
HOUSE BILL No. 2300

By Representatives F. Miller, Huy, Kauffman, P. Long, McCreary,
Judy Morrison and Patterson

2-12

10 AN ACT concerning children in need of care; amending K.S.A. 38-1501,
11 38-1542, 38-1543, 38-1559 and 38-1563 and K.S.A. 2002 Supp. 38-
12 1502 and repealing the existing sections.

13
14 WHEREAS, It is the intent of the legislature for the department of
15 social and rehabilitation services to fully utilize family preservation serv-
16 ices and to remove the child from the home as an action of last resort:
17 Now, therefore,

18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. (a) Subject to appropriations therefor, the depart-
20 ment of social and rehabilitation services shall create a program whereby
21 indigent families involved in child in need of care proceedings may re-
22 ceive daycare vouchers for parents whose children remain in the home
23 to use when attending court hearings, meetings and court ordered coun-
24 seling sessions. The department of social and rehabilitation services shall
25 maintain a list of approved licensed child care facilities.

26 (b) The secretary of social and rehabilitation services shall adopt rules
27 and regulations to implement the provisions of this section.

28 (c) Funding for such program shall be diverted from current depart-
29 ment of social and rehabilitation services appropriations as a result of
30 savings derived from fewer children placed in foster care.

31 (d) This section shall be part of and supplemental to the Kansas code
32 for care of children.

33 New Sec. 2. (a) If a child is taken into custody and not forthwith
34 delivered to the custody of the child's parent pursuant to K.S.A. 38-1528,
35 and amendments thereto, within 24 hours from the time the child was
36 taken into custody, the parents shall receive a written document outlining
37 information regarding the child. Such information shall include, but not
38 be limited to:

- 39 (1) The name of the officer or person taking the child into custody;
40 (2) The date and time of the child being taken into custody;
41 (3) the location of the child when the child was taken into custody;
42 (4) the names of persons who were present at the time the child was
43 taken into custody;

- 1 (5) why the child was taken into custody;
2 (6) the name of the alleged perpetrator, if known;
3 (7) a name and telephone number of a person whom the parents can
4 contact for information concerning the child;
5 (8) the immediate action to be taken by the department of social and
6 rehabilitation services; and
7 (9) the rights the parents have concerning such parent's child being
8 taken into custody.

9 (b) Such written document shall be prepared and signed by an em-
10 ployee of the department of social and rehabilitation services and per-
11 sonally served upon at least one of the parents or custodial guardian. If
12 such parent or guardian cannot be located, the document shall be mailed
13 to such parent or guardian by restricted mail.

14 (c) The secretary of social and rehabilitation services shall adopt rules
15 and regulations to implement the provisions of this section.

16 (d) This section shall be part of and supplemental to the Kansas code
17 for care of children.

18 New Sec. 3. (a) Except in protective custody hearings and temporary
19 custody hearings, the parent shall be notified of hearings not less than 10
20 days prior to a hearing pursuant to this code. Such notice shall be by
21 restricted mail service. If the judge announced the date of the next hear-
22 ing in court, such notice is not required.

23 (b) This section shall be part of and supplemental to the Kansas code
24 for care of children.

25 New Sec. 4. (a) The department of social and rehabilitation services
26 shall not place the name of a person on the child abuse and neglect central
27 registry unless such person is a substantiated perpetrator.

28 (b) This section shall be part of and supplemental to the Kansas code
29 for care of children.

30 Sec. 5. K.S.A. 38-1501 is hereby amended to read as follows: 38-
31 1501. K.S.A. 38-1501 through 38-1593 shall be known as and may be
32 cited as the Kansas code for care of children and shall be liberally con-
33 strued, to the end that each child within its provisions shall receive the
34 care, custody, guidance, control and discipline, ~~preferably in the child's~~
35 ~~own home, as will best serve the child's welfare and the best interests of~~
36 ~~the state~~ *with the primary objective being the preservation of the family.*
37 All proceedings, orders, judgments and decrees shall be deemed to have
38 been taken and done in the exercise of the parental power of the state.
39 Proceedings pursuant to this code shall be civil in nature.

40 Sec. 6. K.S.A. 2002 Supp. 38-1502 is hereby amended to read as
41 follows: 38-1502. As used in this code, unless the context otherwise
42 indicates:

43 (a) "Child in need of care" means a person less than 18 years of age

1 who:

2 (1) Is without adequate parental care, control or subsistence and the
3 condition is not due solely to the lack of financial means of the child's
4 parents or other custodian;

5 (2) is without the care or control necessary for the child's physical,
6 mental or emotional health;

7 (3) has been physically, mentally or emotionally abused or neglected
8 or sexually abused;

9 (4) has been placed for care or adoption in violation of law;

10 (5) has been abandoned or does not have a known living parent;

11 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
12 and amendments thereto;

