a child in need of care, the
14 county or district attorney shall notify the court in writing and the court,
15 after a hearing, shall enter appropriate custody orders pursuant to this
16 article. ~~If the same judge presides over both proceedings, the notice is not~~
17 ~~required. Any order pursuant to the revised Kansas code for care of~~
18 ~~children shall take precedence over any order under this article.~~

19 Sec. 19. K.S.A. 2013 Supp. 23-3208 is hereby amended to read as
20 follows: 23-3208. (a) *Parents*. A parent is entitled to reasonable parenting
21 time unless the court finds, after a ~~an~~ *evidentiary* hearing, that the exercise
22 of parenting time would seriously endanger the child's physical, mental,
23 moral or emotional health.

24 (b) *Enforcement of rights*. An order granting parenting time under this
25 article may be enforced in accordance with the uniform child custody
26 jurisdiction and enforcement act, or K.S.A. 2013 Supp. 23-3401, and
27 amendments thereto.

28 (c) *Court-ordered exchange or parenting time at a child exchange*
29 *and visitation center*. The court may order exchange or parenting time to
30 take place at a child exchange and visitation center, as established in
31 K.S.A. 75-720, and amendments thereto.

32 (d) *As used in this section, "right of first refusal" means that if a*
33 *party intends to leave the minor child or children with a substitute child*
34 *care provider for a significant period of time, then that party must first*
35 *offer the other party an opportunity to personally care for the minor child*
36 *or children. The parties may agree to a right of first refusal that is*
37 *consistent with the least detrimental alternative for the minor child or*
38 *children. The right of first refusal to provide child care for the minor child*
39 *or children during the other parent's normal parenting time may be*
40 *waived in an emergency.*

41 Sec. 20. K.S.A. 2013 Supp. 23-3209 is hereby amended to read as
42 follows: 23-3209. The court ~~may~~ *shall* interview the minor children ~~in~~
43 ~~chambers~~ to assist the court in determining legal custody, residency,

1 visitation rights and parenting time. *The child's testimony shall be taken*
2 *and transcribed to verify the authenticity of the testimony if not done in a*
3 *courtroom on the record.* The court ~~may~~ shall permit counsel to be present
4 at the interviews. ~~Upon request of any party, the court shall cause a record~~
5 ~~of the interview to be made as part of the record in the case.~~

6 Sec. 21. K.S.A. 2013 Supp. 23-3210 is hereby amended to read as
7 follows: 23-3210. (a) *Investigation and report.* In any proceeding in which
8 legal custody, residency, visitation rights or parenting time are contested,
9 the court may order an investigation and report concerning the appropriate
10 legal custody, residency, visitation rights and parenting time to be granted
11 to the parties. The investigation and report may be made by ~~court services~~
12 ~~officers or any consenting person or agency employed by the court for that~~
13 ~~purpose. The court may use the department of social and rehabilitation~~
14 ~~services to make the investigation and report if no other source is available~~
15 ~~for that purpose~~ *any licensed psychologist or other mental health*
16 *professional with training and knowledge of family dynamics, and selected*
17 *by the parties.* The costs for making the investigation and report may be
18 assessed as court costs in the case as provided in article 20 of chapter 60 of
19 the Kansas Statutes Annotated, and amendments thereto.

20 (b) *Consultation.* In preparing the report concerning a child, the
21 investigator may consult any person who may have information about the
22 child and the potential legal custodial arrangements. ~~Upon order of the~~
23 ~~court, the investigator may refer the child to other professionals for~~
24 ~~diagnosis.~~ The investigator may consult with and obtain information from
25 medical, psychiatric or other expert persons who have served the child in
26 the past. If the requirements of subsection (c) are fulfilled, the
27 investigator's report may be received in evidence at the hearing.

28 (c) *Use of report and investigator's testimony.* The court shall make
29 the investigator's report available prior to the hearing to counsel or to any
30 party not represented by counsel. Upon motion of either party, the report
31 may be made available to a party ~~represented by counsel, unless the court~~
32 ~~finds that such distribution would be harmful to either party, the child or~~
33 ~~other witnesses.~~ Any party to the proceeding may call the investigator and
34 any person whom the investigator has consulted for cross-examination. ~~In~~
35 ~~consideration of the mental health or best interests of the child,~~ The court
36 ~~may shall~~ approve a stipulation that the interview records ~~not~~ be divulged
37 to the parties.

