

IN THE SUPREME COURT OF THE STATE OF KANSAS
ADMINISTRATIVE ORDER NO. 155

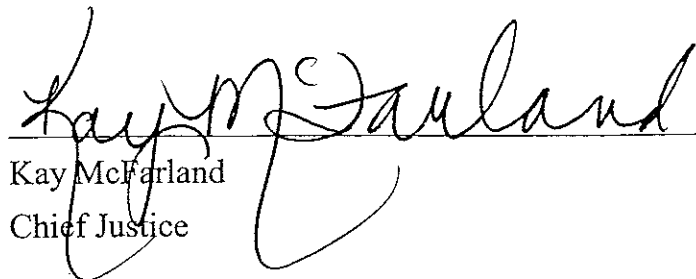
Re: Required Journal Entry Forms for Child in Need of Care, Juvenile
Offender, and Domestic Relations Cases

Attached are Order forms which will meet federal Adoption and Safe Families Act requirements to be used by each Kansas district court effective October 1, 2000.

Each district court shall use the appropriate attached Order of Custody to place any child subject to a child in need of care, juvenile offender, or Chapter 60 divorce proceeding in the custody of any person other than his or her parent or legal guardian. Each district court shall use the Order of Permanency Hearing to rule on child in need of care and juvenile offender permanency hearings. Additional orders or supplemental affidavits may be attached to the form orders, if a court desires to include additional information. All journal entries and attached orders shall be maintained in the court's official file.

The attached forms may be distributed and modified as deemed necessary by the Judicial Administrator.

BY ORDER OF THE COURT this 22nd day of Sept 2000.



Kay McFarland
Chief Justice

Attachments

Guidelines for Completing Orders Pursuant to Supreme Court Administrative Order No. 155

The following guidelines are intended to inform judges and nonjudicial personnel on the use of documents prepared by the Office of Judicial Administration for use in child in need of care, juvenile offender and divorce proceedings. Used properly and in every case, these form orders will enable the State of Kansas to claim the full allowable amount of federal reimbursement for foster care costs. These forms are provided in response to the IV-E audit conducted in August 2000 and as part of the Program Improvement Plan to bring the State of Kansas into compliance with the Adoption and Safe Families Act and the Final Rules published in the Federal Register on Tuesday, January 25, 2000. The Final Rules were published in the Federal Register on January 25, 2000, under the title 45 C.F.R. Parts 1355, 1356 and 1357; Title IV-E Foster Care Eligibility Review and Child and Family Services State Plan Review, Final Rule. Attached to Supreme Court Administrative Order No. 155 are the following seven documents:

- Order of Custody for a Child in Need of Care – single
- Order of Custody for a Child in Need of Care – multiple
- Order of Custody for a Juvenile Offender
- Order of Custody for a Divorce Proceeding
- Permanency Hearing Order for Child in Need of Care – single
- Permanency Hearing Order for Child in Need of Care - multiple
- Permanency Hearing Order for Juvenile Offender

Order of Custody

Orders of Custody are provided for child in need of care (CINC), juvenile offender (JO), and divorce proceedings. Orders are designed to include language required by the Adoption and Safe Families Act, the Final Rules, and the Kansas Statutes Annotated. Where necessary, specific references are made to Kansas law.

This order is not expected to meet all needs of the court regarding the issuance of orders. It is fully expected additional orders or journal entries will be required to properly identify appearances, document notice requirements, and to formalize orders relative to further action of the case. This order is intended to create a relatively fast and easy way for the Kansas Judicial Branch to meet all requirements of the Adoption and Safe Families Act defined in Kansas law and in the federal regulations.

One of three possible findings are required on the Order of Custody regarding reasonable efforts to prevent or eliminate the unnecessary removal of the child from the child's home. First,

the court may find that reasonable efforts were made but failed. Second, the court may find an emergency exists which threatens the safety of the child and it is reasonable to make no effort to maintain the child in the home. Finally, the court may find reasonable efforts are not required due to circumstances defined in law and in the federal regulations. It is important to remember that one option must be selected before the court can issue an order directing or sanctioning the removal of a child from his or her home.

Every order of custody must include the finding that remaining in the home would be contrary to the welfare of the child or immediate placement is in the best interest of the child. This section is not included as an option but as a required finding by the judge. It is important to include information explicitly documenting the particulars of this finding. Referencing an attached document is allowable provided the document is child specific and clearly referenced. It is highly recommended the document and referenced documents be stapled directly to the order.

