

**CHAPTER 23 – KANSAS FAMILY LAW CODE – REVISED  
(May 2, 2014)**

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## ARTICLE 22 - PARENTAGE ACT

SECTION 23-2201. **Title and application of act.** (a) ~~This Act~~ **K.S.A. 23-2201 and 23-2205 through 23-2225** and acts amendatory thereto and supplemental thereof shall be known and may be cited as the Kansas parentage act.

(b) Proceedings concerning parentage of a child shall be governed by this act except to the extent otherwise provided by the Indian child welfare act of 1978 (25 U.S.C. §§ 1901 et seq.).  
(Formerly K.S.A. 38-1110).

SECTION 23-2202. **Definitions.** As used in K.S.A. **23-2203 through 23-2204**, except where the context otherwise requires:

(a) "Birthing hospital" means a hospital or facility as defined by rules and regulations of the secretary of social and rehabilitation services.

(b) "IV-D program" means a program for providing services pursuant to part D of title IV of the federal social security act (42 U.S.C. Sec. 651 *et seq.*) and acts amendatory thereof or supplemental thereto.

(c) "Unwed mother" means a mother who was not married at the time of conception, at the time of birth or at any time between conception and birth.  
(Formerly K.S.A. 38-1136).

### SECTION 23-2203. **Hospital based program for voluntary acknowledgment of paternity.**

(a) There is hereby established in this state a hospital based program for voluntary acknowledgment of paternity pursuant to K.S.A. **65-2409a**, and amendments thereto, for newborn children of unwed mothers. Birthing hospitals shall participate in the program. Other hospitals and persons may participate in the program by agreement with the secretary of social and rehabilitation services.

(b) The secretary of social and rehabilitation services shall provide information and instructions to birthing hospitals for the hospital based program for voluntary acknowledgment of paternity. The secretary of social and rehabilitation services may adopt rules and regulations establishing procedures for birthing hospitals under the program.

(c) Subject to appropriations, the secretary of social and rehabilitation services is authorized to establish in this state a physicians' office-based program for voluntary acknowledgment of paternity pursuant to K.S.A. **65-2409a** and amendments thereto for

newborn children of unwed mothers. The secretary shall provide information and instructions to physicians' offices for the program and may adopt rules and regulations establishing procedures for physicians' offices under the program.

(d) The secretary of health and environment shall provide services for the voluntary acknowledgment of paternity, in appropriate circumstances, through the office of the state registrar. The secretary of health and environment may adopt rules and regulations to carry out the requirements of this section.  
(Formerly K.S.A. 38-1137).

### SECTION 23-2204. **Acknowledgment of paternity forms.**

(a) The state registrar of vital statistics, in conjunction with the secretary of social and rehabilitation services, shall review and, as needed, revise acknowledgment of paternity forms for use under K.S.A. **23-2223** and **65-2409a**, and amendments thereto. The acknowledgment of paternity forms shall include or have attached a written description pursuant to subsection (b) of the rights and responsibilities of acknowledging paternity.

(b) A written description of the rights and responsibilities of acknowledging paternity shall state the following:

(1) An acknowledgment of paternity creates a permanent father and child relationship which can only be ended by court order. A person who wants to revoke the acknowledgment of paternity must file the request with the court before the child is one year old, unless the person was under age 18 when the acknowledgment of paternity was signed. A person under age 18 when the acknowledgment was signed has until one year after his or her 18th birthday to file a request, but if the child is more than one year old then, the judge will first consider the child's best interests.

The person will have to show that the acknowledgment was based on fraud, duress (threat) or an important mistake of fact, unless the request is filed within 60 days of signing the acknowledgment or before any court hearing about the child, whichever is earlier;

(2) both the father and the mother are responsible for the care and support of the child. If

necessary, this duty may be enforced through legal action such as a child support order, an order to pay birth or other medical expenses of the child or an order to repay government assistance payments for the child's care. A parent's willful failure to support the parent's child is a crime;

(3) both the father and the mother have rights of custody and parenting time with the child unless a court order changes their rights. Custody, residency and parenting time may be spelled out in a court order and enforced;

(4) both the father and the mother have the right to consent to medical treatment for the child unless a court order changes those rights;

(5) the child may inherit from the father and the father's family or from the mother and the mother's family. The child may receive public benefits, including, but not limited to, social security or private benefits, including, but not limited to, insurance or workers compensation because of the father-child or mother-child relationship;

(6) the father or the mother may be entitled to claim the child as a dependent for tax or other purposes. The father or the mother may inherit from the child or the child's descendants; and

(7) each parent has the right to sign or not sign an acknowledgment of paternity. Each parent has the right to talk with an attorney before signing an acknowledgment of paternity. Each parent has the right to be represented by an attorney in any legal action involving paternity or their rights or duties as a parent. Usually each person is responsible for hiring the person's own attorney.

(c) Any duty to disclose rights or responsibilities related to signing an acknowledgment of paternity shall have been met by furnishing the written disclosures of subsection (b). Any duty to disclose orally the rights or responsibilities related to signing an acknowledgment of paternity may be met by means of an audio recording of the disclosures of subsection (b).

(d) An acknowledgment of paternity completed without the written disclosures of subsection (b) is not invalid solely for that reason and may create a presumption of paternity pursuant to K.S.A. **23-2208** and amendments thereto. Nothing in K.S.A. **23-2202** through **23-2204** and amendments thereto shall decrease the validity, force or effect of an

acknowledgment of paternity executed in this state prior to the effective date of this act.

(e) Upon request, the state registrar of vital statistics shall provide a certified copy of the acknowledgment of paternity to an office providing IV-D program services.  
(Formerly K.S.A. 38-1138).

**SECTION 23-2205. Parent and child relationship defined.** As used in this act, "parent and child relationship" means the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.  
(Formerly K.S.A. 38-1111).

**SECTION 23-2206. Relationship not dependent on marriage.** The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.  
(Formerly K.S.A. 38-1112).

**SECTION 23-2207. How parent and child relationship is established.**  
The parent and child relationship between a child and:

(a) The mother may be established by proof of her having given birth to the child or under this act.

(b) The father may be established under this act or, in the absence of a final judgment establishing paternity, by a voluntary acknowledgment of paternity meeting the requirements of K.S.A. **23-2204** and amendments thereto, unless the voluntary acknowledgment has been revoked pursuant to K.S.A. **23-2209** and amendments thereto.

(c) An adoptive parent may be established by proof of adoption.  
(Formerly K.S.A. 38-1113).

**SECTION 23-2208. Presumption of paternity.**

(a) A man is presumed to be the father of a child if:

(1) The man and the child's mother are, or have been, married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death or by the filing of a journal entry of a decree of annulment or divorce.

(2) Before the child's birth, the man and the child's mother have attempted to marry each other by

a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) If the attempted marriage is voidable, the child is born during the attempted marriage or within 300 days after its termination by death or by the filing of a journal entry of a decree of annulment or divorce; or

(B) if the attempted marriage is void, the child is born within 300 days after the termination of cohabitation.

(3) After the child's birth, the man and the child's mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable and:

(A) The man has acknowledged paternity of the child in writing;

(B) with the man's consent, the man is named as the child's father on the child's birth certificate; or

(C) the man is obligated to support the child under a written voluntary promise or by a court order.

(4) The man notoriously or in writing recognizes paternity of the child, including but not limited to a voluntary acknowledgment made in accordance with K.S.A. **23-2223** or **65-2409a**, and amendments thereto.

(5) Genetic test results indicate a probability of 97% or greater that the man is the father of the child.

(6) The man has a duty to support the child under an order of support regardless of whether the man has ever been married to the child's mother.

(b) A presumption under this section may be rebutted only by clear and convincing evidence, by a court decree establishing paternity of the child by another man or as provided in subsection (c). If a presumption is rebutted, the party alleging the existence of a father and child relationship shall have the burden of going forward with the evidence.

(c) If two or more presumptions under this section arise which conflict with each other, the presumption which on the facts is founded on the weightier

considerations of policy and logic, including the best interests of the child, shall control.

(d) Full faith and credit shall be given to a determination of paternity made by any other state or jurisdiction, whether the determination is established by judicial or administrative process or by voluntary acknowledgment. As used in this section, "full faith and credit" means that the determination of paternity shall have the same conclusive effect and obligatory force in this state as it has in the state or jurisdiction where made.

(e) If a presumption arises under this section, the presumption shall be sufficient basis for entry of an order requiring the man to support the child without further paternity proceedings.