13 (7) except in the case of a violation of K.S.A. 41-727, subsection (j)
14 of K.S.A. 74-8810 or subsection (m) or (n) of K.S.A. 79-3321, and amend-
15 ments thereto, or, except as provided in subsection (a)(12) of K.S.A. 21-
16 4204a and amendments thereto, does an act which, when committed by
17 a person under 18 years of age, is prohibited by state law, city ordinance
18 or county resolution but which is not prohibited when done by an adult;

19 (8) while less than 10 years of age, commits any act which if done by
20 an adult would constitute the commission of a felony or misdemeanor as
21 defined by K.S.A. 21-3105 and amendments thereto;

22 (9) is willfully and voluntarily absent from the child's home without
23 the consent of the child's parent or other custodian;

24 (10) is willfully and voluntarily absent at least a second time from a
25 court ordered or designated placement, or a placement pursuant to court
26 order, if the absence is without the consent of the person with whom the
27 child is placed or, if the child is placed in a facility, without the consent
28 of the person in charge of such facility or such person's designee;

29 (11) has been residing in the same residence with a sibling or another
30 person under 18 years of age, who has been physically, mentally or emo-
31 tionally abused or neglected, or sexually abused; or

32 (12) while less than 10 years of age commits the offense defined in
33 K.S.A. 21-4204a and amendments thereto.

34 (b) "Physical, mental or emotional abuse" means the infliction of
35 physical, mental or emotional injury or the causing of a deterioration of
36 a child and may include, but shall not be limited to, maltreatment or
37 exploiting a child to the extent that the child's health or emotional well-
38 being is endangered.

39 (c) "Sexual abuse" means any act committed with a child which is
40 described in article 35, chapter 21 of the Kansas Statutes Annotated and
41 those acts described in K.S.A. 21-3602 or 21-3603, and amendments
42 thereto.

43 (d) "Parent," when used in relation to a child or children, includes a

1 guardian, conservator and every person who is by law liable to maintain,
2 care for or support the child.

3 (e) “Interested party” means the state, the petitioner, the child, any
4 parent, any grandparent, and any person found to be an interested party
5 pursuant to K.S.A. 38-1541 and amendments thereto.

6 (f) “Law enforcement officer” means any person who by virtue of
7 office or public employment is vested by law with a duty to maintain
8 public order or to make arrests for crimes, whether that duty extends to
9 all crimes or is limited to specific crimes.

10 (g) “Youth residential facility” means any home, foster home or struc-
11 ture which provides 24-hour-a-day care for children and which is licensed
12 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

13 (h) “Shelter facility” means any public or private facility or home
14 other than a juvenile detention facility that may be used in accordance
15 with this code for the purpose of providing either temporary placement
16 for the care of children in need of care prior to the issuance of a dispos-
17 itional order or longer term care under a dispositional order.

18 (i) “Juvenile detention facility” means any secure public or private
19 facility used for the lawful custody of accused or adjudicated juvenile
20 offenders which must not be a jail.

21 (j) “Adult correction facility” means any public or private facility, se-
22 cure or nonsecure, which is used for the lawful custody of accused or
23 convicted adult criminal offenders.

24 (k) “Secure facility” means a facility which is operated or structured
25 so as to ensure that all entrances and exits from the facility are under the
26 exclusive control of the staff of the facility, whether or not the person
27 being detained has freedom of movement within the perimeters of the
28 facility, or which relies on locked rooms and buildings, fences or physical
29 restraint in order to control behavior of its residents. No secure facility
30 shall be in a city or county jail.

31 (l) “Ward of the court” means a child over whom the court has ac-
32 quired jurisdiction by the filing of a petition pursuant to this code and
33 who continues subject to that jurisdiction until the petition is dismissed
34 or the child is discharged as provided in K.S.A. 38-1503 and amendments
35 thereto.

36 (m) “Custody,” whether temporary, protective or legal, means the
37 status created by court order or statute which vests in a custodian,
38 whether an individual or an agency, the right to physical possession of
39 the child and the right to determine placement of the child, subject to
40 restrictions placed by the court.

41 (n) “Placement” means the designation by the individual or agency
42 having custody of where and with whom the child will live.

43 (o) “Secretary” means the secretary of social and rehabilitation

1 services.

2 (p) “Relative” means a person related by blood, marriage or adoption
3 but, when referring to a relative of a child’s parent, does not include the
4 child’s other parent.

5 (q) “Court-appointed special advocate” means a responsible adult
6 other than an attorney guardian *ad litem* who is appointed by the court
7 to represent the best interests of a child, as provided in K.S.A. 38-1505a
8 and amendments thereto, in a proceeding pursuant to this code.

9 (r) “Multidisciplinary team” means a group of persons, appointed by
10 the court or by the state department of social and rehabilitation services
11 under K.S.A. 38-1523a and amendments thereto, which has knowledge
12 of the circumstances of a child in need of care. A multidisciplinary team
13 may serve as a community services team.