The Order of Custody is provided in “single child” and “multiple children” versions. If you choose to use the multiple children version, it is imperative specific findings are made for each child. More than one child can be included in a description of circumstances provided each child was subject to the identical circumstances. Including more than one child in a journal entry or order is acceptable but only if the information contained in the journal entry or order specifically identifies the circumstances and findings which are unique to each child.

During the course of the recent audit, it was discovered one of the cases found not eligible for IV-E funding was initiated through a divorce proceeding. Therefore, a custody order to be used in a divorce proceeding is included and is required when the court places the child or children in the custody of someone who is not their parent.

It is important to use this custody order even in circumstances when the state is not awarded custody. For example, if the court places the child with a relative, does not make the proper findings, and, the child eventually is placed in the custody of SRS, Kansas will not be eligible for reimbursement for foster care costs. This is true even though the first out of the home placement was not into state custody. In each and every case, the first order which sanctions the removal of the child from his or her home must contain the necessary findings contained in this order.

Permanency Hearing Order

Two Permanency Hearing Orders have been developed: One for child in need of care proceedings and one for juvenile offender proceedings. Both are virtually identical in content but are tailored to meet the permanency hearing needs of juvenile offenders and children in need of care. The design of this order requires the judge to fill in the blank where choices are not appropriate. All sections which require a selection by the judge are formatted in bold and options are placed within brackets. Boxes checked indicate the findings of the court.

Section 2 on page 2 should be completed with specific information explicitly documenting the reasonable efforts made to accomplish the permanency goal. In choosing a permanency goal, please be aware the kinship placement option includes relatives and nonrelatives of the child pursuant to K.S.A. 38-1502 (t). If the court determines reasonable efforts are not required under Section 2.b of the form, the judge must specifically state the circumstance, as defined in K.S.A. 38-1563(h) or K.S.A. 38-1664(a)(1). This section should only be used under the circumstances defined in Kansas law.

Section 6 on pages 3 and 4 requires the judge to choose between 6.a and 6.b, reintegration is no longer a viable option, or reintegration continues to be a viable option. Several choices exist under 6.a and 6.b. All appropriate options should be chosen. Be careful not to inadvertently choose options which conflict with one another (*i.e.*, 6.a.(1) and 6.a.(5)).

Document Distribution and Revision Process

Administrative Order No. 155 allows the Office of Judicial Administration to distribute and modify orders as necessary. Modifications to the language in these forms by anyone other than the Office of Judicial Administration is not permitted. Suggestions and feedback on the practical use of the forms are encouraged. These forms were developed with considerable input from judges, SRS, and the Administration for Children and Families, Region VII office. It is anticipated the next generation of forms will have the same level of input.

Use of the forms is to begin on October 1, 2000. All forms are available on disk, through e-mail, or on the Supreme Court web page. Versions are currently available in WordPerfect.

Acknowledgments

The Office of Judicial Administration wishes to thank the members of the Supreme Court Permanency Planning Task Force, the Court/Education/SRS/JJA Liaison Committee, the Department of Social and Rehabilitation Services, and the Administration for Children and Families Region VII office for their work in the development of these documents.

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

In the Matter of:

_____, Respondent Case No. _____
DOB ___ / ___ / ___ A ___ male ___ female
under the age of 18 years.

**ORDER APPROVING REMOVAL FROM
HOME FOR A JUVENILE OFFENDER**
(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

On this ___ day of _____, 20__ this matter comes before the Court and the COURT
HEREBY FINDS THAT PURSUANT TO K.S.A. 38-1664 AS AMENDED:

- The Court has determined that reasonable efforts have been made but have failed to maintain the family and prevent the unnecessary removal of the juvenile from the juvenile's home as follows:

[OR]

- The Court has determined that an emergency exists which threatens the safety of the juvenile and it is reasonable to make no effort to maintain the juvenile in the home because _____

[OR]

- The Court has determined that reasonable efforts are not required because the parent has been found by a court to have (1) committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; or, (2) parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child as provided in subsection (1); or, (3) parent committed a felony battery that resulted in bodily

ORDER OF CUSTODY - JO

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injury to the child or another child; or, (4) parent has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x), and amendments thereto; or, (5) parental rights of the parent to another child have been terminated involuntarily. (Set out specifically the facts relied upon) _____

THE COURT FURTHER FINDS THAT remaining in the home would be contrary to the welfare of the juvenile and immediate placement is in the best interest of the juvenile, specifically: _____

THE COURT FURTHER FINDS THAT the following Order for Removal may issue:

(Check one)

- A Warrant
- Detention Hearing Order
- Order for Commitment of Incompetent
- Sentencing Order
- Probation Violation Hearing Order
- Order Of Modification of Sentence

THE COURT FURTHER FINDS that this matter is set for _____
hearing on the ____ day of _____, _____, at _____ : _____ M.