(f) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the birth father of a child thereby conceived, unless agreed to in writing by the donor and the woman.  
*(Formerly K.S.A. 38-1114).*

**SECTION 23-2209. Determination of father and child relationship; who may bring action; when action may be brought; revocation of acknowledgment.**

(a) A child or any person on behalf of such a child, may bring an action:

(1) At any time to determine the existence of a father and child relationship presumed under K.S.A. **23-2208** and amendments thereto; or

(2) at any time until three years after the child reaches the age of majority to determine the existence of a father and child relationship which is not presumed under K.S.A. **23-2208** and amendments thereto.

(b) When authorized under K.S.A. **39-755** or **39-756**, and amendments thereto, the secretary of social and rehabilitation services may bring an action at any time during a child's minority to determine the existence of the father and child relationship.

(c) This section does not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to the probate of estates or determination of heirship.

(d) Any agreement between an alleged or presumed father and the mother or child does not bar an action under this section.

(e) Except as otherwise provided in this subsection, if an acknowledgment of paternity pursuant to K.S.A. **23-2204**, and amendments thereto, has been completed the man named as the father, the mother or the child may bring an action to revoke the acknowledgment of paternity at any time until one year after the child's date of birth. The legal responsibilities, including any child support obligation, of any signatory arising from the acknowledgment of paternity shall not be suspended during the action, except for good cause shown. If the person bringing the action was a minor at the time the acknowledgment of paternity was completed, the action to revoke the acknowledgment of paternity may be brought at any time until one year after that person attains age 18, unless the court finds that the child is more than one year of age and that revocation of the acknowledgment of paternity is not in the child's best interest.

The person requesting revocation must show, and shall have the burden of proving, that the acknowledgment of paternity was based upon fraud, duress or material mistake of fact unless the action to revoke the acknowledgment of paternity is filed before the earlier of 60 days after completion of the acknowledgment of paternity or the date of a proceeding relating to the child in which the signatory is a party, including but not limited to a proceeding to establish a support order.

If a court of this state has assumed jurisdiction over the matter of the child's paternity or the duty of a man to support the child, that court shall have exclusive jurisdiction to determine whether an acknowledgment of paternity may be revoked under this subsection.

If an acknowledgment of paternity has been revoked under this subsection, it shall not give rise to a presumption of paternity pursuant to K.S.A. **23-2208** and amendments thereto. Nothing in this subsection shall prevent a court from admitting a revoked acknowledgment of paternity into evidence for any other purpose.

If there has been an assignment of the child's support rights pursuant to K.S.A. **39-709** and amendments thereto, the secretary of social and rehabilitation services shall be a necessary party to any action under this subsection.  
*(Formerly K.S.A. 38-1115).*

**SECTION 23-2210. Jurisdiction; venue.**

(a) The district court has jurisdiction of an action brought under the Kansas parentage act. The action may be joined with an action for divorce, annulment, separate maintenance, support or adoption.

(b) If any determination is sought in any action under the Kansas parentage act for custody, residency or parenting time, the initial pleading seeking that determination shall include that information required by K.S.A. **23-37,209**, and amendments thereto;

(c) The action may be brought in the county in which the child, the mother or the presumed or alleged father resides or is found. If a parent or an alleged or presumed parent is deceased, an action may be brought in the county in which proceedings for probate of the estate of the parent or alleged or presumed parent have been or could be commenced.  
*(Formerly K.S.A. 38-1116).*

**SECTION 23-2211. Parties.**

(a) Except as otherwise provided in subsection (b), the child, the mother, each man presumed to be the father under K.S.A. **23-2208** and amendments thereto and each man alleged to be the father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and shall be afforded the opportunity to be heard. If a man alleged or presumed to be the father is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the parents or guardian of the minor and shall appoint a guardian ad litem who shall be an attorney to represent the minor in the proceedings. If the parents or guardian of the minor cannot be found, notice shall be served in the manner directed by the court.

(b) In an action to establish an order for support of the child, failure to join any person as a party shall not deprive the court of jurisdiction to determine whether a party to the action has a duty to support the child and, if so, to enter an order for support.  
*(Formerly K.S.A. 38-1117).*

**SECTION 23-2212. Genetic tests to determine paternity; order of court; refusal to submit to tests; expert witnesses.**

(a) Whenever the paternity of a child is in issue in any action or judicial proceeding in which the child, mother and alleged father are parties, the court, upon its own motion or upon motion of any party to the action or proceeding, shall order the mother, child

and alleged father to submit to genetic tests. If an action is filed by the secretary of social and rehabilitation services under K.S.A. 39-755 or 39-756, and amendments thereto, the court shall order genetic tests on the motion of the secretary of social and rehabilitation services or any party to the action if paternity of the child is in issue. If any party refuses to submit to the tests, the court may resolve the question of paternity against the party or enforce its order if the rights of others and the interests of justice so require. The tests shall be made by experts qualified as genetic examiners who shall be appointed by the court.

(b) Parties to an action may agree to conduct genetic tests prior to or during the pendency of an action for support of a child. The verified written report of the experts shall be admitted into evidence as provided in subsection (c) unless the court finds that paternity of the child is not in issue.

(c) The verified written report of the experts shall be considered to be stipulated to by all parties unless written notice of intent to challenge the validity of the report is given to all parties not more than 20 days after receipt of a copy of the report but in no event less than 10 days before any hearing at which the genetic test results may be introduced into evidence. If such notice is given, the experts shall be called by the court as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party may demand that other experts, qualified as genetic examiners, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualification of the other experts shall be determined by the court. If no challenge is made, the genetic test results shall be admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.  
(Formerly K.S.A. 38-1118).

#### SECTION 23-2213. **Evidence.**

(a) Evidence relating to paternity may include any of the following:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.

(3) Genetic test results of the statistical probability of the alleged father's paternity.

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. The court may, and upon request of a party shall, require the child, the mother and the alleged father to submit to appropriate tests.

(5) Testimony, records and notes of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth. Such testimony, records and notes are not privileged.

(6) Any other evidence relevant to the issue of paternity of the child, including but not limited to voluntary acknowledgment of paternity made in accordance with K.S.A. 23-2204 and amendments thereto.

(b) Testimony relating to sexual access to the mother by a man at a time other than the probable time of the conception of the child is inadmissible in evidence.

(c) For any child whose weight at birth is equal to or greater than five pounds 12 ounces, or 2,608.2 grams, it shall be presumed that the child was conceived between 300 and 230 days prior to the date of the child's birth. A presumption under this section may be rebutted by clear and convincing evidence.

(d) Evidence consisting of the results of any genetic test that is of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of social and rehabilitation services shall not be inadmissible solely on the basis of being performed by a laboratory approved by such an accreditation body.

(e) Evidence of expenses incurred for pregnancy, childbirth and genetic tests may be admitted as evidence without requiring third-party foundation testimony and shall constitute *prima facie* evidence of amounts incurred for such goods and services.  
(Formerly K.S.A. 38-1119).

#### SECTION 23-2214. **Civil action; trial to court.**

(a) An action under this act is a civil action governed by the rules of civil procedure.

(b) Trial of all issues in actions under this act shall be to the court.  
(Formerly K.S.A. 38-1120).

SECTION 23-2215. **Judgment or order.**

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes, but if any person necessary to determine the existence of a father and child relationship for all purposes has not been joined as a party, a determination of the paternity of the child shall have only the force and effect of a finding of fact necessary to determine a parties' duty of support.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued, but only if any man named as the father on the birth certificate is a party to the action.

(c) Upon adjudging that a party is the parent of a minor child, the court shall make provision for support and education of the child under article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto. The court may order the payment of all or a portion of including the necessary medical expenses incident to the birth of the child's birth. The court may order the support and education expenses to be paid by either or both parents for the minor child.

~~When the child reaches 18 years of age, the support shall terminate unless:~~

~~(1) The parent or parents agree, by written agreement approved by the court, to pay support beyond that time;~~

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

~~(3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to~~

~~subsection (c)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 16-year through 18-year old children. Provision for payment of support and educational expenses of a child after reaching 18 years of age if still attending high school shall apply to any child subject to the jurisdiction of the court, including those whose support was ordered prior to July 1, 1992.~~

~~If an agreement approved by the court prior to July 1, 1988, provides for termination of support before the date provided by subsection (c)(2), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(2). If an agreement approved by the court prior to July 1, 1992, provides for termination of support before the date provided by subsection (c)(3), the court may review and modify such agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection (c)(3).~~

~~For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).~~

~~The judgment may require the party to provide a bond with sureties to secure payment.~~

~~The court may at any time during the minority of the child modify or change the order of support, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, as required by the best interest of the child. If more than three years has passed since the date of the original order or modification order, a requirement that such order is in the best interest of the child need not be shown. The court may make a modification of support retroactive to a date at least one month after the date that the motion to modify was filed with the court. Any increase in support ordered effective prior to the date the court's judgment is filed shall not become a lien on real property pursuant to K.S.A. 60-2202, and amendments thereto.~~

(d) If both parents are parties to the action, the court shall enter such orders regarding custody, residency and parenting time as the court considers to be in the best interest of the child.

