

**REPORT OF THE JUDICIAL COUNCIL
JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE
ON 2008 HB 2820 AND PROPOSED AMENDMENTS TO THE REVISED KANSAS CODE
FOR CARE OF CHILDREN AND THE REVISED KANSAS JUVENILE JUSTICE CODE**

(November 21, 2008)

The Juvenile Offender/Child in Need of Care Advisory Committee (hereinafter “the Committee”), while reviewing aspects of the Revised Kansas Code for Care of Children (hereinafter “the CINC code”) and the Revised Kansas Juvenile Justice Code (hereinafter “the JO code”), determined that certain child in need of care orders or juvenile offender orders should take priority over similar orders in other domestic cases such as divorce, paternity, protection from abuse, and guardianship or conservatorship. This has been the practice generally, but it has not been clarified by statute. It was brought to the attention of the Committee that 2008 House Bill 2820 related to these matters but was not adopted by the 2008 Legislature. Additionally the committee was asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. Finally, the Committee continued to review the CINC code and the JO code for consistency, to facilitate compliance with federal law to maximize federal financial participation, and to respond to the June 2008, Kansas Supreme Court case, *In re L.M.*, 186 P.3d 164 (Kan 2008) which held that juveniles 14 years of age or older who are charged with a felony have the right to a jury trial under the Kansas Constitution.

COMMITTEE MEMBERSHIP

The members of the Committee taking part in the study and drafting of the proposed legislation are as follows:

Honorable Jean F. Shepherd, Chair, Lawrence. Judge Shepherd is a district judge, a member of the Judicial Council and handles juvenile matters in Douglas County.

Wade H. Bowie, Jr., Topeka. Mr. Bowie is an assistant district attorney in Douglas County who works exclusively in the juvenile area.

Kathryn Carter, Concordia. Ms. Carter is a practicing attorney and former district magistrate judge.

Ann Henderson, Olathe. Ms. Henderson is an attorney with K.V.C. Inc., an S.R.S. contractor.

Honorable Timothy H. Henderson, Wichita. Judge Henderson is a district judge in the Sedgwick County Juvenile Department.

Professor Richard E. Levy, Lawrence. Professor Levy is a professor at the University of Kansas School of Law.

Sue Lockett, Topeka. Mrs. Lockett is former Executive Director of C.A.S.A. of Shawnee County.

Roberta Sue McKenna, Topeka. Mrs. McKenna is the attorney for Children and Family Services of the Kansas Department of Social and Rehabilitation.

Lisa Mendoza, Topeka. Ms. Mendoza is chief counsel for the Kansas Juvenile Justice Authority.

Representative Janice L. Pauls, Hutchinson. Representative Pauls is an attorney, a state representative and is the ranking minority member of the House Judiciary Committee.

Honorable Kathleen Sloan, Olathe. Judge Sloan is a district judge in the Johnson County Juvenile Department.

BACKGROUND AND PROPOSED LEGISLATION

As proposed, 2008 HB 2820 would revise the Kansas Code for Care of Children and the divorce code so that orders issued in juvenile court proceedings would supersede pre-existing orders concerning custody, residency, parenting time, and child support. The Committee reviewed the language in 2008 HB 2820 and agreed that orders affecting a child's custody, residency, parenting time, visitation or child support issued in child in need of care proceedings or juvenile offender proceedings should take precedence over orders addressing the same issues whether issued by the same court or a court in another jurisdiction. The Committee's revisions are intended to preserve the orders entered under the code for care of children (hereinafter "the CINC code") or the juvenile justice code (hereinafter "the JO code") unless a change in circumstances requires further court intervention. The Committee also agreed that most of the proposed amendments pertaining to permanency in 2008 HB 2820 should be adopted. However, the Committee did not agree with some of the organization of the proposed amendments and has revised and reorganized the amendments. The Committee's proposed legislation for the CINC and JO codes is attached. The proposed CINC legislation also includes the Committee's recommended revisions to 2007 HB 2527.

COMMITTEE'S COMMENTS TO PROPOSED CINC CODE LEGISLATION (Pages 6-33)

- New Section 1: Pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in Adoption and Relinquishment proceedings and Guardians and Conservators proceedings while the CINC or JO case is pending.
- Section 2: Amends K.S.A. 38-1116 of the Kansas parentage act to include similar priority language as that in new section 1. Subsection (d) pertains to priority of custody and parenting time orders issued in a CINC or JO proceeding over those issued in parentage proceedings while the CINC or JO case is pending. Subsection (e) allows the transfer of CINC orders back into a parentage case as appropriate at the close of the CINC case.
- Section 3: Amends K.S.A. 38-1121 to give the court in parentage actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit

to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The only difference is in line 25, page 8 of the proposed amendments where the word “disposition” has been replaced with “order” and the words “shall be binding and shall supersede” have been replaced with “take precedence over”.