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE MATTER OF THE MARRIAGE OF

and

Case No. _____

**CUSTODY ORDER FOR
REMOVAL FROM HOME**

Pursuant to K.S.A. 60-1610(D)

(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

On this ___ day of _____, 20__ this matter comes before the Court and the COURT
HEREBY FINDS THAT:

- The Court has determined that reasonable efforts have been made and have failed to maintain the family and prevent the unnecessary removal of the child/children from his/her/their home, or, an emergency exists which threatens the safety of the child/children as follows:(List efforts for each child specifically)

[OR]

- The Court has determined that an emergency exists which threatens the safety of the child and it is reasonable to make no effort to maintain the child in the home because (List reasons for each child specifically) _____

[OR]

ORDER OF CUSTODY - DIVORCE PROCEEDING
PAGE 2 OF 3

- The Court has determined that reasonable efforts are not required because the parent has been found by a court to have (1) committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; or, (2) parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child as provided in subsection (1); or, (3) parent committed a felony battery that resulted in bodily injury to the child or another child; or, (4) parent has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x), and amendments thereto; or, (5) parental rights of the parent to another child have been terminated involuntarily. (Set out specifically the facts relied upon)_____

THE COURT FURTHER FINDS THAT remaining in the home is contrary to the welfare of the child/children, or immediate placement is in the best interest of the child/children, because: (List reasons for each child specifically)

IT IS THEREFORE CONSIDERED ORDERED AND DECREED THAT Pursuant to K.S.A. 60-1610 as amended, the following child/children of the petitioner and the respondent in the above captioned case_____

shall be placed in the temporary custody of

- The Secretary of Social and Rehabilitation Services, or

ORDER OF CUSTODY - DIVORCE PROCEEDING
PAGE 3 OF 3

IT IS FURTHER ORDERED that a copy of this order and a transcript of this proceeding be delivered to the county or district attorney within _____ days of this date and that the county or district attorney shall file a petition as provided in K.S.A. 38-1531 and amendments thereto.

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

In the Interest of:

Name _____
DOB ___/___/___ A ___male ___female
under the age of 18 years.

Case No. _____

In the Interest of:

Name _____
DOB ___/___/___ A ___male ___female
under the age of 18 years

Case No. _____

In the Interest of:

Name _____
DOB ___/___/___ A ___male ___female
under the age of 18 years.

Case No. _____

ORDER OF CUSTODY

(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

(Orders pertaining to more than one child include findings specific to each child listed in the caption.)

On this ___ day of _____, 20__ this matter comes before the Court and the COURT
HEREBY FINDS THAT:

THIS IS AN ORDER :
(check one)

- Of Protective Custody pursuant to K.S.A. 38-1542 as amended.
- Of Temporary Custody pursuant to K.S.A. 38-1543 as amended.
- Pursuant to K.S.A. 38-1562 and K.S.A. 38-1563 as amended.

THE COURT FURTHER FINDS THAT:

- The Court has determined that reasonable efforts have been made and have failed to maintain the family and prevent the unnecessary removal of the children from the children's home as follows: *(List efforts for each child specifically)*

[OR]

ORDER OF CUSTODY - CINC (MULTIPLE)

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- The Court has determined that an emergency exists which threatens the safety of the children and it is reasonable to make no effort to maintain the child in the home because (List efforts for each child specifically)

[OR]

- The Court has determined that reasonable efforts are not required because the parent has been found by a court to have (1) committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; or, (2) parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child as provided in subsection (1); or, (3) parent committed a felony battery that resulted in bodily injury to the child or another child; or, (4) parent has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x), and amendments thereto; or, (5) parental rights of the parent to another child have been terminated involuntarily. (Set out specifically the facts relied upon)

THE COURT FURTHER FINDS THAT remaining in the home would be contrary to the welfare of the children and immediate placement is in the best interest of the children, specifically:(List efforts for each child specifically)

ORDER OF CUSTODY - CINC (MULTIPLE)
PAGE 3 OF 3

THE COURT FURTHER FINDS THAT the above named children [**should be**]
[**should continue to be**] placed in the custody of:

- The Secretary of Social and Rehabilitation Services, or
- _____

THE COURT FURTHER FINDS that this matter should be set for _____
hearing on the ____ day of _____, _____, at _____ : _____ A.M./ P.M.