14 (s) “Jail” means:

15 (1) An adult jail or lockup; or

16 (2) a facility in the same building or on the same grounds as an adult
17 jail or lockup, unless the facility meets all applicable standards and licen-
18 sure requirements under law and there is (A) total separation of the ju-
19 venile and adult facility spatial areas such that there could be no haphaz-
20 ard or accidental contact between juvenile and adult residents in the
21 respective facilities; (B) total separation in all juvenile and adult program
22 activities within the facilities, including recreation, education, counseling,
23 health care, dining, sleeping, and general living activities; and (C) separate
24 juvenile and adult staff, including management, security staff and direct
25 care staff such as recreational, educational and counseling.

26 (t) “Kinship care” means the placement of a child in the home of the
27 child’s relative or in the home of another adult with whom the child or
28 the child’s parent already has a close emotional attachment.

29 (u) “Juvenile intake and assessment worker” means a responsible
30 adult authorized to perform intake and assessment services as part of the
31 intake and assessment system established pursuant to K.S.A. 75-7023, and
32 amendments thereto.

33 (v) “Abandon” means to forsake, desert or cease providing care for
34 the child without making appropriate provisions for substitute care.

35 (w) “Permanent guardianship” means a judicially created relationship
36 between child and caretaker which is intended to be permanent and self-
37 sustaining without ongoing state oversight or intervention by the secre-
38 tary. The permanent guardian stands in loco parentis and exercises all the
39 rights and responsibilities of a parent. A permanent guardian may be
40 appointed after termination of parental rights or without termination of
41 parental rights, if the parent consents and agrees to the appointment of
42 a permanent guardian. Upon appointment of a permanent guardian, the
43 child shall be discharged from the custody of the secretary.

1 (x) “Aggravated circumstances” means the abandonment, torture,
2 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

3 (y) “Permanency hearing” means a notice and opportunity to be
4 heard is provided to interested parties, foster parents, preadoptive parents
5 or relatives providing care for the child. The court, after consideration of
6 the evidence, shall determine whether progress toward the case plan goal
7 is adequate or reintegration is a viable alternative, or if the case should
8 be referred to the county or district attorney for filing of a petition to
9 terminate parental rights or to appoint a permanent guardian.

10 (z) “Extended out of home placement” means a child has been in the
11 custody of the secretary and placed with neither parent for 15 of the most
12 recent 22 months beginning 60 days after the date at which a child in the
13 custody of the secretary was removed from the home.

14 (aa) “Educational institution” means all schools at the elementary and
15 secondary levels.

16 (bb) “Educator” means any administrator, teacher or other profes-
17 sional or paraprofessional employee of an educational institution who has
18 exposure to a pupil specified in subsection (a) of K.S.A. 72-89b03 and
19 amendments thereto.

20 (cc) “Neglect” means acts or omissions by a parent, guardian or per-
21 son responsible for the care of a child resulting in harm to a child or
22 presenting a *strong* likelihood of harm and the acts or omissions are not
23 due solely to the lack of financial means of the child’s parents or other
24 custodian. Neglect may include but shall not be limited to:

25 (1) Failure to provide the child with food, clothing or shelter neces-
26 sary to sustain the life or health of the child. *A house that does not create*
27 *a health hazard shall not constitute neglect;*

28 (2) failure to provide adequate supervision of a child or to remove a
29 child from a situation which requires judgment or actions beyond the
30 child’s level of maturity, physical condition or mental abilities and that
31 ~~results~~ *may result* in bodily injury or a *strong* likelihood of harm to the
32 child; or

33 (3) failure to use resources available to treat a diagnosed medical
34 condition if such treatment will make a child substantially more com-
35 fortable, reduce pain and suffering, correct or substantially diminish a
36 crippling condition from worsening. A parent legitimately practicing re-
37 ligious beliefs who does not provide specified medical treatment for a
38 child because of religious beliefs shall not for that reason be considered
39 a negligent parent; however, this exception shall not preclude a court from
40 entering an order pursuant to subsection (a)(2) of K.S.A. 38-1513, and
41 amendments thereto.

42 (dd) “Community services team” means a group of persons, ap-
43 pointed by the court or by the state department of social and rehabilita-

1 tion services for the purpose of assessing the needs of a child who is
2 alleged to be a child in need of care.

3 (ee) “*Substantiated abuse or neglect*” means that a petition alleging
4 abuse or neglect has been confirmed by a court order pursuant to the
5 Kansas code for care of children by clear and convincing evidence.

6 (ff) “*Substantiated perpetrator*” means a person who caused or cre-
7 ated the situation that resulted in the child being adjudicated as a child
8 in need of care or has been determined by a judgment of the court pur-
9 suant to the Kansas code for care of children by clear and convincing
10 evidence to have committed a substantiated act of abuse or neglect.

11 (gg) “*Child abuse and neglect central registry*” means a list main-
12 tained by the department of social and rehabilitation services of persons
13 who are substantiated perpetrators of child abuse, neglect or sexual abuse
14 by court order.