If the parties have an agreed parenting plan it shall be presumed the agreed parenting plan is in the best interest of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interest of the child. If the parties are not in agreement on a parenting plan, each party shall submit a proposed parenting plan to the court for consideration at such time before the final hearing as may be directed by the court.

(e) If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care, as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11) of K.S.A. 2013 Supp. 38-2202, and amendments thereto, or that neither parent is fit to have residency, the court may award temporary residency of the child to a grandparent, aunt, uncle or adult sibling, or another person or agency if the court finds by written order that:

- (1) (A) The child is likely to sustain harm if not immediately removed from the home;
- (B) allowing the child to remain in the home is contrary to the welfare of the child; or
- (C) immediate placement of the child is in the best interest of the child; and

(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety of the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in K.S.A. 2013 Supp. 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 2013 Supp. 38-2234, and

amendments thereto, and may request termination of parental rights pursuant to K.S.A. 2013 Supp. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. If a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any order pursuant to the revised Kansas code for care of children shall take precedence over any similar order under this section.

(f) (1) In entering an original order for support of a child under this section, the court may award an additional judgment ~~to reimburse the expenses of to~~ the mother or any other party who made expenditures for support and education of the child from the date of birth to the date the order is entered. If the determination of paternity is based upon a presumption arising under K.S.A. 23-2208 and amendments thereto, the court shall award an additional judgment to reimburse all or part of the expenses of support and education of the child from at least the date the presumption first arose to the date the order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the child's support.

(2) The court may consider any affirmative defenses pled and proved in making an award under this subsection.

(3) The amount of any award made under this subsection must be determined by applying the Kansas child support guidelines. For any period occurring five years or less before commencement of the action or after commencement of the action, there is a rebuttable presumption that the guidelines amount reflects the actual expenditures made on the child's behalf during that period. For any period occurring more than five years before commencement of the action, the person seeking the award has the burden of proving that the total amount requested for that period does not exceed expenditures actually made on the child's behalf during that period.

*Section (g) moved to K.S.A. 20-165(b)*

~~(g) In determining the amount to be ordered in payment and duration of such payments, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:~~

- ~~— (1) The needs of the child.~~
- ~~— (2) The standards of living and circumstances of the parents.~~
- ~~— (3) The relative financial means of the parents.~~
- ~~— (4) The earning ability of the parents.~~
- ~~— (5) The need and capacity of the child for education.~~
- ~~— (6) The age of the child.~~
- ~~— (7) The financial resources and the earning ability of the child.~~
- ~~— (8) The responsibility of the parents for the support of others.~~
- ~~— (9) The value of services contributed by both parents.~~

~~(g) The provisions of K.S.A. 23-3103, and amendments thereto, shall apply to all orders of support issued under this section.~~

~~(h) An order granting parenting time pursuant to this section may be enforced in accordance with K.S.A. 23-3401, and amendments thereto, or under the uniform child custody jurisdiction and enforcement act.~~

~~(Formerly K.S.A. 38-1121).  
2014 HB2568~~

#### SECTION 23-2216. **Costs.**

(a) Costs and attorney fees may be awarded to either party as justice and equity require. Unless the attorney represents a public agency in the action, the court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(b) The court may order reasonable fees of counsel and for the child's guardian ad litem, and

(c) The court may order other expenses of the action, including for blood genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid from the general fund of the county. After payment, the court may tax all, part or none of the expenses as costs in the action. ~~No fee shall be allowed for representation of the petitioner by the county or district attorney.~~

(d) The fee of an expert witness qualified as an examiner of blood types to perform genetic testing, but not appointed by the court, shall be paid by the party calling the expert witness but shall not be taxed as costs in the action.  
~~(Formerly K.S.A. 38-1122).  
2014 HB 2568~~

#### SECTION 23-2217. **Enforcement of judgment or order.**

~~(a) If existence of the father and child relationship has been determined and payment of support is ordered under prior law, the court may order support and any related expenses to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 39-7,135, and amendments thereto. If payment of support is ordered under this act, the court shall require such support and any related expense to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 39-7,135, and amendments thereto.~~

~~(b) The provisions of the Kansas income withholding act, K.S.A. 23-3101 et seq. through K.S.A. 23-3118, and amendments thereto, shall apply to orders of support issued under this act or under the predecessor to this act.~~

~~(c) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.  
(Formerly K.S.A. 38-1123).~~

SECTION 23-2218. **Modification of judgment or order.** The court has continuing jurisdiction to modify or vacate a judgment or order made under this act.  
~~(Formerly K.S.A. 38-1124).  
2014 HB 2568~~

**SECTION 23-2219. Counsel for parties; free transcript for indigent on appeal.**

(a) If the petitioner is not represented by counsel, the petitioner in an action to determine paternity may apply for services from:

(1) The court trustee of the judicial district in which the action is brought, if the office of court trustee has been established in the county; or

(2) the department of social and rehabilitation services or its contractor, if the action is brought pursuant to part D of title IV of the federal social security act (42 USC § 651 *et seq.*), as amended. At the request of a petitioner in an action to determine paternity, the county or district attorney of the county in which the action is brought shall proceed on the petitioner's behalf if the petitioner is not represented by counsel, the action is not brought pursuant to part D of title IV of the federal social security act (42 USC §651 *et seq.*), as amended, and there is no court trustee in the county.

(b) The court shall appoint a guardian *ad litem* to represent the minor child if the court finds that the interests of the child and the interests of the petitioner differ. In any other case, the court may appoint such a guardian *ad litem*.

(c) The court shall appoint counsel for any other party to the action who is financially unable to obtain counsel.

(d) If a party is financially unable to pay the costs of a transcript, the court shall furnish on request a transcript for purposes of appeal.  
(Formerly K.S.A. 38-1125).

**SECTION 23-2220. Action to determine mother and child relationship.** Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.  
(Formerly K.S.A. 38-1126).

**SECTION 23-2221. Promise to render support.** It shall be presumed that there is consideration for any written promise to furnish support for a child, growing out of a presumed or alleged father and child relationship. Such a promise shall be enforceable according to its terms, subject to subsection (d) of K.S.A. 23-2209.  
(Formerly K.S.A. 38-1127).

**SECTION 23-2222. Paternity orders; birth certificates.**

(a) Upon receipt of a certified order from a court of this state or an authenticated order of a court of another state, the state registrar of vital statistics shall prepare a new birth registration consistent with the findings of the court.

(b) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new birth registration, but the actual place and date of birth shall be shown.

(c) The findings upon which the new birth registration was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only in exceptional cases upon order of the court for good cause shown or as otherwise provided in K.S.A. 23-2204.  
(Formerly K.S.A. 38-1128).

**SECTION 23-2223. Amendment of birth certificate to change name of parent or child; procedure.**

(a) Whenever the parents of a minor child desire that the child's birth certificate be amended to add the name of a parent, correct the name of either parent or of the child or change the child's last name to that of either parent, both parents shall appear before a judge of the district court or a hearing officer authorized by rule of the supreme court to accept voluntary acknowledgments of parentage. The parents shall execute affidavits in the presence of the judge or hearing officer, attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child. If both parents are not residents of this state and are outside this state, both parents shall forward to such judge or hearing officer affidavits, sworn to before a judicial officer of the state in which they reside and attesting to the fact that each is a parent of the child and that they desire to amend the birth registration of the child.

(b) The judge or hearing officer shall require the parents to exhibit or to forward to the judge or hearing officer evidence of the birth of the child. If the judge or hearing officer finds that the birth certificate of the child fails to name either the father or mother of the child, that the name of either parent or the child is incorrect or that the child's name should be changed to that of either parent, the judge or hearing officer shall forward both parents' affidavits to the state registrar of vital statistics, together with a certified order to prepare a new birth

registration in the manner provided by K.S.A. 23-2222 and amendments thereto and to seal the affidavits, court order and original birth certificate and allow inspection of them only as provided therein.

(c) The judge or hearing officer shall return all evidence and other exhibits to the parents of the child. No fee shall be charged for the performance of this service. No case file will be opened in the district court, nor will any record be made by the court of the performance of this act.

