

Approved by the Judicial Council December 4, 2009

**REPORT OF THE JUDICIAL COUNCIL
JUVENILE OFFENDER/CHILD IN NEED OF CARE ADVISORY COMMITTEE
ON 2009 SB 88 RE-DRAFT**

In 2009, while reviewing aspects of the Revised Kansas Code for Care of Children (CINC code), the Revised Kansas Juvenile Justice Code (JO code) and 2008 HB 2820, the Juvenile Offender / Child in Need of Care Advisory Committee (JO/CINC committee) 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. The JO/CINC committee had also been asked to review provisions of 2007 HB 2527 relating to confidentiality of reports and records of a child in need of care. In addition, in June, 2008, the Kansas Supreme Court issued its opinion in *In re L.M.*, 186 P.3d 164 (Kan 2008) and 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. Therefore, the JO/CINC committee submitted legislation to the 2009 Legislature to address these issues. That proposed legislation became 2009 Senate Bill 88.

COMMITTEE MEMBERS

Honorable Jean F. Shepherd, Chair, Lawrence. Judge Shepherd is a district judge, a member of the Judicial Council and handles family court 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.

Charlene Brubaker, Hays. Ms. Brubaker is an assistant county attorney in Ellis County who works exclusively in child in need of care and juvenile offender matters.

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

Ann Henderson, Olathe. Ms. Henderson is an assistant district attorney in Johnson County who works exclusively in the juvenile area.

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

Honorable Jeffry L. Jack, Parsons. Judge Jack is a district judge in Labette County.

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

Rachel Y. Marsh, Halstead. Ms. Marsh is an attorney with Saint Francis Community Services, a contract provider for family preservation, reintegration, and adoption services with the Kansas Department of Social and Rehabilitation Services.

Roberta Sue McKenna, Topeka. Mrs. McKenna is Assistant Director of Children and Family Services of the Kansas Department of Social and Rehabilitation Services responsible for legal services including liaison with the judicial branch and coordination with the legislature.

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

Jayne Morris-Hardeman, Manhattan. Ms. Morris-Hardeman serves as the Executive Director of Sunflower CASA Project, Inc., which provides core CASA, Child Exchange and Visitation Center, and Child Advocacy Center services to Riley, Clay, and Pottawatomie Counties.

Senator Thomas C. (Tim) Owens, Overland Park. Senator Owens is an attorney, a state senator and is the chair of the Senate Judiciary Committee.

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 Steven M. Roth, Westmoreland. Judge Roth is an attorney and is a district magistrate judge in Pottawatomie County.

BACKGROUND AND PROPOSED RE-DRAFT OF LEGISLATION

SB 88 received a hearing on two separate dates in the Senate Judiciary Committee. In the first hearing, S.R.S. brought it to the attention of the Judiciary Committee that there were some child support enforcement issues that had apparently been overlooked during drafting of the bill. The hearing on the bill was subsequently continued to a later date so that the JO/CINC committee and S.R.S. could get together and work out the issues. By the second hearing on the bill, the child support enforcement issues had been addressed and the necessary balloon amendments had been introduced. However, the Kansas Coalition against Sexual and Domestic Violence testified in

opposition to section 26 of the bill which dealt with the authority of the court to remove a child from the home in a protection from abuse case. Although the JO/CINC committee eventually agreed that section 26 could be stricken from the bill if it would allow the bill to move forward, the Senate Judiciary Committee decided that SB 88 should be set aside for interim study. Unfortunately, 2009 SB 88 was not approved for interim study so it remains in the Senate Judiciary Committee at this time.

Since the end of the 2009 legislative session, the JO/CINC committee worked to address several additional issues that were raised by S.R.S and others. As a result of this work, the JO/CINC committee prepared several additional balloon amendments, asked the Revisor's Office to pull the juvenile trial issues from the bill and place them into a separate bill, and asked that section 26 be stricken from the bill. However, during consultation with the Revisor's Office, it was suggested that it would be less confusing to re-draft the bill and re-introduce separate CINC and JO bills in the 2010 legislative session. Therefore, the JO/CINC committee requests Judicial Council approval of the attached re-draft of SB 88. The re-draft strikes completely strikes the proposed amendment that was in section 26, pulls out the juvenile offender amendments and places them into a separate bill, and incorporates the original proposed amendments as well as all balloon amendments, including those proposed in 2009 and those that were going to be proposed in 2010.

COMMITTEE'S COMMENTS TO PROPOSED CINC LEGISLATION (Pages 7-38)

- 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 the sentence beginning in line 22, page 9 of this report where the word “disposition” has been replaced with “custody, residency or parenting time order” and the words “shall be binding and shall supersede” have been replaced with “take precedence over any custody, residency or parenting time”.

- 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 and consistency, 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 party or interested party in addition to the court, each parent, foster parent or custodian, and the child as currently listed in the statute. Subsections (b) and (c) are also amended to maintain consistency with the changes in subsection (a). In addition, the additional sentence is proposed to allow the court to expedite a change in placement if there isn't any request for a hearing within the 10 days after notice is received.
- Section 14: Amends K.S.A. 2008 Supp. 38-2264 to clarify issues surrounding permanency as was intended with 2008 HB 2820 and to make the language in subsection (c) consistent with that in K.S.A. 38-2269(b)(7).
- 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. 38-2273 to address a conflict with permanency hearing time frames when a CINC case is on appeal.
- Section 17: 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 18: 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 19: Amends K.S.A. 38-2305 to clarify appropriate venue in cases involving a juvenile.
- Section 20: Amends K.S.A. 38-2361 to ensure that a permanency hearing is completed when a juvenile offender is released from a juvenile correctional facility.

- Section 21: Amends K.S.A. 2008 Supp. 60-1610 in subparagraph (a)(1) to make the statute consistent with UIFSA (IV-D interstate mandate). Subsection (a)(6) is amended 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 22: 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.

COMMITTEE’S COMMENTS TO PROPOSED JO LEGISLATION (Pages 39-43)

- Section 1: 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 2: 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 3: 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 4: 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 and to make a technical correction in line 27 on page 42 of this report.
- Section 5: Amends K.S.A. 38-2373 to correct a technical error by replacing the word “study” with the intended word “custody”.