15 Sec. 7. K.S.A. 38-1542 is hereby amended to read as follows: 38-
16 1542. (a) The court upon verified application may issue *ex parte* an order
17 directing that a child be held in protective custody and, if the child has
18 not been taken into custody, an order directing that the child be taken
19 into custody. The application shall state for each child:

20 (1) The applicant’s belief that the child is a child in need of care and
21 that allowing the child to remain in the home is contrary to the welfare
22 of the child or placement is in the best interest of the child and that the
23 child is likely to sustain harm if not immediately afforded protective cus-
24 tody; and

25 (2) the facts which are relied upon to support the application, in-
26 cluding efforts known to the applicant, to maintain the family unit and
27 prevent the unnecessary removal of the child from the child’s home, or
28 the specific facts supporting that an emergency exists which threatens the
29 safety of the child.

30 (b) (1) The order of protective custody may be issued only after the
31 court has determined there is probable cause to believe the allegations
32 in the application are true. The order shall remain in effect until the
33 temporary custody hearing provided for in K.S.A. 38-1543, and amend-
34 ments thereto, unless earlier rescinded by the court.

35 (2) No child shall be held in protective custody for more than 72
36 hours, excluding Saturdays, Sundays and legal holidays, unless within the
37 72-hour period a determination is made as to the necessity for temporary
38 custody in a temporary custody hearing. Nothing in this subsection (b)(2)
39 shall be construed to mean that the child must remain in protective cus-
40 tody for 72 hours.

41 (c) Whenever the court determines the necessity for an order of pro-
42 tective custody, the court ~~may place~~ shall first consider placing the child
43 in the protective custody of: ~~(1)~~ a parent or other person having custody

1 of the child and may enter a restraining order pursuant to subsection (e);
2 ~~(2) a. If parental custody is not a viable alternative, the court shall place~~
3 ~~the child in the protective custody of the child's grandparents, aunts,~~
4 ~~uncles, siblings or cousins. If the preceding placements are not a viable~~
5 ~~alternative, the court may place the child in the protective custody of: (1)~~
6 A person, other than the parent or other person having custody or relative,
7 who shall not be required to be licensed under article 5 of chapter 65 of
8 the Kansas Statutes Annotated, and amendments thereto; ~~(3) (2) a youth~~
9 residential facility; or ~~(4) (3) the secretary if the child is alleged to be a~~
10 child in need of care the court may award custody to the secretary. How-
11 ever, if the secretary presents the court with a plan to provide services to
12 a child or family which the court finds will assure the safety of the child,
13 the court may only place the child in the protective custody of the sec-
14 retary until the court finds the services are in place. The court shall have
15 the authority to require any person or entity agreeing to participate in
16 the plan to perform as set out in the plan. When the child is placed in
17 the protective custody of the secretary, the secretary shall have the dis-
18 cretionary authority to place the child with a parent or to make other
19 suitable placement for the child. When circumstances require, a child in
20 protective custody may be placed in a juvenile detention facility or other
21 secure facility pursuant to an order of protective custody for not to exceed
22 24 hours, excluding Saturdays, Sundays and legal holidays.

23 (d) The order of protective custody shall be served on the child's
24 parents and any other person having legal custody of the child. The order
25 shall prohibit all parties from removing the child from the court's juris-
26 diction without the court's permission.

27 (e) If the court issues an order of protective custody, the court may
28 also enter an order restraining any alleged perpetrator of physical, sexual,
29 mental or emotional abuse of the child from residing in the child's home;
30 visiting, contacting, harassing or intimidating the child, other family mem-
31 ber or witness; or attempting to visit, contact, harass or intimidate the
32 child, other family member or witness. Such restraining order shall be
33 served on any alleged perpetrator to whom the order is directed.

34 (f) The court shall not enter an order removing a child from the
35 custody of a parent pursuant to this section unless the court first finds
36 from evidence presented by the petitioner that reasonable efforts have
37 been made to maintain the family unit and prevent the unnecessary re-
38 moval of the child from the child's home or that an emergency exists
39 which threatens the safety of the child and that remaining in the home is
40 contrary to the welfare of the child or that immediate placement is in the
41 best interest of the child. *If a parent or parents refuse to participate in*
42 *family preservation, such child or children may be removed from the*
43 *home. Family preservation services need not be utilized if there is evidence*

1 of physical abandonment, physical abuse, sexual abuse or when a parent
 2 has been convicted of murder in the first degree, K.S.A. 21-3401 and
 3 amendments thereto, murder in the second degree, K.S.A. 21-3402 and
 4 amendments thereto, capital murder, K.S.A. 21-3439 and amendments
 5 thereto, voluntary manslaughter, K.S.A. 21-3403 and amendments
 6 thereto, or violated a law of another state which prohibits such murder
 7 or manslaughter of the child's sibling. Such findings shall be included in
 8 any order entered by the court. If the child is placed in the custody of
 9 the secretary, the court shall provide the secretary with a written copy of
 10 any orders entered for the purpose of documenting these orders upon
 11 making the order.