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____
DOB ___/___/___ A ___male ___female
under the age of 18 years.

Case No. _____

Name _____
DOB ___/___/___ A ___male ___female
under the age of 18 years.

Case No. _____

Name _____
DOB ___/___/___ A ___male ___female
under the age of 18 years.

Case No. _____

**PERMANENCY HEARING ORDER
FOR CHILD IN NEED OF CARE**

Pursuant to K.S.A. 38-1565

(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

(Orders pertaining to more than one child include findings specific to each child listed in the caption.)

NOW on this ___ day of _____, _____, the above-captioned matters come on for a permanency hearing [to establish a permanency plan][for review of the plan for permanency, progress being made towards the goals of the plan and the viability of those goals].

The petitioner appears by _____, [Assistant] County/District Attorney. The children appear [in person and] [not in person, but] by the children's guardian ad litem, _____. The mother appears [not] [in person Pro se] [in person and through her attorney, _____] [not in person, but by and through her attorney, _____]. The [putative] father appears [not] [in person Pro se] [in person and by his attorney, _____] [not in person, but by his attorney, _____].

Other interested parties appearing are: _____

_____.

While not a party, SRS is present through _____
_____.

PERMANENCY HEARING ORDER - CINC

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THE COURT FINDS jurisdiction and venue are proper. All required notices have been given. All interested parties and any foster parents, pre-adoptive parents, and relatives providing care have been properly notified.

The Court having reviewed the file, received the evidence, and heard statements of counsel
FINDS:

1. _____ a. That the proposed permanency presented to the Court [**should**] [**should not**] be approved and adopted by the court as the plan for permanency in these matters.

_____ b. That the progress to achieve the goals of the permanency plan [**is**] [**is not**] adequate.

2. _____ a. Reasonable efforts [**have**] [**have not**] been made to accomplish the permanency goal of [**reintegration**] [**adoption**] [**permanent guardianship**] [**kinship placement**] [**other planned permanent living arrangement of (describe arrangement)**] specifically _____

_____ b. Reasonable efforts to reunify the child and the family are not required due to the following circumstances when reintegrations may not be a viable alternative as set out in K.S.A. 38-1563(h). _____

3. Continued out of home placement [**is**] [**is not**] necessary for the safety of (the name of the children should be inserted here with a description for each child) because _____

4. The children's needs [**are**] [**are not**] being adequately met.

5. The children are out of state placement, and such placement [**continues**] [**does not continue**] to be appropriate and in the best interests of the children.

PERMANENCY HEARING ORDER - CINC

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6. _____ a. Reintegration is no longer a viable alternative for (the name of the children should be inserted here with a separate paragraph for each child):

- _____ (1) The children are in a stable placement with a relative.
- _____ (2) Services set out in the case plan necessary for a safe return of the children have not been made available to the parent with whom reintegration was planned.
- _____ (3) Compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship is in the children's best interests.
- _____ (4) Either adoption or permanent guardianship might be in the best interests of the children and the [county] [district] attorney or the attorney's designee shall file a pleading to terminate parental rights or a pleading to establish a permanent guardianship within 30 days.
- _____ (5) Reunification, adoption, legal guardianship, permanent guardianship, and relative placement have been considered and the state has documented a compelling reason in support of another planned permanent living arrangement.

or

_____ b. Reintegration continues to be a viable alternative for (the name of the children should be inserted here with a separate paragraph for each child):

- _____ (1) The children should not be returned to the parent until further order of the court.
- _____ (2) The children may return home [immediately] [with a target date of _____ day of _____, _____,] [if the following conditions are met:

_____.]

- _____ (3) Within 30 days, a new plan for reintegration should be prepared and submitted to the Court with measurable goals, objectives and time frames.

PERMANENCY HEARING ORDER - CINC

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____ (4) That the previous orders of this Court [shall continue in full force and effect] [except as hereby modified] [are hereby rescinded and the following orders are hereby issued pursuant to K.S.A. 38-1563] :

____ a. _____

____ b. See Dispositional Order from this hearing.

IT IS FURTHER ORDERED that this matter is set for _____ hearing on the _____ day of _____, _____, at _____:_____ A.M./ P.M..