38 Sec. 22. K.S.A. 2013 Supp. 23-3214 is hereby amended to read as
39 follows: 23-3214. (a) The court shall inform the parents, or require them to
40 be informed, about:

- 41 (1) How to prepare a parenting plan;
- 42 (2) the impact of family dissolution on children and how the needs of
- 43 children facing family dissolution can best be addressed;

1 (3) the impact of domestic abuse on children, and resources for
2 addressing domestic abuse; and

3 (4) mediation or other nonjudicial procedures designed to help them
4 achieve an agreement.

5 ~~(b) The court may require the parents to attend parent education~~
6 ~~classes.~~

7 (e) (b) If parents are unable to resolve issues and agree to a parenting
8 plan, the court may ~~require~~ suggest mediation, unless mediation is
9 determined inappropriate in the particular case.

10 ~~(d)~~ (c) The clerk of the district court shall supply forms and
11 information prescribed by the supreme court which may be used for
12 submission of temporary and permanent parenting plans.

13 Sec. 23. K.S.A. 2013 Supp. 23-3218 is hereby amended to read as
14 follows: 23-3218. (a) Subject to the provisions of the uniform child
15 custody jurisdiction and enforcement act~~(, K.S.A. 2013 Supp. 23-37,101~~
16 ~~through 23-37,405, and amendments thereto)~~, the court may change or
17 modify any prior order of custody, residency, visitation and parenting time,
18 ~~when a material change of circumstances is shown evidence is presented~~
19 ~~and shown beyond a reasonable doubt~~, but no ex parte order shall have the
20 effect of changing residency of a minor child from the parent who has had
21 the sole de facto residency of the child to the other parent unless there is
22 sworn testimony to support a showing of extraordinary circumstances. If
23 an interlocutory order is issued ex parte, the court shall hear a motion to
24 vacate or modify the order within 15 days of the date that a party requests
25 a hearing whether to vacate or modify the order.

26 (b) The court may order physical or mental examinations of the
27 parties if requested pursuant to K.S.A. 2013 Supp. 60-235, and
28 amendments thereto, *provided the parties' financial ability to pay is not*
29 *harmed or compromised*.

30 Sec. 24. K.S.A. 2013 Supp. 23-3219 is hereby amended to read as
31 follows: 23-3219. (a) A party filing a motion to modify a final order
32 pertaining to child custody or residential placement pursuant to article 22,
33 27 or 32 of chapter 23 of the Kansas Statutes Annotated, and amendments
34 thereto, shall include with specificity in the verified motion, or in an
35 accompanying affidavit, all known factual allegations which constitute the
36 basis for the change of custody or residential placement. ~~If the court finds~~
37 ~~that the allegations set forth in the motion or the accompanying affidavit~~
38 ~~fail to establish a prima facie case, the court shall deny the motion. If the~~
39 ~~court finds that the motion establishes a prima facie case, the matter may~~
40 ~~be tried on factual issues.~~

41 (b) In the event the court is asked to issue an ex parte order
42 modifying a final child custody or residential placement order based on
43 alleged emergency circumstances, the court shall:

1 (1) Attempt to have the nonmoving party's counsel, if any, present
2 before taking up the matter.

3 (2) Set the matter for review hearing at the earliest possible court
4 setting after issuance of the ex parte order, but in no case later than 15 days
5 after issuance.

6 (3) Require personal service of the order and notice of review hearing
7 on the nonmoving party.

8 No ex parte order modifying a final custody or residential placement
9 order shall be entered without sworn testimony to support a showing of the
10 alleged emergency.

11 Sec. 25. K.S.A. 2013 Supp. 23-3401 is hereby amended to read as
12 follows: 23-3401. (a) The purpose of this section is to enhance the
13 enforcement of court ordered child visitation rights and parenting time by
14 establishing a simplified, expedited procedure to provide justice without
15 necessitating the assistance of legal counsel.

16 (b) A party who has been granted visitation rights or parenting time
17 may file with the court a motion alleging denial or interference with those
18 rights and enforcement of those rights. The district court shall provide a
19 form on which such motion may be filed. Such expedited matters shall be
20 heard by a district judge, ~~court trustee, or magistrate, sitting as a hearing~~
21 ~~officer~~. The provisions of this section are in addition to those enforcement
22 procedures provided in the uniform child custody jurisdiction and
23 enforcement act, and amendments thereto, and other remedies provided by
24 law.