12 Sec. 8. K.S.A. 38-1543 is hereby amended to read as follows: 38-
 13 1543. (a) Upon notice and hearing, the court may issue an order directing
 14 who shall have temporary custody and may modify the order during the
 15 pendency of the proceedings as will best serve the child's welfare.

16 (b) A hearing pursuant to this section shall be held within 72 hours,
 17 excluding Saturdays, Sundays and legal holidays, following a child having
 18 been taken into protective custody.

19 (c) Whenever it is determined that a temporary custody hearing is
 20 required, the court shall immediately set the time and place for the hear-
 21 ing. Notice of a temporary custody hearing shall be in substantially the
 22 following form:

(Name of Court)

(Caption of Case)

NOTICE OF TEMPORARY CUSTODY HEARING

TO:

(Names)

(Relationship)

(Addresses)

On _____, _____, (year), at _____ o'clock _____m.

(day) (date)

the court will conduct a hearing at _____ to determine if the above named child
 or children should be in the temporary custody of some person or agency other than the
 parent or other person having legal custody prior to the hearing on the petition filed in the
 above captioned case. The court may order one or both parents to pay child support.

_____, an attorney, has been appointed as guardian *ad litem* for the child or
 children. Each parent or other legal custodian has the right to appear and be heard person-
 ally, either with or without an attorney. An attorney will be appointed for a parent who can
 show that the parent is not financially able to hire one.

Date _____, (year)

Clerk of the District Court

by _____

(Seal)

REPORT OF SERVICE

I certify that I have delivered a true copy of the above notice to the persons above named in the manner and at the times indicated below:

Name	Location of Service (other than above)	Manner of Service	Date	Time
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Date Returned _____, ____ (year)

(Signature)

(Title)

(d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay.

(e) Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice in substantially the following form:

(Name of Court)

(Caption of Case)

CERTIFICATE OF ORAL NOTICE OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at _____ o'clock ____m. on _____, ____ (year), to the persons listed, in the manner and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication (in person or telephone)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I advised each of the above persons that:

- (1) The hearing is to determine if the above child or children should be in the temporary custody of a person or agency other than a parent;
- (2) the court will appoint an attorney to serve as guardian *ad litem* for the child or children named above;
- (3) each parent or legal custodian has the right to appear and be heard personally either with or without an attorney;

- 1 (4) an attorney will be appointed for a parent who can show that the parent is not
- 2 financially able to hire an attorney; and
- 3 (5) the court may order one or both parents to pay child support.

4 _____
 5 (Signature)

6 _____
 7 (Name Printed)

8 _____
 9 (Title)

10 (f) The court may enter an order of temporary custody after deter-
 11 mining that: (1) The child is dangerous to self or to others; (2) the child
 12 is not likely to be available within the jurisdiction of the court for future
 13 proceedings; or (3) the health or welfare of the child may be endangered
 14 without further care.

15 (g) Whenever the court determines the necessity for an order of tem-
 16 porary custody the court ~~may place~~ *shall first consider placing* the child
 17 in the temporary custody of: ~~(1)~~ a parent or other person having custody
 18 of the child and may enter a restraining order pursuant to subsection (h);
 19 ~~(2)~~ *a. If parental custody is not a viable alternative, the court shall place*
 20 *the child in the protective custody of the child's grandparents, aunts,*
 21 *uncles, siblings or cousins. If the preceding placements are not a viable*
 22 *alternative, the court may place the child in the protective custody of: (1)*
 23 *A person, other than the parent or other person having custody or relative,*
 24 *who shall not be required to be licensed under article 5 of chapter 65 of*
 25 *the Kansas Statutes Annotated, and amendments thereto; ~~(3)~~ (2) a youth*
 26 *residential facility; or ~~(4)~~ (3) the secretary if the child is alleged to be a*
 27 *child in need of care, the court may award custody to the secretary. How-*
 28 *ever, if the secretary presents the court with a plan to provide services to*
 29 *a child or family which the court finds will assure the safety of the child,*
 30 *the court may only place the child in the temporary custody of the sec-*
 31 *retary until the court finds the services are in place. The court shall have*
 32 *the authority to require any person or entity agreeing to participate in*
 33 *the plan to perform as set out in the plan. When the child is placed in*
 34 *the temporary custody of the secretary, the secretary shall have the dis-*
 35 *cretionary authority to place the child with a parent or to make other*
 36 *suitable placement for the child. When circumstances require, a child*
 37 *may be placed in a juvenile detention facility or other secure facility, but*
 38 *the total amount of time that the child may be held in such facility under*
 39 *this section and K.S.A. 38-1542 and amendments thereto shall not exceed*
 40 *24 hours, excluding Saturdays, Sundays and legal holidays. The order of*
 41 *temporary custody shall remain in effect until modified or rescinded by*
 42 *the court or a disposition order is entered but not exceeding 60 days,*
 43 *unless good cause is shown and stated on the record.*

1 (h) If the court issues an order of temporary custody, the court may
2 enter an order restraining any alleged perpetrator of physical, sexual,
3 mental or emotional abuse of the child from residing in the child's home;
4 visiting, contacting, harassing or intimidating the child; or attempting to
5 visit, contact, harass or intimidate the child.