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

In the Matter of:

_____, Respondent Case No. _____
DOB ___/___/___ A ___ male ___ female
under the age of 18 years.

**PERMANENCY HEARING ORDER
FOR JUVENILE OFFENDER**

Pursuant to K.S.A. 38-1664

(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

NOW on this ___ day of _____, _____, the above-captioned matter comes on for a permanency hearing [to establish a permanency plan] [for review of the plan for permanency, progress being made towards the goals of the plan and the viability of those goals].

The complainant appears by _____, [Assistant] County/District Attorney. The juvenile appears [in person and] [not in person, but] by her/his attorney, _____ . The mother appears [not] [in person]. The father appears [not][in person]. Other interested parties appearing are: _____

While not a party, JJA is present through _____

THE COURT FINDS jurisdiction and venue are proper. All required notices have been given. All interested parties and any foster parents, pre-adoptive parents, and relatives providing care have been properly notified.

The Court having reviewed the file, received the evidence, and heard statements of counsel FINDS:

1. _____ a. That the permanency plan submitted [should] [should not] be approved and adopted by the Court.
_____ b. That the progress to achieve the goals of the permanency plan [is] [is not] adequate.

PERMANENCY HEARING ORDER - JO

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2. ____ a. Reasonable efforts have have not been made to accomplish the permanency goal of reintegration adoption permanent guardianship kinship placement other planned permanent living arrangement of (describe arrangement) specifically _____

____ b. Reasonable efforts to reunify the child and the family are not required due to the following circumstances when reintegration may not be a viable alternative as set out in K.S.A. 38-1664(a)(1). _____

3. Continued out of home placement is is not necessary for the safety of the juvenile and/or the community because _____

4. The juvenile's needs are are not being adequately met.

____ a. The juvenile is in out of state placement, and such placement continues does not continue to be appropriate and in the best interests of the juvenile.

____ b. The juvenile is 16 years of age or older and services needed to assist the juvenile to make transition from foster care to independent living are the following:

5. ____ a. Reintegration is no longer a viable alternative:

____ (1) The juvenile is in a stable placement with a relative.

____ (2) Services set out in the case plan necessary for a safe return of the juvenile have not been made available to the parent with whom reintegration was planned.

____ (3) Compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship is in the juvenile's best interests.

____ (4) Either adoption or permanent guardianship might be in the best interests of the juvenile and the county district attorney or the attorney's designee shall file a pleading to terminate parental rights or a pleading to establish a permanent guardianship within 30 days.

PERMANENCY HEARING ORDER - JO

___ (5) Reunification, adoption, legal guardianship, permanent guardianship and relative placement have been considered and the state has documented a compelling reason in support of another planned permanent living arrangement.

or

___ b. Reintegration continues to be a viable alternative:

___ (1) Out of home placement is recommended and the Commissioner shall not return the juvenile to the home from which removed without first notifying the court of the plan.

___ (2) The juvenile may return home [immediately] [with a target date of ___ day of _____, _____,] [if the following conditions are met:

_____.]

___ (3) Within 30 days a new plan for reintegration should be prepared and submitted to the court with measurable goals, objectives, and time frames.

___ (4) That the previous orders of this Court [shall continue in full force and effect][except as hereby modified] [are hereby rescinded and the following orders are hereby issued:

___ a. (a sentencing alternative pursuant to K.S.A. 38-1663)

_____].

(Choose either a. or b.)

___ b. See Sentencing Order from this hearing.

IT IS FURTHER ORDERED that this matter is set for _____ hearing on the ___ day of _____, _____, at _____ : _____ A.M./P.M..

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

In the Interest of:

Name _____
DOB ____/____/____ A ____ male ____ female
under the age of 18 years.

Case No. _____

ORDER OF CUSTODY

(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

On this ____ day of _____, 20__ this matter comes before the Court and the COURT
HEREBY FINDS THAT:

THIS IS AN ORDER :
(check one)

- Of Protective Custody pursuant to K.S.A. 38-1542 as amended.
- Of Temporary Custody pursuant to K.S.A. 38-1543 as amended.
- Pursuant to K.S.A. 38-1562 and K.S.A. 38-1563 as amended.

