

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Kansas Judicial Council
DATE: January 30, 2008
RE: 2008 Senate Bill No. 435

BACKGROUND

In 2006, the Legislature passed the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code, both effective January 1, 2007. As with any significant code revision, some issues arise that require immediate attention while other issues become apparent only after some time has passed. The Judicial Council Juvenile Offender/Child in Need of Care Advisory Committee (Committee) worked with the 2007 Legislature to amend sections of the Codes that needed immediate change including sections relating to juvenile fingerprints and photographs, reading of reports pertaining to evaluation or development needs of the child, and service of process. Since then, the Committee has prepared practice forms for both the Revised Kansas Code for Care of Children and the Revised Kansas Juvenile Justice Code and in doing so, the Committee has identified several other areas that need to be amended. Some of the proposed amendments are technical in nature, some require clarification and some are required to remain in compliance with federal acts or regulations. The Committee proposes Senate Bill 435 to correct these problems.

COMMENT TO CHANGES

The majority of the changes recommended in 2008 Senate Bill 435 are technical or clarifying in nature. Sections 8, 15 and 20 contain technical changes while Sections 1- 3, 6, 7, 9-11, and 13 clarify current language. The more substantive changes recommended are in Sections 4, 5, 12, 14, 16-19, and 21, and are discussed below.

The amendment in Section 4 replaces K.S.A. 38-133, which will be repealed, and clarifies that where a child's parents refuse to give consent or are not available to give consent, and surgical or medical care is determined by a physician to be necessary for the welfare of such child, the providing of health care to the child should not be delayed until disposition.

The amendment in Section 5 pertains to service of process and makes it consistent with K.S.A. 60-304(c) relating to service on a disabled person. K.S.A. 77-201(27) includes those who are incapacitated or imprisoned in its definition of "under legal disability." In addition, the second sentence of subsection (d) was stricken to remove the requirement that the person in charge of an institution consult with the parent to complete service of process. The Committee is of the opinion that such a requirement is inappropriate and that communication of the client's wishes to the court is the role of the attorney.

The amendments in Sections 12 and 17 relate to amendments to the Adoption and Safe Families Act (ASFA) which changed the reference from the “opportunity” to be heard to the “right” to be heard. This amendment is required by federal enactments, is tied to funding and does not alter current law.

The amendment in Section 14 is necessary because the child is in the custody of the secretary at this time, but may be living in the home of a parent.

The amendment in Section 16 clarifies the start time for scheduling permanency hearings and brings the statute in line with ASFA.

The amendment in Section 18 addresses the obstacles the Court faces when trying to obtain relinquishments from incarcerated persons or those living out of state. The proposed language allows for a written relinquishment to be acknowledged either before a judge or by a notary. The proposed language is nearly identical to K.S.A. 59-2124(c) in the adoption code.

The amendment in Section 19 adds “extended out of home placement” as defined in K.S.A. 38-2202(h), to the factors to be considered in termination of parental rights.

The amendment in Section 21 provides a clear definition of “infectious disease” that broadens permitted testing to all infectious diseases rather than limiting it to HIV and Hepatitis B as the current language seems to do. In addition, the change makes the statute consistent with the adult counterpart in K.S.A. 65-6009.

ADDITIONAL PROPOSED AMENDMENTS

While reviewing SB 435, the Committee determined that there were a few additional changes that should be recommended in Sections 4, 8, 17, and 20. These additional recommendations are included in the balloon amendments attached to this testimony. The additional amendments to Section 4, were discussed by the Committee when reviewing the bill and are intended to better clarify the language and maintain consistency within the statute. The additional changes in sections 8 and 17 are changes that were originally requested but simply did not make it into the bill. The additional amendment to section 20 is technical.

PROPOSED AMENDMENTS TO SECTION 4

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30 Sec. 4. K.S.A. 2007 Supp. 38-2217 is hereby amended to read as
31 follows: 38-2217. (a) *Physical or mental care and treatment.* (1) When a
32 child less than 18 years of age is alleged to have been physically, mentally
33 or emotionally abused or neglected or sexually abused, no consent shall
34 be required to medically examine the child to determine whether the
35 child has been abused or neglected. Unless the child is alleged or sus-
36 pected to have been abused by the parent or guardian, the investigating
37 officer shall notify or attempt to notify the parent or guardian of the
38 medical examination of the child.