6 (i) The court shall not enter an order removing a child from the cus-
7 tody of a parent pursuant to this section unless the court first finds from
8 evidence presented by the petitioner that reasonable efforts have been
9 made to maintain the family unit and prevent the unnecessary removal
10 of the child from the child's home or that an emergency exists which
11 threatens the safety of the child and that remaining in the home is con-
12 trary to the welfare of the child or that placement is in the best interest
13 of the child. Such findings shall be included in any order entered by the
14 court. *If a parent or parents refuse to participate in family preservation,*
15 *such child or children may be removed from the home. Family preser-*
16 *vation services need not be utilized if there is evidence of physical aban-*
17 *donment, physical abuse, sexual abuse or when a parent has been con-*
18 *victed of murder in the first degree, K.S.A. 21-3401 and amendments*
19 *thereto, murder in the second degree, K.S.A. 21-3402 and amendments*
20 *thereto, capital murder, K.S.A. 21-3439 and amendments thereto, vol-*
21 *untary manslaughter, K.S.A. 21-3403 and amendments thereto, or vio-*
22 *lated a law of another state which prohibits such murder or manslaughter*
23 *of the child's sibling. If the child is placed in the custody of the secretary,*
24 *the court shall provide the secretary with a written copy of any orders*
25 *entered for the purpose of documenting these orders upon making the*
26 *order.*

27 Sec. 9. K.S.A. 38-1559 is hereby amended to read as follows: 38-
28 1559. (a) Before placement of a child with a person other than the child's
29 parent pursuant to this code, the secretary or a representative of the
30 secretary ~~may~~ shall convene a conference of the child's grandparents,
31 aunts, uncles, siblings, cousins and other relatives determined by the sec-
32 retary or the secretary's representative to have a potential interest in de-
33 termining a placement which is in the best interests of the child. The
34 secretary or the secretary's representative shall provide for the child's
35 relatives to be given any information relevant to the determination of the
36 placement of the child, including the needs of the child and any other
37 information that would be helpful in making a placement in the best
38 interests of the child. After presentation of the information, the relatives
39 of the child shall be permitted to discuss and decide, outside the presence
40 of any other persons, the family member or members with whom it would
41 be in the child's best interest to be placed. The relatives shall make their
42 recommendation to the secretary or the secretary's representative. Unless
43 the secretary determines that there is good cause to place the child with

1 a person other than the relative recommended by the child's relatives,
2 the child shall be placed in accordance with the recommendations of the
3 relatives.

4 (b) Before placement of a child with a person other than the child's
5 parent pursuant to this code, the court or a court services officer at the
6 direction of the court ~~may~~ *shall* convene a conference of the child's grand-
7 parents, aunts, uncles, siblings, cousins and other relatives determined by
8 the court or court services officer to have a potential interest in deter-
9 mining a placement which is in the best interests of the child. The court
10 or the court services officer shall provide for the child's relatives to be
11 given any information relevant to the determination of the placement of
12 the child, including the needs of the child and any other information that
13 would be helpful in making a placement in the best interests of the child.
14 After presentation of the information, the relatives of the child shall be
15 permitted to discuss and decide, outside the presence of any other per-
16 sons, the family member or members with whom it would be in the child's
17 best interest to be placed. The relatives shall make their recommendation
18 to the court or court services officer. Unless the court determines that
19 there is good cause to place the child with a person other than the relative
20 recommended by the child's relatives, the child shall be placed in ac-
21 cordance with the recommendations of the relatives.

22 (c) A person participating in a conference pursuant to this section
23 shall have immunity from any civil liability that might otherwise be in-
24 curred or imposed as a result of the person's participation.

25 (d) This section shall be part of and supplemental to the Kansas code
26 for care of children.

27 Sec. 10. K.S.A. 38-1563 is hereby amended to read as follows: 38-
28 1563. (a) After consideration of any evidence offered relating to disposi-
29 tion, the court may retain jurisdiction and place the child in the custody
30 of the child's parent subject to terms and conditions which the court
31 prescribes to assure the proper care and protection of the child, including
32 supervision of the child and the parent by a court services officer, or may
33 order the child and the parent to participate in programs operated by the
34 secretary or another appropriate individual or agency. The terms and
35 conditions may require any special treatment or care which the child
36 needs for the child's physical, mental or emotional health.