THE COURT FURTHER FINDS THAT:

- The Court has determined that reasonable efforts have been made and have failed to maintain the family and prevent the unnecessary removal of the child from the child's home as follows:

[OR]

- The Court has determined that an emergency exists which threatens the safety of the child and:

- that the assessment of the family is accurate, the agency actions were appropriate and it is reasonable to make no effort to maintain the child in the home because

ORDER OF CUSTODY - CINC

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- The Court has determined that reasonable efforts are not required because the parent has been found by a court to have (1) committed murder in the first degree, K.S.A. 21-3401, and amendments thereto, murder in the second degree, K.S.A. 21-3402, and amendments thereto, capital murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, and amendments thereto, or violated a law of another state which prohibits such murder or manslaughter of a child; or, (2) parent aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter of a child as provided in subsection (1); or, (3) parent committed a felony battery that resulted in bodily injury to the child or another child; or, (4) parent has subjected the child or another child to aggravated circumstances as defined in K.S.A. 38-1502(x), and amendments thereto; or, (5) parental rights of the parent to another child have been terminated involuntarily. (Set out specifically the facts relied upon)_____

THE COURT FURTHER FINDS THAT remaining in the home would be contrary to the welfare of the child and immediate placement is in the best interest of the child, specifically:

THE COURT FURTHER FINDS THAT the above named child [should be] [should continue to be] placed in the custody of:

- The Secretary of Social and Rehabilitation Services, or

THE COURT FURTHER FINDS that this matter should be set for _____ hearing on the ____ day of _____, _____, at _____ : _____ A.M./ P.M..

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

IN THE INTEREST OF

Name _____

Case No. _____

DOB ___ / ___ / ___ A ___ male ___ female

under the age of 18 years.

**PERMANENCY HEARING ORDER
FOR CHILD IN NEED OF CARE**

Pursuant to K.S.A. 38-1565

(CHECKED BOXES INDICATE THE FINDINGS OF THE COURT)

NOW on this ___ day of _____, _____, the above-captioned matter comes on for a permanency hearing [to establish a permanency plan][for review of the plan for permanency, progress being made towards the goals of the plan and the viability of those goals].

The petitioner appears by _____, [Assistant] County/District Attorney. The child appears [in person and] [not in person, but] by the child's guardian ad litem, _____. The mother appears [not] [in person Pro se] [in person and through her attorney, _____].

[not in person, but by and through her attorney, _____].

The [putative] father appears [not] [in person Pro se] [in person and by his attorney, _____] [not in person, but by his attorney, _____].

Other interested parties appearing are: _____

While not a party, SRS is present through _____.

Also present is/are _____

PERMANENCY HEARING ORDER - CINC

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THE COURT FINDS jurisdiction and venue are proper. All required notices have been given. All interested parties and any foster parents, pre-adoptive parents, and relatives providing care have been properly notified.

The Court having reviewed the file, received the evidence, and heard statements of counsel
FINDS:

1. ____ a. That the proposed permanency presented to the Court [**should**] [**should not**] be approved and adopted by the court as the plan for permanency in this matter.

____ b. That the progress to achieve the goals of the permanency plan [**is**] [**is not**] adequate.

2. ____ a. Reasonable efforts [**have**] [**have not**] been made to accomplish the permanency goal of [**reintegration**] [**adoption**] [**permanent guardianship**] [**kinship placement**] [**other planned permanent living arrangement of (describe arrangement)**] specifically _____

____ b. Reasonable efforts to reunify the child and the family are not required due to the following circumstances when reintegration may not be a viable alternative as set out in K.S.A. 38-1563(h). _____

3. Continued out of home placement [**is**] [**is not**] necessary for the child's safety because _____

4. The child's needs [**are**] [**are not**] being adequately met.

5. The child is out of state placement, and such placement [**continues**]

[**does not continue**] to be appropriate and in the best interests of the child.

PERMANENCY HEARING ORDER - CINC

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6. _____ a. Reintegration is no longer a viable alternative:

- _____ (1) The child is in a stable placement with a relative.
- _____ (2) Services set out in the case plan necessary for a safe return of the child have not been made available to the parent with whom reintegration was planned.
- _____ (3) Compelling reasons are documented in the case plan to support a finding that neither adoption nor permanent guardianship is in the child's best interests.
- _____ (4) Either adoption or permanent guardianship might be in the best interests of the child and the county] district] attorney or the attorney's designee shall file a pleading to terminate parental rights or a pleading to establish a permanent guardianship within 30 days.
- _____ (5) Reunification, adoption, legal guardianship, permanent guardianship, and relative placement have been considered and the state has documented a compelling reason in support of another planned permanent living arrangement.

or

_____ b. Reintegration continues to be a viable alternative:

- _____ (1) The child should not be returned to the parent until further order of the court.
- _____ (2) The child may return home immediately] with a target date of _____ day of _____, _____,]
 if the following conditions are met:

_____.]
- _____ (3) Within 30 days, a new plan for reintegration should be prepared and submitted to the court with measurable goals, objectives and time frames.