39 (2) When the health or condition of a child who is subject to juris-
40 diction of the court requires it, the court may consent to the performing
41 and furnishing of hospital, medical, surgical or dental treatment or pro-
42 cedures, including the release and inspection of medical or dental records.

43 A child, or parent of any child, who is opposed to certain medical pro-
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1 cedures authorized by this subsection may request an opportunity for a
2 hearing thereon before the court. Subsequent to the hearing, the court
3 may limit the performance of matters provided for in this subsection or
4 may authorize the performance of those matters subject to terms and
5 conditions the court considers proper.

6 (3) The custodian ^{is} the personal representative for the purpose of
7 consenting to disclosure of otherwise protected health information and
8 may give consent to the following:

- 9 (A) Dental treatment for the child by a licensed dentist;
10 (B) diagnostic examinations of the child, including but not limited to
11 the withdrawal of blood or other body fluids, x-rays and other laboratory
12 examinations;
13 (C) releases and inspections of the child's medical history records;
14 (D) immunizations for the child;

1) To maintain consistency,
insert after custodian:
“*or an agent of the custodian*”

After amendment paragraph (3)
should read, “The custodian *or an
agent of the custodian* is the personal
representative for the purpose of
consenting to disclosure of otherwise
protected health information and
may give consent to the following:”

15 (E) administration of lawfully prescribed drugs to the child; and
 16 (F) examinations of the child including, but not limited to, the with-
 17 drawal of blood or other body fluids or tissues for the purpose of deter-
 18 mining the child’s parentage.; and
 19 (G) *subject to limitations in K.S.A. 59-3075(d)(4), (5) and (6), medical*
 20 *or surgical care determined by a physician to be necessary for the welfare*
 21 *of such child, if the parents are not available or refuse to consent.*
 22 (4) When the court has ~~granted legal custody of a child in a disposi-~~
 23 ~~tional hearing to adjudicated a child to be in need of care,~~ any agency,
 24 association or individual, ~~the custodian or an agent designated by the~~
 25 ~~custodian~~ *having custody of the child* is the personal representative for
 26 the purpose of consenting to disclosure of otherwise protected health
 27 information and shall have authority to consent to the performance and
 28 furnishing of hospital, medical, surgical or dental treatment or procedures
 29 or mental care or treatment other than inpatient treatment at a state
 30 psychiatric hospital, including the release and inspection of medical or
 31 hospital records, subject to terms and conditions the court considers
 32 proper .
 33 (5) Any health care provider who in good faith renders hospital, med-
 34 ical, surgical, mental or dental care or treatment to any child or discloses
 35 protected health information as authorized by this section shall not be
 36 liable in any civil or criminal action for failure to obtain consent of a
 37 parent.
 38 (6) Nothing in this section shall be construed to mean that any person
 39 shall be relieved of legal responsibility to provide care and support for a
 40 child.
 41 (b) *Care and treatment requiring court action.* If it is brought to the
 42 court’s attention, while the court is exercising jurisdiction over the person
 43 of a child under this code, that the child may be a mentally ill person as
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 1 defined in K.S.A. 59-2946, and amendments thereto, or a person with an
 2 alcohol or substance abuse problem as defined in K.S.A. 59-29b46, and

5) Strike:
 “having
 custody of
 the child”

2) Technical change: Strike: “(d)” and insert “(e)”. The statute should read, “K.S.A. 59-3075(e)(4), (5) and (6)”.

3) Strike:
 “any agency, association or individual,”.

4) To maintain consistency, do not strike and reinsert: “*the custodian or an agent designated by the custodian*”.

6) To maintain consistent limitations, insert: “*and subject to the limitations of K.S.A. 59-307(e)(4), (5) and (6)*”.