37 (b) The duration of any period of supervision or other terms or con-
38 ditions shall be for an initial period of no more than 12 months. The
39 court, at the expiration of that period, upon a hearing and for good cause
40 shown, may make successive extensions of the supervision or other terms
41 or conditions for up to 12 months at a time.

42 (c) The court may order the child and the parents of any child who
43 has been adjudged a child in need of care to attend counseling sessions

1 as the court directs. The expense of the counseling may be assessed as
2 an expense in the case. No mental health center shall charge a greater
3 fee for court-ordered counseling than the center would have charged to
4 the person receiving counseling if the person had requested counseling
5 on the person's own initiative.

6 (d) If the court finds that placing the child in the custody of a parent
7 will not assure protection from physical, mental or emotional abuse or
8 neglect or sexual abuse or is contrary to the welfare of the child or that
9 placement would be in the best interests of the child, the court shall ~~enter~~
10 *first consider entering* an order awarding custody of the child, until the
11 further order of the court, to ~~one of the following~~.

12 ~~—(1) a relative of the child or a~~ *If custody with a relative is not a viable*
13 *alternative, the court shall enter an order awarding custody of the child,*
14 *until further order of the court, to one of the following: (1) A person with*
15 *whom the child has close emotional ties;*

16 (2) any other suitable person;

17 (3) a shelter facility; or

18 (4) the secretary.

19 If the child is adjudged to be a child in need of care, the court shall
20 not place the child in the custody of the secretary if the court has received
21 from the secretary, written documentation of the services and/or com-
22 munity services plan offered or delivered to prevent the need for such
23 custody unless the court finds that the services documented by the sec-
24 retary are insufficient to protect the safety of the child and that being in
25 the custody of the parent with such services in place is contrary to the
26 welfare or that placement is in the best interests of the child. The court
27 shall have the authority to require any person or entity agreeing to par-
28 ticipate in the plan to perform as set out in the plan. The secretary shall
29 present to the court in writing the specific actions taken to maintain the
30 family unit and prevent the unnecessary removal of the child from the
31 child's home.

32 In making such a custody order, the court shall give preference, to the
33 extent that the court finds it is in the best interests of the child, first to
34 granting custody to a relative of the child and second to granting custody
35 of the child to a person with whom the child has close emotional ties. If
36 the court has awarded legal custody based on the finding specified by this
37 subsection, the legal custodian shall not return the child to the home of
38 that parent without the written consent of the court.

39 (e) When the custody of the child is awarded to the secretary:

40 (1) The court may recommend to the secretary where the child
41 should be placed.

42 (2) The secretary shall notify the court in writing of any placement
43 of the child or, within 10 days of the order awarding the custody of the

1 child to the secretary, any proposed placement of the child, whichever
2 occurs first.

3 (3) The court may determine if such placement is contrary to the
4 welfare or in the best interests of the child, and if the court determines
5 that such placement is not in the best interests of the child, the court
6 shall notify the secretary who shall then make an alternative placement
7 subject to the procedures established in this paragraph. In determining
8 if such placement is in the best interests of the child, the court, after
9 providing the parties with an opportunity to be heard, shall consider the
10 health and safety needs of the child and the resources available to meet
11 the needs of children in the custody of the secretary.

12 (4) When the secretary provides the court with a plan to provide
13 services to a child or family which the court finds is in place and which
14 will assure the safety of the child, the court shall approve the return of
15 the child to the child's home. The court shall have the authority to require
16 any person or entity agreeing to participate in the plan to perform as set
17 out in the plan.

18 (f) If custody of a child is awarded under this section to a person
19 other than the child's parent, the court may grant any individual reason-
20 able rights to visit the child upon motion of the individual and a finding
21 that the visitation rights would be in the best interests of the child. *Such*
22 *visitation shall be unattended unless the court orders attended visitation.*
23 *During attended visitation, the parent shall be allowed to bring such par-*
24 *ent's Senator, member of the house of representatives or clergy to attend*
25 *such visitation with the parent. The parent may make a recording of the*
26 *attended or unattended visitation.*

27 (g) If the court issues an order of custody pursuant to this section,
28 the court may enter an order restraining any alleged perpetrator of phys-
29 ical, sexual, mental or emotional abuse of the child from residing in the
30 child's home; visiting, contacting, harassing or intimidating the child,
31 other family member or witness; or attempting to visit, contact, harass or
32 intimidate the child, other family member or witness.