~~(d) This statute shall be part of and supplemental to the Kansas parentage act. (Formerly K.S.A. 38-1130). 2014 HB 2568~~

**SECTION 23-2224. Court orders; interlocutory orders; ex parte, when; notice and hearing; temporary support.**

(a) The court, without requiring bond, may make and enforce orders which:

(1) ~~Re~~restrain the parties from molesting or interfering with the privacy or rights of each other;

(2) confirm the existing de facto custody of the child subject to further order of the court, if the court has jurisdiction under K.S.A. 23-37,101 et seq., and amendments thereto;

(3) appoint an expert to conduct genetic tests for determination of paternity as provided in K.S.A. 23-2212 and amendments thereto;

(4) order the mother and child and alleged father to contact the court appointed expert and provide tissue samples for testing within 30 days after service of the order;

(5) order the payment of temporary child support pursuant to subsection (c); or

(6) the court deems necessary to carry appropriate under the provisions of ~~the Kansas parentage act~~ article 22 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto.

(b) (1) Interlocutory orders authorized by this section that relate to genetic testing may be issued ex parte, if:

(A) The appointed expert is a paternity laboratory accredited by the American association of blood banks; and

(B) the order does not require an adverse party to make advance payment toward the cost of the test.

(2) If such ex parte orders are issued, and if an adverse party requests modification thereof, the court will conduct a hearing within 10 days of such request.

(c) After notice and hearing, the court shall enter an order for child support during the pendency of the action as provided in this subsection. The order shall be entered if the pleadings and the motion for temporary support, if separate from the pleadings, indicate there is only one presumed father and if probable paternity by the presumed father is indicated by clear and convincing evidence. For purposes of this subsection, "clear and convincing evidence" may be presented in any form, including, but not limited to, an uncontested allegation in the pleadings, an uncontested affidavit or an agreement between the parties. For purposes of this subsection, "clear and convincing evidence" means:

(1) The presumed father does not deny paternity;

(2) the mother and the presumed father were married to each other, regardless of whether the marriage was void or voidable, at any time between 300 days before the child's birth and the child's birth;

(3) a voluntary acknowledgment of paternity was completed by the mother and the presumed father more than 60 days before the motion was filed and no request to revoke the voluntary acknowledgment has been filed; or

(4) results of genetic tests show the probability of paternity by the presumed father is equal to or greater than 97% and the report was received more than 20 days before the motion was filed, unless written notice of intent to challenge the validity of the report has been timely given.

~~(d) The provisions of this section are part of and supplemental to the Kansas parentage act. (Formerly K.S.A. 38-1131). 2014 HB 2568~~

**SECTION 23-2225. Change in child's residence; notice; effect; exception.**

(a) Except as provided in subsection (d), a parent granted rights pursuant to subsection (d) of K.S.A. **23-2215**, and amendments thereto, shall give written notice to the other parent who has been granted rights pursuant to subsection (d) of K.S.A. **23-2215**, and amendments thereto, not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child from this state as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of child support, custody or parenting time. In determining any such motion, the court shall consider all factors the court deems appropriate including, but not limited to:

(1) The effect of the move on the best interests of the child;

(2) the effect of the move on any party having rights granted pursuant to subsection (d) of K.S.A. **23-2215**, and amendments thereto; and

(3) the increased cost the move will impose on any party seeking to exercise rights granted under subsection (d) of K.S.A. **23-2215**, and amendments thereto.

(d) A parent who has ~~been~~ **been** granted rights pursuant to subsection (d) of K.S.A. **23-2215**, and amendments thereto, shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, in which the child is the victim of such crime.

(e) This section shall be part of and supplemental to the Kansas parentage act.  
(Formerly K.S.A. 38-1132).

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## ARTICLE 27- DISSOLUTION OF MARRIAGE

### SECTION 23-2701. **Grounds for divorce or separate maintenance.**

(a) The district court shall grant a decree of divorce or separate maintenance for any of the following grounds:

- (1) Incompatibility;
- (2) failure to perform a material marital duty or obligation; or
- (3) incompatibility by reason of mental illness or mental incapacity of one or both spouses.

(b) The ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall require a finding of either:

- (1) Confinement of the spouse in an institution by reason of mental illness for a period of two years, which confinement need not be continuous; or
- (2) an adjudication of mental illness or mental incapacity of the spouse by a court of competent jurisdiction while the spouse is confined in an institution by reason of mental illness. In either case, there must be a finding by at least two of three physicians, appointed by the court before which the action is pending, that the mentally ill or mentally incapacitated spouse has a poor prognosis for recovery from the mental illness or mental incapacity, based upon general knowledge available at the time. A decree granted on the ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall not relieve a party from contributing to the support and maintenance of the mentally ill or mentally incapacitated spouse. If both spouses are confined to institutions because of mental illness or mental incapacity, the guardian of either spouse may file a petition for divorce and the court may grant the divorce on the ground of incompatibility by reason of mental illness or mental incapacity.  
(Formerly K.S.A. 60-1601).

### SECTION 23-2702. **Grounds for annulment.**

(a) The district court shall grant a decree of annulment of any marriage for either of the following grounds:

- (1) The marriage is void for any reason; or
- (2) the contract of marriage is voidable because it was induced by fraud.

(b) The district court may grant a decree of annulment of any marriage if the contract of marriage was induced by mistake of fact, lack of knowledge of a material fact or any other reason justifying rescission of a contract of marriage.  
(Formerly K.S.A. 60-1602).

### SECTION 23-2703. **Residence.**

(a) *State.* The petitioner or respondent in an action for divorce must have been an actual resident of the state for 60 days immediately preceding the filing of the petition.

(b) *Military residence.* Any person who has been a resident of or stationed at a United States post or military reservation within the state for 60 days immediately preceding the filing of the petition may file an action for divorce in any county adjacent to the post or reservation.

(c) *Residence of spouse.* For the purposes of this article, a spouse may have a residence in this state separate and apart from the residence of the other spouse.  
(Formerly K.S.A. 60-1603).

### SECTION 23-2704. **Petition and summons.**

(a) *Verification of petition.* The truth of the allegations of any petition under this article must be verified by the petitioner in person or by the guardian of an incapacitated person.

(b) *Captions.* All pleadings shall be captioned, "In the matter of the marriage of \_\_\_\_\_ and \_\_\_\_\_." In the caption, the name of the petitioner shall appear first and the name of the respondent shall appear second, but the respective parties shall not be designated as such.

(c) *Contents of petition.* The grounds for divorce, annulment or separate maintenance shall be alleged as nearly as possible in the general language of the statute, without detailed statement of facts. If there are minor children of the marriage, the petition shall state their names and dates of birth and shall contain, or be accompanied by an affidavit which contains, the information required by K.S.A. 23-37,209 and amendments thereto.

(d) *Bill of particulars.* The opposing party may demand a statement of the facts which shall be furnished in the form of a bill of particulars. The facts stated in the bill of particulars shall be the specific facts upon which the action shall be tried. If

interrogatories have been served on or a deposition taken of the party from whom the bill of particulars is demanded, the court in its discretion may refuse to grant the demand for a bill of particulars. A copy of the bill of particulars shall be delivered to the judge. The bill of particulars shall not be filed with the clerk of the court or become a part of the record except on appeal, and then only when the issue to be reviewed relates to the facts stated in the bill of particulars. The bill of particulars shall be destroyed by the district judge unless an appeal is taken, in which case the bill of particulars shall be destroyed upon receipt of the final order from the appellate court.

(e) *Service of process.* Service of process shall be made in the manner provided in article 3 of ~~this~~ chapter 60 Kansas Statutes Annotated, and amendments thereto.

(Formerly K.S.A. 60-1604). [2012 SB304 §36]  
2013 Kan.Sess.Laws Ch 124, Sec 2

**SECTION 23-2705. Answer and counterclaim.** The respondent may answer and may also file a counterclaim for divorce, annulment or separate maintenance. If new matter is set up in the answer, it shall be verified by the respondent in person or by the guardian of an incapacitated person. If a counterclaim is filed, it shall be subject to the provisions of subsections (a), (b) and (c) of K.S.A. **23-2704** and amendments thereto. When there are minor children of the marriage, the answer shall contain, or be accompanied by an affidavit which contains, the information required by K.S.A. **23-37,209**, and amendments thereto.

(Formerly K.S.A. 60-1605).

**SECTION 23-2706. Granting of ~~degree~~ decree mandatory; exceptions; denial of relief; orders authorized.**

(a) The court shall grant a requested decree of divorce, separate maintenance or annulment unless the granting of the decree is discretionary under this act or unless the court finds that there are no grounds for the requested alteration of marital status.