After amendment, paragraph (4) should read, “When the court has *adjudicated a child to be in need of care, the custodian or an agent designated by the custodian* is the personal representative for the purpose of consenting to disclosure of otherwise protected health information and shall have authority to consent to the performance and furnishing of hospital, medical, surgical or dental treatment or procedures or mental care or treatment other than inpatient treatment at a state psychiatric hospital, including the release and inspection of medical or hospital records, subject to terms and conditions the court considers proper *and subject to the limitations of K.S.A. 59-307(e)(4), (5) and (6).*”

3 amendments thereto, the court may:
4 (1) Direct or authorize the county or district attorney or the person
5 supplying the information to file the petition provided for in K.S.A. 59-
6 2957, and amendments thereto, and proceed to hear and determine the
7 issues raised by the application as provided in the care and treatment act
8 for mentally ill persons or the petition provided for in K.S.A. 59-29b57,
9 and amendments thereto, and proceed to hear and determine the issues
10 raised by the application as provided in the care and treatment act for
11 persons with an alcohol or substance abuse problem; or
12 (2) authorize that the child seek voluntary admission to a treatment
13 facility as provided in K.S.A. 59-2949, and amendments thereto, or K.S.A.
14 59-29b49, and amendments thereto.
15 The application to determine whether the child is a mentally ill person
16 or a person with an alcohol or substance abuse problem may be filed in
17 the same proceedings as the petition alleging the child to be a child in
18 need of care, or may be brought in separate proceedings. In either event,
19 the court may enter an order staying any further proceedings under this
20 code until all proceedings have been concluded under the care and treat-
21 ment act for mentally ill persons or the care and treatment act for persons
22 with an alcohol or substance abuse problem.

PROPOSED AMENDMENT TO SECTION 8

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43 Sec. 8. K.S.A. 2007 Supp. 38-2244 is hereby amended to read as
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1 follows: 38-2244. (a) At any time after filing a petition, but prior to an
2 adjudication, the court may enter an order for continuance and informal
3 supervision without an adjudication if no party ~~or interested party~~ objects.

4 Upon granting the continuance, the court shall include in the order any
5 conditions with which the parties ~~or~~ *and* interested parties are expected
6 to comply and provide the parties ~~or~~ *and* interested parties with a copy of the
7 order. The conditions may include appropriate dispositional alternatives
8 authorized by K.S.A. 2007 Supp. 38-2255, and amendments thereto.

9 (b) An order for informal supervision may remain in force for a period
10 of up to six months and may be extended, upon hearing, for an additional
11 six-month period for a total of one year. For a child under an order for
12 informal supervision who remains in the custody of such child's parent,
13 such one-year period may be extended if no party objects, upon hearing,
14 for up to an additional one year, with reviews by the court occurring at
15 least every six months.

16 (c) The court after notice and hearing may revoke or modify the order
17 with respect to a party or interested party upon a showing that the party
18 or interested party, being subject to the order for informal supervision,
19 has substantially failed to comply with the terms of the order, or that
20 modification would be in the best interests of the child. Upon revocation,
21 proceedings shall resume pursuant to this code.

22 (d) Persons subject to the order for informal supervision who suc-
23 cessfully complete the terms and period of supervision shall not again be
24 proceeded against in any court based solely upon the allegations in the
25 original petition and the proceedings shall be dismissed.

26 (e) If the court issues an order for informal supervision pursuant to
27 this section, the court may also enter an order restraining any alleged

Strike "or"
Insert "*and*"

After amendment the sentence should read, "Upon granting the continuance, the court shall include in the order any conditions with which the parties *and* interested parties are expected to comply and provide the parties *and* interested parties with a copy of the order."

28 perpetrator of physical, mental or emotional abuse or sexual abuse of the
29 child from residing in the child's home, visiting, contacting, harassing or
30 intimidating the child, other family member or witness; or attempting to
31 visit, contact, harass or intimidate the child, other family member or wit-
32 ness. The restraining order shall be served by personal service pursuant
33 to subsection (a) of K.S.A. 2007 Supp. 38-2237, and amendments thereto,
34 on any alleged perpetrator to whom the order is directed.
35 (f) Lack of service on a parent shall not preclude an informal super-
36 vision under the provisions of this section. If an order of informal super-
37 vision is entered which effects change in custody, any parent not served
38 pursuant to K.S.A. 2007 Supp. 38-2237, and amendments thereto, who
39 has not consented to the informal supervision, may request reconsidera-
40 tion of the order of informal supervision. The court shall hear the request
41 without unnecessary delay. If the informal supervision order effects a
42 change in custody, efforts to accomplish service pursuant to K.S.A. 2007
43 Supp. 38-2237, and amendments thereto, shall continue.