PERMANENCY HEARING ORDER - CINC

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___ (4) That the previous orders of this Court [shall continue in full force and effect][except as hereby modified] [are hereby rescinded and the following orders are hereby issued pursuant to K.S.A. 38-1563]:

___ a.

___ b. See Dispositional Order from this hearing.

IT IS FURTHER ORDERED that this matter is set for _____ hearing on the _____ day of _____, _____, at _____:_____ A.M./ P.M..

BY ORDER OF THE COURT THIS _____ day of _____, _____.

Judge of the District Court

Kansas Judicial Branch Response to the August 2000 Title IV-E Audit

September 13, 2000

Background

During the week of August 7, 2000, auditors from the federal Administration on Children and Families conducted an audit of IV-E cases in Kansas. The auditors found several cases were not eligible for IV-E reimbursement because of errors, including errors in the court records. This report is intended to describe the problem and to propose solutions in preparation for the second audit, which is expected to occur in December 2001.

Several factors important in the determination of Kansas' compliance with the federal regulations relative to the functions of the court are noted below.

- This audit was limited to cases claimed by SRS to be eligible for reimbursement through Title IV-E funds.
- This audit included both Child in Need of Care (CINC) and juvenile offender cases.
- New federal regulations were effective March 27, 2000. All of the records audited were reviewed against regulations effective prior to the March 27, 2000, implementation of the new regulations.
- Judges must make findings of reasonable efforts to prevent the removal of a child from his or her home, to reintegrate the child back into his or her home, and to make and finalize permanency plans in a timely manner when reunification is not possible.
- In cases where the child is placed in custody, the court must make a finding that returning the child home is contrary to the welfare of the child, or that placement is in the best interests of the child.
- Permanency hearings are required prior to the end of the 12-month period following the child's removal from his or her home.

During their August 2000 audit, federal auditors examined 88 cases. Although the figures are preliminary and unofficial, the findings of the auditors indicated two types of errors were found in court documents. First, several cases were found in which judges did not make the required "contrary to the welfare of the child" findings. Second, "reasonable efforts" to eliminate the need for removal, to reunite the family, or to establish a permanency plan were not made in some cases. Either of these errors would result in a child not being eligible for IV-E funds.

Federal regulations allowed up to nine cases to be found not eligible before Kansas could be found out of compliance and subject to a corrective action period. Twenty-nine cases of the 88 cases examined were found to be ineligible.

Journal entry and order errors were not the sole reason Kansas was found to be out of compliance with federal IV-E regulations. Approximately one half of the errors can be attributed to SRS, the Department of Health and Environment, or the Juvenile Justice Authority. Journal entry errors, however, could have a more significant impact

on the state's ability to comply with future audits and on the state's foster care budget. With certain limited exceptions, federal law prohibits a judge from going back and correcting identified journal entry and order errors. No such prohibition exists for Executive Branch agency actions. For this reason, journal entry and order errors made at any point in the life of the case could render a child ineligible for IV-E funding.

Determinations of eligibility and filing for IV-E reimbursement are clearly the responsibility of SRS. The Judicial Branch has no role in the actual determination of a child's eligibility or the submission of claims. The Judicial Branch does, however, share a vital role in making the appropriate findings that enable SRS to make the necessary eligibility determinations. To that end, the Office of Judicial Administration has provided training to judges on the Adoption and Safe Families Act (ASFA) during past Judicial Conferences. In May 2000, all chief judges and judges hearing juvenile offender and CINC cases were convened specifically to inform them of the new federal regulations. In addition, a letter was distributed to all chief judges and judges hearing juvenile offender and CINC cases informing them of the changes in the federal regulations.

SRS will receive the official report from the Administration for Children and Families by mid-September 2000. SRS will then have 90 days to respond to the findings presented in the report and to develop a corrective action plan. The official report should identify districts in which problems and errors were found. It should be noted that not all districts were included in the audit. Kansas will then have one year to implement the corrective action plan in preparation for a second audit. This second audit will be at least as comprehensive as the audit just completed. Failure of that audit would likely result in significant financial penalties.