- Section 4: Amends K.S.A. 38-2201 to clarify that orders issued pursuant to the CINC code shall take precedence over any order under the parentage, adoption and relinquishment, guardians and conservators, divorce, protection from abuse, and protection from stalking act until jurisdiction under the CINC code is terminated.
- Section 5: Amends K.S.A. 2008 Supp. 38-2202 to include a definition of “civil custody case”.
- Section 6: Amends K.S.A. 2008 Supp. 38-2203 to include a section clarifying that a court’s order affecting a child’s custody, residency, parenting time and visitation that is issued in a proceeding under the CINC code shall take precedence over such orders in a civil custody case (as defined by the amendment in Section 5), a proceeding under the protection from abuse act or a comparable case in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 7: Amends K.S.A. 38-2208 to correct an error and thereby clarify that in any case referred to a citizen review board, the court shall conduct a hearing at least annually.
- Section 8: Amends K.S.A. 38-2212 to include the Committee’s revised amendments to 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. The proposed amendments would restrict disclosure of information from confidential reports or records relating to a child in need of care to instances where the individual or their representative has given written explicit consent unless the investigation or the filing of a petition has become public knowledge. In such instance, the authorized disclosure would be restricted to confirmation of procedural details relating to the handling of the case by professionals. Other technical amendments are suggested in subsection (f) and pertain to removing reference to “department of social and rehabilitation services” and replacing it with “secretary” to maintain consistency, and reorganizing the content of the section for clarity.
- Sections 9 and 10: Amend K.S.A. 38-2242 and 38-2243 to address the federal requirement that the judicial determination of contrary to the welfare of the child be made in the first court order authorizing out of home placement. The federal law also requires a finding that reasonable efforts were made or were unnecessary due to an emergency which threatens the safety of the child shortly after loss of parental custody. The proposed amendments are intended to reflect that orders subsequent to the initial removal order need not continue to make the findings and in some instances the child is returned home to live with a parent prior to court returning custody to the parent. The reasonable efforts requirement subsequent to the initial order is addressed in K.S.A. 38-2264 which requires that, if the child continues in foster care for 12 months, the court must determine whether reasonable efforts are being made to provide a permanent family for the child.

- Section 11: Amends K.S.A. 2008 Supp. 38-2251 to clarify the time frame within which a final adjudication or dismissal of a CINC proceeding must be completed.
- Section 12: Amends K.S.A. 38-2255 to make a few technical changes for clarity, to remove subparagraph (d)(1)(B) as the Committee determined that the provision only served to cause confusion and it was not necessary, and to address the same issue as sections 9 and 10 above.
- Section 13: Amends K.S.A. 2008 Supp 38-2258 to specify that written notice of any change in placement of a child shall also be given to the petitioner, the attorney for the parents, if any, the child's court appointed special advocate and any other interested party in addition to the court, each parent, foster parent or custodian, and the child as currently listed in the statute.
- Section 14: Amends K.S.A. 2008 Supp. 38-2264 to clarify issues surrounding permanency as was intended with 2008 HB 2820.
- Section 15: Amends K.S.A. 38-2272 to make a correction pertaining to acknowledgment of consents to appointment of a permanent custodian which was apparently overlooked in the clean-up legislation of 2008 SB 435. This amendment makes the process consistent with consents to adoption.
- Section 16: Amends K.S.A. 38-2279 to address issues surrounding the modification of child support orders prior to the closing of a CINC case.
- Section 17: Amends K.S.A. 2008 Supp. 60-1610 in subparagraph (a)(6) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a divorce proceeding. Subparagraph (3)(E) is added to allow the transfer of CINC orders back into a divorce case as appropriate at the close of the CINC case.
- Section 18: Amends K.S.A. 60-3103 to add subsection (b) to clarify that custody and parenting time orders issued in a CINC proceeding or a JO proceeding take precedence over those issued in a protection from abuse proceeding.
- Section 19: Amends K.S.A. 60-3107 to give the court in protection from abuse actions the option of placing a child or children in nonparental residency if the court finds that there is probable cause to believe the child is a child in need of care or that neither parent is fit to have residency. The proposed language is almost identical to the nonparental custody provisions in the divorce code. The difference is that the last three lines of the language in the divorce statute do not apply in this case and have not been included in the proposed language.

COMMITTEE'S COMMENTS TO PROPOSED JO CODE LEGISLATION (Pages 34-40)

- Section 1: Amends K.S.A. 2008 Supp. 38-2304 to indicate that a court's order affecting a child's custody, residency, parenting time and visitation issued in a proceeding under the JO code shall take precedence over such orders in a proceeding under the parentage, divorce, protection from abuse, adoption and relinquishment, guardians or conservators acts, or comparable cases in another jurisdiction, except as provided by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 2: Amends K.S.A. 38-2305 to clarify appropriate venue in cases involving a juvenile.
- Section 3: Amends K.S.A. 38-2344 to make technical corrections which address a juvenile's right to a jury trial as set forth in *In re L.M.*, 186 P.3d 164 (Kan 2008).
- Section 4: Amends K.S.A. 38-2357 to clarify the methods of trial in juvenile offender cases. The proposed language is a combination of language taken from three statutes in the Kansas adult criminal code. (See K.S.A. 22-3403, 22-3404 and 22-3421) Most of the language is identical to that of the adult statutes. The difference is that a juvenile must request the jury trial in writing within 30 days from the entry of the juvenile's plea.
- Section 5: Amends K.S.A. 38-2364 to provide some discretion to the court when determining, under extended juvenile jurisdiction cases, whether a juvenile's juvenile portion of the sentence should be revoked and the adult portion of the sentence should be enforced. The proposed amendments provide that the court may revoke the juvenile portion of a sentence if the court finds by a preponderance of the evidence that the juvenile committed a new offense or violated one or more conditions of the juvenile's sentence. The proposed amendments remove the mandatory language included in the statute and allow the court to determine whether violations are sufficient to require revocation of the juvenile sentence and imposition of the adult portion of the sentence.
- Section 6: Amends K.S.A. 38-2365 to require the commissioner to notify a juvenile's attorney of record in addition to the juvenile's parents of any changes in placement of the juvenile.
- Section 7: Amends K.S.A. 38-2373 to correct a technical error by replacing the word "study" with the intended word "custody".