33 (h) The court shall not enter an order removing a child from the
34 custody of a parent pursuant to this section unless the court first finds
35 from evidence presented by the petitioner that reasonable efforts have
36 been made to maintain the family unit and prevent the unnecessary re-
37 moval of the child from the child's home ~~or that reasonable efforts are~~
38 ~~not necessary because reintegration is not a viable alternative, or that an~~
39 ~~emergency exists which threatens the safety of the child and that allowing~~
40 ~~the child to remain in the home is contrary to the welfare of the child or~~
41 ~~that placement would be in the best interest of the child by utilizing~~
42 *family preservation services. If a parent or parents refuse to participate*
43 *in family preservation, such child or children may be removed from the*

1 *home. Family preservation services need not be utilized if there is evidence*
2 *of physical abandonment, physical abuse, sexual abuse or when a parent*
3 *has been convicted of murder in the first degree, K.S.A. 21-3401 and*
4 *amendments thereto, murder in the second degree, K.S.A. 21-3402 and*
5 *amendments thereto, capital murder, K.S.A. 21-3439 and amendments*
6 *thereto, voluntary manslaughter, K.S.A. 21-3403 and amendments*
7 *thereto, or violated a law of another state which prohibits such murder*
8 *or manslaughter of the child's sibling. If the child is placed in the custody*
9 *of the secretary, the court shall provide the secretary with a copy of any*
10 *orders entered for the purpose of documenting these orders within 10*
11 *days of making the order. Reintegration may not be a viable alternative*
12 *when the: (1) Parent has been found by a court to have committed murder*
13 *in the first degree, K.S.A. 21-3401, and amendments thereto, murder in*
14 *the second degree, K.S.A. 21-3402, and amendments thereto, capital*
15 *murder, K.S.A. 21-3439, and amendments thereto, voluntary manslaugh-*
16 *ter, K.S.A. 21-3403, and amendments thereto, or violated a law of another*
17 *state which prohibits such murder or manslaughter of a child; (2) parent*
18 *aided or abetted, attempted, conspired or solicited to commit such mur-*
19 *der or voluntary manslaughter of a child as provided in subsection (h)(1);*
20 *(3) parent committed a felony battery that resulted in bodily injury to the*
21 *child or another child; (4) parent has subjected the child or another child*
22 *to aggravated circumstances as defined in K.S.A. 38-1502, and amend-*
23 *ments thereto; (5) parental rights of the parent to another child have been*
24 *terminated involuntarily or (6) the child has been in extended out of home*
25 *placement as defined in K.S.A. 38-1502, and amendments thereto. Such*
26 *findings shall be included in any order entered by the court.*

27 (i) In addition to or in lieu of any other order authorized by this
28 section, if a child is adjudged to be a child in need of care by reason of a
29 violation of the uniform controlled substances act (K.S.A. 65-4101 *et seq.*,
30 and amendments thereto, or K.S.A. 41-719, 41-804, 41-2719, 65-4152,
31 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall
32 order the child to submit to and complete an alcohol and drug evaluation
33 by a community-based alcohol and drug safety action program certified
34 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
35 to exceed the fee established by that statute for such evaluation. If the
36 court finds that the child and those legally liable for the child's support
37 are indigent, the fee may be waived. In no event shall the fee be assessed
38 against the secretary or the department of social and rehabilitation serv-
39 ices.

40 (j) In addition to any other order authorized by this section, if child
41 support has been requested and the parent or parents have a duty to
42 support the child, the court may order one or both parents to pay child
43 support and, when custody is awarded to the secretary, the court shall

1 order one or both parents to pay child support. The court shall determine,
2 for each parent separately, whether the parent is already subject to an
3 order to pay support for the child. If the parent is not presently ordered
4 to pay support for any child who is a ward of the court and the court has
5 personal jurisdiction over the parent, the court shall order the parent to
6 pay child support in an amount determined under K.S.A. 38-1595, and
7 amendments thereto. Except for good cause shown, the court shall issue
8 an immediate income withholding order pursuant to K.S.A. 23-4,105 *et*
9 *seq.*, and amendments thereto, for each parent ordered to pay support
10 under this subsection, regardless of whether a payor has been identified
11 for the parent. A parent ordered to pay child support under this subsec-
12 tion shall be notified, at the hearing or otherwise, that the child support
13 order may be registered pursuant to K.S.A. 38-1597, and amendments
14 thereto. The parent shall also be informed that, after registration, the
15 income withholding order may be served on the parent's employer with-
16 out further notice to the parent and the child support order may be en-
17 forced by any method allowed by law. Failure to provide this notice shall
18 not affect the validity of the child support order. *If a relative of the child*
19 *has been awarded custody and such relative has not requested child sup-*
20 *port, the court shall not order one or both parents to pay child support.*

21 (k) *In addition to any other order authorized by this section, if the*
22 *parent of a child and the relative are both indigent and a relative of the*
23 *child has been awarded custody, the court may require the department*
24 *of social and rehabilitation services to pay to the relative an amount not*
25 *to exceed the amount of money the department of social and rehabilitation*
26 *services would normally pay the foster care contractor for the services of*
27 *a licensed foster care provider had such foster care provider been awarded*
28 *custody of such child.*

29 Sec. 11. K.S.A. 38-1501, 38-1542, 38-1543, 38-1559 and 38-1563 and
30 K.S.A. 2002 Supp. 38-1502 are hereby repealed.

31 Sec. 12. This act shall take effect and be in force from and after its
32 publication in the statute book.
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