(b) If a decree of divorce, separate maintenance or annulment is denied for lack of grounds, the court shall nevertheless, if application is made by one of the parties, make the orders authorized by Articles 28, 29, 30, and 32 of Chapter 23, K.S.A. ~~23-2501 and 23-2502-60-1610(a) or 60-1610(b)~~ and amendments thereto.

(Formerly K.S.A. 60-1606) [2012 SB304 §37]

**SECTION 23-2707. Interlocutory orders.**

(a) *Permissible orders.* After **the filing of** a petition for divorce, annulment or separate maintenance has been filed, and during the pendency of the action ~~prior to~~ **until the entry of** final judgment the judge assigned to hear the action may, without requiring bond, make, **modify, vacate** and enforce by attachment, orders which:

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(1) Jointly restrain the parties with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property;

(2) restrain the parties from molesting or interfering with the privacy or rights of each other;

(3) provide for the legal custody and residency of and parenting time with the minor children and the support, if necessary, of either party and of the minor children during the pendency of the action;

(4) require mediation between the parties on issues, including, but not limited to, child custody, residency, division of property, parenting time and development of a parenting plan;

(5) make provisions, if necessary, for the expenses of the suit, including reasonable attorney's fees, that will insure to either party efficient preparation for the trial of the case;

(6) require an investigation by court service officers into any issue arising in the action; or

(7) require that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage.

(b) *Ex parte orders.* Orders authorized by subsections (a)(1), (2), (3), (4) and (7) may be entered after *ex parte* hearing upon compliance with rules of the supreme court, except that no *ex parte* order shall have the effect of changing the residency of a minor child from the parent who has had the sole *de facto* residency of the child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory

order is issued *ex parte*, the court shall hear a motion to vacate or modify the order within ~~1415~~ days of the date on which a party requests a hearing whether to vacate or modify the order. In the absence, disability, or disqualification of the judge assigned to hear the action, any other judge of the district court may make any order authorized by this section, including vacation or modification or any order issued by the judge assigned to hear the action.

(c) *Support orders.* (1) An order of support obtained pursuant to this section may be enforced by an order of garnishment as provided in this section.

(2) No order of garnishment shall be issued under this section unless: (A) Ten or more days have elapsed since the order of support was served upon the party required to pay the support, and (B) the order of support contained a notice that the order of support may be enforced by garnishment and that the party has a right to request an opportunity for a hearing to contest the issuance of an order of garnishment, if the hearing is requested by motion filed within five days after service of the order of support upon the party. If a hearing is requested, the court shall hold the hearing within five days after the motion requesting the hearing is filed with the court or at a later date agreed to by the parties.

(3) No bond shall be required for the issuance of an order of garnishment pursuant to this section. Except as provided in this section, garnishments authorized by this section shall be subject to the procedures and limitations applicable to other orders of garnishment authorized by law.

(4) A party desiring to have the order of garnishment issued shall file an affidavit with the clerk of the district court stating that:

(A) The order of support contained the notice required by this subsection;

(B) ten or more days have elapsed since the order of support was served upon the party required to pay the support; and

(C) either no hearing was requested on the issuance of an order of garnishment within the five days after service of the order of support upon the party required to pay the same or a hearing was requested and held and the court did not prohibit the issuance of an order of garnishment.

(d) If an interlocutory order for legal custody, residency, or parenting time is sought, the party

seeking such order shall file a proposed temporary parenting plan as provided by K.S.A. **23-3211**, and amendments thereto, at the time such order is sought. If any motion is filed to modify any such interlocutory orders, or in opposition to a request for issuance of interlocutory orders, that party shall attach to such motion or opposition a proposed alternative parenting plan.

(e) *Service of process.* Service of process served under subsection (a)(1) and (2) shall be by personal service and not by certified mail return receipt requested.

(Formerly K.S.A. 60-1607).

**SECTION 23-2708. Time for hearing; pretrial conferences; counseling, when.** ~~(a)~~ *Time.*

An action for divorce shall not be heard until 60 days after the filing of the petition unless the judge enters an order declaring the existence of an emergency, stating the precise nature of the emergency, the substance of the evidence material to the emergency and the names of the witnesses who gave the evidence. A request for an order declaring the existence of an emergency may be contained in a pleading or made by motion. Unless otherwise agreed by the parties, a request for the declaration of an emergency shall not be heard prior to the expiration of the time permitted for the filing of an answer. Unless waived, notice of the hearing requesting the declaration of an emergency shall be given to all parties not in default not less than seven days prior to the date of the hearing. Upon a finding that an emergency exists, the divorce and all issues pertaining thereto may be heard immediately. (Formerly K.S.A. 60-1608(a)).

**SECTION 23-2709. ~~(b)~~ Pretrial conferences.** The court shall conduct a pretrial conference or conferences in accordance with K.S.A. **60-216**, and amendments thereto, upon request of either party or on the court's own motion. Any pretrial conference shall be set on a date other than the date of trial and the parties shall be present or available within the courthouse.

(Formerly K.S.A. 60-1608(b)). [2012 SB304 §38]

**SECTION 23-2710. ~~(e)~~(a) Marriage counseling.**

After the filing of the answer or other responsive pleading by the respondent, the court, on its own motion or upon motion of either of the parties, may require both parties to the action to seek marriage counseling if marriage counseling services are available within the judicial district of venue of the action. Neither party shall be required to submit to

marriage counseling provided by any religious organization of any particular denomination.

~~(d)~~(b) *Cost of counseling.* The cost of any counseling authorized by this section may be assessed as costs in the case.

*(Formerly K.S.A. 60-1608(c) & (d)[2012 SB304 §39]*

**SECTION 23-2711. Decree; authorized orders.**

(new – basic version of old KSA 60-1610)

(a) A decree in an action under this article may include orders on the following matters:

(1) an order changing or terminating the parties' marital status by divorce, annulment or separate maintenance.

(2) an order making an equitable division of the parties' property as authorized by article 28 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(3) an order regarding spousal support as authorized by article 29 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(4) an order for child support as authorized by article 30 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(5) an order allocating parental decision-making and entering a parenting plan as authorized by article 32 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto;

(6) an order changing one or both parties' names as authorized by K.S.A. 23-2716, and amendments thereto.

(7) an order awarding costs and attorneys fees to either party under K.S.A. 23-2715, and amendments thereto.

(b) The provisions of this section shall be construed and applied retroactively [May 31, 2012].  
[2012 SB304 §24] [new 2012 HB 2741 – revision of basic 60-1610]

**SECTION 23-2712. ~~(b)~~(3) Separation agreement.**

(a) If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. A separation agreement may include provisions relating to a parenting plan. The provisions of the agreement on all matters settled by

it shall be confirmed in the decree except that any provisions relating to the legal custody, residency, visitation parenting time, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article.

(b) Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: ~~(A)~~ ~~(1)~~(a) As prescribed by the agreement or ~~(B)~~ ~~(2)~~(b) as subsequently consented to by the parties.

*(Formerly K.S.A. 60-1610(b)(3)).*

**SECTION 23-2713. ~~(e)~~(2) Effective date as to remarriage. Effect of a decree in another state.**

(a) Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

(b) A judgment or decree of divorce rendered in any other state or territory of the United States, in conformity with the laws thereof, shall be given full faith and credit in this state, except that, if the respondent in the action, at the time of the judgment or decree, was a resident of this state and did not personally appear or defend the action in the court of that state or territory and that court did not have jurisdiction over the respondent's person, all matters relating to maintenance, property rights of the parties and support of the minor children of the parties shall be subject to inquiry and determination in any proper action or proceeding brought in the courts of this state within two years after the date of the foreign judgment or decree, to the same extent as though the foreign judgment or decree had not been rendered. Nothing in this section shall authorize a court of this state to enter a child custody determination, as defined in K.S.A. **23-37,102** and amendments thereto contrary to the provisions of the uniform child custody jurisdiction and enforcement act.

*(Formerly K.S.A. 60-1610(c)(2) and 60-1611).*

**SECTION 23-2714. Evidence.**

(a) *Admissions.* Upon the trial of the action, the court may admit proof of the admissions of the parties to be received in evidence, excluding such as shall appear to have been obtained by connivance, fraud, coercion, or other improper means.

(b) *Marriage.* Testimony admissible to prove a common-law marriage may be received as evidence of the marriage of the parties.

(c) *Husband and wife as witness.* Either party to the action shall be competent to testify upon all material matters involved in the controversy.

(d) *Corroborating testimony.* A decree of divorce, separate maintenance or annulment may be granted upon the uncorroborated testimony of either party or both of them.

(Formerly K.S.A. 60-1609).