25 (c) When a motion seeking expedited enforcement under subsection
26 (b) is filed, the ~~hearing officer~~ court shall immediately:

27 (1) Set a time and place for a hearing on the motion, which shall not
28 be more than 21 days after the date on which the motion was filed; or

29 (2) if deemed appropriate, issue an ex parte order for mediation in
30 accordance with K.S.A. 2013 Supp. 23-3501 through 23-3506, and
31 amendments thereto.

32 (d) If mediation ordered pursuant to subsection (c) is completed, the
33 mediator shall submit a summary of the parties' understanding to the
34 ~~hearing officer~~ court within five days after it is signed by the parties. Upon
35 receipt of the summary, the ~~hearing officer~~ court shall enter an order in
36 accordance with the parties' agreement or set a time and place for a hearing
37 on the matter, which shall be not more than 10 days after the summary is
38 received by the hearing officer.

39 (e) If mediation ordered pursuant to subsection (c) is terminated
40 pursuant to K.S.A. 2013 Supp. 23-3504, and amendments thereto, the
41 mediator shall report the termination to the ~~hearing officer~~ court within
42 five days after the termination. Upon receipt of the report, the matter shall
43 be set for hearing. Any such hearing shall be not more than 10 days after

1 the mediator's report of termination is received by the ~~hearing officer~~
2 ~~court~~.

3 (f) Notice of the hearing date set by the ~~hearing officer~~ ~~court~~ shall be
4 given to all interested parties by certified mail, return receipt requested, or
5 as the court may order.

6 (g) If, upon hearing the ~~hearing officer~~ ~~court~~ finds that there has been
7 an unreasonable interference with or denial of visitation or parenting time,
8 the ~~hearing officer~~ ~~court~~ shall enter an order providing for one or more of
9 the following:

10 (1) A specific schedule for visitation or parenting time;

11 (2) compensating visitation or parenting time to the party suffering
12 interference or denial of visitation or parenting time, which time shall be
13 of the same type (e.g., holiday, weekday, weekend, summer) as for which
14 denial or interference was found and which shall be at the convenience of
15 the party suffering the denial or interference of visitation or parenting
16 time;

17 (3) the posting of a bond, either cash or with sufficient sureties,
18 conditioned upon compliance with the order granting visitation rights or
19 parenting time;

20 (4) assessment of reasonable attorney fees, mediation costs and costs
21 of the proceedings to enforce visitation rights or parenting time against the
22 person responsible for the unreasonable denial or interference with
23 visitation or parenting time other than the child;

24 (5) attendance of one or more of the parties to the action at
25 counseling or educational sessions which focus on the impact on children
26 of disputes regarding visitation or parenting time. Expenses shall be
27 assessed to the person responsible for the denial or interference with
28 visitation or parenting time;

29 (6) supervised visitation or parenting time; or

30 (7) any other remedy which the ~~hearing officer~~ ~~court~~ considers
31 appropriate, ~~except, if a hearing officer is not a district judge, the hearing~~
32 ~~officer shall not enter any order which grants a new order, or modifies an~~
33 ~~existing order for child support, child custody, residency, or maintenance.~~

34 (h) ~~Decisions of any hearing officer who is not a district judge shall~~
35 ~~be subject to review by a district judge on the motion of any party filed~~
36 ~~within 14 days after the order was entered.~~

37 (i) In no case shall final disposition of a motion filed pursuant to this
38 section take place more than 45 days after the filing of such motion.

39 Sec. 26. K.S.A. 2013 Supp. 20-1204a, 23-2904, 23-3001, 23-3002,
40 23-3004, 23-3005, 23-3103, 23-3104, 23-3106, 23-3111, 23-3112, 23-
41 3113, 23-3114, 23-3118, 23-3119, 23-3120, 23-3121, 23-3122, 23-3201,
42 23-3202, 23-3203, 23-3206, 23-3207, 23-3208, 23-3209, 23-3210, 23-
43 3214, 23-3218, 23-3219, 23-3220, 23-3221, 23-3302 and 23-3401 are

1 hereby repealed.

2 Sec. 27. This act shall take effect and be in force from and after its
3 publication in the statute book.