PROPOSED AMENDMENT TO SECTION 17

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27 Sec. 17. K.S.A. 2007 Supp. 38-2265 is hereby amended to read as
28 follows: 38-2265. (a) The court shall require notice of the time and place
29 of the permanency hearing be given to the parties and interested parties.
30 The notice shall state that the person receiving the notice shall have an
31 opportunity to be heard at the hearing.
32 (b) The court shall require notice and ~~opportunity~~ *the right* to be
33 heard to the following:
34 (1) The child’s foster parent or parents or permanent custodian pro-
35 viding care for the child;
36 (2) preadoptive parents for the child, if any;
37 (3) the child’s grandparents at their last known addresses or, if no
38 grandparent is living or if no living grandparent’s address is known, to the
39 closest relative of each of the child’s parents whose address is known;
40 (4) the person having custody of the child; and
41 (5) upon request, by any person having close emotional ties with the
42 child and who is deemed by the court to be essential to the deliberations
43 before the court.

Strike “an opportunity”
Insert “*the right*”

After amendment, paragraph (a) should read, “The court shall require notice of the time and place of the permanency hearing be given to the parties and interested parties. The notice shall state that the person receiving the notice shall have *the right* to be heard at the hearing.”

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1 (c) The notices required by this subsection shall be given by first class
2 mail, not less than 10 business days before the hearing.
3 (d) Individuals receiving notice pursuant to subsection (b) shall not
4 be made a party or interested party to the action solely on the basis of
5 this notice and ~~opportunity~~ *the right* to be heard. ~~Opportunity~~ *The right*
6 to be heard shall be at a time and in a manner determined by the court
7 and does not confer an entitlement to appear in person *at government*
8 *expense*.
9 (e) The provisions of this section shall not require additional notice
10 to any person otherwise receiving notice of the hearing pursuant to K.S.A.
11 2007 Supp. 38-2239, and amendments thereto.

15 birthday but no later than the juvenile offender's 23rd birthday if either
16 or both of the following conditions apply:

17 (1) The juvenile offender is sentenced pursuant to K.S.A. 2007 Supp.
18 38-2369, and amendments thereto, and the term of the sentence includ-
19 ing successful completion of aftercare extends beyond the juvenile of-
20 fender's 21st birthday; or

21 (2) the juvenile offender is sentenced pursuant to an extended juris-
22 diction juvenile prosecution and continues to successfully serve the sen-
23 tence imposed pursuant to the revised Kansas juvenile justice code.

24 (f) Termination of jurisdiction pursuant to this section shall have no
25 effect on the juvenile offender's continuing responsibility to pay restitu-
26 tion ordered.

27 (g) (1) If a juvenile offender, at the time of sentencing, is in an out
28 of home placement in the custody of the secretary of social and rehabil-
29 itation services under the Kansas code for care of children, the sentencing
30 court may order the continued placement of the juvenile offender as a
31 child in need of care unless the offender was adjudicated for a felony or
32 a second or subsequent misdemeanor. If the adjudication was for a felony
33 or a second or subsequent misdemeanor, the continued placement cannot
34 be ordered unless the court finds there are compelling circumstances
35 which, in the best interest of the juvenile offender, require that the place-
36 ment should be continued. In considering whether compelling circum-
37 stances exist, the court shall consider the reports and recommendations
38 of the foster placement, the contract provider, the secretary of social and
39 rehabilitation services, the presentence investigation and all other rele-
40 vant factors. If the foster placement refuses to continue the juvenile in
41 the foster placement the court shall not order continued placement as a
42 child in need of care.

43 (2) If a placement with the secretary of social and rehabilitation serv-
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1 ices is continued after sentencing, the secretary shall not be responsible
2 for any costs of sanctions imposed under this code.

3 (3) If the juvenile offender is placed in the custody of the juvenile
4 justice authority, the secretary of social and rehabilitation services shall
5 not be responsible for furnishing services ordered in the child in need of
6 care proceeding during the time of the placement pursuant to the revised
7 Kansas juvenile justice code. Nothing in this subsection shall preclude
8 the juvenile offender from accessing other services provided by the de-
9 partment of social and rehabilitation services or any other state agency if
10 the juvenile offender is otherwise eligible for the services.