SECTION 23-2715. ~~(b)(4)~~ *Costs and fees.* Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(Formerly K.S.A. 60-1610(b)(4)). [2012 SB304 §40]

SECTION 23-2716. ~~(e)(1)~~ *Restoration of name.*

Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name. The court shall have jurisdiction to restore the spouse's maiden or former name at or after the time the decree of divorce becomes final. The judicial council shall develop a form which is simple, concise and direct for use with this paragraph.

(Formerly K.S.A. 60-1610(c)(1)).

**SECTION 23-2717. Obligation to comply with orders not suspended by other party's failure to comply; nature of certain motions to modify orders.** ~~(a)~~ If a party fails to comply with a provision of a decree, temporary order or injunction issued under articles 27 through 38 of chapter 23 of the Kansas Statutes Annotated and amendments thereto, under K.S.A. 23-2701 et seq., the obligation of the other party to make payments for support or maintenance or to permit visitation or parenting time is not suspended, but the other party may request by motion that the court grant an appropriate order.

(Formerly K.S.A. 60-1612(a)). [2012 SB304 §41]

**SECTION 23-2718. Interspousal tort.**

(a) An action for interspousal tort shall not be consolidated with an action under [[this article]] K.S.A. **23-2701**, *et seq.*, and amendments thereto, unless the parties agree to consolidation and consolidation is approved by the court.

(b) A decree of divorce or separate maintenance granted under subsections (a)(1) or (3) of K.S.A. **23-2701**, and amendments thereto, shall not preclude an action for interspousal tort.

(c) A decree of divorce or separate maintenance granted under subsection (a)(2) of K.S.A. **23-2701**, and amendments thereto, shall preclude an action for interspousal tort based upon the same factual allegations. An action for interspousal tort which has been finally determined shall preclude an action under subsection (a)(2) of K.S.A. **23-2701**, and amendments thereto, based upon the same factual allegations.

(Formerly K.S.A. 60-1627).

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**ARTICLE 29 - ESTABLISHMENT &  
MODIFICATION OF SPOUSAL SUPPORT**

SECTION 23-2901. **Interpretation of terms.** For purposes of interpretation, the terms "alimony" and "maintenance" are synonymous.  
*(Formerly K.S.A. 60-1618).*

SECTION 23-2902. *Maintenance.*

(a) ~~The~~ A decree under K.S.A. 23-2711 may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances.

(b) Maintenance may be in a lump sum, in periodic payments, on a percentage of earnings or on any other basis.

(c) ~~The~~ A decree under K.S.A. 23-2711 may make the future payments modifiable or terminable under circumstances prescribed in the decree.  
*(Formerly K.S.A. 60-1610(b)(2) in part). [2012 SB304 §43]*

SECTION 23-2903. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree.  
*(Formerly K.S.A. 60-1610(b)(2) in part).*

SECTION 23-2904. The court may make a modification of maintenance retroactive to a date at least one month after the date that the motion to modify was filed with the court. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The

recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months.  
*(Formerly K.S.A. 60-1610(b)(2) in part).*

SECTION 23-2905.

(a) Except for good cause shown, every order requiring payment of maintenance under this ~~section~~ article shall require that the maintenance be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. **39-7,135**, and amendments thereto. A written agreement between the parties to make direct maintenance payments to the obligee and not pay through the central unit shall constitute good cause.

(b) If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has made a determination concerning the manner of payment of child support, then maintenance payments shall be paid in the same manner.  
*(Formerly K.S.A. 60-1610(b)(2) in part). [2012 SB304 §44]*

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## ARTICLE 30 - ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

SECTION 23-3001. ~~(a) Minor children. (A) Child support and education.~~ (a) In any action for divorce or separate maintenance, under KSA 23-2711, the court shall make provisions for the support and education of the minor children.

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

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

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

~~(C)~~ (3) the child is still a bona fide high school student after June 30 of the school year during which the child became 18 years of age, in which case the court, on motion, may order support to continue through the school year during which the child becomes 19 years of age so long as the child is a bona fide high school student and the parents jointly participated or knowingly acquiesced in the decision which delayed the child's completion of high school. The court, in extending support pursuant to ~~(a)(1)(C)~~ (b)(3), may impose such conditions as are appropriate and shall set the child support utilizing the guideline table category for 12-year through 18-year old children. *For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED).*

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

agreement, and any order based on such agreement, to extend the date for termination of support to the date provided by subsection ~~(a)(1)(C)~~ (b)(3). For purposes of this section, "bona fide high school student" means a student who is enrolled in full accordance with the policy of the accredited high school in which the student is pursuing a high school diploma or a graduate equivalency diploma (GED). *(Formerly K.S.A. 60-1610(a)(1) in part). [2012 SB304 §45]*

SECTION 23-3002. **Determining amount of child support.** (a) In determining the amount to be paid for child support, the court shall follow the child support guidelines adopted by the supreme court pursuant to K.S.A. 20-165 and amendments thereto. ~~the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child.~~

(b) Anyone requesting a child support order or modification order must file with the motion a completed domestic relations affidavit and a proposed child support worksheet.

*(Formerly K.S.A. 60-1610(a)(1) in part). 2014 HB 2568, sec 8*

SECTION 23-3003. ~~(a)(6)~~ **Child health insurance coverage.** The court may order that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage. *(Formerly K.S.A. 60-1610(a)(6)).*

SECTION 23-3004. Except for good cause shown, every order requiring payment of child support ~~under this section~~ under this article shall require that the support be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 39-7,115, and amendments thereto. A written agreement between the parties to

make direct child support payments to the obligee and not pay through the central unit shall constitute good cause, unless the court finds the agreement is not in the best interest of the child or children. The obligor shall file such written agreement with the court. The obligor shall maintain written evidence of the payment of the support obligation and, at least annually, shall provide such evidence to the court and the obligee.

(Formerly K.S.A. 60-1610(a)(1) in part).

[2012 SB304 §46]

SECTION 23-3005. **Modification of child support.**

(a) Subject to the provisions of K.S.A. 23-36,207, and amendments thereto, ~~the~~ court may modify ~~or~~ ~~change~~ any prior child support order, including any order issued in a title IV-D case, within three years of the date of the original order or a modification order, when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. If more than three years has passed since the date of the original order or modification order, a material change in circumstance need not be shown.

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

(Formerly K.S.A. 60-1610(a)(1) in part). [2012 SB304 §47]

2014 HB2568

SECTION 23-3006. If the divorce decree of the parties provides for an abatement of child support during any period provided in such decree, the child support such nonresidential parent owes for such period shall abate during such period of time, except that if the residential parent shows that the criteria for the abatement has not been satisfied there shall not be an abatement of such child support.

(Formerly K.S.A. 60-1610(a)(1) in part).

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**ARTICLE 32 – DECISION MAKING AND PARENTING PLANS**

SECTION 23-3201. ~~(a)(3)~~ **Child custody or residency criteria.** The court shall determine [legal] custody [and] or residency of a child in accordance with the best interests of the child.  
(Formerly K.S.A. 60-1610(a)(3))

SECTION 23-3202. ~~(a)(3)(A)~~ **Child custody or residency criteria.** If the parties have entered into a parenting plan, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.  
(Formerly K.S.A. 60-1610(a)(3)(A))

SECTION 23-3203. ~~(a)(3)(B)~~ **Child custody or residency criteria.** In determining the issue of child custody, residency and parenting time, the court shall consider all relevant factors, including but not limited to:

~~(i) (a) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto~~  
Each parent's role and involvement with the minor child before and after separation;

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

~~(iii) (c)~~ the desires of ~~the a~~ child of sufficient age and maturity as to the child's custody or residency;

(d) the age of the child;

(e) the emotional and physical needs of the child;

~~(iv) (d)(f)~~ the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;

~~(v) (e)(g)~~ the child's adjustment to the child's home, school and community;

~~(vi) (f)(h)~~ the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;

~~(vii) (g)(i)~~ evidence of spousal abuse, either emotional or physical;

(j) the ability of the parties to communicate, cooperate and manage parental duties;

(k) the school activity schedule of the child;

(l) the work schedule of the parties;

(m) the location of parties' residences and places of employment;

(n) the location of the child's school;

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

~~(ix) (i)~~ whether a parent has been convicted of abuse of a child, K.S.A. **21-3609**, and amendments thereto;

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

~~(xi) (k)~~ whether a parent is residing with an individual who has been convicted of abuse of a child, K.S.A. **21-3609**, and amendments thereto.  
(Formerly K.S.A. 60-1610(a)(3)(B)(i-xi))

SECTION 23-3204. ~~(a)(3)(C)~~ **Child custody or residency criteria.** Neither parent shall be considered to have a vested interest in the custody or residency of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody or residency to the mother.