According to the preliminary report, 15 errors were attributed to court records. The fact that virtually none of these can be corrected places the State of Kansas and the Kansas Judicial Branch in a very difficult position. Unless the 150 cases pulled during the December 2001 audit are cases filed after May 1, 2000, errors which exist in court records today are likely to be audit exceptions that could cause Kansas to be found out of compliance during this second audit, regardless of any actions the Judicial Branch might take or any actions that might be taken by Executive Branch agencies. This does not absolve the Judicial Branch from doing everything possible to establish the highest quality judicial practices. However, it is important to be realistic about the continued impact of flawed orders on open IV-E cases. To their credit, SRS and JJA are considering the termination of efforts to draw federal funds on all cases identified which, for any reason, do not meet eligibility requirements for IV-E reimbursement.

Finally, the corrective action period of one year may be somewhat misleading. While it is true the state has one year to implement the plan, the audit will draw from IV-E cases which were open during the defined time period (*i.e.*, between October 1, 2001, and March 1, 2001). Cases open during that period, however, will likely include cases that were filed several years ago. For cases open prior to March 27, 2000, regulations in effect at that time will be used to evaluate the eligibility status of those cases.

Two Core Recommendations

Two core endeavors are central to bringing the district courts into compliance with ASFA before the next audit: (1) an internal review of court documents; and (2) model orders and journal entries. Other recommendations for the Judicial Branch are described in a later section of this report. SRS and JJA are also preparing recommendations to correct errors in their processes.

1. Internal Review of Court Records

A team comprised of Office of Judicial Administration (OJA) staff and district court administrators will review a random sample of journal entries and orders in child in need of care and juvenile offender cases. Cases from each judge hearing CINC and juvenile offender cases will be reviewed. Two to three people, including one court administrator and one OJA representative, will review records in each district.

The reviewers will sample 10% to 15% of each district's relevant caseload. All open child in need of care and juvenile offender cases in the district will be used as the pool from which a sample of cases are drawn. A staff member from the Family and Children Unit of the OJA will lead the review.

The review will ensure compliance and will provide feedback to individual judges. The results of the full review will be provided to the Kansas Supreme Court.

Although current resources do not allow a review of all existing open cases to ensure that journal entries and orders include the appropriate language, it is possible to review open cases as they appear for permanency hearings and other reviews. If an existing journal entry or order is identified as not including language in compliance with the appropriate federal regulation, that journal entry or order must be brought to the judge's attention for a possible *nunc pro tunc* order. The abbreviated report from the federal Administration for Children and Families issued following the recent federal audit states that a *nunc pro tunc* order "is acceptable if there is accompanying contemporaneous documentation to support the determination." However, *nunc pro tunc* orders are not acceptable to correct orders issued on or after March 27, 2000. The audit report also states that a single *nunc pro tunc* order cannot be used to replace multiple journal entries or orders.

2. Model Orders and Journal Entries

Model orders and journal entries that meet the requirements of ASFA will be developed. The Custody Order for First Removal would be used at any point in the life of a case at which a child is removed from his or her home. The journal entry for the hearing will reflect all other aspects of the hearing and further orders of the court.

Resources and Funding

Resources are available to begin reviewing cases. Our best resources are the judges who understand and comply with the federal regulations.

The goal of the corrective actions recommended in this report is to maximize the number of child in need of care and juvenile offender cases eligible for IV-E reimbursement through compliance with the Adoption and Safe Families Act. While certain aspects of these recommendations further the goal of establishing good child welfare practices in the court, the primary goal is to retain the integrity of the IV-E funding for the State of Kansas. The following additional recommendations are intended to meet that goal.

- Assess the accuracy of the auditors' determinations in those cases found to be out of compliance with federal regulations.
- Create a bench tool to be used as a prompt for judges hearing CINC, juvenile offender, and domestic cases in which a child may be removed from the custody of his or her parents.
- Offer technical assistance to judges within their judicial districts and at regional meetings.

Consequences and Risks

Substantial federal funding is at risk if judges fail to meet regulations required by the Adoption and Safe Families Act. Regardless of who is responsible for the loss of federal funds supporting the Kansas foster care system, the impact on critical services available to the children of Kansas would be significant. With foster care resources already at or near capacity, the Judicial Branch must do everything possible to ensure that orders and journal entries are in compliance with ASFA.