(Formerly K.S.A. 60-1610(a)(3)(C))  
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SECTION 23-3205. ~~(a)(3)(D)~~ **Child custody or residency criteria.** There shall be a rebuttable presumption that it is not in the best interest of the child to have custody or residency granted to a parent who:

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

~~(h)~~(b) is residing with an individual who has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.  
(Formerly K.S.A. 60-1610(a)(3)(D)(i-ii).

SECTION 23-3206. ~~(a)~~(4) **Types of legal custodial arrangements.** Subject to the provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall provide one of the following legal custody arrangements, in the order of preference:

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

~~(B)~~(b) **Sole legal custody.** The court may order the sole legal custody of a child with one of the parties when the court finds that it is not in the best interests of the child that both of the parties have equal rights to make decisions pertaining to the child. If the court does not order joint legal custody, the court shall include on the record specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order, stating the reasons for that determination.  
(Formerly K.S.A. 60-1610(a)(4)(A-B).

SECTION 23-3207. ~~(a)~~(5) **Types of residential arrangements.** After making a determination of the legal custodial arrangements, the court shall determine the residency of the child from the following options, which arrangement the court must find to be in the best interest of the child. The parties shall submit to the court either an agreed parenting plan or, in the case of dispute, proposed parenting plans for the court's consideration. Such options are:

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

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

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

~~(i)~~(a) ~~(1)~~(A) The child is likely to sustain harm if not immediately removed from the home;

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

~~(c)~~(C) immediate placement of the child is in the best interest of the child; and

~~(ii)~~(2) reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or that an emergency exists which threatens the safety to the child. In making such a residency order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such residency to a relative of the child by blood, marriage or adoption and second to awarding such residency to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary residency orders are to be entered in lieu of temporary orders provided for in KSA 38-2243 and 38-2244, and amendments thereto, and shall remain in effect until there is a final determination under the revised Kansas code for care of children. An award of temporary residency under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary residency of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. 38-2234, and amendments thereto, and may request termination of parental rights pursuant to K.S.A. 38-2266, and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody

orders pursuant to this ~~section~~ **article**. If the same judge presides over both proceedings, the notice is not required. Any ~~disposition order~~ pursuant to the revised Kansas code for care of children shall ~~be binding and shall supersede take precedence over~~ any order under this ~~section~~ **article**.  
(Formerly K.S.A. 60-1610(a)(5)(A-C)). [2012 SB304 §48]

**SECTION 23-3208. Parenting time; visitation orders; enforcement. Child exchange and visitation centers.**

(a) *Parents.* A parent is entitled to reasonable parenting time unless the court finds, after a hearing, that the exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health.

~~(b)~~ **(b)** *Enforcement of rights.* An order granting ~~visitation rights or parenting time pursuant to under~~ this ~~section~~ **article** may be enforced in accordance with the uniform child custody jurisdiction and enforcement act, or K.S.A. **23-3401**, and amendments thereto.

~~(c)~~ **(c)** *Court ordered exchange or parenting time visitation-at a child exchange and visitation center.*

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

(Formerly K.S.A. 60-1616(a), (d) and (f)(1)). [2012 SB304 §48]

**SECTION 23-3209. Interviews; court; minors.** The court may interview the minor children in chambers to assist the court in determining legal custody, residency, visitation rights and parenting time. The court may permit counsel to be present at the interviews. Upon request of any party, the court shall cause a record of the interview to be made as part of the record in the case.

(Formerly K.S.A. 60-1614).

**SECTION 23-3210. Information relating to custody or residency of children; visitation or parenting time with children.**

(a) *Investigation and report.* In any proceeding in which legal custody, residency, visitation rights or parenting time are contested, the court may order an investigation and report concerning the appropriate legal custody, residency, visitation rights and parenting time to be granted to the parties. The investigation and report may be made by court services officers or any consenting person or agency employed by the court for that purpose. The court

may use the department of social and rehabilitation services to make the investigation and report if no other source is available for that purpose. The costs for making the investigation and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

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

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

(Formerly K.S.A. 60-1615).

**SECTION 23-3211. Parenting plan; definitions.**

(a) "Temporary parenting plan" means an agreement or order issued defining the legal custody, residency and parenting time to be exercised by parents with regard to a child between the time of filing of a matter in which a parenting plan may be entered, and any other provisions regarding the child's care which may be in the best interest of the child, until a final order is issued.

(b) "Permanent parenting plan" means an agreement between parents which is incorporated into an order at a final hearing or an order or decree issued at a final hearing without agreement that establishes legal custody, residency, parenting time and other matters regarding a child custody arrangement in a matter in which a parenting plan may be entered.

(c) "Legal custody" means the allocation of parenting responsibilities between parents, or any

person acting as a parent, including decision making rights and responsibilities pertaining to matters of child health, education and welfare.  
(Formerly K.S.A. 60-1623).

**SECTION 23-3212. Same; temporary orders.**

(a) The court may enter a temporary parenting plan in any case in which temporary orders relating to child custody is authorized.

(b) If the court deems it appropriate, a temporary parenting plan approved by the court may include one or more of the following provisions regarding children involved in the matter before the court:

(1) Designation of the temporary legal custody of the child;

(2) designation of a temporary residence for the child;

(3) allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;

(4) a schedule for the child's time with each parent, when appropriate.

(c) A parent seeking a temporary order in which matters of child custody, residency, or parenting time are included shall file a proposed temporary parenting plan contemporaneous with any request for issuance of such temporary orders, which plan shall be served with any such temporary orders.

(d) If the parent who has not filed a proposed temporary parenting plan disputes the allocation of parenting responsibilities, residency, parenting time or other matters included in the proposed temporary parenting plan, that parent shall file and serve a responsive proposed temporary parenting plan.

(e) Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order.

(f) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment is in the best interest of the child.

(g) If a proceeding for divorce, separate maintenance, annulment or determination of

parentage is dismissed, any temporary parenting plan is vacated.  
(Formerly K.S.A. 60-1624).

**SECTION 23-3213. Same; permanent; objectives; general outline, provisions.**

(a) The objectives of the permanent parenting plan are to:

(1) Establish a proper allocation of parental rights and responsibilities;

(2) establish an appropriate working relationship between the parents such that matters regarding the health, education and welfare of their child is best determined;

(3) provide for the child's physical care;

(4) set forth an appropriate schedule of parenting time;

(5) maintain the child's emotional stability;

(6) provide for the child's changing needs as the child grows and matures in a way that minimizes the need for future modifications to the permanent parenting plan;

(7) minimize the child's exposure to harmful parental conflict;

(8) encourage the parents, where appropriate, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(9) otherwise protect the best interests of the child.

(b) A permanent parenting plan may consist of a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis; however, a permanent parenting plan must set forth the following minimum provisions:

(1) Designation of the legal custodial relationship of the child;

(2) a schedule for the child's time with each parent, when appropriate;

(3) a provision for a procedure by which disputes between the parents may be resolved without need for court intervention; and

(4) if either parent is a service member, as defined in K.S.A. 23-3217, and amendments thereto, provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour of such service member.

(c) A detailed permanent parenting plan shall include those provisions required by subsection (b), and may include, but need not be limited to, provisions relating to:

(1) Residential schedule;

(2) holiday, birthday and vacation planning;

(3) weekends, including holidays and school inservice days preceding or following weekends;

(4) allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;

(5) sharing of and access to information regarding the child;

(6) relocation of parents;

(7) telephone access;

(8) transportation; and

(9) methods for resolving disputes.

(d) The court shall develop a permanent parenting plan, which may include such detailed provisions as the court deems appropriate, when:

(1) So requested by either parent; or

(2) the parent or parents are unable to develop a parenting plan.  
(Formerly K.S.A. 60-1625).

**SECTION 23-3214. Same; court information; classes; mediation; forms.**

(a) The court shall inform the parents, or require them to be informed, about:

(1) How to prepare a parenting plan;

(2) the impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed;

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

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

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

(c) If parents are unable to resolve issues and agree to a parenting plan, the court may require mediation, unless mediation is determined inappropriate in the particular case.

(d) The clerk of the district court shall supply forms and information prescribed by the supreme court which may be used for submission of temporary and permanent parenting plans.  
(Formerly K.S.A. 60-1626).

**SECTION 23-3215. Notification of other parent of certain events; failure, indirect civil contempt; material change in circumstances.**

(a) A parent entitled to legal custody of, or residency of, or parenting time with a child pursuant to **Article 32**, and amendments thereto, shall give written notice to the other parent of one or more of the following events when such parent: (1) Is subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; (2) has been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto; (3) is residing with an individual who is known by the parent to be subject to the registration requirements of the Kansas offender registration act, K.S.A. 22-4901, et seq., and amendments thereto, or any similar act in any other state, or under military or federal law; or (4) is residing with an individual who is known by the parent to have been convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent within ~~40~~ 14 days following such event.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable

attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) An event described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time. *(Formerly K.S.A. 60-1629). [2012 SB304 §50]*

#### **SECTION 23-3216. RESERVED.**

#### **SECTION 23-3217. Child custody and parenting time for parents deployed by the military; modification of orders; hearing.**

(a) As used in this section:

(1) "Deployment" means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation.

(2) "Mobilization" means the call-up of a national guard or reserve service member to extended active-duty status. "Mobilization" does not include national guard or reserve annual training.

(3) "Service member" means any member serving in an active-duty status in the armed forces of the United States, the national guard or the armed forces reserves.

(4) "Temporary duty" means the transfer of a service member from one military base to a different location for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(5) "Unaccompanied tour" means a permanent change of station for a service member where dependent travel is not authorized.

(6) "Nondeploying parent" means the parent not subject to deployment, mobilization, temporary duty or unaccompanied tour orders from the military.

(b) The absence, relocation or failure to comply with a custody or parenting time order by a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, shall not, by itself, constitute a material change in circumstances warranting a permanent modification of a custody or parenting time order.

(c) Any court order limiting previously ordered custodial or parenting time rights of a parent due to the parent's deployment, mobilization, temporary

duty or unaccompanied tour shall specify the deployment, mobilization, temporary duty or unaccompanied tour as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

(d) The court, on motion of the parent returning from deployment, mobilization, temporary duty or unaccompanied tour, seeking to amend or review the custody or parenting time order based upon such deployment, mobilization, temporary duty or unaccompanied tour, shall set a hearing on the matter that shall take precedence on the court's docket and shall be set within 30 days of the filing of the motion. Service on the nondeploying parent shall be at such nondeploying parent's last address provided to the court in writing. Such service, if otherwise sufficient, shall be deemed sufficient for the purposes of notice for this subsection. For purposes of this hearing, such nondeploying parent shall bear the burden of showing that reentry of the custody or parenting time order in effect prior to deployment, mobilization, temporary duty or unaccompanied tour is no longer in the best interests of the child.

(e) If the parties in a custody or parenting time matter concerning a parent who receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military have entered into a parenting plan pursuant to K.S.A. **23-3213**, and amendments thereto, that includes provisions for custody and parenting time upon military deployment, mobilization, temporary duty or unaccompanied tour, it shall be presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the best interests of the child.

(f) If a parent with parenting time rights receives deployment, mobilization, temporary duty or unaccompanied tour orders from the military that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting time rights, the court may delegate the parent's parenting time rights, or a portion thereof, to a member or members of the service member's family with a close and substantial relationship to the minor child for the duration of the parent's absence, if delegating parenting time rights is in the best interests of the child.

(g) Upon motion of a parent who has received deployment, mobilization, temporary duty or unaccompanied tour orders from the military, the court shall, for good cause shown, hold an expedited hearing in custody and parenting time matters instituted under this section when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

(h) Nothing in this section shall preclude a parent from petitioning for a modification of a custody or parenting time order based upon a material change in circumstances.

(i) Any order entered pursuant to this section shall provide that:

(1) The nondeploying parent shall reasonably accommodate the leave schedule of the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders;

(2) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the parent subject to deployment, mobilization, temporary duty or unaccompanied tour orders and the child during the period of such deployment, mobilization, temporary duty or unaccompanied tour; and

(3) the parent subject to deployment, mobilization, temporary duty or unaccompanied tour shall provide timely information regarding such parent's leave schedule to the nondeploying parent. Willful violation of such order shall constitute contempt of court.

(j) Nothing in this section shall alter the duty of the court to determine custody or parenting time matters in accordance with the best interests of the child. (Formerly K.S.A. 60-1630).

SECTION 23-3218. ~~(a)(2)~~ **Modification of Child custody and residency.**

~~(A)~~ **(a) Changes in custody.** Subject to the provisions of the uniform child custody jurisdiction and enforcement act (K.S.A. 23-37,101 through 23-37,405, and amendments thereto), the court may change or modify any prior order of custody, residency, visitation and parenting time, when a material change of circumstances is shown, but no ex parte order shall have the effect of changing residency of a minor child from the parent who has had the sole de facto residency of the child to the

other parent unless there is sworn testimony to support a showing of extraordinary circumstances. If an interlocutory order is issued ex parte, the court shall hear a motion to vacate or modify the order within 15 days of the date that a party requests a hearing whether to vacate or modify the order.

~~(B)~~ **(b) Examination of parties.** The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235 and amendments thereto. (Formerly K.S.A. 60-1610(a)(2)(A) and (B)).

SECTION 23-3219. **Modification of final order; specify factual allegations.**

(a) A party filing a motion to modify a final order pertaining to child custody or residential placement pursuant to articles 22, 27 or 32 or chapter 23 of the Kansas Statutes Annotated, ~~K.S.A. 23-2201 et seq.~~ or ~~K.S.A. 23-2701 et seq.~~, and amendments thereto, shall include with specificity in the verified motion, or in an accompanying affidavit, all known factual allegations which constitute the basis for the change of custody or residential placement. If the court finds that the allegations set forth in the motion or the accompanying affidavit fail to establish a *prima facie* case, the court shall deny the motion. If the court finds that the motion establishes a *prima facie* case, the matter may be tried on factual issues.

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

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

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

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

No *ex parte* order modifying a final custody or residential placement order shall be entered without sworn testimony to support a showing of the alleged emergency. (Formerly K.S.A. 60-1628). [2012 SB304 §51]

SECTION 23-3220 ~~(b)~~ Motions to modify legal custody, residency, visitation rights or parenting time in proceedings where support obligations are enforced under part D of title IV of the federal social

security act (42 USC § 651 *et seq.*), as amended, shall be considered proceedings in connection with the administration of the title IV-D program for the sole purpose of disclosing information necessary to obtain service of process on the parent with physical custody of the child.  
(Formerly K.S.A. 60-1612(b)).

**SECTION 23-3221. Parenting time; visitation orders; enforcement modification.**

~~(e)~~ (a) *Modification.* The court may modify an order granting or denying parenting time ~~or visitation rights~~ whenever modification would serve the best interests of the child.

~~(e)~~ (b) *Repeated denial of rights, effect.* Repeated unreasonable denial of or interference with ~~visitation rights or~~ parenting time granted pursuant to ~~under~~ this article ~~section~~ may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, ~~visitation~~ or parenting time.

~~(f)(2)~~ (c) Any party may petition the court to modify an order granting visitation rights or parenting time to require that the exchange or transfer of children for visitation or parenting time take place at a child exchange and visitation center, as established in K.S.A. 75-720 and amendments thereto. ~~The court may modify an order granting visitation whenever modification would serve the best interests of the child.~~  
(Formerly K.S.A. 60-1616(c), (e) and (f)(2)). [2012 SB304 §52]

**SECTION 23-3222. Change in child's residence; notice; effect; exceptions.**

(a) Except as provided in subsection (d), a parent entitled to legal custody or residency of or parenting time with a child under **Article 27** and amendments thereto shall give written notice to the other parent not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days. Such notice shall be sent by restricted mail, return receipt requested, to the last known address of the other parent.

(b) Failure to give notice as required by subsection (a) is an indirect civil contempt punishable as provided by law. In addition, the court may assess, against the parent required to give notice, reasonable attorney fees and any other expenses incurred by the other parent by reason of the failure to give notice.

(c) A change of the residence or the removal of a child as described in subsection (a) may be considered a material change of circumstances which justifies modification of a prior order of legal custody, residency, child support or parenting time. In determining any motion seeking a modification of a prior order based on change of residence or removal as described in (a), the court shall consider all factors the court deems appropriate including, but not limited to: (1) The effect of the move on the best interests of the child; (2) the effect of the move on any party having rights granted under **Article 27**, and amendments thereto; and (3) the increased cost the move will impose on any party seeking to exercise rights granted under **Article 27**, and amendments thereto.

(d) A parent entitled to the legal custody or residency of a child under **Article 27** and amendments thereto shall not be required to give the notice required by this section to the other parent when the other parent has been convicted of any crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes, prior to their repeal, or K.S.A. 2011 Supp. 21-5401 through 21-5609, 21-6104, 21-6325, 21-6326, 21-6419, 21-6420 or 21-6421, and amendments thereto, in which the child is the victim of such crime.  
(Formerly K.S.A. 60-1620). [2012 SB304 §53]

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